



NSW Police Force

NSW Police Force Withdrawal Policy

Police Prosecutions Command

OFFICIAL: Sensitive

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Part 1 Application of Policy

This Policy applies to the following matters:

1. all court attendance notices commenced by NSW police officers proceeding summarily; and
2. all court attendance notices alleging offences that must be dealt with on indictment, until the brief of evidence has been served on the Office of the Director of Public Prosecutions and the matter has been adjourned for charge certification; and
3. all applications (i.e., forensic procedures, confiscation of assets, child protection register) where the applicant is a NSW Police Officer; and
4. all apprehended violence order applications where the applicant is a NSW Police Officer; and
5. all court attendance notices arising from an infringement notice issued by a NSW Police Officer unless:
 - a) the prosecutor (as per the meaning in the *Criminal Procedure Act 1986*, i.e., the officer in charge) or applicant has instructed a legal practitioner other than a Police Prosecutor to appear; or
 - b) the Office of the Director of Public Prosecutions has taken over the matter under section 9 of the *Director of Public Prosecutions Act 1986*; or
 - c) a clause of the policy specifically limits its application.

Part 2 Authority to withdraw proceedings

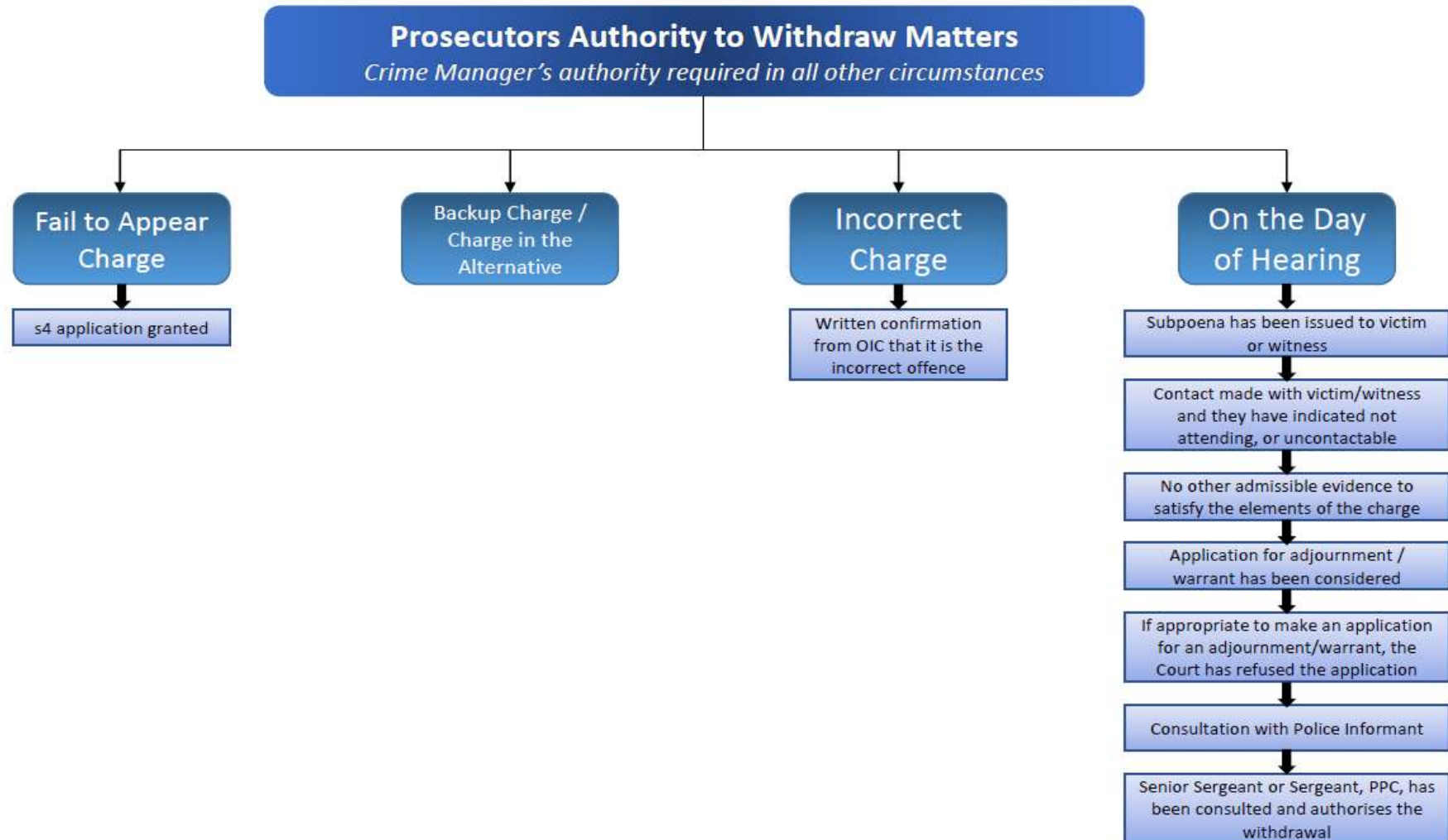
2.1 Authority of Commanders

Responsibility for determining if proceedings are withdrawn or left to the determination of the Court rests with the Commander of the Police Informant i.e., the relevant Police Area/Police District Commander or equivalent. Such Commanders, or an officer or officers delegated by them, have the authority to discontinue summary proceedings.

2.2 Authority of certain Police Prosecution's officers

Additionally, in specific circumstances as detailed in this Policy, that decision may rest with a prosecutor attached to Police Prosecutions. The authorisation to make that determination will be dictated by certain factors specified in this document

Figure 2.2



Part 3 Representations

Representations for the withdrawal of summary proceedings are to be made in writing (which may include via electronic means such as email), to the Commander of the Police Informant under most circumstances.

Representations are to be addressed in the following order:

1. Police Informant; then
2. Commander, Police Area Command or Police District; then
3. Prosecutor Team Leader.

