

04/2012

CANCELLED

This Circular was cancelled as of 6 July 2012.
New references are OPM ss. 3.12: 'Prosecution Review Committee' and
3.16: 'Sexual offence prosecutions'

Circular No. 4/2012
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PROSECUTION REVIEW SYSTEM

A recent review of the Prosecution Review system by the Legal Services Branch (LSB) has led to a number of changes to Service policy and procedures. In summary, the changes mean:

- Districts are to stop forwarding the Form QP0496: 'Prosecution Review Committee Form' to LSB;
- LSB no longer maintain a Prosecution Review Database;
- Prosecution Review Committees (PRCs) only report to LSB any significant issue, or issue that has or is likely to have state-wide implications;
- District Brief Managers are to be included on PRCs; and
- PRCs to meet at least twice yearly.

The changes to Service policy and procedures are set out in this Circular in a format which will be used when incorporated into the Operational Procedures Manual (OPM).

3.12 Prosecution Review Committee

3.12.1 Introduction – Prosecution Review Committee

POLICY

The role of the Prosecution Review Committee is to thoroughly and professionally examine the processes, policies and procedures involved in each relevant case and to identify areas in which Service or local procedures may be improved. The Prosecution Review Committee should review:

- (i) cases involving dismissal, withdrawal or offering no evidence (see s. 3.4.4⁹: 'Withdrawal of charges' of this Manual). However, review does not extend to:
- (a) sexual offences (see s. 3.16⁹: 'Sexual offence prosecutions' of this chapter); or
 - (b) matters dealt with by ex officio indictment; Justice Mediation; or through the Mental Health Court or the Attorney-General (see s. 6.6.12¹⁰: 'Discontinuing or staying proceedings' of this Manual);
- (ii) cases in which costs are awarded (see s. 3.13¹¹: 'Costs' of this Manual);
- (iii) successful prosecutions where a member of the Service identifies there are issues which require review, and
- (iv) cases where a magistrate makes adverse comment concerning any member of the Service (see s. 3.7.13¹²: 'Comments by Magistracy concerning members of the Service' of this chapter).

The Prosecution Review Committee is not intended as a forum for assigning blame or as a disciplinary avenue against arresting officers. Arresting officers need have no fear of censure or castigation if a prosecution case is dismissed, provided that the prosecution has been instituted in accordance with prevailing law, policies and procedures.

3.12.2 Responsibilities of district officers or commissioned officers in charge

ORDER

District officers or commissioned officers in charge are to establish, within their area of control, a Prosecution Review Committee. As a minimum this committee is to consist of:

(i) the district brief manager or other member with sufficient policing experience who is prepared to undertake duty as a member of the committee;

(ii) a district, regional or establishment training officer; and

(iii) a police prosecutor.

It may also include a person nominated as an employee representative.

POLICY

In appointing a person as an employee representative, the district officer or commissioned officer in charge should provide an opportunity for the local union branch or branches to nominate such a representative.

ORDER

District officers or commissioned officers in charge are to ensure that:

(i) the Prosecution Review Committee meets at regular intervals, consistent with local needs but at least twice yearly;

(ii) processes are in place which ensure that all relevant matters are referred to the Prosecution Review Committee for evaluation; and

(iii) members who have been involved in the investigation of any case under evaluation by the Prosecution Review Committee are excluded from deliberations relating to that matter.

3.12.3 Duties and functions

ORDER

Members of a Prosecution Review Committee are to, on attending meetings of the committee, consider the facts of every case put before them, and in respect to each case:

(i) attempt to identify:

(a) the reason or reasons the prosecution failed; or

(b) in the case of a successful prosecution, any particular issue(s) requiring review;

(ii) consider what action may be necessary to prevent the failure of future cases for the same reason, or to address the particular issue(s) identified;

(iii) complete a Form QP496: 'Prosecution Review Committee Form' (available on QPS Forms Select) for maintaining of records at district level;

(iv) if an issue identified has or is likely to have state-wide implications, requires a change to Service policy or should be brought to the attention of the Superintendent, Legal Services Branch, complete a report outlining the issue with a firm recommendation on suggested actions and containing supporting documents including a copy of the brief of evidence, and forward the report to the Superintendent, Legal Services Branch; and

(v) review actions taken as a result of previous Prosecution Review Committee meeting recommendations.

The member of the Prosecution Review Committee who is the district brief manager or training officer is to retain a copy of all documentation relating to the Prosecution Review Committee functions.

