

Introduction

The NSW Police Withdrawal Policy provides guidelines for timely independent, ethical assessment and decision making in relation to questions of withdrawal of proceedings.

The following instructions are to be followed in all matters prosecuted by police prosecutors in the Local Court, including part-heard hearings where there is a question of withdrawal of proceedings. In proceedings where the DPP is the prosecuting authority you should contact the Office of the Director of Public Prosecutions for advice.

Part 1 - WITHDRAWAL OF SUMMARY PROCEEDINGS

1. Authority to Authorise Withdrawal of Proceedings

The Commissioner has delegated authority for withdrawal of proceedings. The following officers within Police Prosecutions have authority to withdraw summary proceedings (not prosecuted by the DPP):

- Commander
- Director, Prosecutors Operations
- Police Prosecutions Managers
- Co-ordinator (State-wide Advice) Operational Legal Advice Unit
- Area Prosecutions Coordinators (APCs)

And in specific circumstances as outlined in this policy:

- Heads of Court (HOCs).

For the purposes of this policy a Head of Court is a police prosecutor:

- who holds a substantive sergeant's position within Police Prosecutions or is a person relieving in such a position; or
- who has been provided with prior written (including by way of email) delegation from the cluster's APC or Head/s of Court to withdraw proceedings where there is no Head of Court or APC present at a court house (or prosecutors office attached to that court house). APCs and HOCs are in the best position to determine which prosecutors within their cluster have the competence and experience to make such decisions.

[Click here for further information regarding the Commissioner's delegations including withdrawal of proceedings \(NSW Police Intranet\).](#)

1.1 How questions of withdrawal of proceedings may be raised.

Questions of withdrawal of proceedings are to be made in writing. Whilst it is preferred that such questions are raised via email, they may be accepted on paper. They are to be addressed to the informant's commander.

2. Duties of the Local Area Commander

2.1 Step 1: Send letter acknowledging receipt of the representations

The Local Area Commander (or equivalent) will immediately forward a letter to the author of the representations acknowledging receipt. The letter should be in the prescribed form, [click here to see STANDARD LETTER NO. 1.](#)

2.2 Referrals to the DPP

If the representations relate to a case being prosecuted by the Office of the Director of Public Prosecutions (DPP), the Commander will forward the representations to the DPP, using the pro-forma letter. The letter should be in the prescribed form, [click here to see STANDARD LETTER NO. 2.](#)

2.3 Step 2: Direct the officer in charge of the case to supply a “brief & comment”

The Local Area Commander (or equivalent) shall, by memorandum, direct the representations to the officer in charge of the case (OIC) and request the OIC to prepare and submit:

- (a) Fact sheet
- (b) Relevant court attendance notices
- (c) Criminal (& traffic, if applicable) record
- (d) A comprehensive report commenting, in particular, on the matters raised in the representations and on the grounds given as to why the matter should be withdrawn. The OIC shall also be directed to comment on whether the application is supported, and, consistent with the New South Wales Charter of Victims Rights, whether the victim (if any) supports the application.

It is always preferable to provide a full copy of the brief. However, if the proceedings and representations are not complex or sensitive, the OIC need not supply a brief of evidence. If the OIC is in possession of statements from relevant witnesses (including victims and other police), they should ensure they provide them in their reply. If, on review, the police prosecutor requires a full copy of the brief of evidence, such shall be provided.

The Local Area Commander (or equivalent) shall require the OIC to submit the above within 21 days of the date of receipt by the Commander of the representations.

A pro-forma request by Commander to the OIC should be used. The letter should be in the prescribed form, [click here to see STANDARD LETTER NO. 3](#)

2.4 What if the content of the representations constitutes a “complaint”?

On receipt of the representations, the Commander shall assess them to determine if they constitute a **written** complaint within the meaning of Part 8A of the Police Act 1990.

If the representations constitute a complaint within the meaning of Part 8A of the Police Act 1990:

- The Commander shall address the “complaint” as a separate issue to the representations for withdrawal.
- The Commander shall NOT forward the letter containing the representations to the officer in charge of the case, if doing so will disclose the identity of the complainant to the POLICE OFFICER DIRECTLY INVOLVED. Instead, the Commander shall include a summary of the grounds for the withdrawal application in the above memorandum.

2.5 Step 3: Keeping Appropriate Records - Enter all details on TRIM

The Commander shall cause the appropriate entries to be made on the TRIM System, so the movement of the file can be tracked.

