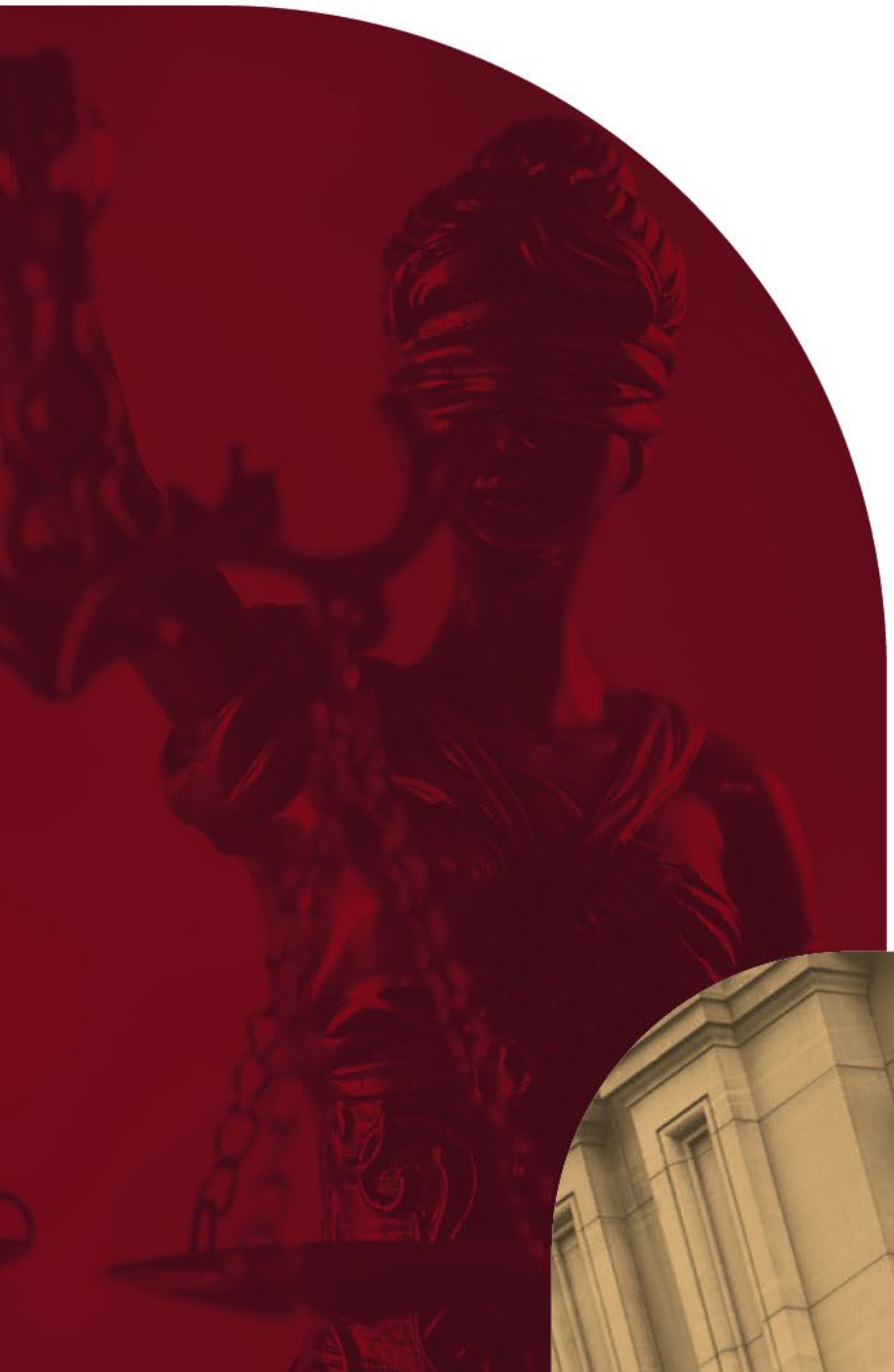
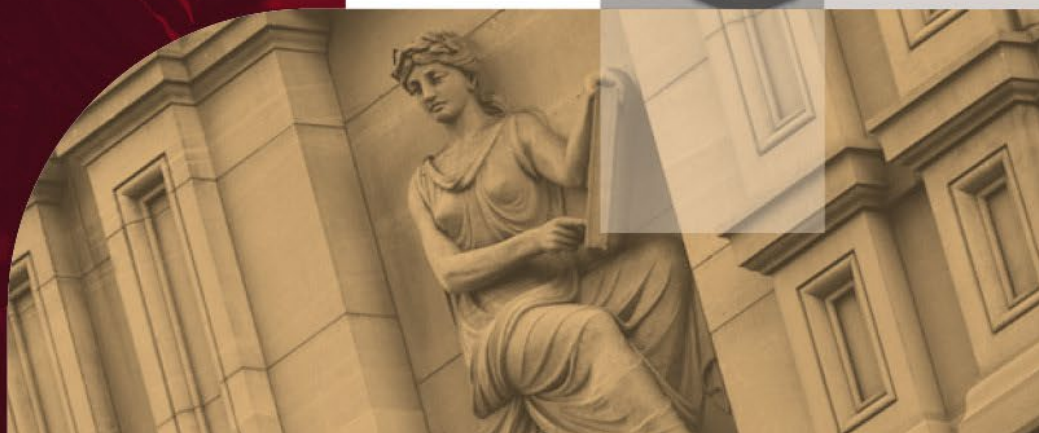
Director of Public Prosecutions
Victoria