Where misconduct or a breach of discipline is identified in the process of reviewing an unsuccessful prosecution, not otherwise reported, officers are reminded of their obligations under Chapter 18.1.5.7¹³ of the Human Resource Management Manual.

3.12.4 Responsibilities of Police Prosecutors

ORDER

The prosecutor who has withdrawn or offered no evidence in respect of a charge, or has had a charge dismissed by a Magistrate at a summary or committal hearing, is to forward the matter to the appropriate Prosecution Review Committee together with:

(i) in the case of a withdrawal or offering no evidence, a copy of the completed court brief, and copies of the Brief of Evidence and 'Request Authority to Withdraw Charges' form (QP 0626), if completed; and

(ii) in the case of a dismissal at a summary or committal hearing, copies of the completed court brief, Brief of Evidence and a QP0625: 'Report on Dismissal of Charge(s)' form (or equivalent).

3.16 Sexual offence prosecutions

3.16.1 Memorandum of Understanding – Sexual offence prosecutions

The Service and the Office of the Director of Public Prosecutions (State) (ODPP) have entered into a memorandum of understanding¹¹ (pdf 900 kB) with regard to communications between the two organisations in relation to sexual offence prosecutions. This document outlines the minimum standards of communication and assistance that the Service and the ODPP can expect of each other. Additionally, the memorandum of understanding refers to the 'QPS and ODPP Seeking Justice Committee' and the 'QPS and ODPP Failed Sexual Offence Prosecutions Working Party'. The Service's obligations under the memorandum of understanding have been incorporated into policies and procedures in this chapter and Chapter 2¹⁵: 'Investigative Process' of this Manual.

QPS and ODPP Seeking Justice Committee

The QPS and ODPP Seeking Justice Committee is comprised of members from the Child Safety and Sexual Crime Group, State Crime Operations Command, Legal Services Branch and the ODPP. The committee meets regularly to discuss the investigation and/or prosecution of sexual offence matters. The committee seeks to identify and acknowledge good practice and to discuss and resolve identified problems in a timely manner.

QPS and ODPP Failed Sexual Offence Prosecutions Working Party

The QPS and ODPP Failed Sexual Offence Prosecutions Working Party is comprised of members from the Service and the ODPP. The responsibilities of the Working Party include:

(i) to gather information about failed sexual offence prosecutions;

(ii) to meet regularly to discuss failed sexual offence prosecutions;

(iii) to identify systemic issues that need to be addressed by the Service and/or the ODPP; and

(iv) to provide the QPS and ODPP Seeking Justice Committee with brief statistical reports every three months and a written report every 12 months containing:

(a) an analysis of all failed sexual offence prosecutions for that period; and

(b) where appropriate, recommendations to prevent future failed sexual offence prosecutions and to enhance service delivery in both the Service and the ODPP.

POLICY

Where an officer has identified:

(i) a failure to comply with an obligation or expectation imposed by the memorandum of understanding between the Service and the ODPP; or

(ii) an issue that should be addressed by the QPS and ODPP Seeking Justice Committee,

the officer should attempt to have the matter resolved at the local level. Where such attempts have been unsuccessful, the officer should obtain permission from their officer in charge and send an e-mail identifying the issue to 'QPS ODPP SEX OFFENCE COMMITTEE'.

3.16.2 Failed sexual offence prosecutions

A failed sexual offence prosecution can occur at a magistrates court (see 'Failed sexual offence prosecution' in s. 3.3¹⁶: 'Definitions' of this chapter).

PROCEDURE

Police prosecutor

Where a police prosecutor withdraws a charge or offers no evidence or a magistrate dismisses a charge for a sexual offence prosecution, the prosecutor is to forward:

(i) the completed Court Brief (QP9); and

(ii) a copy of the QP0626: 'Request for Authority to Withdraw Charge(s)' form (or equivalent), or a copy of the QP0625: 'Report on Dismissal of Charge(s)' form (or equivalent);

to the QPS and ODPP Failed Sexual Offence Prosecutions Working Party by email to 'Failed Sexual Prosecutions'.

See also s. 3.4.4⁸: 'Withdrawal of charges' of this chapter.

Administration

POLICY

The contents of this circular will be incorporated into Chapter 3: 'Prosecution Process' of the OPM in due course.

The following sections of the OPM are hereby cancelled:

(i) Section 3.12: 'Prosecution Review Committee'; and

(ii) Section 3.16: 'Sexual offence prosecutions'.

ORDER

Officers in charge are to note the contents of this circular and bring them to the notice of all members under their control.

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