

DISCONTINUANCE REVIEW FRAMEWORK

INTRODUCTION

1. In its [Final Report](#), the Royal Commission into Institutional Responses to Child Sexual Abuse recommended that: “41. Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.”
2. A similar recommendation was made by the Victorian Law Reform Commission in its 2016 [Report on Victims of Crime in the Criminal Trial Process](#).
3. To implement these recommendations, the Director of Public Prosecutions Kerri Judd QC has established the following framework.
4. In the framework, “discontinuance” and “discontinue the prosecution”:

mean
 - a) a discontinuance of all charges against a particular accused under Part 5.4 of Chapter 5 of the *Criminal Procedure Act 2009*, except where the accused has died; or
 - b) a discontinuance of all charges in respect of a particular complainant in a prosecution on indictment with multiple complainants.

do not mean a discontinuance that occurs under s 164(4) of the *Criminal Procedure Act 2009* when a fresh indictment is filed.

CASES INVOLVING A DEATH OR IN WHICH THE DIRECTOR, THE CCP OR A SCP DECIDES THAT A DISCONTINUANCE SHOULD BE TREATED AS A SPECIAL DECISION

5. In a case involving a death, or in which the Director, the Chief Crown Prosecutor (‘CCP’) or a Senior Crown Prosecutor (‘SCP’) decides that a discontinuance should be treated as a special decision:
 - a) a SCP will decide whether to discontinue the prosecution
 - b) if the SCP decides not to discontinue the prosecution, the prosecution will proceed

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- c) if the SCP decides to discontinue the prosecution, the SCP will make that decision subject to review
- d) the Director will review the decision and make a final decision. The final decision is to be treated as a “special decision”. Accordingly, prior to the final decision, the CCP and the most senior SCP available (which may be the SCP who made the original decision) will provide advice to the Director on whether the prosecution should be discontinued. The advice must be provided at a meeting of the Director’s Committee.

Click [here](#) to view this process in a flowchart.

CASES THAT DO NOT INVOLVE A DEATH

- 6. In a case that does not involve a death:
 - a) a Crown Prosecutor (‘CP’) or SCP (in a case in which the SCP is briefed) will decide whether to discontinue the prosecution
 - b) if the CP or SCP decides not to discontinue the prosecution, the prosecution will proceed
 - c) if the CP or SCP decides to discontinue the prosecution, the CP or SCP will make that decision subject to review
 - d) a SCP (different to the SCP who made the decision subject to review if applicable) will review the decision. If the SCP agrees with the decision, the SCP will discontinue the prosecution. If the SCP disagrees with the decision, the Director will make a final decision.
 - e) if the SCP has disagreed with the decision, the Director’s final decision will need to be treated as a special decision given paragraph (e) of the definition of “special decision” in the *Public Prosecutions Act 1994*. Accordingly, prior to the final decision, the CCP and the SCP who reviewed the decision will provide advice to the Director on whether the prosecution should be discontinued. The advice must be provided at a meeting of the Director’s Committee.

Click [here](#) to view this process in a flowchart.

CONSULTATION WITH VICTIMS

- 7. Prior to making a decision subject to review, the views of the victims must be ascertained, unless:
 - a) the victim does not want to be contacted about the prosecution; or
 - b) the victim cannot be contacted after reasonable attempts; or

