



CONSENT OF DPP UNDER SECTION 334(4) OF THE *CRIMES ACT 1900*

STATEMENT OF POLICY

BACKGROUND

Section 334 – the power to dismiss

Section 334 gives the Magistrates Court power to dismiss a charge where the court is satisfied that:

- (a) the accused is mentally impaired; and
- (b) on an outline of the facts to be alleged in the proceedings, or any other evidence the Magistrates Court considers relevant, it would be appropriate to deal with the person under this division [i.e. Division 13.6].

The dismissal is either unconditional (section 334(2)(b)), or with a requirement that the accused submit to the jurisdiction of the ACAT to enable the ACAT to make a mental health order (section 334(2)(a)).

In relation to purely summary matters the power of the Magistrates Court to dismiss under section 334 is not conditioned on consent.

However, in relation to proceedings with respect to an indictable offence that may be heard and determined summarily, the **consent** of the Director of Public Prosecutions **is required** before the Magistrates Court may dismiss the charge under section 334 – see subsection 334(4).

PROSECUTION CONSENT UNDER SUBSECTION 334(4) WHERE THE PROSECUTION HAS ELECTED TO HAVE CASE DISPOSED OF SUMMARILY UNDER SUBSECTION 374(2) *CRIMES ACT 1900*

Where the prosecutor has elected to have a matter disposed of summarily pursuant to subsection 374(2) *Crimes Act 1900*, the office considers the matter a summary matter for the purposes of consent under subsection 334(4).

THE POLICY - WHAT FACTORS ARE TO BE CONSIDERED BY THE DIRECTOR IN GIVING OR WITHHOLDING CONSENT UNDER SUBSECTION 334(4)?

Of course, for such a matter to have reached this stage, the prosecution would have had to agree pursuant to subsection 333(b) to the offence being heard and determined summarily.

Just because the prosecution has agreed that the matter can be dealt with summarily, it does not follow that the Director of Public Prosecutions will consent to an order being made to dismiss the charge under section 334.

The matters set out in subsection 334(3), which are factors to which the Magistrates Court must have regard in determining whether to make an order under subsection 334(2), are factors which will also guide the Director in deciding whether or not to consent under subsection 334(4).

A disposition under section 334 should be seen as an **exceptional outcome** which embodies significant leniency. It must hold the prospect of benefit not just to the offender but to the community.

This suggests that three matters are particularly important:

- the seriousness of the alleged offence;
- whether the accused has had the benefit of previous dispositions under section 334; and
- any other relevant public interest factors.

These matters will need to be balanced in making the ultimate decision.

Special considerations may also apply to FV matters and Children's Court matters.

The seriousness of the offence

The more serious the offence, the less likely it is that the Director will consent to a disposition under section 334. The seriousness of the offence is to be judged by:

- the type of offence,
- the objective seriousness of the conduct which constituted the offence, and
- any aggravating factors in the commission of the offence.

Previous dispositions under section 334

The fact that an offender has previously been given the benefit of a disposition under section 334 on one or more occasions will tell against consent being given; as it tends to suggest that such a disposition has not been effective to prevent criminal behaviour.

Relevant public interest factors

The following general factors will tell **against** consent being given:

- other sentencing options offer greater hope of establishing appropriate and effective treatment and care regimes.
- the recording of a conviction or other court disposition has a specific consequence such as the holding of a licence.
- there are unresolved issues of safety for members of the community.
- there is evidence that the defendant is not complying with current treatment regimes, or is not doing anything that addresses treatment.

Family Violence offenders and other personal violence offences

Special considerations apply to FV offences or offences where the offender and the victim are known to each other. A primary consideration should be the safety of the victim. This may require in appropriate cases consultation with the victim and/or other relevant members of the family, and / or the informant.

Children's Court

Section 334 of the *Crimes Act 1900* now applies to Children's Court matters, with the consequence that the Director's consent is required. (See subsection 300(2) which makes it clear that a reference to the Magistrates Court includes a reference to the Children's Court).

The issue of jurisdiction of the Children's Court to deal with indictable matters is dealt with in subsection 375(2) of the *Crimes Act*. The jurisdiction is greater than for adults.

Having said all that, the same considerations apply to consent in respect of young people as apply generally.