



Director's Instruction No. 13

Guidelines for contact with child complainants in sexual offence matters

Introduction

This is to provide guidance in contact between the Office and child complainants in sexual offence matters, and to explain the role of the Sexual Offences Unit, prosecutors and the WAS in relation to such matters.

Child sexual offence cases bring with them particular issues that differentiate them from other types of cases, particularly in terms of the complainants' response both to the sexual offence and their subsequent engagement with the criminal justice system.

Children and young people who are victims of sexual offences are at risk of being further traumatised by the court process. These guidelines outline the approach that prosecutors should take when dealing with such cases, with a view to ameliorating the risk of further trauma and ensuring that the court hears the best evidence.

These guidelines also serve to ensure that the DPP, as an organisation that exercises a function in the administration of justice, has proper regard to the governing principles contained in section 4 of the *Victims of Crime Act 1994* (ACT), as required by section 5 of that Act.

Key points

Child sexual offence (CSO) cases require **special attention and oversight** from the prosecutor with carriage.

CSO cases encompass historic offences, where the complainant may now be an adult, and recent cases, where the complainant is still a child.

Face-to-face meetings between the prosecutor and the complainant (or their carer/s)¹ are required during the course of the matter.

There are a number of **key issues** that must be discussed at those meetings.

Contact must be established early, and a flow of information maintained. If any issue about the continuation of the matter arises, the views of the complainant must be sought and the internal processes for reviewing such decisions explained.

Specialist Sexual Offences Unit

The Sexual Offences Unit (SOU) is a specialist unit within the Office which provides a central point of expertise and coordinates the prosecution of all sexual offence matters, including sexual offences against children.

The SOU has initial carriage of all sex offence prosecutions prior to allocation to a particular prosecutor. The SOU does not conduct all sexual offences proceeding but will oversee the conduct of all matters.²

Both allocated prosecutors and WAS have roles to play in dealing with complainants.

Allocation to a prosecutor

Matters are usually allocated to prosecutors at the Magistrates Court stage. An important function of the prosecutor at this stage is to review the charges and to meet with the complainant in a “meet and greet” interview. Due to the process of criminal trial listing, the prosecutor allocated the matter at this early stage may not retain carriage of the matter for trial. This should be explained to the witness at the initial “meet and greet”.

Upon being allocated a matter the prosecutor should review the file and **provide instructions for all court appearances**.

¹ References to contact with “complainant” in this document includes references to the complainant’s guardian when the complainant is a child.

² The Sexual Offences Unit guidelines are available on the intranet

The allocated prosecutor needs to ensure that the initial meeting with the complainant occurs within **four weeks** of receiving the file. If the complainant lives interstate, this could take place on the phone or via Cisco Jabber or similar.³

There should be at least two face to face meetings with the complainant during the course of proceedings:

- a. At the early stages when the matter is in the Magistrates Court; and
- b. Prior to the pre-trial hearing (if a child) or the trial (if an adult) – this will be a proofing session, or where the EIC interview will be played, an opportunity for the witness to view the interview.

It is the responsibility of the allocated prosecutor to ensure the meetings take place. You can request the WAS to contact the complainant and make the appointment.

WAS contact with child complainants and their families/guardians

The role of WAS

The first contact between the Office and the complainant will generally be by the Witness Assistant Service (WAS).

The WAS assists the Director in dealing with victims of crime and witnesses. Broadly, WAS acts as a bridge between vulnerable witnesses and their family members on the one hand, and prosecutors on the other. The WAS is comprised of witness liaison officers (WLOs). It is not part of the WAS role to provide counselling or other therapeutic supports, or to “represent” victims. The WAS provides support and information to vulnerable witnesses to ensure they are able to fully participate in court proceedings.

How is a matter referred to WAS?

Paralegals provide the WAS with the police statement of facts in all sexual offence matters after the first mention. The WAS sends an initial introduction letter to the complainant giving them information about the WAS and other agencies that may be able to provide support. Where the complainant is a child the information is sent to the child’s parent or guardian.

Contact between the witness and our Office

Detailed time frames for WAS contact is at Attachment A.