3. Duties of the Officer in Charge of the Case (OIC)

Comply with the instructions in the memorandum from your commander.

Submit a comprehensive report addressing all of the issues raised in the representations and the information suggested in **3.1 Police officers making their own representations**.

ALWAYS consult the victim [Click here to View the Charter of Victims Rights](#).

ALWAYS consider and address the DPP Guidelines – [Click here to view The Test to Apply and The Decision to Prosecute \(extract from ODPP guidelines\)](#).

ALWAYS attach to the report the following documents:

- (1) Copy of the fact sheet
- (2) Copy of the court attendance notices
- (3) The defendant's criminal record and, if relevant, traffic record.

It is always preferable to provide a full copy of the brief. However, if the proceedings and representations are not complex or sensitive, you need not supply a brief of evidence. If you are in possession of statements from relevant witnesses (including victims and other police), ensure you provide them in your reply. If, on review, the police prosecutor requires a full copy of the brief of evidence, such shall be provided.

Submit your report to your commander as early as possible before the date the case is next listed at court.

3.1 Police officers making their own representations

Police *should* make representations for the withdrawal of proceedings if:

- The admissible evidence available is not capable of establishing each element of the offence
- There is no reasonable prospect of proving the offence or complaint beyond reasonable doubt
- Discretionary factors dictate that the matter should not proceed in the public interest.

If any of the above points apply to a case, the OIC should submit a comprehensive report in the matter, which includes the following information:

- An explanation why you say the case should be withdrawn.
- If the matter involves a victim, ascertain the attitude of the victim towards the matter being withdrawn and include that information in your report.
- The court at which the case is next listed and the date it is listed for. Also include whether the proceedings are next listed for mention or for hearing.

Attach to the report the following documents:

- (4) Copy of the fact sheet
- (5) Copy of the charge sheet(s) or breach report(s)
- (6) The defendant's Criminal Record and, if relevant, Traffic Record.

It is always preferable to provide a full copy of the brief. However, if the proceedings and representations are not complex or sensitive, you need not supply a brief of evidence. If you are in possession of statements from relevant witnesses (including victims and other police), ensure you provide them in your reply. If, on review, the police prosecutor requires a full copy of the brief of evidence, such shall be provided.

Submit your report to your commander as early as possible before the date the case is next listed at court.

If the Accused Person is bail refused or on conditional bail at the time of submitting your report, you must discuss with your local prosecutor the appropriateness of lodging a bail review pending the outcome of the representations.

3.2 The Role of the Brief Manager

Brief Managers should initiate representations for withdrawal for matters where they are of the opinion the available evidence is insufficient to establish a prima facie case, OR there is no reasonable prospect of conviction, OR for other discretionary reasons. PRIOR to submitting representations, where appropriate, every effort should be made to further investigate the offence. In accordance with the good practice set out in the [Brief Manger's Standard Operating Procedures](#) (click here to view on NSW Police Intranet).

4. Review by the Commander

- Review the file and provide a written recommendation on whether the case should be withdrawn or proceed. [Note: this function may be delegated to the Crime Manager or equivalent.]
- Forward the file to the [Head of the Court at which the case is listed](#).
- Ensure there is a record made of the movement of the file on TRIM.

5. Duties of the Head of Court

Note that the Head of Court may or may not be the Area Prosecutions Coordinator (APC). It's the Head of the Court that is being referred to here, unless the Head of the Court and the APC are one and the same.

When the Commander has recommended the case be withdrawn, follow that recommendation and have the proceedings withdrawn.

When the Commander has recommended the case proceed, review the file and make a recommendation as to whether the case should proceed or be withdrawn.

5.1 No Prima Facie Case

Upon review, if it is clear to the Head of Court there is no prima facie case, the Head of Court can approve the withdrawal of proceedings PROVIDED the case is not complex and/or sensitive and the OIC and the Commander are no longer opposed to the case being withdrawn. See section 8 when there is continued disagreement.

5.2 OIC, LAC and HOC all agree to proceed

Where the OIC, the OIC's commander (or delegated officer eg, Crime Manager) *and* the Head of Court at which the proceedings are listed *all* agree the proceedings the subject of the representations should be left to the determination of the court, the Head of Court may make the determination that the proceedings are to be left to the determination of the Court, and the representations need not be referred to the APC for determination.