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Definitions

In this policy

Associated accused has the same meaning as in the *Evidence Act 2008*.

CCP means Chief Crown Prosecutor.

DPP means the Director of Public Prosecutions for the State of Victoria.

Mental impairment means the defence of mental impairment within the meaning of s 20 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.

OPP means the Office of Public Prosecutions.

Prosecutor means the Crown Prosecutor, barrister or solicitor appearing on behalf of the DPP and the solicitor.

Resolution means an agreement between the prosecution and the accused that the accused will plead guilty to a particular charge or charges on the condition that the prosecution will withdraw, discontinue or not proceed with a different charge or charges.

The solicitor means the OPP solicitor with conduct of the prosecution.

Unfitness means unfitness to stand trial within the meaning of s 6(1) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.*

Victim has the same meaning as in the *Victims' Charter Act 2006*.

CHAPTER 1 – Prosecutorial Discretion

The decision to prosecute

The criteria

1. A prosecution may only proceed if:
   - there is a reasonable prospect of a conviction; and
   - a prosecution is in the public interest.

Reasonable prospect of conviction

2. In determining whether there is a reasonable prospect of a conviction, regard must be had to:
   - all the admissible evidence
   - the reliability and credibility of the evidence
   - the possibility of evidence being excluded
   - any possible defence
   - whether the prosecution witnesses are available, competent and compellable
   - any conflict between eye-witnesses
   - whether there is any reason to suspect that evidence may have been concocted
   - how the witnesses are likely to present in court
   - any possible contamination of evidence
   - any other matter relevant to whether a jury or magistrate would find the person guilty.

Public interest

3. If there is a reasonable prospect of a conviction, consideration must be given to whether the prosecution is in the public interest. The prosecution must proceed unless there are public interest factors tending against prosecution which outweigh those tending in favour. Public interest factors include:

<u>Offence related factors</u>

- the seriousness of the offence

- the age of the offence

Offender related factors

- the offender's culpability
- the offender's antecedents and background
- the age, physical health, mental health or disability of the offender
- whether the offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the offender has done so.

Victim related factors

- the attitude of the victim to a prosecution
- the entitlement of the victim to compensation
- the age, physical health, mental health or disability of the victim.

Other factors

- community protection
- the likely sentence
- the prevalence of the offence and the need for specific and general deterrence
- the need to maintain public confidence in constitutional institutions such as the courts and Parliament
- whether the consequences of a conviction would be unduly harsh or oppressive
- any circumstances that would prevent a fair trial
- the age, physical health, mental health or disability of any witnesses
- the obsolescence or obscurity of the law
- whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute
- the availability and efficacy of any alternatives to prosecution
- the likely length of a trial
- whether a sentence has already been imposed on the offender which adequately reflects the criminality
- any mitigating or aggravating circumstances.

