



CDPP

Australia's Federal Prosecution Service

**Commonwealth Director
of Public Prosecutions**

Illegal Imports & Exports
Human Exploitation and Border
Protection
Sydney Office

17 October 2016

The Hon Justice Peter McClellan AM
Chair of the Royal Commission into Institutional Responses to Child Sexual Abuse
1 Farrer Place
SYDNEY NSW 2000

Dear Justice McClellan

**Commonwealth Director of Public Prosecutions
Submission to Royal Commission into Institutional Responses to Child Sexual Abuse
DPP complaints and oversight mechanisms**

I refer to the roundtable of DPPs that occurred on 29 April 2016 in which the CDPP participated and to the Consultation Paper released by the Royal Commission in September 2016.

This submission addresses the issues raised during the roundtable discussion and those parts of the Consultation Paper relevant to prosecution agencies. It provides background on the operations and work of the CDPP and our governance structures and internal procedures and review mechanisms, particularly regarding cases involving victims of child sexual abuse. It also outlines my views regarding the suggestion that there be a mechanism to provide for external review of decisions in cases involving child victims of sexual abuse. Lastly, this submission addresses each of the suggestions made by the Commission at the roundtable discussion.

1. The CDPP

1. The CDPP is an independent, national federal prosecution service established in 1984 to prosecute offences against Commonwealth law. We have committed to contribute to a fair, safe and just society by delivering an effective, independent prosecution service in accordance with the *Prosecution Policy of the Commonwealth*. It is fundamental that the CDPP operates independently of government and referring agencies and makes independent assessments of the merits of prosecutions.
2. The CDPP conducts prosecutions both summarily and on indictment and appears in committals. The office is arranged into specialist practice groups with responsibility for particular types of prosecutions. The Human Exploitation and Border Protection (HEBP) Practice Group is responsible for conducting prosecutions for child sex offences in the Magistrates Court and trial courts as well as providing legal advice to investigators during the course of the investigation where sought in major matters.

2. Offences which may involve victims of child sexual abuse prosecuted by the CDPP

3. In 1994, new Commonwealth offences were enacted to criminalise the behaviour of Australians who engaged in the sexual abuse of children overseas (child sex tourism)¹. Significantly, in 2004 a raft of new online child pornography and abuse offences and grooming or procuring offences were introduced into the *Criminal Code (Cth)* by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act 2004*.
4. Offences against Commonwealth law, which may involve child sexual abuse (child sex matters), include:
 - accessing/transmitting/soliciting child pornography material and other offences relating to online child pornography or abuse material²;
 - online grooming or procuring of children for the purpose of sexual activity;
 - a number of crimes against humanity and war crimes³;
 - crimes of slavery and slavery-like conditions⁴; and
 - child sex offences or child pornography offences committed outside Australia⁵.
5. The CDPP does not commonly prosecute matters arising from institutional child sexual abuse.

3. Current matters being prosecuted by the CDPP

6. The CDPP is currently prosecuting 2959 matters and of these matters 307, or just over 10%, are child sex crime matters.⁶
7. The majority of the CDPP's child sex crime matters involve accessing, transmitting or soliciting child pornography material online. Unfortunately the victims depicted in child pornography material are not usually identified in the investigation.
8. In terms of the CDPP's current child sex crime matters:
 - 59%⁷ relate to online accessing, transmitting or soliciting child exploitation material and similar offences;
 - 29%⁸ relate to online grooming;
 - 6%⁹ are import/possess child exploitation material;
 - 1%¹⁰ are having sex with a child outside of Australia; and
 - 5%¹¹ are other child sex offences – these include assaults on children on aircraft.

¹ These were initially located in the Crimes Act 1914 from 1994 and were transferred, with modifications and improvements, to Division 272 of the Criminal Code in 2010. In introducing the Bill to Parliament in 1994 the then Minister for Justice noted Australia's key role in the development of the Convention on the Rights of the Child and Australia's ratification of that Convention in December 1990.

² See Division 474 of the Criminal Code (Cth) (offences which relate to relevant online offending were first introduced in 2004 and further related offences were introduced in 2010) and similar offences relating to postal services in Division 471 of the Criminal Code (Cth) (introduced in 2010).

