



Decisions to Discontinue Prosecutions – Victims’ Right of Review

Director’s Guideline

This Guideline sets out the review process for decisions to discontinue a prosecution. The purpose of this Guideline is to ensure consistency, accountability and transparency in the decisions made by the ACT Office of the Director of Public Prosecutions.

This Guideline is issued under section 12 of the *Director of Public Prosecutions Act 1990*. The Guideline should be read in line with the [ACT DPP Prosecution Policy](#).

What is a reviewable decision?

A reviewable decision is a decision to discontinue a prosecution which involves an identifiable victim, where no charge involving the victim is proceeded with or prosecuted by my office. In this Guideline, **victim** includes:

- a complainant in a criminal prosecution conducted by the DPP;
- a close family member or partner of a deceased person in homicide cases; and
- a parent or guardian of a complainant who is a child.

After a reviewable decision has been made, there are two types of review process available:

- review at request; or
- automatic review.

A decision that is subject to **automatic review** means that the decision will be reviewed without requiring the victim to request a review. A decision that is subject to **review at request** will be reviewed only when a request for review is made by the victim, in accordance with this Guideline.

The type of review process available depends on the charge for which the prosecution will be discontinued. If a decision is made to discontinue more than one charge, the review process available will be the one which applies to the most serious charge.

Type of charge	Type of review available
Homicide offence ¹	Automatic review
Sexual offence ²	
Serious violent offence ³	
Less serious violent offence ⁴	Review at request
Any other offence against an identifiable victim named in the information	

All decisions to discontinue a prosecution for a homicide offence, sexual offence or serious violent offence will be subject to an automatic review.

If you are a victim of a less serious violent offence or any other offence, and a decision has been made to discontinue the prosecution, you are entitled to seek a review of that decision.

Decisions to discontinue

A decision to bring or discontinue a prosecution is governed by the ACT DPP Prosecution Policy. There are 3 considerations in deciding whether to prosecute or continue a prosecution: whether there is sufficient evidence to prosecute, whether there are reasonable prospects of conviction, and whether it is in the public interest to proceed.

Before a decision to discontinue is made, the prosecutor conducting the case will typically obtain the views of the victim and the police informant. Victims may be contacted by the prosecutor directly, or through a Witness Liaison Officer or the police. The victim's views will be considered when making the decision, although the decision whether to discontinue a prosecution is a matter for the DPP's office, considered against the Prosecution Policy.

All reviewable decisions are made by the Deputy Director or the Assistant Director. Review of those decisions is taken by the Director.

¹ In this Guideline, a 'homicide offence' includes any offence where the death of a person has occurred.

² The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991* s 41 – see Annexure 1 of this Guideline.

³ The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991* s 40 – see Annexure 1 of this Guideline.

⁴ The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991* s 39 – see Annexure 1 of this Guideline.

Review process

If a decision to discontinue is subject to automatic review, the Director will undertake a review of the decision within **7 days** of the decision being made.

If a decision to discontinue is subject to review at request, the prosecutor will notify the victim and explain generally the nature of the decision, the reasons for the decision and the right of the victim to seek a review of the decision. The prosecutor will also ask the victim if there are any further matters they would like to have considered on review. From this point, the victim has **7 days** to request a review.

A request for review can be made by:

- phone: (02) 6207 5399 or
- email: feedbackctdpp@act.gov.au

If a trial is listed to commence within 7 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 be still be reviewed by the Director, but the matter may not be able to be prosecuted.

When reviewing the decision, the Director will examine the evidence in the case, and critically consider the decision that was made, before making an independent assessment of whether that decision was correct. The Director's decision will be final, unless any new evidence becomes available.

When will I be notified about the outcome of review?

If a review is requested, the victim will be notified of the outcome of review within **14 days** of receipt of their request for review. Where there is an automatic review, the victim will be notified of the outcome of review within **14 days** since they were first consulted about the decision to discontinue.

If the final decision is to discontinue the prosecution, the victim will be invited to discuss the reasons for the decision with the Director in person. The victim may also request a letter containing the Director's written reasons for that decision, provided that request is made within **14 days** of the victim being notified of the final decision to discontinue the prosecution.