³ Cisco Jabber is on all desktop computers in the Office. There is also an office laptop with Skype installed. Prosecutors should not communicate with witnesses using their own devices.

Early initial face to face contact – the “meet and greet”

An important aspect of our contact with complainants and their guardians, is an early initial “meet and greet” face to face meeting between the complainant, the allocated prosecutor and WAS.

The WAS will arrange a “meet and greet” between the allocated prosecutor and the complainant and/or their carers early in the proceedings. There is further information about what should be discussed at these meetings below. The WLO will inform the witness about contact the witness can expect from the DPP in the course of the proceedings.

Contact during the proceedings

WAS will keep the complainant updated during the proceedings when the following significant events occur, at the closest possible time:

- A plea is entered
- A bail application, bail reversal or bail variation (where it may have an impact on the witness) is listed, or the defendant fails to attend court
- The matter is committed to the Supreme Court
- A trial date/ pre-trial hearing is set
- A date the matter is listed for sentence or decision
- Outcome of sentence/trial/hearing
- An appeal is lodged
- An appeal is listed for hearing
- Outcome of appeal.

If there are specific outcomes that the prosecutor with carriage of the matter would like communicated to the complainant, the prosecutor should ask WAS to make contact.

Introductory meeting

When should this meeting occur?

- Within four weeks of allocation the WAS will book in a meeting with the child⁴ and their families/guardians;
- This meeting will be arranged by the WAS in consultation with the allocated prosecutor.

⁴ Whether the child attends this first appointment will depend on the age of the child, and the wishes of their parent/guardian. For younger children, it may be that it is just the parents/guardian that attend.

What is the purpose of this meeting?

- Meet the complainant and their parents/guardians
- To explain the role of the prosecutor and WAS
- To explain the prosecution process
- To explain the special measures that are available
- To answer questions that the child and or their parents/guardians have about the legal process.

Who should attend?

This depends on the matter. The following may attend:

- Child complainant;
- Parent/guardian;
- Support person (DVCS/VLO or regular support person) or WAS officer; and
- Prosecutor with carriage.

Where should this meeting take place?

- The meeting should, ideally, take place in the DPP WAS meeting room on the ground floor. The WAS officer will book this room when arranging the appointment;
- It is preferable that this meeting occur in person. However, if a complainant lives interstate this introductory meeting can be conducted by phone or Cisco Jabber or similar.

Other preliminary considerations

Attending the DPP in relation to the prosecution of a sexual offence can be a stressful experience for a child or young person and/or their family. It is important that we do what we can to make the experience as comfortable as possible. For example:

- Children can have limited attention spans so please be mindful of the need to attend these meetings in a timely manner and have regular breaks;
- If you have been unavoidably caught up please advise WAS and they will invite the child and their parent/guardian to wait outside or in the waiting room next door as there are some toys and books for younger children;
- It may be useful to bring a few of these toys and books into the meeting room to make them comfortable;
- Dress less formally;
- Use age appropriate language to communicate so that they understand what is being discussed; and
- Be sensitive to any cultural considerations.

Building rapport

It is important to approach an introductory meeting with sensitivity noting that complainants in sexual offences will have often suffered significant trauma and may be reluctant to engage with you and the criminal justice process. Building rapport with a child is essential as it can ensure that they are more comfortable, communicate more effectively and therefore provide the best evidence. Reducing anxiety and stress can also assist in enabling recollection. Prosecutors may wish to discuss strategies for communicating with a particular child in advance of the introductory meeting with the allocated WAS who may have some knowledge of the complainant.

Explain the role of WAS to the complainant and/or their parent or guardian

The prosecutor or WAS officer should explain that:

- the role of the WAS is to act as a bridge between the prosecutor and the complainant;
- the WAS will update the complainant regularly throughout the prosecution in accordance with the “Timeframes for WAS contact” outlined above;
- the WAS will provide information about support services that are available and arrange a pre-visit to the CCTV room prior to the pre-trial hearing;
- it is important that expectations of witnesses are managed at this juncture to ensure that they understand that the WAS does not provide counselling services or attend court as a support person. They can, however, make referrals to other agencies, which provide support and additional information; and
- the distinction between the role of the prosecutor and the role of the WAS.

