

Discontinuance Review Framework

Introduction

1. In this framework, “discontinuance” and “discontinue the prosecution” means:
 - 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.
2. This framework does not otherwise cover a discontinuance that occurs under s 164(4) of the *Criminal Procedure Act 2009* when a fresh indictment is filed over.
3. Without limiting the DPP’s power to discontinue a prosecution, in the usual course if the accused makes an application for a discontinuance, or if the solicitor considers that the prosecution should be discontinued, the solicitor must follow the Discontinuance Review Framework.

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

4. 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;
 - 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 will be treated as a “special decision” pursuant to paragraph (h) of the definition of “special decision” in the Public Prosecutions Act 1994. 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 unless the Director determines that a meeting is not required pursuant to s 45E of the Public Prosecutions Act 1994.

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

Cases that do not involve a death

5. 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. The final decision will be a special decision pursuant to 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, unless the Director determines that a meeting is not required pursuant to s 45E of the Public Prosecutions Act 1994.

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Consultation with victims

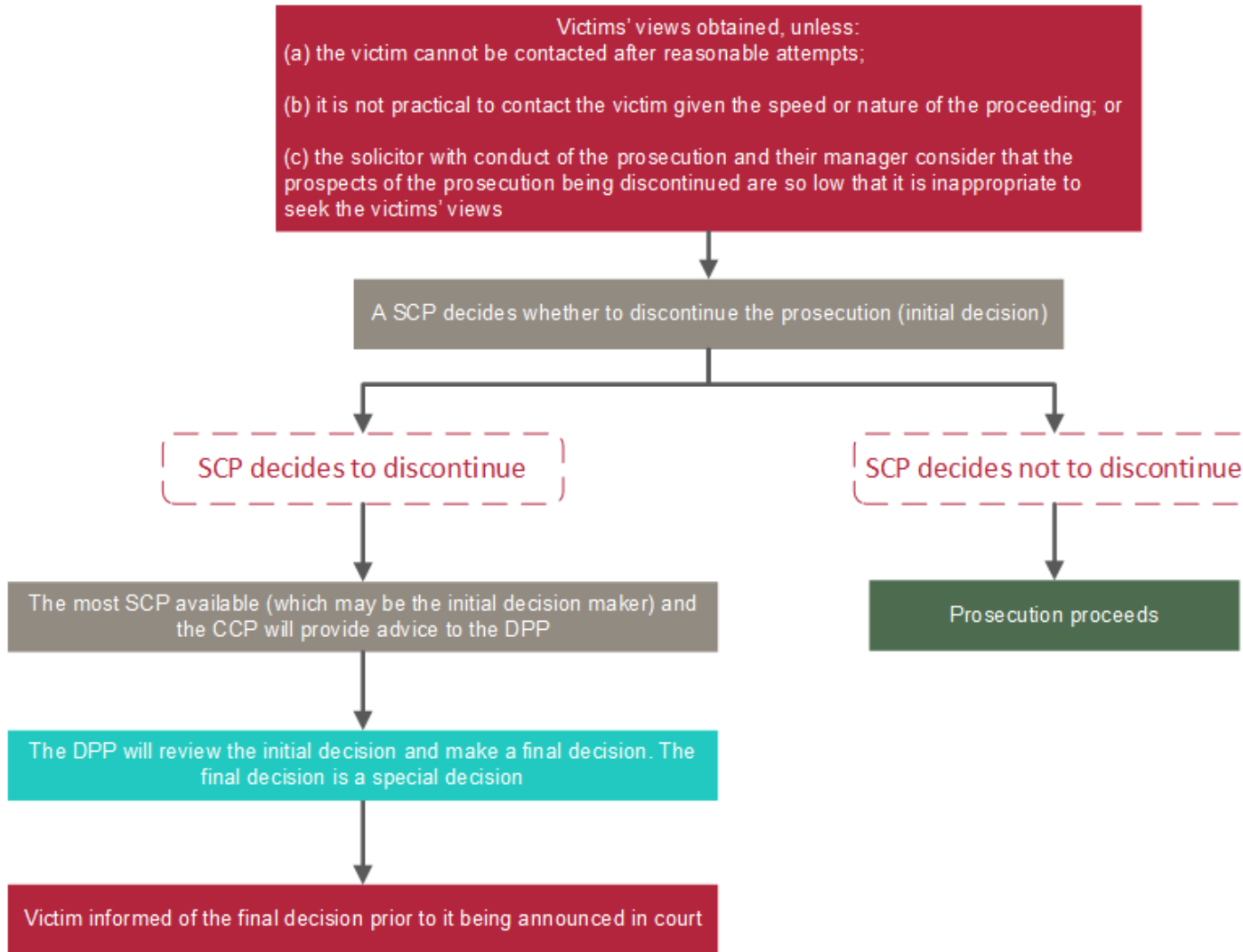
6. Prior to considering discontinuance of a prosecution the views of the victims must be ascertained, unless:
 - a) the victim cannot be contacted after reasonable attempts;
 - b) it is not practical to contact the victim given the speed or nature of the proceeding; or
 - c) the solicitor with conduct of the prosecution and their manager consider that the prospects of the prosecution being discontinued are so low that it is inappropriate to seek the victims' views.
7. If paragraph 6 has been complied with, the victim's views need not be ascertained again before a decision is made unless the CP, SCP, CCP or Director considers that more information is required, or further consultation is appropriate.
8. Once the review has been completed (and subject to paragraph 6 above) the victim must be informed of the decision to enter a discontinuance or the decision to proceed as the case may be.
9. 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



**Director of Public
Prosecutions**
Victoria

- 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 Director, the CCP or a SCP decides that a discontinuance should be treated as a special decision



Discontinuance process - Cases that do not involve a death

