

OUR REFERENCE

**DIRECTOR'S CHAMBERS**

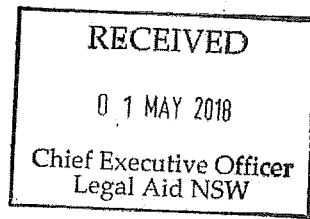


**ODPP**  
New South Wales

YOUR REFERENCE

DATE

1 May 2018



Brendan Thomas  
CEO, Legal Aid New South Wales  
Via email: [Mark.Rosalky@legalaid.nsw.gov.au](mailto:Mark.Rosalky@legalaid.nsw.gov.au)

Dear Mr Thomas

**Agreement between NSW Police and the DPP**

The Commissioner of Police and I have entered an updated agreement concerning the content and service of an Early Appropriate Guilty Plea brief of evidence and the process for charge certification.

Attached is a copy of this agreement for your information.

Yours faithfully

A handwritten signature in black ink, appearing to read "Lloyd Babb".

**Lloyd Babb SC**  
**Director of Public Prosecutions**

**AGREEMENT BETWEEN NSW POLICE FORCE &  
OFFICE OF THE DPP (NSW)**

**CONCERNING THE CONTENT AND SERVICE OF AN EARLY  
APPROPRIATE GUILTY PLEA BRIEF and CHARGE CERTIFICATION**

**Part 1 – Introduction**

The parties to this agreement are:

The Commissioner of Police, NSW Police Force (NSWPF) and

The Director of Public Prosecutions, Office of Director of Public Prosecutions (ODPP).

This is an agreement between the parties in respect of the prosecution of indictable offences pursuant to the *Criminal Procedure Act 1986* and serious children's indictable offences pursuant to the *Children (Criminal Proceedings) Act 1987* dealing with:

- The content and service of the Early Appropriate Guilty Plea Brief ("the brief") by the NSWPF to the ODPP
- Charge certification and
- The transfer of the responsibility for prosecution of offences from Police Prosecutors to the ODPP.

This agreement replaces the Agreement executed on 23 February 2018.

**Part 2 - Purpose of the brief**

The brief is to provide the evidence necessary to satisfy the elements of the offence to enable the ODPP to certify the charge(s) laid by the NSWPF against an accused.

The brief of evidence must contain the following:

(a) copies of all material obtained by the prosecution that forms the basis of the prosecution's case,

(b) copies of any other material obtained by the prosecution that is reasonably capable of being relevant to the case for the accused person,

(c) copies of any other material obtained by the prosecution that would affect the strength of the prosecution's case.

It is not the purpose of the brief to provide all the evidence in the admissible form that may be required should the matter proceed to trial.

This Protocol, in allowing for evidence in a brief to be provided in an alternative form, does not remove the requirement of NSWPF to fully investigate the matter and obtain all relevant evidence.

### Part 3 - Contents of the brief

The brief must include:

- The Brief Coversheet
- The 'Brief Items List and Summary of Evidence'<sup>1</sup>
- Details of any co-accused who have been charged including names and charges.
- Court Attendance Notices
- Police 'Facts Sheet'
- Criminal antecedents of the accused
- Evidence required to satisfy the elements of the offence/s (including the identification of the accused/s)
- All material obtained that forms the basis of the prosecution's case
- All material obtained that is reasonably capable of being relevant to the case for the accused
- All material obtained that would affect the strength of the prosecution's case

The evidence in the brief need not be provided in an admissible form and may be provided in the alternative forms described in *Appendix A*.

If, the type of evidence is not referred to in *Appendix A* and/or there is no alternative form available, the Officer in Charge (OIC) and ODPP may agree on the form that the evidence is provided to the ODPP. For the sake of clarity, the brief need not include the following evidence if it has not been obtained and it is not critical to the prosecution establishing an element of the offence:

- Statements from corroborating police officers
- Forensic statements
- Expert witness statements
- Formal custody statements
- Continuity statements

The copy of the brief which is served on the ODPP must be accompanied by a completed Disclosure Certificate pursuant to s15A of the *Director of Public Prosecutions Act 1986*, in the form prescribed by the Regulations to that Act.

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<sup>1</sup> This is a new document and it includes a brief cover sheet with the name/contact details of the OIC and Crime Manager, index of brief including exhibits and a summary of the evidence prepared by the OIC.

#### **Part 4 – Review, endorsement and service of the brief.**

The NSWPF are responsible for serving the brief on the ODPP and the accused or their legal representative. The brief is not to be served on the ODPP until the relevant supervisor of the officer in charge of the case certifies that the brief meets the requirements set out in Parts 2 and 3 of this Protocol. Specifically, whilst not performing a legal quality review, the relevant supervisor will ensure that:

- The investigation is complete as reflected in COPS.
- The matter has been properly investigated.
- All witnesses have been interviewed and statements taken, subject to Part 3.
- All available evidence is contained in the brief subject to Part 3.
- The 'Brief Items List and Summary of Evidence' has been signed by the supervisor to reflect that this review has been completed.
- There is a completed Disclosure Certificate pursuant to s15A of the Director of Public Prosecutions Act accompanying the copy of the brief served on the ODPP.

If the brief has not been completed by the date ordered by the Court for service, nothing in this Protocol prevents the accused or their legal representative being served with the brief material that is available at that time.

#### **Part 5 – Requests for further evidence**

Further evidence may be requested where:

1. the ODPP determines that there is inadequate material to certify the charge/s.
2. it is necessary to facilitate an early appropriate guilty plea at a Case Conference. (In making that determination, the ODPP may take into account requests made by the accused person's legal representative.)

