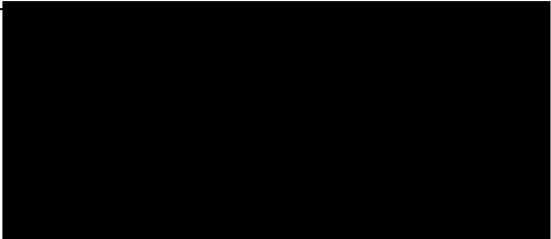


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

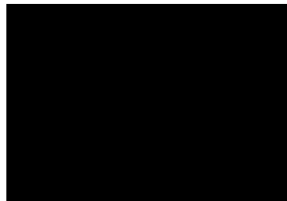
ATTACHMENT PR-11 TO STATEMENT OF SENIOR SERGEANT PAUL RUDD

Date of document: 27 July 2015
Filed on behalf of: State of Victoria
Prepared by:
Victorian Government Solicitor's Office
Level 33
80 Collins Street
Melbourne VIC 3000



This is the attachment marked '**PR-11**' produced and shown to **PAUL RUDD** at the time of signing his Statement on 27 July 2015.

Before me:



.....



An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)



DIRECTOR of
PUBLIC PROSECUTIONS
VICTORIA

• DIRECTOR'S POLICY •

RESOLUTION

Last updated: 24 November 2014

Introduction

1. This document is the Director of Public Prosecutions' ('DPP') policy on the resolution of prosecutions by pleas of guilty.
2. This policy applies to all prosecutions conducted by the public prosecutions service.¹

Definitions

3. In this Policy:
 - 'appropriate charges' means charges which:
 - adequately reflect the accused's criminality, based on what can be proved beyond reasonable doubt
 - allow for the imposition of a sentence which adequately reflects the accused's criminality; and
 - allow for the making of all appropriate ancillary orders.
 - 'injury' means:
 - actual physical bodily injury; or
 - mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or
 - pregnancy; or
 - grief, distress or trauma or other significant adverse effect; or
 - loss or damage to property.
 - 'lesser charges' means:
 - a charge for an alternative offence with a lower maximum penalty
 - where multiple non-alternative offences (separate thefts, for example) have been charged, a reduction in the number of those charges; or
 - where multiple non-alternative offences (10 separate thefts, for example) have been charged, a lesser number of charges for offences with the same maximum penalty (5 charges of obtaining property by deception, for example).

¹ See s 3 of the *Public Prosecutions Act 1994* for the definition of 'public prosecutions service'.



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- 'the solicitor' means the solicitor with conduct of the prosecution at each stage of the prosecution
- 'the prosecutor' means the Crown Prosecutor, barrister or solicitor briefed to appear on behalf of the DPP
- 'victim' means:
 - a person who has suffered injury as a direct result of a criminal offence; or
 - if a person has died as a direct result of a criminal offence committed against that person, a family member of that person; or
 - if a person referred to in one of the preceding two sentences is under 18 years of age or is incapable of managing his or her own affairs because of mental impairment, a parent, guardian or family member of that person.

The importance of resolution

4. The resolution of prosecutions by pleas of guilty to appropriate charges is necessary for the effective, economic and efficient conduct of prosecutions.² It relieves victims and witnesses of the burden of having to give evidence and may help victims put their experience behind them.³ It also provides certainty of outcome and saves the community the cost of trials.

The solicitor must consider resolution

5. At every stage of the prosecution, the solicitor must consider whether the prosecution may be resolved by a plea of guilty to appropriate charges, having regard to:
 - the strength of the evidence, in particular any admissions
 - any probable defences
 - the views of the victims and the informant
 - the need to minimise inconvenience and distress to witnesses, particularly those who may find it onerous to give evidence
 - the accused's antecedents, in particular any criminal history
 - the likely length of a trial
 - whether the accused will give evidence for the prosecution after pleading guilty. In considering this, regard should be had to:
 - the value of the accused's evidence; and
 - the culpability of the accused compared with the culpability of those against whom the accused's evidence will be used.

² See *Public Prosecutions Act 1994* ss 24(b) and 41(1)(a).

³ See generally, *Cameron v R* (2002) 209 CLR 339 at [67]-[68]; [2002] HCA 6, [66]-[67].