³ Division 268 of the Criminal Code (Cth), introduced in 2002.

⁴ Division 270 of the Criminal Code (Cth), introduced in 1999, with significant additions in 2005 and 2013.

⁵ Division 272 of the Criminal Code (Cth).

⁶ Of 2959 current matters 307 are child sex crime matters.

⁷ 180 matters.

⁸ 89 matters.

⁹ 19 matters.

¹⁰ 2 matters.

¹¹ 17 matters.

9. At 7.4.2 of the Consultation Paper it is suggested that prosecution agencies should recognise the benefits to victims (and their families) of continuity in prosecution team staffing and take reasonable steps to facilitate, to the extent possible, continuity of prosecution staffing. The Commonwealth DPP recognises the importance of continuity of prosecution case officers. We have a specialised practice group that handles child exploitation prosecutions at the summary and trial stages which assists in maintaining the continuity of case officers.
10. Apart from crimes against humanity and war crimes¹², briefs which are received by the CDPP involving allegations of such offences are considered by case officers in the Human Exploitation and Border Protection Practice Group Branches of the CDPP in the Brisbane, Sydney, Melbourne and Adelaide offices. Where briefs for such offences are received in other offices the expertise of a specialist practice group is available to assist case officers. In short, the CDPP has adopted a specialised approach to the handling of these offences.
11. Many of the offences referred to above, particularly accessing, transmitting or soliciting child exploitation material online, may themselves involve hundreds or thousands of images of individual child victims. As noted above usually the victims are not able to be identified.
12. Nevertheless the work of identifying victims by the federal and State agencies investigating these offences is very important and can lead to identification. For example, a 10 month investigation led to the arrest and prosecution of Shannon McCooles in South Australia for federal and State offences (prosecuted by the CDPP and the DPP (SA), respectively) involving multiple counts of persistent sexual exploitation of a child, aggravated indecent assault, aggravated production of child pornography material (which was uploaded to a 'Dark Web' child pornography site) and an aggravated count of transmitting child pornography material and urging the transmission of child pornography material. Some of the victims were identified by the investigators in that matter. In 2015 McCooles was sentenced to a total effective sentence of 35 years with a non-parole period of 28 years imprisonment.

4. Offences involving identifiable child victims

13. Where a victim is identified in the investigation and in the brief of evidence referred to the CDPP this is recorded on our electronic Case Recording Information Management System (CRIMS). Our CRIMS data on victims has been cross referenced to crime types. Current data is listed below, commencing with the crime types that have the highest number of victims recorded in CRIMS:
 - online child exploitation;
 - immigration detention matters – principally assaults;
 - economic crimes;
 - telecommunications offences – harassing and menacing communications;
 - assaults on planes.
14. Of the 2959 current matters being prosecuted by the CDPP 66 matters, or 2.2%, include victims who have been identified in our case management system¹³. Those 66 matters relate to 278 victims and of these matters 50 matters, or 1.7% of all matters prosecuted by the CDPP, involved 123 child victims who have been identified.

¹² There are no current cases. Where the CDPP receives briefs in these matters they will be considered by the Organised Crime and Counter Terrorism Practice Group of the CDPP.

¹³ There can be more than one victim in a matter.