5.3 IN ALL OTHER CASES, THE FOLLOWING PROCEDURES ARE TO BE COMPLIED WITH:

- Include your recommendation in LEX. Print out a Decision Report on LEX, attach the file from the LAC and submit to the Area Prosecutions Coordinator for your area;
- Ensure there is a record made of the movement of the file on TRIM.

5.4 Reporting Procedure where HOC makes determination

- The prosecutor determining the matter shall make entry of their determination on LEX, print out the Decision Report and attach it to the reps file.
- If the defendant is legally represented and their legal representative is known, the legal representative's details are to be entered into LEX prior to printing out the Decision Report and attaching it to the reps file.
- The prosecutor shall forward the reps file with decision report attached to the OIC's LAC/Commander.
- The LAC/Commander shall notify the OIC of case, maker of the representations and if the maker is not the defendant or her/his legal representative, the defendant or, if the defendant's legal representative is known, the defendant's legal representative, of the decision (see below for further instructions concerning this step).
- The OIC of the case shall notify the victim (if applicable)

- If the proceedings are withdrawn, the prosecutor who withdrew the proceedings shall complete an electronic Failed Prosecution Form on COPS.

6. Duties of the Area Prosecutions Coordinator

The Area Prosecutions Coordinator or a prosecutor of or above the rank of Senior Sergeant (or relieving in either of these positions) may:

- Review the Head of Court's report and make a determination whether the case should be withdrawn or left to the determination of the Court.
- Indicate your determination by endorsing LEX accordingly.
- Enter your name, rank and date onto LEX.
- Indicate on LEX the reasons for your decision.
- If your reasons are the same as those the Head of Court has detailed in their report, you may simply endorse LEX, "For the reasons stated by HOC, [To Be Withdrawn / To Be Left for the Determination of the Court]." Delete whichever is inapplicable.
- If the defendant is legally represented and their legal representative is known, to input the legal representative's details on LEX.
- Print out a new Decision Report from LEX and attach it to the original file. Return the original file, to the Commander of the OIC.

6.1 Withdrawals by APC on the day a matter is set for a defended hearing or part heard hearings

Circumstances may arise where you are asked to consider withdrawing charges on the day of hearing (including part heard matters where an application for withdrawal has not been submitted during the adjourned period).

If you feel it is appropriate to consider the application you should make every effort to follow the guidelines in this policy by:

1. Consulting the investigating police
2. Consulting the Commander / Crime Manager at the relevant LAC
3. Ensuring, where the offence involves a victim, the victim has been consulted and obtaining their view on the application
4. If appropriate consulting a Police Prosecutions Manager, and
5. Recording all of the information above on COPS (FAILCRE).

Extreme caution should be exercised in dealing with withdrawals on the day of hearing.

If the Investigating Police, Commander/Crime Manager, or victim disagree with the proposed course of action DO NOT AUTHORISE THE WITHDRAWAL OF PROCEEDINGS. HAVE THE PROCEEDINGS ADJOURNED OR CONTACT A POLICE PROSECUTIONS MANAGER. DO NOT CONSIDER THE WITHDRAWAL OF SENSITIVE OR HIGH PROFILE MATTERS, HAVE THE PROCEEDINGS ADJOURNED OR CONTACT A POLICE PROSECUTIONS MANAGER.

7. Cases the Head of Court and the APC are NOT to determine

The Head of Court and the APC shall NOT review or determine any case that is sensitive or unusually complex.

In such cases, the Head of Court is to inform the APC and forward the file to their Manager. Prosecutions Managers may refer withdrawal files to the Manager, Operational Legal Advice Unit, where they need to call upon specialist legal expertise in resolving a complex legal issue.

8. What if the Head of Court, OIC, Commander or APC disagree as to whether the proceedings should be discontinued?

Whenever this occurs, the Head of Court should advise the APC and consideration should be given to discussing the matter with the relevant Commander and/or OIC of the case.

In some cases, the disagreement may be due to a misunderstanding of the law or the available evidence. In these cases, there should be an attempt made to negotiate an agreed position.

If negotiations fail, or if the case is not a suitable one to attempt to negotiate, the Head of Court is to inform the APC and the file is to be forwarded to the Manager for determination. In situations of continued disagreement, the ultimate decision will rest with the Commander of Police Prosecutions.

9. Head of Court or APC may decline to determine the representations

The APC may refer a file to their Manager for determination if:

- For any reason, the APC considers it inappropriate that the representations are determined locally (eg, perceived conflict of interest).
- The APC's workload is such that the APC is unable to attend to the file.