4. In the following types of cases, particular attention must be given to whether a prosecution is in the public interest:

Child offenders

- The prosecution of a child is a severe step. The public interest will not normally require the prosecution of a child who is a first time offender if the offence is not serious.

A young person who has committed an offence in the context of a consenting sexual relationship with another young person

- An example of such a case is sexual penetration of a child under 16 where the offender is 18 and the complainant is 15. In such cases, the following factors should be taken into account:
  - the ages, maturity and intellectual capacity of the complainant and the offender
  - whether the offender and complainant were or are in a relationship
  - whether the complainant was capable of consenting and did consent
  - whether the offending involved any grooming, duress, coercion or deception
  - the attitude of the complainant and his or her family or guardians towards prosecution.

Offenders with cognitive impairments

- This includes offenders with intellectual disabilities, acquired brain injuries, mental illnesses, acute personality disorders and neurological disorders. It may not be in the public interest to prosecute such an offender where the offence is not serious, the offender's cognitive impairment reduces their moral culpability, the offender is of no danger to the community and the prosecution is likely to result in an unconditional discharge.

Persons who commit offences while detained involuntarily in psychiatric hospitals

- In such cases, regard must be had to:
  - whether the offence was committed while the offender was resisting detention. It may not be in the public interest to prosecute a mentally ill person who was detained involuntarily for resisting that detention
  - the person's treatment and medication regime both at the time of the offence and at the time the prosecution is being considered
  - whether a prosecution would be likely to be harmful to the person or medically inappropriate
  - community protection.

5. Most prosecutions will proceed if there is a reasonable prospect of a conviction. While there may be public interest factors tending against a prosecution, in most cases the appropriate course will be to proceed with the prosecution and for those factors to be put to the court in mitigation of sentence.

Improper considerations

6. A decision whether to prosecute must not be influenced by:

- political pressure or interference
- the race, religion, sex, national origin, political associations, activities or beliefs of the offender or any other person involved
- personal feelings concerning the offence, the offender or a victim
- possible political advantage or disadvantage to the Government or any political group or party
- the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

Direct indictments

When may a direct indictment be filed after an accused has been discharged at committal?

7. Without limiting the DPP's discretion to file a direct indictment under the *Criminal Procedure Act 2009*, in the usual course a direct indictment may be filed after an accused has been discharged at committal only if:

- the magistrate made an error in discharging the accused; and
- the criteria governing the decision to prosecute are satisfied; and
- there has not been an unreasonable delay between the discharge and the decision to directly indict.

When may a direct indictment be filed where no committal has been held?

8. Subject to paragraph 71 below, if no committal has been held, a direct indictment may be filed if the criteria governing the decision to prosecute are satisfied and

- there are strong grounds justifying a trial without a committal; and
- a trial without a committal would not be unfair to the accused.

9. Circumstances which may justify a trial without a committal include where the case against the accused has already been ventilated in curial proceedings such as an inquest or a Royal Commission.

When may a direct indictment be filed after a discontinuance?

10. Where a discontinuance has been filed, a person may be directly indicted for the same offence only if it is in the interests of justice that the prosecution proceed, for example:

- significant fresh evidence is available; or
- the decision to enter a discontinuance was obtained by fraud; or
- the decision was based on a mistake of fact.

Cases that require the DPP's instructions

Cases wholly or substantially reliant on DNA evidence

11. In any matter in which the prosecution case is wholly or substantially reliant upon DNA evidence, the prosecution must not proceed without instructions from the DPP.

A case must not proceed to a third trial without the DPP's instructions

12. If a case has been to trial twice, whether because of a successful appeal or because the jury was unable to reach a verdict, the case must not proceed to a third trial without the DPP's instructions. This does not include a trial in which the jury was discharged prior to retiring to consider its verdict.

CHAPTER 2 – Role of the Prosecutor

Possible miscarriages of justice

13. If, in performing their duties, the prosecutor identifies any possible miscarriage of justice or any other significant error, the DPP's instructions must be sought.

General principles

14. Prosecutors must:

- act independently. Prosecutors represent the DPP, not the government, the police, the victim, or any other person
- act fairly to the accused
- act impartially
- assist the court to avoid appellable error
- not make any submissions of fact or law which are not soundly based
- endeavour to ensure that criminal proceedings are completed expeditiously
- use temperate and dispassionate language
- avoid any real or potential conflict of interest
- endeavour to ensure that any conflict of interest involving a defence practitioner is acted upon.