5. Prosecution Policy of the Commonwealth

15. The CDPP operates in accordance with the *Prosecution Policy of the Commonwealth*. This was the first set of principles developed by an office of Public Prosecutions in Australia. The policy is the foundation document for the prosecution of all criminal offences by the CDPP and underpins all of the decisions made by the CDPP throughout the prosecution process. It is based on the principles of fairness, openness, consistency, accountability and efficiency. It requires that when deciding whether evidence is sufficient to sustain a prosecution, there must be a reasonable prospect of securing a conviction. In addition, it must be in the public interest for the prosecution to commence or continue. The *Prosecution Policy of the Commonwealth* is a public document and is available at www.cdpp.gov.au. This policy is not referred to in the summary of prosecution policies under Part 7.4 of the Consultation Paper and I have enclosed a copy for your ease of reference.
16. The *Prosecution Policy of the Commonwealth* states that it is important that all victims are treated with respect for their dignity. The policy provides for the views of any victims where those views are available, and where appropriate, to be considered and taken into account at significant points in the prosecution process. Under the policy the views of a victim will be sought and considered when deciding whether it is in the public interest to:
- commence a prosecution;
 - discontinue a prosecution;
 - agree to a charge negotiation; or
 - decline to proceed with a prosecution after a committal.
17. It is the longstanding practice of the CDPP to consult victims at those stages in a prosecution. The pre-recorded discussion you had with the Director of Public Prosecutions for England and Wales, Ms Alison Saunders CB, played at the roundtable discussion, was surprising to my officers as it was apparent that there was no practice of consulting the victims/complainants in considering whether to commence a prosecution. The oversight mechanisms of prosecution decisions that exist in the UK must be seen against that background and would seem to explain why the UK has taken that approach.
18. The Prosecution Policy states that the CDPP will also comply with its Victims of Crime Policy in its dealings with victims. The Victims of Crime Policy, provides greater detail in relation to how the CDPP relates to, and interacts with, victims of crimes and witnesses. In this policy the CDPP recognises that victims have an important role in the prosecution process.
19. The CDPP also has in place:
- a Victims of Crime Manual;
 - Witness Assistance Service Referral Guidelines; and
 - a Witness Assistance Service.
- These documents have previously been provided to the Royal Commission.
20. At 7.5.4 of the Consultation Paper possible principles are suggested to guide prosecution charging and plea decisions. One of those suggested principles is that prosecutors should allow adequate time to consult the complainant and police in relation to any proposal to downgrade or withdraw charges or to accept a negotiated plea and that the complainant is given the opportunity to obtain assistance of the relevant witness assistance officers and support services before they give their opinion on the proposal.

21. It is the practice of the CDPP to consult the complainant and police in relation to any such proposal. Our practice is to consult the complainant and the police where a decision depends on public interest considerations. Where a decision depends on evidentiary considerations the police are consulted. Where there is a critical evidentiary deficiency that cannot be remedied the complainant is advised of the evidentiary deficiency which means that the charge or matter cannot proceed further pursuant to the *Prosecution Policy of the Commonwealth*.
22. One difficulty my prosecutors face is where offers to plead guilty are made in close proximity to the hearing date. Of course prosecutors have no control over the timing of plea offers. In some cases it might be possible to make the relevant witness assistance officers available very promptly to the complainant. In some cases it may be viable to seek a short adjournment of the matter to facilitate the complainant being able to consult others. The risk that costs may be ordered can be a disincentive to the prosecution seeking an adjournment. My office will give further consideration to strategies that might be adopted to ensure there is adequate time to consult a complainant in those circumstances.
23. In relation to other possible principles referred to at 7.5.4 of the Consultation Paper:
- Prosecutors at the CDPP are trained to ensure that correct charges are identified and laid as early as possible, and where police seek legal advice in significant matters on the appropriate charges during the course of the investigation the CDPP provides that advice. Where such pre-brief legal advice is sought by police on child sex matters this is provided by specialist lawyers in the Human Exploitation and Border Protection Practice Group.
 - Where a brief is received it will be allocated promptly to a case officer whose responsibility is to ensure that appropriate charges are identified as early as possible.
 - The *Prosecution Policy of the Commonwealth* requires that charges for which a guilty plea is accepted must adequately reflect the true criminality involved. In the ordinary course the charge or charges should be the most serious disclosed by the evidence though the policy recognises that detailed evidentiary considerations may make it appropriate to proceed with the charge that is not the most serious charge alleged (see paragraphs 2.19-2.20).

6. CDPP commitment to continuous improvement

24. The CDPP is committed to continuous improvement and works to identify and implement best practice.

Certification of Compliance with the Prosecution Policy of the Commonwealth

25. In November 2015 we introduced a new performance metric designed to assess our compliance in addressing the two-stage test for prosecutions in the *Prosecution Policy of the Commonwealth*. We measure compliance at selected stages of the prosecution process, based on a sampling of cases and certification by the relevant CDPP case officer or supervisor that we have complied with the test for prosecution – in other words, that there is a *prima facie* case, reasonable prospects of a conviction, and that prosecution is required in the public interest. Since introducing this new performance metric, we have achieved 100 per cent compliance. We are developing further mechanisms to assess compliance with the measure. These mechanisms, and the selected stages of the prosecution when we assess compliance, will remain under review.