For Representations made on behalf of the Aboriginal Women in Remand Project ('AWRP') see pt 3.10 below.

3.1 Representation steps (for non-AWRP matters)

Step 1: The Commander of the Informant is to send a letter acknowledging receipt of the representations.

Step 2: Require the Informant of the case to respond within 21 days.

Step 3: Keep appropriate records: All documents are to be recorded and entered on the RMS system.

Step 4: Once the Informant has responded to the representations, the file is to be forwarded to the Commander of the Police Area Command/District.

Step 5: The Commander is to authorise and endorse the file if the matter is to proceed or be withdrawn, taking all comments and material into consideration, and following consultation with prosecutor, where appropriate. Once a decision is made, the file is to be forwarded to the relevant Team Leader of the Police Prosecutions Command.

Step 6: The Police Area/District Commander is to notify the maker of the representations of the decision.

3.2 Representations for Office of the Director of Public Prosecution matters

The Police Area/District Commander is to forward representations relating to prosecutions for which the Office of the Director of Public Prosecutions has carriage, to the Office of the Director of Public Prosecutions. The maker of the representation should be informed that matter has been referred to the Office of the Director of Public Prosecutions.

3.3 Police Informant responsibilities for representations

The Informant is to include comment in the report on:

- the matters raised in the representations and on the grounds given as to why the matter should be withdrawn. The informant is to refer to comments concerning the brief of evidence made by prosecutors on the police system (COPS) if applicable; and
- whether the application for the withdrawal of the proceedings is supported; and
- consistent with the New South Wales Charter of Victims' Rights, whether the victim, if any, supports the application; and

[Click here to View the Charter of Victims' Rights](#)

- Consider and address the ODPP Guidelines

[Click here to view The Test to Apply and The Decision to Prosecute](#)

Where they exist, always attach copies of the following documents to the report:

- facts sheet;
- court attendance notices;
- defendant's criminal record and, if relevant, traffic record;
- recorded interview with the defendant;
- all relevant notebook entries;
- brief of evidence;
- statements obtained;
- photographs; and
- any other relevant documents.

