



Early Resolution Scheme

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Table of Contents

PURPOSE 1
WHAT is Early Resolution? 2
HOW Early Resolution is Brought About? 2
WHEN SHOULD CDPP STAFF ENGAGE IN EARLY RESOLUTION? 3
Unrepresented Accused 3
Indictable Matter 3
Summary Matter 3
WHO SHOULD TAKE ACTION TO RESOLVE MATTERS? 3
Partner Agency 4
Victims 4
WORK TO SUPPORT EARLY RESOLUTION 4
Early Provision of Summary of Facts 4
Provision of Centrelink Debt Schedules in Centrelink Prosecutions 4
Provision of other material to the defence 5
Communication with the Defence 5
Examples of Resolution Efforts 5
Seeking defence admissions to streamline trials 6

PURPOSE

- 1. For our criminal justice system to operate effectively it is important that prosecutions are conducted expeditiously and with appropriate use of resources. The concept of "early resolution" plays a very important role in this context and the purpose of this NLD is to highlight the importance of this and to set out a framework and provide guidance for lawyers to take active steps to facilitate early resolution of cases consistently with the Prosecution Policy of the Commonwealth.
2. Case Officers and their supervisors must actively explore the opportunity for early resolution on an appropriate basis in ALL matters where there has not already been an indication from the legal representatives of the defendant that the matter will proceed by way of guilty plea. Supervisors must ensure that case officers comply with this obligation. This NLD sets out the framework for this process.
3. This NLD should be read in conjunction with the following documents:
- Prosecution Policy of the Commonwealth – section on "Charge Negotiation" at paragraphs 6.14 to 6.21

- [Federal Prosecutions Manual](#)¹ (FPM) – Chapter on “Charge Negotiation”
- [CDPP Victims of Crime Manual](#)² (VOCM) – Section 4 - “Contact with Victims throughout the Prosecution process”
- [CDPP Victims of Crime Policy](#) - Clause 4

WHAT is Early Resolution?

4. Early resolution is the finalisation of a matter at any point prior to it proceeding as a contested hearing or trial. In the majority of cases, the resolution of the matter will be by way of guilty plea to all or some charges, however there will also be instances where the matter is resolved by way of discontinuance due to insufficiency of evidence or public interest considerations. Generally, the earlier the matter is able to be resolved the better.

HOW Early Resolution is Brought About?

5. Early resolution arises in a number of different scenarios, often in combination.

- In some cases the legal representatives of the accused give an early indication of the intention of the accused to plead guilty, without any engagement with CDPP on the subject. In these cases the case officer should explore the provision of a plea (or short form) brief if this option is available and appropriate, bearing in mind the seriousness of the matter and the risk that the full criminality of the offending and the defendant’s role in it may not have been identified at that stage. This is particularly important in cases involving a number of accused where one makes an early approach to plead guilty.
- In most jurisdictions the courts have a system of mention hearings, often requiring the parties to file documents designed to elicit and explore the issues in dispute, and thus identify and filter out those matters that might be resolved. Some jurisdictions also have other mechanisms aimed at encouraging early guilty pleas, such as sentence indication and these should also be considered and used, where appropriate.
- Charge negotiations between the prosecution and legal representatives of the accused that result in the accused agreeing to plead guilty to fewer charges than they are facing, or to a lesser charge or charges, with the remaining charges either not proceeded with or being taken into account pursuant to section 16BA of the Crimes Act 1914. This can be initiated by either party and in some cases the Judge or Magistrate presiding over the matter may suggest the parties engage in discussions with a view to resolving it. See “Charge Negotiations” section in the [Prosecution Policy of the Commonwealth](#) and also the [Federal Prosecutions Manual](#) chapter on “Charge Negotiations”.
- Charge negotiations relating to the content of a prosecution statement or summary of facts to be presented to a court on a plea.
- An indication by CDPP to the legal representatives of the accused as to what the prosecution submission on disposition would be in the event of a guilty plea.
- Discontinuance of proceedings. This can be initiated by a request from the legal representatives of the accused, or of CDPP’s own volition after a review of the evidence, or a change in circumstances that impacts on the case in some way. The matter is discontinued due to there no longer being a reasonable prospect of conviction or on public interest grounds.

6. It is important for CDPP lawyers to recognise that all methods of resolution are to occur within the framework of the [Prosecution Policy of the Commonwealth](#), the *Decision Making Matrix* and other relevant office policies in order to ensure that all relevant delegations and authorisations are observed. In particular, consistent with paragraph 6.17 of the [Prosecution Policy of the Commonwealth](#), charges to be proceeded with should bear a reasonable relationship to the nature of the criminal conduct of the

¹ This is an internal CDPP resource

² This is an internal CDPP resource

defendant and should provide an adequate basis for an appropriate sentence, and there should be evidence to support the charges. It is also important to ensure the relevant Partner Agency is consulted throughout the process, and that consultation also occurs, where appropriate, with any victims.