Practice Group Model

26. In 2014 the CDPP moved from a regional based structure and restructured its prosecutions along practice group lines. The Human Exploitation and Border Protection practice group, to which I have already referred, is one of six practice groups. This practice group is responsible for prosecutions involving unlawful sexual activity with children and online child exploitation offending and conducts these prosecutions both in the summary and trial courts. The practice group model has ensured prosecutions for federal offences, including child sex offences, are handled by specialist federal prosecutors and matters are handled in a nationally consistent manner.

Decision making matrix

27. This internal CDPP document lists all prosecution decisions in the prosecution process and cross-references those to the seniority of the prosecutor required to make that particular decision. Prosecution decisions itemised in the Decision Making Matrix include decisions:

- not to commence a prosecution;
- to discontinue a prosecution; and
- to agree to a charge negotiation.

28. The Matrix mandates the level at which each decision is to be made within the CDPP. It ensures that decisions about more serious and sensitive issues, including decisions not to prosecute or to discontinue a prosecution, are made at an appropriately senior level within the CDPP. In essence there are 5 levels of potential decision making in the offices of the CDPP:

- at case officer level;
- at Work Group Coordinator level [Principal Federal Prosecutor];
- at Assistant Director level [SES Band 1];
- at Practice Group Leader level [SES Band 2]; and
- by the Director.

29. At 7.4.2 of the Consultation Paper it is suggested that prosecutors be trained to be non-judgmental and to focus on the credibility of the complaint or allegation rather than the credibility of the complainant. Our Decision Making Matrix ensures that there is a consistent and accurate decision making process and that my senior officers, who are skilled at applying professional judgment to determining the strength of complaints, are involved in significant decisions regarding such complaints.

30. The Executive Leadership Group of the CDPP has decided to increase the level of authority required for prosecution decisions where there are child complainants¹⁴ in a child sex matter and there is a recommendation that either a prosecution not be instituted or that a prosecution be discontinued. Now these decisions will be made at Practice Group Leader level. In addition a child complainant (through a parent or legal guardian) will have the option of seeking a review by me as Director of any decision not to commence a prosecution or to wholly discontinue a prosecution. I anticipate this new decision making process will come into operation very shortly, following appropriate amendments being made to the relevant Decision Making Matrices.

¹⁴ i.e. a victim who has made a statement in the brief of evidence.

Electronic Red Folder

31. As an adjunct to the Decision Making Matrix the CDPP has an electronic record (the Electronic Red Folder) of prosecution decisions made and the material relied upon in considering those decisions. The Electronic Red Folder is an internal online tool in which documentation associated with decisions is compiled and recorded. The Electronic Red Folder includes the written recommendations of the case officer and any supervisor along with the decision of the decision maker. It also includes the material relied upon in the decision making process.
32. As part of the CDPP prosecution decision making process, all CDPP case officers use the Electronic Red Folder to make recommendations and submit relevant documentation to the relevant Practice Group Leader or the Director.
33. The records generated by the Electronic Red Folder system provide an auditable repository of CDPP prosecution decisions and the material relied on.

7. CDPP Complaints Policy

34. The CDPP also has a Complaints Policy which provides that responses to complaints will be set out in writing.¹⁵
35. The CDPP complaints policy is publicly available at www.cdpp.gov.au.
36. The CDPP is currently undertaking a review of this policy in order to improve the effectiveness of the complaints process. A decision was recently taken that publication of anonymised data regarding complaints will be placed on the CDPP's external website.

8. CDPP compliance with Public Governance, Performance and Accountability Act 2013 ('PGPA Act')

37. As a Commonwealth public sector agency, the CDPP is subject to the PGPA Act, the accompanying Public Governance, Performance and Accountability Rules 2014 and related guidance from the Department of Finance and the Australian National Audit Office.
38. The PGPA requires the CDPP to establish and maintain a coherent system of governance and accountability. As part of its ongoing compliance with the mandatory requirements of the PGPA the CDPP has an audit committee comprising three independent members (Chair, Deputy Chair and member). Our audit committee is responsible for providing independent advice, assurance and assistance to me (as Director) on the appropriateness of CDPP's financial and performance reporting responsibilities, risk oversight and management and the system of internal control.
39. One of the functions of the CDPP Audit Committee is to review our internal audit work program to ensure that the coverage is aligned with CDPP's key risks. In 2015-16, the Audit Committee agreed to the conduct of internal audits relating to compliance with the prosecution processes. For 2016-17, the Audit Committee endorsed an audit on compliance with the Victims of Crime Policy on Identifiable Vulnerable Victims (specifically of child sex crimes). This will commence in early 2017. This audit will focus on the following:
 - decisions to discontinue prosecutions;

¹⁵ A copy of which is attached.