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The solicitor should discuss resolution with the accused's legal representatives

6. The solicitor should discuss resolution with the accused's legal representatives, irrespective of whether resolution is raised by the accused's legal representatives. This should occur:
- prior to the committal mention
 - prior to the committal
 - prior to the initial directions hearing (having regard to the evidence adduced at the committal)
 - prior to the final directions hearing; and
 - prior to the trial.

Consultation with victims and the informant

7. The solicitor should consult the victims and the informant prior to the resolution of a prosecution by a plea of guilty to lesser charges.
8. The victims' and the informant's views should be taken into account in determining whether to resolve the prosecution by a plea of guilty to lesser charges, but are not determinative.
9. The solicitor must inform the victims and the informant if the prosecution resolves by a plea of guilty, regardless of whether the plea of guilty is to lesser charges.⁴

Proceeds of crime implications

10. If a restraining order under the *Confiscation Act 1997* is in place, the solicitor needs to consider the proceeds of crime implications in the resolution of the matter.

Crown Prosecutor or DPP approval

11. The resolution of a prosecution by a plea of guilty to lesser charges requires a Crown Prosecutor's or the DPP's approval. Prior to seeking a Crown Prosecutor's or the DPP's approval, the solicitor should seek guidance from the relevant Legal Prosecution Specialist, if any. The identity of the Crown Prosecutor who approves a resolution must not be revealed to the accused or their legal representatives.

⁴ See generally *Victims' Charter Act 2006* ss 9(c)(iii) and 9(d).



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12. In any case involving a death, the resolution of the prosecution by a plea of guilty to lesser charges requires approval of the DPP, or in his absence, the Chief Crown Prosecutor. In any other case, the solicitor may seek the DPP's approval of a resolution if, having regard to the facts and circumstances of the case, the solicitor considers it appropriate to do so. In any case in which the DPP is asked to approve the resolution of the prosecution by a plea of guilty to lesser charges, written advice must first be obtained from a Crown Prosecutor.
13. In all cases, the resolution of a prosecution by a plea of guilty to lesser charges may only be approved if the lesser charges are appropriate charges.

Crown Prosecutors and solicitors must not discuss resolution with an accused's legal representative unless conducting the prosecution

14. A Crown Prosecutor must not discuss resolution with an accused's legal representative unless the Crown Prosecutor is briefed to appear in the prosecution. An Office of Public Prosecutions ('OPP') solicitor must not discuss resolution with an accused's legal representative unless the OPP solicitor has conduct of the prosecution.

Resolution must be reduced to writing

15. The solicitor must record any resolution by a plea of guilty in writing (letter or email) and ensure that accused's legal representatives have a copy of that document before the resolution is acted upon. The document should include the charges to which the accused will plead guilty, any agreed facts, any agreed sentencing submissions, any agreement about applications for ancillary orders and any other substantial matter relevant to the accused's decision to plead guilty.⁵
16. Plea offers made by the accused's legal representatives should be in writing. However, if the accused's legal representatives make a verbal plea offer, the solicitor must respond to it in writing.

Sentencing submissions

17. If the accused pleads guilty, the prosecutor at the plea should submit that the accused is entitled to a reduction of the sentence that would otherwise have been imposed. If the accused pleaded guilty at the committal mention, the prosecutor at the plea should submit that the accused pleaded guilty at the earliest opportunity. If the accused indicated an intention to plead guilty after the committal, the prosecutor

⁵ *R v GAS & SJK* (2004) 206 ALR 116, [42]-[45]; [2004] HCA 22, [42]-[44].



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at the plea should submit that the accused did not plead guilty at the earliest possible opportunity (unless there is a good reason to do otherwise). If the accused indicated an intention to plead guilty after the trial had been listed, the prosecutor at the plea should submit that the reduction of the sentence should reflect the late plea of guilty (unless there is a good reason to do otherwise). These principles apply regardless of whether the plea of guilty is to lesser charges.⁶

Unrepresented accused

18. Written plea offers made by unrepresented accused may be considered and responded to in writing. However, the solicitor must not initiate resolution discussions with an unrepresented accused without the DPP's instructions.

Review

19. This Policy will be reviewed and updated as necessary.

⁶ See *Sentencing Act 1991* s 5(2)(e).