Explain the procedure and relevant time frames to the complainant and/or their parent or guardian

The purpose of this initial meeting is to explain the court process to the witness and their family. The topics that will be covered are:

1. what has happened so far – whether any pleas have been entered
2. what charges have been laid (if appropriate)
3. what will happen if a plea of not guilty is entered and what will happen if a plea of guilty is entered
4. time frames and “events” along the way:
 - a. In Magistrates Court – plea, service of brief, committal for trial or sentence
 - b. In Supreme Court – time for preparation of documents, call over, trial date.
5. What will happen if there is a plea of guilty including opportunity to make a VIS

6. What will happen if the matter is set for trial:
 - a. Pre-trial hearing where the EIC is played
 - b. Trial
 - c. Verdict
 - d. Sentence.
7. Special measures – CCTV, support person, EIC and pre-trial hearing.⁵
8. When we will contact them – that is when significant events occur
9. The role of the prosecutor – it is important to explain we are not their lawyer, and we present the evidence in court on behalf of the community.

There are a number of facts sheets you can provide at this stage including:

- Fact sheet on special measures
- Information about other support agencies including VS ACT.

Second meeting - Prior to the pre-trial hearing

Prior to the child giving evidence at the pre-trial hearing it will be necessary to have a face to face meeting with them to explain the process of giving evidence and play the EIC to them.

What is the purpose of this meeting?

- To build on the rapport that you have established with the child;
- To explain what the charges are if appropriate;
- To explain the process of pre-trial hearings (PTH);
- To play the witness's EIC to refresh their recollection; and
- Answer questions that the child and or their parents/guardians may have.

This meeting should take place prior to the PTH date.

This meeting will be arranged by the WAS in consultation with the instructing solicitor. The complainant will again be advised that they can bring a support person to this meeting.

Where should this meeting take place?

The meeting will take place in the DPP WAS meeting room on the ground floor where possible.

Who should attend?

⁵ It is essential that prosecutors are across all the special measures that apply in the particular case before the meeting.

This should be considered on an individualised basis depending on the matter. The following may attend:

- Child complainant;
- Parent/guardian;
- Support person (DVCS/VLO or regular support person) or WAS officer; and
- Counsel and instructing solicitor.

During proofing sessions with complainants, as per usual practice an instructing solicitor or other person must be present with counsel to take details of what is discussed at the meeting, and to ensure that any disclosable information is disclosed to defence.

Explain what the charges are

It may be appropriate to advise the complainant and/or their parent/guardian and what the charges being proceeded with are. This is particularly important when the charges are different to those which the accused was committed for trial on. There may be *ex officio* counts, representative counts or some charges may not be included on the indictment.

However, be careful not to disclose any evidence or issue which may affect the evidence that the witness may give.

Explain the process of the PTE

Witnesses and their families need to have the logistics in relation to their upcoming court attendances explained, including:

- Where to attend and when;
- What to wear; and
- What to bring with them.

Explain to the witness that:

- They will go into the remote room;
- They can have a support person with them;
- They will be asked if they want to give an oath or make an affirmation or they will be told the matters outlined in s.13(5) of *the Evidence Act 2011 (ACT)*;
- The judge, lawyers and the accused will be in court but they won't be able to see the accused;
- They will have to sit in the CCTV room while their EIC is being played to the court;
- Then they will be cross examined by the defence.
- If they need a break they should ask for one.

- That you and the defence lawyer will be wearing robes and a wig and bring these with you to the meeting to show.

In the witness room there are photographs and maps of the court layout which can be used to familiarise witnesses with the remote room and the court room. By this meeting, the WAS should have already taken the complainant on a court tour.

Prosecutors should also remind witnesses not to discuss their evidence with other witnesses until the end of the proceedings.

Play the EIC

Prior to the PTH the child should be shown the EIC interview. Unless absolutely necessary, they should not be asked to repeat their evidence or asked additional questions about the evidence.

Witnesses should be told if it has been edited in any way. It is also appropriate to explain why it has been edited.

The EIC should be played to the child. Do not leave children (including teenagers) in a room alone – it can be very confronting and they should always have a support person with them.