- decisions to partially discontinue prosecutions; and
- compliance with the CDPP complaints policy.

40. In addition, other potential audit topics that have been identified for future audits (i.e. 2017-18 and beyond) include:

- management of the Complaints Handling System; and
- compliance with the *Prosecution Policy of the Commonwealth* (an in-depth audit on adherence to internal controls and guidelines that relate to compliance with the decision making process set out in the Policy, as opposed to an audit of decisions. This potential audit also complements our current work on the certification of compliance with the Policy, as mentioned in item 6 above).

9. CDPP Witness Assistance Service

41. The CDPP has a Witness Assistance Service dedicated to witnesses and victims of crime.

42. The CDPP commenced a Witness Assistance Service (WAS) Pilot Project in November 2008 with the employment of one social worker in the role of Witness Assistance Officer (WAO). There are currently two WAOs based in the Sydney Office with nationwide responsibility for providing assistance to complainant witnesses in CDPP prosecuted matters.

43. This reflects the CDPP's commitment to meeting its policy obligations as set out in the CDPP Victims of Crime Policy. The WAS is attached to the Human Exploitation and Border Protection Practice Group. I note the suggestion in the Consultation Paper at 7.4.2 that WAS staff should be trained to provide culturally appropriate services for Aboriginal and Torres Strait Islander victims and survivors. In practice our WAS officers have not worked with victims who identify as being Aboriginal or Torres Strait Islander, but they do work with some victims who come from diverse cultural backgrounds. The CDPP is committed to ensuring our WAS officers are appropriately trained and will seek to identify and make available specific training in relation to Aboriginal or Torres Strait Islander victims.

44. The CDPP Victims of Crime Policy identifies the types of information that victims of crime are entitled to receive upon request and this guides the work of the WAOs, together with prosecutors in this area. The Policy recognises, in accordance with the suggestions of the Consultation Paper at 7.4.2, the importance to victims and their families of maintaining regular communication with them of the status of the prosecution unless they have been asked not to be informed. Where a child victim is involved communication with the child will occur through a parent or legal guardian. The services and information provided to any referred vulnerable victim will also be based on their individual needs and circumstances and may include one or more of the following:

- General information about court procedures and legal processes, for example:
 - role of the CDPP;
 - role of the prosecutor/defence; and
 - general trial processes.
- General information about their role as a witness, for example:
 - giving evidence in court; and
 - any vulnerable witness provisions that may be relevant.
- Case specific information, for example:
 - charges laid;
 - court dates;

- bail status; and
- outcomes of court proceedings (e.g. verdicts/sentences/appeal proceeding).
- WAO attendance at case conference and court, including;
 - referral to support services (e.g. counselling services);
 - in appropriate cases a liaison role between referred victims/witnesses and the CDPP lawyer in relation to information/support related issues;
 - court familiarisation tours;
 - assessing the need for any special measures;
 - support before, during and after victim/witness participation in judicial proceedings (e.g. court attendance and follow-up contact post court attendance); and
 - assistance/information concerning Victim Impact Statements.

45. In certain circumstances, it may be more appropriate for the CDPP lawyer or the informant to pass on certain case-specific updates to victims (e.g. a lawyer will usually be the most appropriate person to explain a complex legal situation such as a plea negotiation) or address certain questions or concerns raised by victims.

10. Evidence of victims

46. At Chapter 9 of the Consultation Paper there is discussion of the various mechanisms for child victims and survivors giving evidence and the protections for such witnesses in various jurisdictions, together with a discussion of the special measures that may be developed to further assist such witnesses.