The ODPP should make requests for further evidence by requisition to the NSWPF.

Prior to making a requisition to the NSWPF, the ODPP should consider:

- (a) whether the requisition is likely to facilitate a resolution of the matter; and
- (b) the amount of resources required to comply with the requisition

The NSWPF will confirm receipt of a requisition within 48 hours of it being sent and agree with the ODPP on a timeframe for answering the requisition.

## **Part 6 – Charge Certification**

If the ODPP is of the view that additional or different charges should be laid, following consultation with the OIC and any victim in accordance with the Director's Guidelines, the ODPP will request the OIC to create those charges.

Receipt of the request will be immediately confirmed by the OIC. The charges will be created by close of business on the following business day.

Where the OIC is unavailable the ODPP will contact the Crime Manager or officer nominated on the Brief Coversheet. The Crime Manager or other nominated officer will then create the charges within the agreed time.

A request by the ODPP must be made no later than 2 days before the next court listing.

The ODPP will serve the additional CANs on the accused in court, unless an alternative arrangement is made with the OIC.

The OIC must not create any further CANs without consultation with the ODPP once the charge/s have been certified.

## **Part 7 – Transfer of proceedings from Police Prosecutors to ODPP**

A Police Prosecutor will appear at the first appearance for an accused who is on bail, and in the case of an accused who is bail refused, on the first and any subsequent bail related appearance until the brief is served on the ODPP.

On the first appearance a Police Prosecutor will seek an adjournment for the period provided by the Local Court Practice Note for the brief to be served. If a matter is exceptional or complex, then an application should be made for additional time to serve the brief.

At the second appearance, if the brief has not been served the Police Prosecutor may seek a further adjournment of an adequate length to allow for service of the brief.

At the second appearance, if the brief has been served, Police Prosecutors will appear and list the matter in accordance with the Local Court Practice Note for a third appearance and filing of the charge certificate. If a matter is exceptional or complex, then an application should be made for additional time for a third appearance and filing of the charge certificate.

Once the brief has been served, and a timetable has been set to file the charge certificate, the ODPP will appear in the matter.

At the third appearance the ODPP will appear and file the Charge Certificate or advise if a further adjournment is sought for the certificate to be filed.

**Part 8 – Responsibility to inform and consult with Victims**

The NSWPF is responsible for informing and communicating with victims until the brief is served.

Upon receipt of the brief and the contact details for the victim the ODPP is responsible for updating victims on the progress of the case and consulting on the charges that are to be certified.

**Part 9 - Escalation of disputes**

In the first instance the OIC and the ODPP lawyer handling the case should attempt to resolve any dispute about any issue arising from this Protocol.

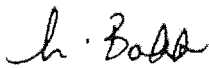
If the dispute remains unresolved the issue should be referred to the relevant Crime Manager or equivalent officer and the ODPP Managing Lawyer.

If the dispute remains unresolved it is to be escalated to the Commander, Police Prosecutions and the Solicitor for Public Prosecutions for resolution.

**Part 10 – Review**

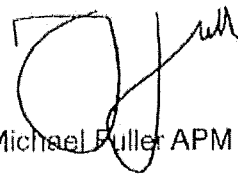
This Protocol will be reviewed by the Parties within 2 years from the date of its commencement.

Date: 27-04-2018



Lloyd Babb SC

Director of Public Prosecutions



Michael Fuller APM

Commissioner of Police

**APPENDIX A:**

Evidence to be included in the Brief	Acceptable Alternative Forms of Evidence (where not yet obtained in admissible form)
Key <sup>2</sup> police and witness statements, including from the Officer in Charge	Not applicable
Victim/s signed statement or transcript of recorded interview/ DVEC	Not applicable
Witness statements and/or transcript of interview	For non-key witnesses handwritten signed statements in police notebook
Other Evidence containing admissions by an accused	Not applicable
Photographs or documentary evidence	Statement producing it not required provided photographs contain captions explaining their origin
Identification Parade <sup>3</sup>	Statement producing the recording not required DVD recording of parade required
Electronic Recorded Interview of a Suspected Person (ERISP) transcript	Not applicable
CCTV footage	Statement producing it not required provided a synopsis is included which includes details about where the CCTV footage originates from and the video can be played without additional software
Other Audio-Visual Material (eg Body worn video, Search Warrant Video)	Provide all relevant recordings, property seizure form and exhibit list (EFIMS)
Police scientific evidence (includes DNA, fingerprint, ballistics, drug and chemical analysis)	Result from EFIMS or Forensic Summary Report Short form statement/ certificate with expert opinion explaining the summary report. Presumptive drug testing results which identifies drug and quantity
Telephone Intercepts and Listening Devices Audio and Transcripts	Audio of all relevant recordings with a detailed synopsis of the contents. All calls should be summarised with explanation of any code/s used and key calls identified. Key calls will need to be transcribed.

<sup>2</sup> The word 'key' is to emphasise that where there are important police or witness statements, there is no alternative inadmissible form

<sup>3</sup> Identification Parade includes photograph parade

Agreement between NSWPF and ODPP – Early Guilty Plea Brief and Charge Certification

Visual and other Surveillance Evidence	Surveillance Log and relevant footage/ photos
Telephone records	Download from IASK but with a synopsis
Expert Medical	Photos, discharge summary, clinical notes or short opinion from doctor, SAIK
Expert Evidence	Short form opinion
Digital Device Downloads	Digital evidence download report (e.g. Cellebrite) *
Financial Evidence	Business records relied upon with a synopsis (e.g. Statement of Account)
Evidence obtained overseas including Mutual Assistance Evidence.	Evidence about Mutual Assistance formalities not required.