If the complainant is old enough, you could provide the EIC transcript to them to follow.

When should this take place?

How long before the PTH date will depend on a number of factors such as the age of the child, whether any further questions will be asked of the child in proofing and in the course of examination in chief and prosecutor availability. Generally at the PTH we indicate to the court that the child has recently viewed the recording, and the court does not then require it to be played at the PTH. The child will then be cross examined. Bear this in mind when working out the timing of when you want the child to view the interview. Ideally the child should be shown the *edited* version of the interview. This cannot always happen as edits are often sought at the PTH, but as much as possible this should be done.

Should parents/guardians be in the room with the child when the EIC is played?

Parents/guardians are often witnesses and if that is the case they cannot be present when the EIC is played to the child. This should be discussed with the parent/guardian when the appointment is made.

If the parent/guardian is not a witness, it may still not be desirable for them to be present. They may have emotional reactions to hearing what the child has said, which may affect the child. Children often want to protect their parents from hearing terrible things that have happened to them. Teenagers may become very embarrassed if their parent/guardian hears what they have said. There is no hard and fast rule but it is something to keep in mind.

What if there are deficiencies in the EIC?

Deficiencies such as lack of specific detail about a particular incident, or failure to follow up a disclosure about an act in the interview should ideally be identified early in the process – before the matter is committed or in the process of preparing committal documents. There is nothing preventing a further EIC interview and this is preferable to prosecutors collecting this further evidence in a proofing session. This second EIC interview can be played as evidence in chief in addition to the initial interview.

If any additional material disclosures are made during or after the viewing of the EIC, or as a result of further questions put to the witness in the course of proofing ensure these further disclosures are noted and disclosed to the defence.

Discontinuance of a child sexual offence matter

In making decisions in the course of the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed, and in particular by the Prosecution Policy and Guidelines promulgated by the Director pursuant to section 12 of the *Director of Public Prosecutions Act 1990*.

Discontinuance of charges

All sexual offence charges involving an identifiable complainant can only be discontinued with the consent of the Director, following an automatic review of the first-instance decision of the Deputy Director or Assistant Director. This applies where it is a decision to discontinue the proceeding entirely, and applies whether this occurs in the Magistrates Court or the Supreme Court. There are processes to follow which are set out in the following instructions:

- Director's Instruction No. 2 - Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court;
- Director's Instruction No. 1: Discontinuing Prosecutions and significantly amending Statements of Facts in the Supreme Court;

- Director’s Instruction No. 14.1 - Review of a decision to discontinue a prosecution; and
- Director’s Instruction No. 14.2 – Reviewable decisions to discontinue – contact with complainants, review processes and auditing.

Consulting the complainant is an important part of these instructions.

Amending the statement of facts

Any significant amendment to the statement of facts, where those amendments materially change the nature of the case must be discussed with the complainant and approved by the Director –see: Director’s Instruction No. 7: Charge Negotiation in the Supreme Court. This provides that where there is the possibility of charge negotiations in sexual offence cases, it is vital that the complainant be fully consulted. In the case of children, the consultation should involve consideration of the views of the parents and / or guardians of the complainant.

What if the complainant is dissatisfied with a decision to discontinue a matter?

It must be recognised that a decision to discontinue a sexual offence is a matter of potentially great moment for a complainant. This is of course particularly the case where the complainant is a child. Specific rules apply therefore for discontinuing a sexual offence (as defined in section 41 of the *Evidence (Miscellaneous Provisions) Act 1991*).

In such cases, if a decision to discontinue is in prospect, the prosecutor must not only consult the complainant but also advise the complainant that if they are dissatisfied with a decision to discontinue a matter, they can ask that the decision be **reviewed** by the Director. This procedure is subject to a specific instruction from the Director (Director’s Instruction No. 14.1-2).

Sentences

Victim impact statements

Prior to any sentence, the complainant and their family should be given the opportunity to make a victim impact statement (VIS). Victim Impact Statements are governed by Part 4.3 of the *Crimes (Sentencing) Act*. See the guide to Victim Impact Statements on the intranet. Note that pursuant to the *Evidence (Miscellaneous Provisions) Act* a VIS can be read by the victim from the remote location.