Disclosure

15. Subject to any claim of public interest immunity or legal professional privilege or any statutory provisions to the contrary, prosecutors must disclose to the accused any material which is known to them which, on their sensible appraisal:

i. is relevant or possibly relevant to an issue in the case; or

ii. raises or possibly raises a new issue that is not apparent from the evidence the prosecution proposes to use; or

iii. holds out a real as opposed to fanciful prospect of providing a line of inquiry which goes to (i) or (ii) above.

16. The prosecution duty of disclosure does not extend to disclosing material:

i. relevant only to the credibility of defence (as distinct from prosecution) witnesses

ii. relevant only to the credibility of the accused

iii. relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false

iv. for the purpose of preventing an accused from creating a trap for themselves, if at the time the prosecution became aware of the material it was not a relevant issue at trial.

17. If material is not disclosed under paragraph 15 above on the basis of a claim of public interest immunity or legal professional privilege or a statutory prohibition, any application or submission to a court in support of that claim should be made by the person or body which holds the material or the privilege, as the case may be. A prosecutor should not represent that person or body, except in relation to a privilege held by the DPP or OPP.

18. Subject to paragraph 19 below, if an investigative agency has not disclosed to the accused relevant material on the basis that it is subject to a claim of public interest immunity or legal professional privilege or a statutory prohibition, the agency should inform the prosecutor:

i. of the nature of the material and the basis of the claim;

ii. whether a ruling has been made by a court on the claim and, if so, provide to the prosecutor a copy of the ruling and the reasons given by the court (unless the prosecutor was present in court or a non-publication order prevents the information being provided); and

iii. whether, in the opinion of the agency, the material, on a sensible appraisal, substantially weakens the case for the prosecution or substantially strengthens that of the defendant.

19. So far as practicable, the prosecutor should not be provided with, or informed of the content of, any material to the extent that it is subject to a claim of public interest immunity, unless the prosecutor so requests. Click here to access the protocol for consulting the DPP in relation to complex disclosure issues involving Public Interest Immunity.

Unrepresented accused

20. Prosecutors must take particular care when dealing with an unrepresented accused. Caution should be exercised in the following manner:

- any plea offer made by the accused is to be considered and responded to in writing
- telephone contact with the accused is to be avoided
- face-to-face contact with the accused should only occur in the presence of a witness
- contemporaneous notes should be taken of any telephone or face-to-face communication that does occur
- a written record should be maintained of all information and material provided to and received from the accused
- where appropriate, a prosecutor may communicate with the accused through the court.

Role of the prosecutor at trial

21. Trial prosecutors:

- must present the prosecution case fairly and vigorously
- must place before the jury all relevant and reliable evidence and address the jury as to how to use that evidence according to law
- must call all witnesses:
    - whose testimony is admissible and necessary for the presentation of all of the relevant circumstances; or
    - whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue,

  unless the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable
- must not adopt tactics involving an appeal to prejudice or amounting to an intemperate or emotional attack upon the accused. That does not mean that in properly carrying out the role the prosecutor's cross-examination and jury address must be bland, colourless and lacking in the advocate's flourish
- must not comment on answers given by witnesses in evidence during the course of their evidence
- must not put forward theories that are not supported by evidence
- must not reverse the onus of proof in cross-examination of the accused or addresses

Witness preparation

22. Prosecutors may assist a witness prepare for giving evidence by:

- advising the witness to read their statement prior to giving evidence
- explaining the court's procedure (including the roles of the judge/magistrate), oath/affirmation taking and the order of examination in chief, cross-examination and re-examination
    - informing the witness that they must answer all questions truthfully, however difficult they may be
    - informing the witness that it is not a sign of weakness if they do not know or do not recall the answer to a particular question and, if this is genuinely the case, they should not be afraid to say so
    - explaining the role of defence counsel – that it is their job to put their client's case and challenge the prosecution's version of events, including by suggesting the witness is mistaken or lying. The witness should be told to listen carefully to any such suggestion and clearly say whether they agree or disagree with it

- informing the witness that they should not be afraid to ask for a break if they genuinely need one such as when they feel tired, are losing concentration or if they want to compose themselves emotionally
- explaining to the witness the importance of listening to all questions carefully and making sure they understand each one before answering it. Witnesses should be encouraged not to be afraid to ask the advocate asking the question or the judge to repeat or rephrase any question which they do not understand.