The Informant must submit their report to the Police Area/District Commander as soon as possible.

3.4 Police officer seeking to withdraw charges

Police officers must make written representations for the withdrawal of proceedings if:

- There is no reasonable prospect of proving the offence or complaint before the Court; or
- Discretionary factors dictate that it is not in the public interest that the matter should proceed.

If either of the above points apply to a case, the Informant should submit a comprehensive report for consideration and determination in accordance with the steps for representations in Part 3.1 of this Policy.

3.5 Police Prosecutors making or responding to representations

A Police Prosecutor must make written representations for the withdrawal of proceedings if:

- There is no reasonable prospect of proving the offence or complaint before the Court; or
- Discretionary factors dictate that it is not in the public interest that the matter should proceed.

The report is to be forwarded to the Commander of the Informant, for consideration and determination in accordance with the steps for representations in Part 3.1 of this Policy.

3.6 Responsibilities of the Police Commander

Review the file and decide whether to approve the withdrawal of the proceedings, or to leave the proceedings to the determination of the court.

A Commander may consult with the Police Prosecutor allocated with the matter or the relevant Team Leader, Police Prosecutions Command.

The Commander should approve the withdrawal of the proceedings if satisfied that:

- having considered all the available evidence and the matters raised in the representations, there is no reasonable prospect that a court would find the offence proved beyond reasonable doubt; or
- having regard to Part 4 of this Policy, you are satisfied discretionary factors dictate it is not in the public interest to allow the proceedings to continue.

[Click here to view The Test to Apply and The Decision to Prosecute.](#)

Once a decision to withdraw or proceed has been made, the Commander must:

- ensure there is a record made of the movement of the file on the Record Management System;
- notify the Informant, and the maker of the representations of the decision only after it is confirmed there is no conflict with the Team Leader, Police Prosecutions Command – see 3.7 and 3.9;
- if the matter is to be withdrawn and the maker of the representations is not the defendant or her or his legal representative, notify the defendant or the defendant's legal representative of the decision; and
- if applicable, instruct the Informant to advise the victim

3.7 Disagreement between Commander and Team Leader, Police Prosecutions Command

If there are differing views between the Team Leader, Police Prosecutions Command, and the Commander, the Team Leader is to enter discussions with the Commander in an attempt to resolve the issue.

If the matter cannot be resolved between the Commander and the Team Leader, the matter is referred to the relevant Manager, Police Prosecutions Command, either by the Commander or the Team Leader.

The Manager must take steps to resolve the issue. If this is not successful, the matter will be referred to the Commander, Police Prosecutions Command. The Commander, Police Prosecutions Command, will determine whether the matter will proceed or be withdrawn. The Crime Manager will be advised in writing of the decision.

The decision of the Commander, Police Prosecutions Command, will be the final determination.

3.8 Duties of the Commander, Police Prosecutions Command following final determination

The Commander, Police Prosecutions Command, will:

- Indicate the determination by endorsing CMFMS representations or a Record Management System file accordingly; and
- Print out a new Decision Outcome report from CMFMS and attach it to the original file; and
- Return the original file, to the Police Area/District Commander and the Team Leader, Police Prosecutions Command.

After making a determination the Commander, Police Prosecutions Command, will advise the Police Area/District Commander of the outcome.

3.9 Duties of Police Area/District Commander following final determination by Commander, Police Prosecutions Command

The Police Area/District Commander will:

- advise the Informant of the case of the outcome. This may be conducted by endorsing and forwarding the file for notation by the officer-in-charge; and
- if applicable, instruct the officer-in-charge to advise the victim; and
- advise the maker of the representations of the outcome.

3.10 TRIAL – Aboriginal Women in Remand Project (AWRP) – Special Procedures

If the defendant is an Aboriginal woman who has applied for bail by a court, been refused, and their next court date is longer than two days away, special representations may be made by an AWRP Solicitor (Legal Aid) on behalf of the defendant directly the Police Prosecutions Command via email only to AWRP@police.nsw.gov.au

All communications from Police Prosecutors to AWRP Solicitors regarding these representations should cc [#AWRP](#)

Upon receipt, PPC will triage and forward the representations to the relevant Court Sector Manager, to forward to the relevant Prosecutor Team Leader, for initial comment and advice. That advice should then be forwarded to the relevant Commander, Crime Manager, and OIC.