If the victim requires further support following reasons being given for the decision, our Witness Liaison Officers can refer to the victim to support agencies.

Audit of reviewable decisions

A record must be taken of each of the steps in the above process. During each financial year, an audit will be conducted in relation to reviewable decisions made in that year, to establish whether the procedures set out in this Guideline have been complied with.

The audit will be undertaken by an audit committee appointed by the Director. The results of the audit will be published in the annual report of the Director for the year in question.

Shane Drumgold
ACT Director of Public Prosecutions
16 September 2019

Due for review: September 2020

Annexure 1 – Definitions in *Evidence (Miscellaneous Provisions) Act 1991*

39 Meaning of *less serious violent offence proceeding*—ch 4

In this chapter:

less serious violent offence proceeding means—

- (a) a proceeding for an offence against any of the following provisions of the *Crimes Act 1900*:
 - (i) section 21 (1) (Wounding);
 - (ii) section 22 (Assault with intent to commit other offence);
 - (iii) section 23 (1) (Inflicting actual bodily harm);
 - (iv) section 24 (1) (Assault occasioning actual bodily harm);
 - (v) section 25 (Causing grievous bodily harm);
 - (vi) section 26 (Common assault);
 - (vii) section 28 (Acts endangering health etc);
 - (viii) section 29 (4) and (5) (Culpable driving of motor vehicle);
 - (ix) section 31 (Threat to inflict grievous bodily harm);
 - (x) section 37 (Abduction of young person);
 - (xi) section 41 (Exposing or abandoning child);
 - (xii) section 116 (Destroying or damaging property); or
- (b) a proceeding for an offence against the *Criminal Code*, section 403 (Damaging property); or
- (c) a proceeding for an offence against the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).

40 Meaning of *serious violent offence proceeding*—ch 4

In this chapter:

serious violent offence proceeding means—

- (a) a proceeding for an offence against any of the following provisions of the *Crimes Act 1900*:
 - (i) section 12 (Murder);
 - (ii) section 15 (Manslaughter);
 - (iii) section 19 (Intentionally inflicting grievous bodily harm);
 - (iv) section 20 (Recklessly inflicting grievous bodily harm);
 - (v) section 21 (2) (Wounding);
 - (vi) section 23 (2) (Inflicting actual bodily harm);

- (vii) section 24 (2) (Assault occasioning actual bodily harm);
 - (viii) section 27 (Acts endangering life etc);
 - (ix) section 29 (2) and (3) (Culpable driving of motor vehicle);
 - (x) section 30 (Threat to kill);
 - (xi) section 32 (Demands accompanied by threats);
 - (xii) section 34 (Forcible confinement);
 - (xiii) section 35 (Stalking);
 - (xiv) section 36 (Torture);
 - (xv) section 38 (Kidnapping);
 - (xvi) section 40 (Unlawfully taking child etc);
 - (xvii) section 42 (Child destruction);
 - (xviii) section 43 (Childbirth—grievous bodily harm); or
- (b) a proceeding for an offence against any of the following provisions of the [Criminal Code](#):
- (i) section 309 (Robbery);
 - (ii) section 310 (Aggravated robbery);
 - (iii) section 311 (Burglary) if the complainant was in the building at the time of the offence;
 - (iv) section 312 (Aggravated burglary) if the complainant was in the building at the time of the offence.

41 **Meaning of *sexual offence proceeding*—ch 4**

In this chapter:

sexual offence proceeding means—

- (a) a proceeding for an offence (a *sexual offence*) against any of the following provisions of the [Crimes Act 1900](#):
 - (i) part 3 (Sexual offences);
 - (ii) part 4 (Female genital mutilation);
 - (iii) part 5 (Sexual servitude); or
- (b) a proceeding for an offence against the [Family Violence Act 2016](#), section 43 (Offence—contravention of family violence order) if the family violence order was made because of a sexual offence, or an alleged sexual offence, against the person protected under the order; or
- (c) a proceeding for an offence against the [Personal Violence Act 2016](#), section 35 (Offence—contravention of protection order) if the protection order was made because of a sexual offence, or an alleged sexual offence, against the person protected under the order.

Annexure 2 – flow-chart of victims’ review process