47. In relation to Commonwealth criminal proceedings there are specific measures in Part IAD of the *Crimes Act 1914* (Cth) for the protection of vulnerable witnesses. These include a number of appropriate provisions designed to protect vulnerable witnesses, including children. I support mechanisms designed to protect vulnerable witness, including children, in a way that is consistent with the fairness of the prosecution. The Attorney-General's Department may wish to comment further on the suggestions in Chapter 9 of the Consultation Paper.

11. Training

48. The CDPP has implemented compulsory training for all case officers who are members of the Human Exploitation and Border Protection Practice Group on the Victims of Crime Policy, the Victims of Crime Manual, referral to the WAS and other internal procedures to ensure that victims of child sex offences, where they have been identified, are treated with respect and in accordance with the CDPP's policies.

49. At 7.4.2 of the Consultation Paper it is suggested that prosecution staff should receive training in order to facilitate an understanding of the nature and impact of child sexual abuse and institutional child sexual abuse and how it can affect people who are involved in a prosecution process. The Commonwealth DPP does not generally prosecute cases involving institutional child sexual abuse however, I am open to expanding our training to cover the nature and impact of child sexual abuse and how it can affect people who are involved in a prosecution process.

12. Judicial review

50. At the roundtable discussions, the issue of external oversight of the decision not to prosecute or to discontinue matters was canvassed. I do not support the external review of such decisions.
51. I note that Professor Mark Aronson was critical of this option at the roundtable discussion, expressing the view that in his opinion it was the least attractive option in the Australian context as it breached the doctrine of the separation of powers. The High Court has largely accepted the inappropriateness of judicial review of DPP decisions – *Maxwell v R* (1996) 184 CLR 501 at 534 per Gaudron and Gummow JJ. This was followed more recently by a majority (Gummow, Hayne, Crennan, Kiefel and Bell JJ) in *Likiardopoulos v The Queen* (2012) 247 CLR 265 at [37] (see also French CJ at [2]-[4]).
52. Judicial review of prosecution decisions necessarily involves the possibility of fragmenting the criminal justice process. The possibility of fragmentation of the criminal justice process has long been discouraged. For example in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 338-339 Mason CJ stated:
- ... only in most exceptional circumstances would it be appropriate to grant relief in respect of a decision given by a magistrate in committal proceedings ... The delays consequent upon fragmentation of the criminal process are so disadvantageous that they should be avoided unless the grant of relief by way of judicial review can clearly be seen to produce a discernible benefit.
53. Likewise in *Flanagan & Ors v Commissioner of AFP & Ors* (1996) 60 FCR 149 at 187 the Full Federal Court stated:
- The principle is well-established that criminal proceedings should not be fragmented by other courts' entertaining, except in exceptional or extraordinary circumstances, applications of various kinds by or against one or more of the participants in the criminal trial. [References omitted] This principle has been applied on many occasions by this court and the State Supreme Courts.
54. Finally it is noted that in 2000 the *Administrative Decisions (Judicial Review) Act 1977* was amended through the insertion of s9A¹⁶, to effectively prohibit the use of that Act to collaterally challenge issues arising from prosecutions for offences against laws of the Commonwealth or of the States or Territories.
55. The effect of imposing such external reviews is likely to unnecessarily add to costs for the community and may lead to additional trauma for victims, together with burdens upon potential accused.

13. Suggestions made by the Commission at the roundtable

56. At the roundtable discussion the Commission made a number of suggestions to the DPPs. Those suggestions and my responses are set out below:

First Suggestion: To adopt comprehensive written policies for decision making and consultation with victims and police.

¹⁶ Through the *Jurisdiction of Courts Legislation Amendment Act 2000*.

CDPP Response: The CDPP already has these policies.

Second Suggestion: Publish all relevant policies online and ensure they are available to the public.

CDPP Response: All CDPP relevant policies are online and available to the public.

Third Suggestion: Adopt and place online a formal complaints policy and provide written responses to complaints.

CDPP Response: CDPP has a complaints policy online and written responses are provided. This policy is being updated currently.

Fourth Suggestion: To provide a right for complainants/victims to seek written reasons for key decisions.