The Commander of the OIC (or delegate) is to consider the representations and advise the Prosecutor Team Leader to either:

- Agree to the representations
- Reject the representations
- Propose a counteroffer

The representations should be considered in accordance with pt 3.6 above, noting the goal of providing a final response to the AWRP Solicitor within fourteen (14) days of the making of the initial representations.

In determining whether it is in the interests of justice to agree or disagree to the representations, note should be made of the NSWPF's goals consistent with the Aboriginal Engagement priorities, in particular, "Collaborate with other Agencies to Reduce Aboriginal Over-Representation in the Criminal Justice System".

Once advice from the Commander is received by the Prosecutor Team Leader, it should be communicated directly to the AWRP Solicitor, subject to pt 3.7 of this policy, cc'ing [#AWRP](#)

It is expected that a reply will be provided from the Prosecutor Team Leader to the AWRP Solicitor within fourteen (14) days **of the making of the initial representations**. It is recognised that this time frame may not provide the OIC opportunity to comment. Given this time frame it is also expected that comment and advice may be made entirely through email, rather than via standard report.

3.10.1 AWRP Considerations

AWRP Representations should be constrained to the following nature:

- Circumstances where the accused agrees to plead guilty as charged but wishes to amend the police facts sheet
- Circumstances where the accused agrees to the conduct outlined in the police facts, however, they say there is a more appropriate charge
- Offering alternative conditions to an ADVO or APVO
- Where the charge is a summary or table 2 offence, and the accused raises a legal defence

Strictly Indictable matters, and matters of a sexual nature, **will not be** considered under this procedure and must follow the normal course for representations.

If, during the initial triage by PPC, representations are determined to fall outside these procedures, they will be returned to the AWRP Solicitor who will be directed to follow the normal course for representations.

Part 4 Test to apply for withdrawing matters

All police officers, including those attached to the Police Prosecutions Command, irrespective of rank or position, shall adhere to the principles set out in the Prosecution Policy of the Office of the Director of Public Prosecutions. Extracts from that policy are set out below. If you need assistance concerning any legal issue relevant to a withdrawal file, contact your local Police Prosecutor.

The prosecution process is usually enlivened by a suspicion, an allegation or a confession. Not every one, however, will result in a prosecution. Sir Hartley Shawcross QC, former UK Attorney General and Nuremberg trial prosecutor, speaking in the House of Commons on 29 January 1951, said the following:

It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration.

The above statement applies equally to the State of New South Wales. The general public interest is the paramount criterion. The question of whether or not the public interest requires that a matter be prosecuted is resolved by determining if:

1. there is a reasonable prospect of a finding of guilt, or
2. discretionary factors dictate that the matter should not proceed in the public interest.

The first matter requires an exercise of judgment which will depend, in part, upon an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case considering the anticipated course of proceedings, including the circumstances in which they will take place. It is a test appropriate for both indictable and summary charges.

The second matter requires consideration of many factors, such as:

- the seriousness or, conversely, the triviality of the alleged offence or that it is of a "technical" nature only;
- the staleness of the alleged offence;
- the prevalence of the alleged offence and any need for deterrence, both personal and general;

- any mitigating or aggravating circumstances;
- the youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender, a witness or a victim; and
- the alleged offender's antecedents and background, including culture and language ability;

For the full list of factors please see:

[Click here to view The Test to Apply and The Decision to Prosecute.](#)

Part 5 Withdrawal of matters at Court

5.1 Authority to withdraw matters on the day of hearing (non-attendance of witness)

On the day of hearing, a Team Leader, Police Prosecutions Command, has authority to withdraw a matter if the following criteria are satisfied (non-attendance of witness):

1. Subpoenas have been issued for the victim/witness to attend court and they have not attended court; and
2. Contact has been made with the victim/witness on the day of the hearing and they have indicated they will not be attending court or is not contactable; and
3. There is no other admissible evidence capable of satisfying the elements of the offence; and
4. Application for an adjournment or warrant has been considered and, if appropriate, an application for a warrant or adjournment has been made to the court and declined by the court; and
5. The Informant has been consulted.
6. The Team Leader, Police Prosecutions Command, has been informed of the matter and authorises for the matter to be withdrawn.