7. In matters involving a number of co-accused it is important for the case officer to consider the possible impact of a plea offer on other matters involving co-accused.

WHEN SHOULD CDPP STAFF ENGAGE IN EARLY RESOLUTION?

8. Resolution of a matter should be considered as soon as CDPP has carriage of a prosecution and, if the matter is unable to be resolved at an early stage, then the case officer and supervisors should take active steps to attempt to resolve the matter at every subsequent stage of the prosecution, including right up to the commencement of the summary hearing or trial.

Unrepresented Accused

9. Note that caution is required in the case of an unrepresented accused. Case officers should consult with their supervisor to decide whether it is appropriate to pursue resolution of the matter, and if so, the most suitable way to proceed.

Indictable Matter

10. For a matter that is to proceed on indictment, attempts at resolution must occur after service of a brief and is expected to occur at most, if not all, of the following stages:
 - prior to the committal mention hearing or equivalent
 - prior to the committal hearing
 - prior to the first mention hearing or equivalent in the superior court post committal
 - prior to significant subsequent mention hearings
 - prior to trial
11. For regions without a committal regime, an attempt to resolve the matter must occur as soon as practicable after charges have been laid and the legal representatives of the accused have been provided with the brief of evidence and detailed summary/statement of facts (see below). Further attempts should be made in the lead up to the trial.

Summary Matter

12. For a matter that is to proceed summarily, attempts at resolution must occur after service of a brief and is expected to occur at most, if not all, of the following stages;
 - prior to, or whilst at court for a significant mention hearing of the matter
 - prior to a contested summary hearing

WHO SHOULD TAKE ACTION TO RESOLVE MATTERS?

13. It is the collective responsibility of all CDPP legal staff involved in prosecutions to actively seek to achieve early resolution. While the primary responsibility rests on case officers, as they will be best placed to know the intricacies of their case and be in a position to have discussions with the defence, there is also a crucial role to be played by all supervisors to bring to bear their experience and have continuing discussions with case officers with a view to ensuring all opportunities for resolving a matter are considered and taken. Branch heads, Practice Group Leaders and the Director will also have a role to play, in appropriate cases, to resolve matters while counsel, both “in house” and “external”, similarly play an important role, given the key part they play in appearing for the prosecution and the opportunities this presents to initiate and conduct discussions with defence representatives, particularly shortly prior to the commencement of a contested hearing. Case officers should ensure counsel act on instructions and any discussions between counsel resulting in a resolution of the matter are subject to written confirmation by us with solicitors acting for the defence.

Partner Agency

14. It is important to keep the partner agency informed of the progress and possible resolution of a matter. The partner agency views on resolution, including associated conditions, should be sought before resolution is finalised, and is one of the factors taken into account in determining whether it is acceptable to resolve a matter. However, it is important to ensure that the views are the formal views of the partner agency and not limited to the respective case officer/informant.

Victims

15. When in the process of participating in a plea negotiation, case officers must be mindful of Chapter 5 of the [Prosecution Policy of the Commonwealth](#) and the obligation to consider, when appropriate, the views of any victim when deciding whether it is in the public interest to agree to early resolution. See also section 4 of the [Victims of Crime Manual](#) and Clause 4 of the [Victims of Crime Policy](#).

WORK TO SUPPORT EARLY RESOLUTION

Early Provision of Summary of Facts

16. One of the most effective ways to bring about early resolution of a matter is for the case officer to conduct a thorough analysis of the brief of evidence and to produce a comprehensive statement of facts (in more complex matters it is preferable that the statement of facts footnotes the evidence relied upon with reference to the brief, **and for this to be provided to the legal representatives of the accused at an early stage in proceedings**). This is applicable to both matters where charges are initiated by the CDPP and those commenced by way of arrest. A more streamlined and concise version of the statement of facts may be prepared for subsequent court proceedings.
17. While template summaries for particular crime types (e.g. DHS matters) are useful and provide guidance in terms of good structure and detail, it is nevertheless vital that lawyers recognise the need for the summary in each matter to be suitably tailored. The summary should tell a story in a clear, logical and generally, chronological way. It should focus on the conduct of the accused, bearing in mind the physical and fault elements of the offence, and set out the relevant evidence as the alleged offending unfolded, appropriately footnoted to the evidence in the brief. This will also assist staff in identifying evidentiary deficiencies at an early stage.
18. Where charges are initiated by CDPP upon completion of the brief assessment phase, the statement/summary of facts that has been drafted by the case officer should normally be provided to the accused at the same time as the charges are served. The [Federal Prosecutions Manual](#) deals with the steps required to be complied with when serving such summaries on the defence at the time of charging (see section headed PREPARING THE SUMMARY (OR STATEMENT) OF FACTS).³
19. Where the charges arise from an arrest, the case officer should ensure that the summary of facts that is provided with the brief of evidence adequately reflects the nature and extent of the case against the accused. Agency summaries can be a good starting point in order to get an overview of a matter but may require reworking with a view to ensuring all assertions are supported by evidence. Supporting material as outlined in this NLD should also be provided.