CDPP Response: The *Prosecution Policy of the Commonwealth* and the CDPP's Victims of Crime Policy requires that a complainant/victim be consulted at the various stages in the prosecution process when considering whether prosecution is in the public interest including when commencing a prosecution, considering discontinuing a prosecution, agreeing to a charge negotiation and considering whether to decline to proceed with a prosecution after committal. The CDPP is committed to explaining to complainants the reasons for the decisions. I think it best that that explanation be provided in conversation with the complainant (and in the case of a child complainant through a parent or legal guardian) and then confirmed in writing by my office. The CDPP Executive Leadership Group has recently recommended and I agree that where a prosecution is not commenced or where a prosecution is discontinued in a child sex matter, and where the complainant seeks written reasons for that decision, that I will provide written reasons if it is appropriate to do so.

Fifth Suggestion: That the CDPP provide a right to complainants/victims to seek an internal merits review of key decisions (not to prosecute or discontinuing a prosecution).

CDPP Response: Unlike in the UK the CDPP consults and seeks the views of complainants/victims at the important stages of the prosecution process when considering whether a prosecution is in the public interest including when commencing a prosecution, when considering discontinuing a prosecution and when considering a charge negotiation. As noted above the CDPP has decided to amend our Decision Making Matrix to require that such prosecution decisions, where there is an identifiable victim of a child sex charge or allegation, be made at Practice Group Leader level. In addition a child complainant (through a parent or legal guardian) will have the option of seeking a review by me as Director of any decision not to commence a prosecution or to wholly discontinue a prosecution. I anticipate this addition to our decision making process will come into operation very shortly, following amendment of our Decision Making Matrices.

Sixth Suggestion: That a victim/complainant be entitled to seek an external judicial review of a key prosecution decision such as not commencing a prosecution or discontinuing a prosecution.

CDPP Response: For the reasons set out above at page 10 I do not agree.

Seventh Suggestion: That the CDPP consider auditing compliance with CDPP policies for decision making and consultation with victims/complainants and police investigators.

CDPP Response: As noted above our internal audit this year will cover compliance with our Victims of Crime Policy. Next year it is proposed that our audits include compliance with the process set out in the *Prosecution Policy of the Commonwealth*.

Eighth Suggestion: That the annual report include data on complaints and any audits of compliance with policies for decision making and consultation with victims/complaints.

CDPP Response: The CDPP proposes to publish complaints data on its external website.

Conclusion

57. The CDPP is strongly committed to bringing to justice those who commit sex offences against children in accordance with the *Prosecution Policy of the Commonwealth*. The CDPP has strong and proven mechanisms in place to ensure that decisions are made by appropriately senior staff, that decisions are correctly made and that the views of child victims of sexual abuse are taken into account during the CDPP's decision-making processes.
58. The CDPP is also committed to continuous improvement of our processes and practices. In particular, the CDPP:
- is taking steps to measure compliance with the *Prosecution Policy of the Commonwealth* and the Victims of Crime Policy;
 - is reviewing our complaints mechanism to make it more effective;
 - is committed to publishing data relating to complaints on its external website;
 - is committed to ensuring that case officers are appropriately trained with respect to the CDPP's victims' policies and obligations;
 - will soon implement a process whereby critical decisions not to commence a prosecution or to discontinue a prosecution of a child sex crime will be made by the Practice Group Leader; and
 - will soon provide a child complainant (through a parent or legal guardian) with the option of seeking a review by me as Director of any decision not to commence a prosecution or to wholly discontinue a prosecution. I anticipate this addition to our decision making process will come into operation before the end of the year, following the formal amendment of our Decision Making Matrices.
59. As regards the request at p324 of the Consultation Paper for specific submissions on Chapter 7, I am of the view that:
- it would be sufficient for the Commission to propose general principles for prosecution responses and charging and plea decisions along the lines set out at 7.4.2 and 7.5.4, rather than making more specific recommendations about those matters; and
 - as regards the liaison between CDPP and investigative agencies, there is sufficient liaison between prosecutors and police in relation to charging decisions. In long running and complex investigations, this may occur as part of the CDPP's pre-brief engagement, and in more routine matters, there is ongoing dialogue between the agencies following the arrest of offenders.

Please let me know if you require any further information.

Yours faithfully



Sarah McNaughton SC
Director
Commonwealth Director of Public Prosecutions

Encl. *Prosecution Policy of the Commonwealth*