



Right of Review - Prosecutions involving child and certain other complainants

Last Update: March 2021

1. The purpose of this National Legal Direction (“NLD”) is to set out guidelines in relation to how certain critical decisions should be made with respect to commencing or wholly discontinuing charges in matters where there is a complainant or multiple complainants, and the complainant is an identifiable victim of the following offences:
 - offence involving a child (person under 18 years of age) who is considered a victim of crime (as defined in the CDPP Victims of Crime Policy), including victims of:
 - online child exploitation offences, including grooming, procuring and engaging in sexual activity
 - child sex offences outside Australia.
 - slavery, servitude and forced marriage offences.
 - offences in which a victim suffers really serious physical or psychological harm as a result of alleged offences.

In addition, matters involving the death of a person as a result of any alleged offence.

2. This National Legal Direction should be read in conjunction with the Victims of Crime Policy, the Victims of Crime Manual and the Decision Making Matrix (DMM).

Background

3. The Royal Commission into Institutional Responses to Child Sexual Abuse consulted with the Commonwealth Director of Public Prosecutions (CDPP) and other Offices of Public Prosecutions with respect to decision making processes for child sex matters.
4. The CDPP Victims of Crime Policy identifies the types of information that victims of crime are entitled to receive upon request and this guides the work of the Witness Assistance Service, together with prosecutors in this area. The Policy sets out the circumstances in which a victim’s views are required to be obtained. The Policy recognises the importance to victims and their families of maintaining regular communication with them regarding the status of the prosecution unless they have been asked not to be informed.

PGL to make certain decisions - changes in the Decision Making Matrix (“DMM”) relating to offence involving child and certain other complainants

5. The DMM lists prosecution decisions in the prosecution process and cross-references those to the seniority of the prosecutor required to make that particular decision. The prosecution decisions affected by this NLD are:
 - a decision in the context of considering whether to commence a prosecution, which results in none of the allegations against an alleged offender relating to a particular complainant (or in the case of an offence resulting in the death of a person, the deceased) being the subject of a prosecution; and

- a decision to wholly discontinue a prosecution against an alleged offender with respect to all of the allegations relating to a complainant (or in the case of an offence resulting in the death of a person, the deceased) (either before or after committal).

6. The DMM has been amended to increase the level of authority required for the decisions set out in paragraph 5 to the Practice Group Leader (“PGL”) level where the prosecution involves:

A complainant who is an identifiable victim of the following offences:

- offence involving a child (person under 18 years of age) who is considered a victim of crime (as defined in the CDPP Victims of Crime Policy), including victims of:
 - online child exploitation offences, including grooming, procuring and engaging in sexual activity
 - child sex offences outside Australia.
- slavery, servitude and forced marriage offences.
- offence in which a victim suffers really serious physical or psychological harm as a result of alleged offences.

In addition, matters involving the death of a person as a result of any alleged offence.

7. Prior to the matter being referred to the PGL, a consultation process with the complainant should occur, whether the issue in the case relates to the sufficiency of evidence or the public interest. The complainant should be allowed adequate time to consider whether they are comfortable with proceedings not commencing or being discontinued. In the case of an offence resulting in the death of a person the consultation and right to seek a review rests with the direct family members of the deceased.
8. In the context of a case in which the key issue is whether the prosecution is in the public interest, the attitude of a victim is a relevant factor to consider in making that ultimate decision.
9. The discussions with the complainant should be carefully file noted by the prosecutor. Before these discussions are held, it would be prudent for the prosecutor to consult with someone experienced in these matters.
10. Referral of the matter to the PGL should occur via a Decision Task in caseHQ and the views of the complainant(s) should be referenced within the attached materials.
11. By way of clarification, this NLD does not apply to situations where at least some charges will proceed or remain on foot against the alleged offender with respect to the complainant or deceased person. The NLD does apply if all of the charges relating to a particular complainant or deceased person are discontinued or not commenced even though charges relating to another complainant or deceased person will proceed.
12. By way of clarification, where no prosecution will be commenced at all or where a prosecution will be discontinued entirely due to the Attorney-General declining to provide the necessary consent for the prosecution, this NLD will not be applicable, as in effect, the decision is being made by the Attorney-General, not by the CDPP. Similarly, there will be no right of review by the Director available (see paragraph below regarding when a review will be available).

Right of Review by the Director

13. Where the PGL makes a decision of the type outlined in paragraphs 5 and 6, the complainant(s) should be notified in writing of that decision, and also notified of their right to request a review of the decision by the Director. Ordinarily, such decisions should be communicated verbally to the complainant in the first instance and followed up in writing. Ordinarily, a complainant will have a period of 7 days from the communication of the decision to seek a review by the Director, unless in the particular circumstances of the case it is appropriate to vary that time frame, for example, where time may be of the essence and a shorter time frame may be necessary. Complainants should be provided with clear written information about how to seek a review and any associated deadlines for such a request.
14. Where a review by the Director is sought, this should occur via a Decision Task in caseHQ.

Reasons

15. The reasons for not commencing a prosecution at all, or wholly discontinuing a prosecution against an alleged offender with respect to a complainant should be explained to the complainant by the prosecutor at the time the decision is first communicated.
16. The complainant may seek written reasons for the decision of the PGL or of the Director, not to commence a prosecution at all or to wholly discontinue a prosecution with respect to the complainant, where the matter is of a type as set out in paragraphs 5 and 6. The complainant should be advised of their ability to do so in writing. The PGL and/or Director may provide written reasons where it is considered appropriate to do so.

Contact/Communication with a Child Complainant

17. The Victims of Crime Manual provides detailed guidance on who a prosecutor should contact when the case involves a child complainant. In such cases, whilst the appropriate person to consult with and obtain views from, will most often be the parents/guardians of the child complainant, this will not always be the situation, and should be assessed on a case by case basis. Accordingly, references to consultation with the complainant, or obtaining the views of the complainant in this NLD should be viewed in that context, that is, as requiring consultation with and obtaining views from the person(s) whom this office has identified as being the most appropriate person(s) to deal with.

Referral to the PGL or Director in other Circumstances

18. Nothing in this NLD prevents a victim matter which falls outside the terms of this NLD, to be escalated to the PGL or Director, where it is otherwise appropriate to do so.