23. Prosecutors must not:

- advise or suggest to a witness that false or misleading evidence should be given; or
- coach a witness by advising what answers the witness should give to questions that might be asked.

24. The prosecutor may question and test the version of evidence to be given by the witness. If new and relevant information comes forward the informant should obtain that information in statement form. The prosecutor may ask the witness questions about a crucial piece of evidence in the statement in order that the prosecutor can determine how to adduce this at trial.

CHAPTER 3 – Victims

Treatment of victims

25. The prosecutor must treat victims with courtesy, respect, dignity and sensitivity.

26. The solicitor must establish an early relationship with the victim.

27. The solicitor must address the individual priorities of a victim and not make assumptions about what is in the victim's interests.

28. Where an OPP social worker is allocated to a case, they must also treat victims in accordance with the principles in paragraphs 25–27. The role of OPP social workers, as staff members of the OPP and part of the public prosecutions service, is to assist the DPP in the performance of the DPP's functions under the *Public Prosecutions Act 1994* (Vic).

Explanation of the prosecution and resolution process

29. The solicitor must proactively explain the prosecution and resolution process to the victim in accordance with the *Victims' Charter Act 2006.* Click here for details.

Discontinuances

30. 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.

Reasons for decisions

31. Victims must be given reasons for decisions in accordance with the *Victims' Charter Act 2006*. Click here for details.

Compensation and restitution orders

32. The solicitor may apply for a compensation or restitution order on behalf of a victim only if:

- the offender pleads guilty to or is found guilty of an offence which caused the pain and suffering or property loss (as the case may be); and
- there is sufficient evidence of pain and suffering, property loss, damage or medical expenses to justify the application; and
- the quantum of compensation or restitution can be readily determined; and
- the application is not opposed by the offender; and

- there is reason to believe, on the basis of information concerning the offender's financial situation, that there is a reasonable prospect that the order could be wholly or substantially enforced; and
- if the application is made on behalf of a child or a person incapable of managing their affairs, a suitable person is available to act as a litigation guardian pursuant to s 85E of the *Sentencing Act 1991*.

Family violence victims who wish to retract their statements

33. If a victim of family violence wishes to retract their statement or make a further statement which is inconsistent with their original statement, no advice may be given about charging the victim with perjury or attempt to pervert the course of justice without the instructions of the DPP or CCP.

34. If the police have already charged a victim with perjury or attempt to pervert the course of justice, the prosecution against the victim must not proceed without the instructions of the DPP or CCP.

CHAPTER 4 – Resolution

When may resolution occur?

35. Resolution may only occur if it is in the public interest. In determining whether a proposed resolution is in the public interest, regard must be had to:

- whether there is a reasonable prospect of a conviction of each offence charged. If there is no reasonable prospect of a conviction of an offence charged, then that charge must not proceed. It is improper for such a charge to proceed to committal with a view to the prospects of conviction being reassessed after committal
- the strength of the evidence on each charge
- any defences
- the likelihood of an acquittal on any of the charges
- whether the charge or charges to which the accused will plead guilty:
    - adequately reflect the accused's criminality
    - allow for the imposition of an appropriate sentence
    - allow for the making of all appropriate ancillary orders.
- the views of the victims and the informant about the proposed resolution

Trade-offs between criminal charges and forfeiture of assets

36. Trade-offs between criminal charges and forfeiture of assets should not occur, because criminal and confiscation proceedings involve different considerations, burdens of proof and standards of proof.

Resolution involving a death

37. In any case involving a death, a resolution requires the approval of the DPP, or in the DPP's absence the CCP.

CHAPTER 5 – Jurisdiction

Indictable offences triable summarily

Criteria for determining whether a charge should be determined summarily

38. In determining whether a charge for an indictable offence that is triable summarily should be determined summarily, regard must be had to:

- the seriousness of the offence
- the complexity of the proceeding
- the adequacy of sentences available to the court
- whether a co-accused is charged with the same offence and in which stream
- any proceeds of crime implications, particularly whether summary confiscation jurisdiction exists under s 12 of the *Confiscation Act 1997* to make a pecuniary penalty order or a forfeiture order;
- any other relevant matter.