The Prosecutor must record these steps in a Failed Prosecution Report on CMFMS or COPS.

If the criteria in steps 1 to 6 are not met, authority to withdraw the matter must be authorised in writing by the Commander/Crime Manager of the Police Area Command or Police District.

5.2 Responsibility of Police Prosecutors when matters are withdrawn

If a matter is withdrawn in accordance with Part 3 or Part 5 of this Policy, the Police Prosecutor must record the reason for withdrawal on CMFMS or COPS as a Failed Prosecution Report.

The Police Prosecutor will include the name of the officer authorising the withdrawal in the Failed Prosecution Report.

5.3 Review of matters that have been withdrawn at court (summary proceedings)

The Crime Manager and the Team Leader, Police Prosecutions Command, must review all matters that have been withdrawn in accordance with the *Failed Prosecution Review Panels Standard Operating Procedures*.

5.4 Responsibilities of Managers, Police Prosecutions Command

Managers, Police Prosecutions Command, must ensure regular dip sampling and auditing of all failed prosecutions is conducted frequently.

5.5 Adverse Comments

Police Prosecutors shall report in writing any adverse judicial comments/findings made about a police officer/s to their Managers.

This may be reported using the failed prosecutions form or the costs report in accordance with the '*Guidelines for Reporting Adverse Comments of Judicial Officers*'. If the adverse judicial comments will not be included in a failed prosecutions form or Costs form, the Police Prosecutor will prepare a standard report, outlining the adverse judicial comments, through their Manager to the Commander, Police Prosecutions.

5.6 Withdrawal of matters without authority

If proceedings were withdrawn by a Police Prosecutor without the written authority of the Police Area/District Commander, or not in accordance with this policy, the Police Prosecutor must submit a report outlining the circumstances to the Police Area/District Commander.

Part 6 Backup charges, charges in the alternative, fail to appear charges and incorrect offences

6.1 Backup charges and charges in the alternative

A backup charge or charge in the alternative means:

The backup charge or charge in the alternative is **less serious and carries less punishment** than the primary charge for which the accused is found guilty, and:

- i. The legal elements of the offence in the backup or alternative charge are contained wholly within the primary charge for which the accused is found guilty, or
- ii. The accused was found guilty and sentenced on facts that took into account all the facts relied upon to prove the backup charge or charge in the alternative.

A Police Prosecutor has the authority to withdraw a backup charge or charge in the alternative.

6.2 Fail to appear charges

If an accused has been charged with a fail to appear and a section 4 annulment application under the *Crimes (Appeal and Review) Act 2001* (NSW) has been lodged and granted by the court, a Police Prosecutor has authority to withdraw the fail to appear charge.

6.3 Incorrect offences

Incorrect offences are charges laid in error by the Informant. If an incorrect offence has been charged by the Informant, the Police Prosecutor has authority to withdraw the incorrect offence. The Police Prosecutor must have email confirmation from the officer in charge that the charge was laid in error.

Note: Insufficient evidence does not fall within the ambit of incorrect offences.

6.4 Recording of withdrawal

A failed prosecution form on CMFMS or COPS must be completed by the Police Prosecutor, clearly outlining the basis upon which a matter was dealt with as a backup, charge in the alternative, failed to appear charge, or incorrect offence.

Part 7 Amendment of Facts Sheets

An amendment of the Facts Sheet in relation to a charge may be required in the following circumstances:

1. The Facts Sheet contains reference to facts that relate to offences with which the accused has not been charged.
2. The withdrawal of a charge may change the basis, and therefore the facts, upon which the remainder of the prosecution case is to be conducted.
3. The Facts Sheet refers to evidence or information that the prosecution is not in a position to prove.
4. The accused person agrees to plead guilty to an agreed set of facts.