Provision of Centrelink Debt Schedules in Centrelink Prosecutions

20. The Centrelink debt schedule should accompany the summary of facts but should not be annexed or incorporated within it, consistent with current RBF practice. Reference should also be made to the debt schedule having been prepared by DHS and being subject to revision at any time. If possible, relevant fortnights should be highlighted/shaded to indicate the periods of alleged offending.

³ As clearly set out in the FPM exemptions to this policy may be required in child pornography and related matters where the Summary/Statement of Facts may contain material of a sensitive and graphic nature

Provision of other material to the defence

21. Documents prepared by CDPP staff when analysing briefs of evidence, such as chronologies, tables, summaries and charts are important tools when having discussions with defence representatives in relation to a proposed resolution of a case. Such documents enable quite complex and voluminous material to be condensed to manageable segments and, when provided to the defence, will often result in focussed discussions occurring between the parties in an attempt to resolve the matter on an appropriate basis. Identifying key items of evidence can be another effective way in which to highlight the strength of the Crown case and prompt a discussion with defence representatives about possible early resolution. Extracting from a large brief those critical conversations or documents which implicate the defendant in the offending can help a defence legal representative more quickly understand the Crown case and seek instructions on possible admissions. CDPP staff should always consider providing the defence with such material early in the proceedings. Needless to say, however, the defence should not be provided with internal CDPP working documents, such as notes, analysis and commentary as these are likely to be subject to legal privilege.

Communication with the Defence

22. One of the key factors to achieving effective early resolution of cases is for case officers to be proactive and conduct early and open discussions with the defence. Opportunities to communicate with the defence will regularly present themselves to case officers, such as when a new case officer is appointed, when sending additional statements or other evidence to the defence or sending comparative sentencing material, if appropriate. Where there are mitigating circumstances known to the prosecution it may be appropriate for the CDPP to draw attention to these in an endeavour to achieve early resolution. Such factors might typically involve: any delay since the offending, the absence of a criminal history, full reparation having been made, and so on. All such discussions should be recorded by the case officer in accordance with normal record keeping and file management practices.

23. The case officer must record any resolution by a plea of guilty in writing (letter or email) and ensure that the accused's legal representatives have a copy of that document before the resolution is acted upon. The document should include the charges to which the accused will plead guilty, any agreed facts, any agreed sentencing submissions and any other substantial matter relevant to the accused's decision to plead guilty. Whilst it is desirable for all the facts to be agreed, if this cannot occur it is open to negotiate a plea and any facts that cannot be agreed can be the subject of a disputed facts hearing at the sentence proceedings.

24. All attempts to resolve a matter and related communications and correspondence should be recorded and saved in the G drive. These records will include file notes of conversations, copies of correspondence, including letters and emails, and copies of relevant written submissions.

Examples of Resolution Efforts

- 25.** The following are examples of how case officers commence the process of seeking to resolve a matter:
- Discuss the case with the legal representative of the accused at court to sound them out about the possibility of early resolution
 - Telephone the legal representative of the accused to sound them out about the possibility of early resolution
 - Write to the legal representative of the accused to invite them to enter into discussions concerning the possible resolution of the matter
 - Write to the legal representative of the accused with a formal offer to settle the matter on the basis that the accused pleads guilty to a particular charge (possibly a rolled up count) or charges. Such an offer may involve withdrawing or scheduling some charges in return for a plea of guilty to others.
 - Write to the legal representative of the accused to indicate what the case officer considers the appropriate sentencing disposition for an early guilty plea to the charges on foot might be, based

on the circumstances and information currently known, and noting that the case officer is not the ultimate decision maker. This should generally occur after the case officer has had a discussion with his/her supervisor

- Write to the legal representative of the accused to invite them to attend a conference where the CDPP (with or without the informant as appropriate) will run through the prosecution case and explain how it is put with a view to discussing potential resolution.

Seeking defence admissions to streamline trials

- 26.** While the focus of this NLD is on resolution in the sense of resolving matters as pleas, it is equally important case officers do all they can to seek appropriate admissions from the defence, with a view to ensuring matters which cannot be resolved and end up proceeding as hearings or trials are conducted as efficiently as possible, resulting in savings for not only the CDPP but also the courts and the defence. Accordingly, case officers must always be conscious of seeking either formal admissions in relation to issues such as continuity, surveillance evidence, translations of telephone intercept and listening device conversations, drug analysis, banking evidence, etc., or agreement that such evidence can be led from one officer, in short form. This is most effectively done by formally writing to the defence.
- 27.** Where the defence have indicated a willingness to make admissions but have not actually done so prior to trial another means of seeking to progress the issue is to write to the defence and outline each of the matters that we propose seeking admissions to and specify that unless we are advised to the contrary by a certain date we will proceed on the basis that the various matters referred to in the letter, such as continuity, surveillance evidence, translations of telephone intercept and listening device conversations, drug analysis, banking evidence, etc are admitted.