When should a summary prosecution proceed to committal because of unfitness or mental impairment?

Magistrates' Court

39. If unfitness or mental impairment is established by evidence in a matter involving an indictable offence in the summary stream of the Magistrates' Court, the matter should proceed to committal only if a supervision order is necessary. In determining whether a supervision order is necessary, regard must be had to:

- whether a supervision order is necessary to protect the community
- any treatment or support in place for the accused, the accused's compliance with that treatment or support and the extent to which that treatment or support makes the accused less dangerous to the community
- the seriousness of the offence
- any prior or subsequent offending
- the likelihood that the County Court would release the accused unconditionally
- the fact that in deciding whether to make a supervision order the court must apply the principle that restrictions on a person's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community.

Children's Court

40. The Children's Court may make a supervision order for a term not exceeding 6 months in a case involving unfitness or mental impairment. Such an order may be extended so that the total period of the order does not exceed 12 months or 24 months, depending on the child's age. If unfitness or mental impairment is established by evidence in a matter involving an indictable offence in the Children's Court, the DPP will take over the matter and proceed to committal only if the DPP considers that a longer supervision order is necessary. In determining whether a longer supervision order is necessary, DPP will have regard to the factors in paragraph 38 above (with any necessary modifications).

How to request advice about whether a summary prosecution should proceed to committal because of unfitness or mental impairment

41. Click here for details on how to request advice about whether a summary prosecution proceed to committal because of unfitness or mental impairment.

CHAPTER 6 – Undertakings and Indemnities

What are undertakings and indemnities?

42. An undertaking is a document in which the DPP undertakes pursuant to s 22(1)(cb) of the *Public Prosecutions Act 1994* to a person that an answer given, or statement or disclosure made, by that person in a specified proceeding will not be used in evidence against that person in any criminal proceeding, other than a proceeding in respect of the falsity of evidence given by that person.

43. An indemnity is a document by which the DPP grants pursuant to s 22(1)(ca) of the *Public Prosecutions Act 1994* indemnity from prosecution for any summary or indictable offence to a person on account of a promise given by that person to give evidence, or an understanding or expectation that that person will give evidence, in a specified proceeding.

44. Both are means of allowing the prosecutor to call a witness who might otherwise rely on the privilege against self-incrimination.

When will the DPP grant an undertaking or indemnity?

45. The DPP will only grant an undertaking or indemnity if the DPP is satisfied that an undertaking or indemnity is in the public interest.

46. In deciding whether an undertaking or indemnity is in the public interest, the DPP will have regard to:

- in the case of an associated accused, whether the associated accused will plead guilty and give an undertaking to the court that they will give evidence against the accused. In those circumstances, the preferred course is to finalise the associated accused's matter prior to the accused's trial (see paragraph 51 below)
- the seriousness of the offences committed by the witness. If the offences committed by the witness are not serious and the witness has received independent legal advice, it is unnecessary to seek an undertaking or indemnity because the witness can rely on s 128 of the *Evidence Act 2008*. In this context, offences that are 'not serious' include illegal personal drug use, low level drug trafficking, low level offences against the person, low level dishonesty offences and low level property offences
- the value of the witness's evidence
- the seriousness of the offences committed by the witness compared to those committed by the accused
- the culpability of the witness compared to that of the accused
- the witness's character and credibility
- the reliability of the witness's evidence
- whether the witness's evidence is corroborated by other evidence
- whether the witness has provided a full and frank statement, including an acknowledgement of their role in the offences

- whether any form of reward, inducement, protection or privilege is being provided or offered to the witness to cause them to give evidence, other than the indication that an application will be made for an undertaking/ indemnity
- whether the witness's evidence might necessitate the seeking of undertakings or indemnities from other State or Commonwealth authorities
- whether counsel briefed in the matter and the informant support the application
- any other matters considered relevant.

The DPP will prefer to grant an undertaking rather than an indemnity

47. If the DPP decides to grant an undertaking or indemnity, the DPP will prefer to give an undertaking. indemnities are rarely granted.

