ACT · DPP

ACT Office of the Director of Public Prosecutions

Right of Review Policy

1. Introduction

This policy sets out the review process for decisions to discontinue a prosecution or charges, in discrete categories of offences. The genesis of this policy is the Royal Commission into Institutional Abuse which recommended that each Director of Public Prosecutions should establish a robust and effective mechanism to allow complainants in criminal proceedings to seek internal merits reviews of key decisions.

This policy provides the opportunity for formal review of a direction already given, in relation to prosecutions involving sexual violence offending. It is not the only avenue for consultation for complainants as their views are considered in all decisions made, consistent with the ACT DPP Prosecution Policy, which can be read here. It is also not the only avenue for complaints, and the ACT DPP has a complaints mechanism and policy, which can be found on the website.

The purpose of this policy is to ensure consistency, accountability and transparency in the decisions made by the ACT Office of the Director of Public Prosecutions and to achieve best practice in responding to allegations of sexual violence.

2. Victims of Crime

A complainant in a criminal prosecution is defined as a person who has suffered physical, emotional, psychological, psychiatric, or financial harm as a direct result of an alleged criminal offence. In this policy, the term complainant is a collective term that also encompasses:

- A victim of crime or a complainant in a criminal prosecution conducted by the ODPP;
- in the case of a deceased person, a close family member or next of kin, including those recognised under Aboriginal and Torres Strait Islander kinship systems and cultural practices; and
- a parent or guardian of a complainant who is a child or young person, as defined in the *Children and Young People Act 2008*. For an Aboriginal or Torres Strait Islander child or young person, the term 'parent or guardian' also includes a person who has responsibility for the

child or young person in accordance with the traditions and customs of the child's or young person's Aboriginal or Torres Strait Islander community.

- a caregiver or designated spokesperson for a complainant who is unable to communicate effectively due to injury, disability or illness, including mental illness - excluding the defendant.

3. Decisions Eligible for Review

A complainant in a matter involving an allegation of **sexual violence** is entitled to request a review of an ODPP decision to discontinue a prosecution, where that decision results in the **termination of any charge** or a **significant change** to the agreed statement of facts relating to the complainant.

A review is not available in circumstances where:

- The decision not to prosecute was made at the complainant's request, with their agreement, or following their withdrawal of support for the prosecution.
- The Director made the decision, unless any new and significant evidence has become available.

Reviews are not available to be requested by persons who are not complainants, as defined in this policy, for example a defendant or their legal representative, or the police.

4. Review process

If a decision is eligible for a review, the prosecutor must notify the complainant and explain generally the nature and reasons for the decision and the right of the complainant to seek a review of the decision under this policy.

From this point, the complainant has 10 business days to request a review

A request for review is best made in writing by email to feedbackactdpp@act.gov.au. It can also be made by phone by contacting (02) 6207 5399.

5. The Review

When reviewing an eligible decision, a prosecutor at a higher grade than the original decision maker will be allocated to conduct the review. The reviewing prosecutor will consider whether:

- The evidence was materially misinterpreted;
- The law was incorrectly applied;
- The Prosecution Policy was not followed;
- The decision was based on flawed reasoning; or
- The views of the complainant were not meaningfully taken into account.

If the review also relates to the proposed agreed facts, these will also be reviewed by the reviewing prosecutor.

6. Outcome and Notification

The reviewing prosecutor will:

- Confirm if the original decision is upheld; or
- Determine that the original decision should be changed, noting the consequences of that decision.

The complainant will be notified in writing of the outcome, including a brief explanation.

If a trial is listed to commence within 10 days of a decision to discontinue, the request for review must be made as soon as possible, as the timeframe for the review process will be shorter. In some cases, it may not be possible to review the decision before notice of the decision is communicated to the court. In those circumstances, the decision will still be reviewed, however, the decision may not be able to be reversed.

7. Further Support and Feedback

If a complainant remains dissatisfied or has concerns about the process, they may provide feedback or lodge a formal complaint through the designated feedback process including a Justice Agency Complaint. A referral to external victim support services should be considered by the prosecutor throughout the review process.