A Police Prosecutor does not require the authority of the relevant Police Area/District Commander to amend a Facts Sheet to remove references to offences for which the accused is not charged if the references are removed for legal reasons, and not removed on discretionary grounds, in accordance with the principles referred to in *R v De Simoni* (1981) 147 CLR 383.

However, aggravating circumstances of offences that are charged must remain in the Facts Sheet.

No other amendments to Facts Sheets can be made by the Police Prosecutor without written instructions from the Police Informant.

Where there is a victim, the Police Prosecutor must ensure, where practicable, the victim is consulted by the Police Informant and, where possible, obtain the victim's signature beside the changes on the facts sheet.

Part 8 No Evidence Offered

A Police Prosecutor must not "offer no evidence" in a matter as a means of avoiding the requirements of this Policy.

Where no evidence is offered, a failed prosecution report must be submitted by the Police Prosecutor outlining why the matter was not withdrawn in accordance with this Policy. For example, where the Police Prosecutor formed the view that the Magistrate's refusal to grant an adjournment to remedy a deficiency in a brief is an error at law, the Police Prosecutor may

decide not to withdraw the matter, and instead allow the magistrate to dismiss the matter on its merits, so that the matter once dismissed may be the subject of an appeal.

Part 9 Domestic Violence matters

The same test for deciding whether to prosecute a domestic violence matter is to be applied when:

1. There are no reasonable prospects an order will be made; or
2. Discretionary grounds dictate that it is in the public interest for the matter to be withdrawn.

9.1 Applications for apprehended Domestic Violence Orders

Decisions about the discontinuation of any Apprehended Violence Order application shall always be consistent with the objects of the *Crimes (Domestic & Personal Violence) Act 2007* (NSW), as stated in section 9 of that Act.

9.2 Procedure for withdrawal of Apprehended Violence Order applications

Part 3 of this Policy is to be complied with for representations for the discontinuance of an Apprehended Violence Order application.

9.3 Police Prosecutor responsibilities

Ensure, as far as possible, that where an absence of fear of future violence, harassment, intimidation, etc., by the Person In Need Of Protection is a basis upon which withdrawal of the proceedings is being sought, the Person In Need Of Protection is under no fear, threat, inducement, or intimidation to seek the withdrawal of the application.

Police Prosecutors should be mindful that it is not necessary to prove the Person In Need Of Protection holds fears in order to succeed in an application for an apprehended domestic violence order where section 16(2) of the *Crimes (Domestic & Personal Violence) Act 2007* is applicable.

9.4 When a Police Prosecutor may discontinue an application for an AVO

Any Police Prosecutor may withdraw an Apprehended Violence Order application if all the following conditions are met:

1. The Person In Need Of Protection is not a child; and
2. There is no information of which the Police Prosecutor is aware that the Person In Need Of Protection may be suffering from an appreciably below average general intelligence function; and
3. The Police Prosecutor received instructions from the Person In Need Of Protection (either directly or through the applicant police officer or the relevant Domestic Violence Officer) that the person in need of protection does not in fact themselves fear they may in the future be:
 - a. stalked by the defendant, or
 - b. the victim of a personal violence offence at the hands of the defendant, or
 - c. the victim of intimidation or harassment by the defendant; and

4. There is no information of which the Police Prosecutor is aware that indicates:
 - a. the Person In Need Of Protection has been subjected at any time to conduct by the defendant amounting to a personal violence offence; and,
 - b. there is a reasonable likelihood that the defendant may in the future commit a personal violence offence against the Person In Need Of Protection; and
5. The applicant police officer (or, in the absence of the applicant police officer, the relevant Domestic Violence Officer (DVO)) has given instructions to the Police Prosecutor that there is no objection to discontinuing the apprehended violence order application.