How to make an application to the DPP for an undertaking or indemnity

48. Click here for details on how to make an application to the DPP for an undertaking or indemnity.

Explanation of undertakings and indemnities

49. If a witness is granted an undertaking or indemnity, the solicitor must explain the effect of the document to the witness.

Revocation of indemnities

50. The DPP may revoke an indemnity if the person to whom it has been granted fails to comply with its conditions.

Letters of comfort

51. If a witness applies for an undertaking or indemnity, and it appears that the witness's evidence is not self-incriminating, the DPP may provide the witness with a letter of comfort. A letter of comfort is a letter from the DPP which says the witness is compellable to give evidence because their statement does not contain sufficient evidence to put them at risk of being charged.

Associated accused

52. If the prosecutor wishes to call an associated accused to give evidence against the accused, the preferred course is for the associated accused to make a statement, plead guilty and to give an undertaking to the court during their plea hearing that they will give evidence against the accused in accordance with their statement. The associated accused will receive a reduction in sentence for undertaking to give evidence against the accused. The associated accused will not be able to invoke the privilege against self-incrimination when called to give evidence because they will be *autrefois convict* and not liable to re-prosecution. If the associated accused fails to give evidence in accordance with their undertaking, the DPP may appeal their sentence.

CHAPTER 7 – Juries

When will the Crown stand aside a potential juror?

53. The Crown's power to stand aside a potential juror must be exercised sparingly. The Crown's paramount concern is that the jury be impartial and that it complies with the *Juries Act 2000*. The Crown's must never use its power to stand aside on the basis of factors such as age, sex, occupation, ethnic origin, religion, marital status or economic, cultural or social background.

54. The Crown will stand aside a potential juror only if the potential juror's inclusion could undermine the integrity of the jury, for example if:

- the potential juror is known or related to a participant in the trial, such as the informant, counsel, instructing solicitors, the accused, or any of the witnesses
- there is a reasonable basis for apprehending bias on the part of the potential juror, such as a biased remark.
- there is behaviour demonstrating that the potential juror does not wish to participate, such as an expression of hostility towards the procedures
- there is behaviour or some other circumstance that indicates the potential juror is unable to perform the role of a juror.

55. A potential juror's unsuccessful application to be excused will never of itself justify the Crown standing aside that potential juror.

When will the Crown challenge a potential juror for cause?

56. In addition to its stand aside power, the Crown may challenge an unlimited number of potential jurors for cause. The criteria for challenging a potential juror for cause are the same as the criteria for standing aside a potential juror.

CHAPTER 8 – Taking over Prosecutions

Summary prosecutions conducted by Victoria Police or other government agencies (including Children's Court prosecutions)

57. In determining whether to take over and conduct a summary prosecution (including a Children's Court prosecution), regard must be had to:

- the seriousness of the offences
- the complexity of the prosecution
- the views of the police or government agency
- whether an associated accused is being prosecuted by the OPP
- whether the DPP has obtained a restraining order in relation to the prosecution
- the resources required to conduct the prosecution
- any actual or perceived conflict of interest in the police or the government agency conducting the prosecution.
- whether the offences relate to a contravention of supervision order contrary to s 169(1) of the *Serious Offenders Act 2018*.
- whether it is in the public interest for the DPP to conduct the prosecution.

58. The DPP will take over and discontinue a summary prosecution (including a Children's Court prosecution) if:

- there is no reasonable prospect of a conviction; or
- the prosecution is not in the public interest.

59. The DPP will not consider a request by an accused to take over and discontinue a summary prosecution (including a Children's Court prosecution) unless:

- an application to discontinue has been made to the police or other prosecuting agency; and
- that application has been rejected.

Private prosecutions

60. The DPP may take over private prosecutions.

61. In determining whether to take over a private prosecution, regard will be had to:

- the seriousness of the offence;

- the complexity of the prosecution;
- whether the private prosecutor and/or the accused person will be legally represented;
- any actual or perceived conflict of interest in the DPP taking over the prosecution; and
- whether it is in the public interest for the DPP to take over the prosecution.