Sentence only

Many matters proceed to sentence without a trial or hearing. It is important that you provide the opportunity for complainants and their families to have a face to face

meeting with you in these circumstances prior to the sentencing taking place. This provides an opportunity to discuss the process. These meetings should be offered when you become aware that the offender has pleaded guilty. As with other victim contact, the WAS can organise this on your behalf.

After the sentence is imposed

It is vitally important that the complainant and their family are advised as soon as possible of the result of any sentence. These matters are often high profile and attract media attention, especially in a small jurisdiction. It is important for complainants and their guardians to hear of the result from us *before* they hear it on the news or on the internet. The news cycle is rapid so this involves advising the complainant as soon as possible after the sentence is passed. The WAS can assist with this.

A further meeting might be needed. This will depend on the needs and requests of the complainant and their family.

After the trial or sentence

When complainants and their families are advised of results in criminal proceedings this can be traumatic and they may not be in a position to fully process it. A follow up meeting should be offered to enable the prosecutor to further explain the verdict and/or sentence and to allow the complainant to ask any questions they may have.

Appeals

In child sexual offence matters particular sensitivity is needed when an appeal is lodged because of the nature of the offences, and the stress that has often been involved around the court proceedings.

Key point – appeal is filed

When an appeal is lodged (either by the offender or by us), this Office emails the informant and asks them to contact the complainant. In addition in CSO matters direct contact needs to be made with the complainant and their family preferably by the prosecutor/s who had carriage of the matter to advise them of the appeal and what will happen. This means they are hearing from someone they know.

A further meeting should be offered. Whether that meeting is with the prosecutors who had conduct or the prosecutor appearing in the appeal will depend on the stage of the proceedings.

Key point - Notification of the hearing date

The Office will email the informant and the WAS when a hearing date is set. The WAS will contact the complainant and advise of the hearing date.

Key point – notification that the judgment will be handed down

Appeal decisions are often reserved and then handed down with only one or two days notice.

It is important that the complainant and family are advised *prior to* the decision being handed down, and as soon as possible following the hand down of the decision. Contact with the complainant should be made by the WAS, or if not available the appeals paralegal or the appeals prosecutor.

Key point – after the judgment is handed down

Often prosecutors not associated with the case will attend court for the decision. **These prosecutors have the responsibility for ensuring that the complainant is advised promptly (preferably before they hear of it via the media).** Contact can be made by the informant, the WAS, the prosecutor who had carriage of the original matter, the prosecutor who instructed or conducted the appeal or the appeals prosecutor. What is essential is that *someone* contacts the complainant promptly and the prosecutor picking up the judgment makes sure this happens.

ATTACHMENT A
Timeframes for WAS contact

Event	Timeframe
Introductory phone call	Within 2 business days of first mention
Initial letter	Within 2 business days of initial phone call or first mention in the event that the complainant has been able to be reached via phone.
Plea entered	Within 2 days of plea being entered
Book in a first meeting with the allocated prosecutor	Within 4 weeks of allocation to a prosecutor.
Matter committed	Within 2 business days of committal
When court listings occur: <ul style="list-style-type: none"> • Bail applications; • Trial date; • Pre-trial evidence date; and • Sentence date. 	Within 2 business days of the matter being listed. Complainants should be advised of bail applications as soon as possible.
Bail results (granted or denied)	As soon as result known, it must be conveyed to the complainant by phone – particularly if the defendant/accused had been in custody and is now granted bail.
Book in a second meeting with the trial counsel and instructing solicitor	2 weeks prior to pre-trial hearing
Trial result	As soon as the result is known.
Follow up providing a Victim Impact Statement for sentence	At least 4 weeks prior to the sentence date
Sentence result	As soon as the result is known.
Appeals	Appeal lodged - within 2 business days of the appeal being lodged. Appeal result - as soon as result known, it must be conveyed to the victim by phone – particularly if as a result the defendant is released from prison.
Significant prosecution decisions including: <ul style="list-style-type: none"> • Considering whether to discontinue a prosecution; • Laying additional charges or significantly changing charges; • Significant changes to the statement of facts. 	As discussed with the allocated prosecutor.