The non-attendance of the PINOP shall not, of itself, be sufficient reason to discontinue the proceedings. In the absence of the PINOP, the Police Prosecutor shall consider whether there is sufficient evidence upon which the application can succeed; such evidence including, but not limited to, evidence of prior personal violence offences, other witnesses, medical records and COPS entries. The Police Prosecutor shall make reasonable inquiries of the DVO and or OIC as to the availability of such evidence.

9.5 Undertakings not to be accepted in lieu of apprehended domestic violence order

Police Prosecutors must not accept undertakings in lieu of a final order for an apprehended domestic violence order.

9.6 Interim orders for extended periods in the Local Court

Police Prosecutors must seek final orders, as soon as practicable, unless withdrawal of the proceedings is justified. Police Prosecutors must not agree or consent to extended interim orders.

Note: This sub-section does not apply to “lapsing interim AVOs” that are considered at Court locations in accordance with the Specialist Family Violence List Pilot Practice Note (issued by Judge Johnstone on 25 September 2023). Police Prosecutors at these locations, in consultation with DVOs and complainants, may consent to the Court setting a “lapsing interim AVO” in place. Nothing in the Practice Note requires the Police Prosecutor to consent, discretion should be exercised in considering whether the facts and circumstances of each matter are appropriate for a “lapsing interim AVO” to be put in place.

Where a “lapsing interim AVO” is granted, the Police Prosecutor is to report the details of the order through their Team Leader to their Manager.

9.7 Interim orders for extended periods in the Children’s Court

The practice of making extended interim orders in apprehended violence order applications in the Children’s Court jurisdiction should not be opposed by a Police Prosecutor, provided there is compliance with [Children’s Court of NSW: Practice Note No. 8 – Apprehended Domestic and Personal Violence Proceedings in the Children’s Court.](#)

In the Children’s Court jurisdiction, Police Prosecutors have authority to withdraw an apprehended violence order application if instructions have been received by the relevant Domestic Violence Officer.

Part 10 Application proceedings commenced by Police

Parts 4 and 5 of this Policy are to be complied with when the withdrawal of application proceedings under Part 4 of the *Local Court Act 2007* (NSW) (other than Apprehended Violence Order application proceedings) are commenced by the issue and filing of an application notice.

Part 11 Withdrawal procedures for State Debt Recovery Office matters (other than infringements issued by Police)

11.1 State Debt Recovery Office Withdrawal Process for Court Elected Matters

If the State Debt Recovery Office client requests the State Debt Recovery Office to withdraw proceedings which have been listed for plea, mention, or hearing, the State Debt Recovery Office must provide advice in writing to the Police Prosecutor, the Court, and the Accused of that intention to withdraw.

If a Police Prosecutor receives a request to withdraw a court-elected matter prior to proceedings being listed, the Police Prosecutor must, as soon as practicable, notify the State Debt Recovery Office of such a request in writing.

11.2 The Police Prosecutor is of the opinion the proceedings should be withdrawn.

If a Police Prosecutor is of an opinion that a matter to which this part applies should be withdrawn, they may, in consultation with their respective Prosecutor Team Leader, advise the State Debt Recovery Office Client or the State Debt Recovery Office that the proceedings should be withdrawn.

If the State Debt Recovery Office intends to continue with the proceedings regardless of that advice, it will need to arrange for its own legal representative to appear at its own expense.

11.3 Requirements when representations for withdrawal received by Police Prosecutors prior to a court date

If a Police Prosecutor receives representations prior to a court date, the Prosecutor is to advise the State Debt Recovery Office in writing of those representations.

Part 12 Police issued penalty notices

12.1 Court Elected Penalty Notices Issued by NSW Police Force

Any request for the withdrawal of a court elected penalty notice issued by the NSW Police Force is to be determined in accordance with this policy.

12.2 Internal Review of Penalty Notices issued by the NSW Police Force

Where a member of the NSW Police Force issues a penalty notice for an offence and no court election has been made, but the person seeks the NSW Police Force to conduct an internal review of the decision to issue the penalty notice, the internal review will be conducted in accordance with the NSW Police Force Internal Review Guidelines for Penalty Notices.