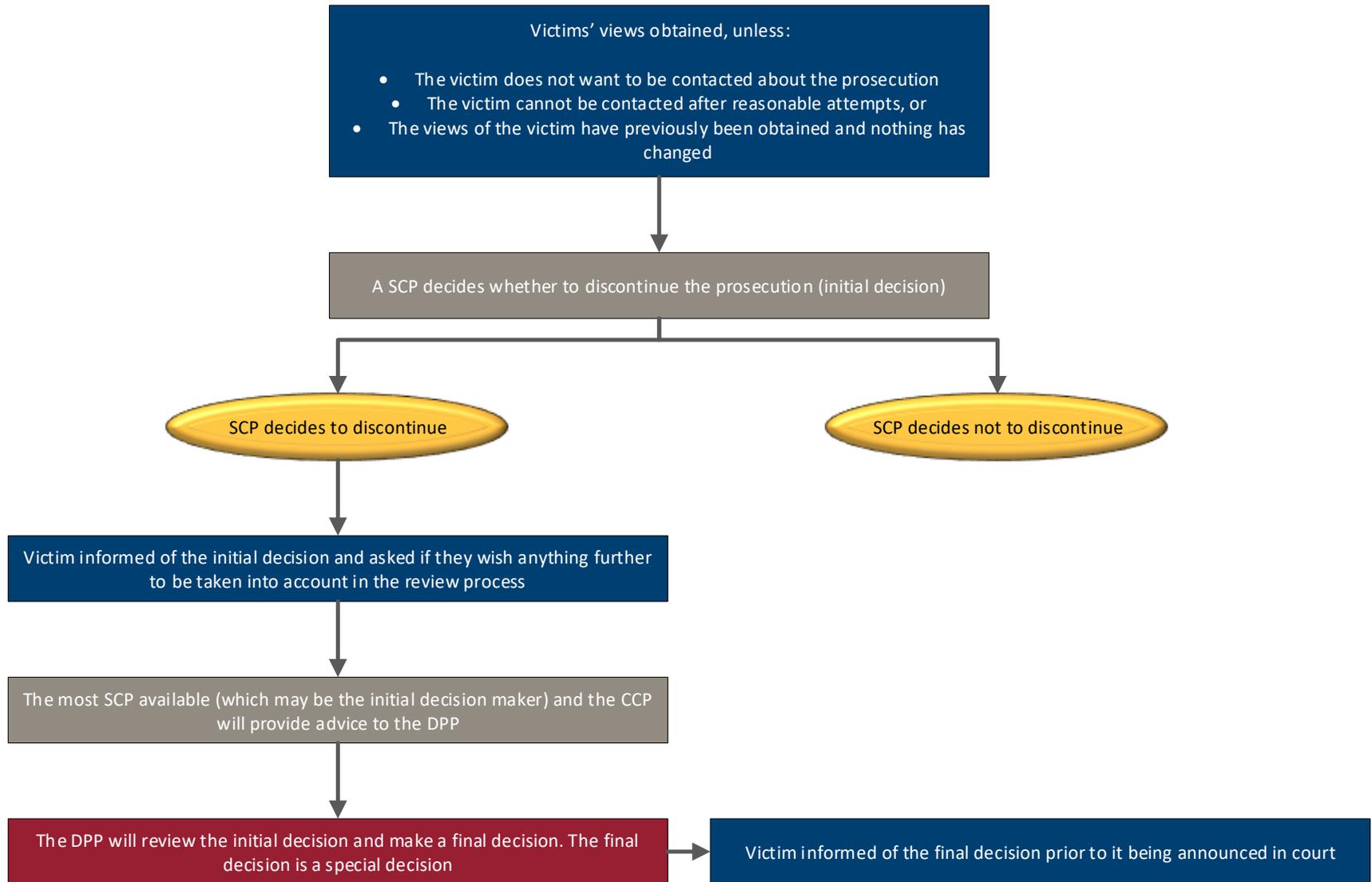
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- c) the views of the victim have previously been ascertained and nothing has changed in the interim; or
 - d) it is not practical to contact the victim given the speed or nature of the proceeding.
- 8. Subsequent to making a decision subject to review (and subject to paragraphs 7(a) and 7(b) above), the victim must be informed of the decision subject to review and asked if they wish anything further to be taken into account in the review process.
- 9. Once the review has been completed (and subject to paragraphs 7(a) and 7(b) above) the victim must be informed of the decision to enter a discontinuance or the decision to proceed as the case may be.
- 10. If the decision is to discontinue the prosecution:
 - a) the victim must be informed of the decision prior to the discontinuance being announced in court; and
 - b) the victim must be informed of the reasons for the discontinuance, unless the disclosure may jeopardise any investigation of a criminal offence or prejudice any other proceeding.

DIRECTOR'S DISCRETION TO DISCONTINUE PROSECUTIONS

- 11. In cases where the Director considers that a discontinuance decision ought to be made by her personally, the Director will make a special decision as to whether to discontinue the prosecution. No review is required in this instance as the Director will have received the advice of a SCP and the CCP before making the decision.
- 12. Prior to the Director making the decision, the views of the victims must be ascertained unless paragraphs 7(a) or 7(b) above apply.
- 13. If the decision is to discontinue the prosecution:
 - a) the victim must be informed of the decision prior to the discontinuance being announced in court; and
 - b) the victim must be informed of the reasons for the discontinuance, unless the disclosure may jeopardise any investigation of a criminal offence or prejudice any other proceeding.

Discontinuance process | Cases involving a death or in which the DPP, CCP or a SCP decide that a discontinuance should be treated as a special decision



Discontinuance process | Cases that do not involve a death

