

Victims' Right to Review of Discretionary Prosecutorial Decisions

Aim

This document is the Director's Policy detailing a victim's right to seek a review of a "discretionary prosecutorial decision". The purpose of this Policy is to affirm accountability and transparency in the decision making process of the Office of the Director of Public Prosecutions (ODPP).

Victim

For the purposes of this policy, a victim is a complainant in any prosecution that is being conducted by this Office, but also includes:

- a close relative or partner in homicide cases; and
- a parent or guardian where a victim is under 18.

Discretionary Prosecutorial Decision

For the purposes of this policy, a discretionary prosecutorial decision is a decision to discontinue a prosecution conducted by the ODPP in any Court and where no charge involving the relevant victim is prosecuted.

Review

We recognise that there will be times where a victim will feel dissatisfied with a decision made by the Office to discontinue a prosecution, and would like someone to reconsider the matter. In circumstances where a discretionary prosecutorial decision has been made, a victim will initially be notified of the decision and given an opportunity to discuss the decision with the responsible ODPP lawyer.

In discussing the decision, a victim will be advised of:

- the nature of the decision;
- the reasons for the decision; and
- his or her entitlement to request a review of the decision.

If a victim would like a decision to be reviewed, he or she should either tell the responsible ODPP lawyer, or contact the ODPP by email (dpp@sa.gov.au) within seven (7) days of the date of the communication of the decision.

A request made within seven (7) days allows for a prompt review. If a request for a review is made within the specified timeframe, a victim should be advised of the outcome of the review within fourteen (14) days of the receipt of the request.

A review consists of a Senior Prosecutor, who has had no prior involvement in the case, reviewing the decision in question. The Senior Prosecutor will critically examine the decision, and determine whether, in his or her view, the original decision was correct.

Where the Senior Prosecutor disagrees with the original decision, the matter will be escalated and further reviewed by either a Deputy Director or Director of Public Prosecutions.

Where a trial date has been fixed and is due to commence within seven (7) days of a decision to discontinue a prosecution, a review may not be possible before the decision has been conveyed to the court. In such circumstances, a review will still be performed, but the fact that the original decision has been conveyed to the court may impact upon whether it can be changed.

In some instances, a discretionary prosecutorial decision may already have been the subject of a review by a Deputy Director or the Director. Where this has occurred, a further review will not be undertaken unless there is new evidence that was not previously able to be considered. If a further review does not occur, a Deputy Director or the Director will offer to meet with the victim to ensure all relevant matters have been taken into account and the decision explained.

Contact

A request in writing for a review of a discretionary prosecutorial decision may be made by email at: dpp@sa.gov.au



Adam Kimber SC
Director of Public Prosecutions

6 June, 2017

Due for Review
June, 2019