61. If the DPP takes over a private prosecution, the DPP may conduct or withdraw the prosecution.

CHAPTER 9 – Proceeds of Crime

Restraining orders

62. In determining whether to make an application for a restraining order under the *Confiscation Act 1997*, the DPP will have regard to:
    - whether the evidence meets the applicable statutory thresholds for restraint
    - the objects in s 3A of the *Confiscation Act 1997* (to deprive, deter, disrupt, undermine)
    - the net value of the property
    - the nature and extent of any known third party interests
    - the ability to sustain the restraining order in view of a prospective exclusion application (in so far as an assessment is possible on the state of the evidence)
    - the degree of exposure to costs and damages
    - in compensation or restitution matters:
        - whether a compensation or restitution order under the *Sentencing Act 1991* in excess of $20,000 is likely to be made
        - whether the victim is a natural person
        - whether the accused's interest in the property can be readily determined
        - the prospect of enforcement of the compensation or restitution order against the property
        - whether there are other more appropriate remedies available to a victim, such as civil action or the Victims of Crime Assistance Tribunal.
    - in matters requiring a financial analysis:
        - whether an expert report from a forensic accountant has been provided with the referral
        - whether a forensic accountant will be available to respond to any exclusion claim or other claim arising from the restraining order, by promptly preparing an expert report and giving evidence at the hearing if required

CHAPTER 10 – Advice to External Agencies

When will the DPP provide advice to an external agency?

63. Subject to paragraph 66 and 67 below, the DPP will provide advice to an external agency prior to charges being filed only if:

- the OPP will prosecute the matter if charges are filed; and
- the matter has some complexity, novelty, raises a potential conflict of interest for the external agency or has broader policy implications; and
- the issue will not compromise the independence of the DPP; and
- the advice is not about operational or investigative matters; and
- the advice is not about whether to file charges in a particular jurisdiction.

What will the OPP provide advice about?

64. Subject to paragraph 66 and 67 below, the DPP can be consulted in relation to:

- whether there is a reasonable prospect of a conviction
- whether the prosecution is in the public interest
- complex issues arising from disclosure obligations
- complex disclosure issues involving Public Interest Immunity (subject to the Complex Disclosure Protocol which can be accessed here).

When does the DPP expect an external agency to request advice from the DPP?

65. The DPP expects:

- all external agencies except Victoria Police, WorkSafe and IBAC to request advice from the DPP prior to filing any charges that the OPP will prosecute
- all external agencies to request advice from the DPP prior to filing any charge that requires the consent of the DPP or a CP
- Victoria Police to request advice from the DPP prior to filing a course of conduct charge that the OPP will prosecute.

66. Where paragraph 66 applies, the DPP will provide advice about:

- whether there is a reasonable prospect of a conviction
- whether the prosecution is in the public interest
- the appropriate jurisdiction.

Advice about when a summary prosecution should proceed to committal because of unfitness or mental impairment

67. The DPP will provide advice to an external agency about whether a case in the summary jurisdiction of the Magistrates' Court or the Children's Court involving mental impairment or unfitness should proceed to committal (see paragraph 38 above).

How to request advice from the DPP

68. Click here for details on how to request advice from the DPP.

CHAPTER 11 – Detention and Supervision Orders

When will the DPP apply for a detention order?

69. The DPP will apply for a detention order under s 61(1) of the *Serious Offenders Act 2018* if the DPP is satisfied that there is a reasonable prospect that the Supreme Court will make a detention order.

Prosecuting a contravention of a supervision order contrary to s 169(1) of the *Serious Offenders Act 2018*

70. A charge for a contravention of a supervision order contrary to s 169(1) of the *Serious Offenders Act 2018*, where there can be no committal, should ordinarily be determined summarily. In determining whether a charge should proceed by way of a direct indictment, regard must be had to:

- whether the offending conduct was preparatory to the commission of a serious sex offence or a serious violence offence, as defined in the *Serious Offenders Act 2018*
- where there is insufficient evidence to characterise the offending conduct as preparatory, whether it is nevertheless consistent with a disturbing pattern of conduct employed by an offender prior to or in the course of previous offending
- the accused's history of compliance with the supervision order, taking into account the seriousness of past contraventions of the order
- whether the offending conduct involved victims and/or contact with children, including victims of a previous offence; and
- whether the offending conduct was committed in the course of the commission of other indictable offence.