



This information resource aims to assist victims of crime to understand the plea negotiation process and the role they may play in relation to this process.

The **Office of the Commonwealth Director of Public Prosecutions (CDPP)** is an independent agency responsible for prosecuting crimes against Commonwealth law. The CDPP is responsible for making various prosecution decisions including decisions regarding plea negotiations.

The CDPP acts on behalf of the community and does not act on behalf of any individuals. However, the Office does recognise the important role that victims of crime play in the prosecution process and has policies that provide for their views to be taken into account when considering plea negotiations.

Full copies of the CDPP Prosecution and Victims of Crime policies are publicly available via our website: www.cdpp.gov.au.

What is a plea negotiation?

The term **plea negotiation**, sometimes known as **charge negotiation**, refers to a communication process that occurs between the prosecutor (CDPP lawyer) and defence counsel (lawyer representing the defendant/the accused) where the purpose is to explore whether or not a case may be resolved via a guilty plea as opposed to going to a trial or a hearing.

Plea negotiations may take very different forms depending upon the individual case and charges concerned. For example, a plea negotiation may result in a defendant pleading guilty to fewer than all of the charges they are facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

Plea negotiations may involve agreements between the prosecutor and defence counsel regarding the facts upon which the defendant might enter a plea of guilty. In some cases, the defendant might agree to enter a plea of guilty to a charge but dispute the facts or circumstances surrounding the offending.

Some plea negotiations may be quite straight forward, for example in cases where a defendant agrees to plead guilty to a lesser charge on the basis that a more serious charge is withdrawn. However, plea negotiations can also be quite complicated, particularly in cases that involve multiple charges and multiple victims.

Are plea negotiations common?

Yes, plea negotiations are a very common and accepted practice within criminal proceedings. Many criminal matters resolve by way of plea negotiations.

What are the consequences of plea negotiations?

Plea negotiations may result in a number of different consequences, including the following:

- » Provide certainty regarding the outcome of guilt (there is no guarantee that a defendant will be found guilty if the matter goes to a trial or a hearing);
- » Provide a formal acknowledgement of guilt on behalf of the defendant;
- » Alleviate the need for victims and witnesses to come to court and give evidence in a trial or a hearing;
- » Save the community the high cost of a trial;
- » Facilitate an earlier resolution of the case than if the matter went to a trial or hearing;
- » Entitle the offender to receive a reduction on their sentence on account of their guilty plea; and
- » Enable victims to provide a Victim Impact Statement to the court to be taken into account in determining the offender's sentence.

When do plea negotiations occur?

Plea negotiations may occur at any stage of the prosecution process and may be initiated by the prosecution or defence.

Who is usually involved in the plea negotiation process?

- » The Commonwealth Director of Public Prosecutions
- » CDPP Senior Prosecutor (lawyer)
- » CDPP Prosecutor (lawyer)
- » CDPP Witness Assistance Officer (if one is involved)
- » Victim of crime
- » The Investigating Officer (usually a police officer)
- » Defence Counsel (the lawyer representing the defendant/accused)
- » The Defendant (also known as the accused)

Do I get to have a say in relation to any plea negotiations?

The **CDPP Prosecution Policy** requires the views of any victims, where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to agree to a charge negotiation.

You should let the relevant Prosecutor or Witness Assistance Officer know if you would like to be consulted in relation to any charge negotiations that may arise in your matter and provide them with your preferred contact details. If there are any changes to your contact details, please let the Prosecutor or Witness Assistance Officer know so that they can maintain contact with you.

According to the **CDPP Victims of Crime Policy**, a victim's views are not required to be sought by the office when the victim has indicated that they do not want to be consulted or when the whereabouts of the victim cannot be ascertained after reasonable inquiry.

In cases where the CDPP is unable to adequately communicate and consult with a victim due to the victim's age or lack of capacity or due to the victim being deceased, the CDPP will seek to identify an appropriate person with whom to deal, which in most instances, will be a member of the victim's immediate family. In accordance with the CDPP Victims of Crime policy, where possible, efforts will be made to ensure that victims of crime have adequate time to formulate their views regarding a plea offer.

What if I need further assistance or support to help me understand the plea negotiation processes?

If you require the assistance of an interpreter, the CDPP can arrange for this. If you require any further assistance or support, please speak with the allocated CDPP prosecutor or the allocated Witness Assistance Officer (if one is involved) and we will do what we can to assist.

Who decides whether to accept or reject a plea offer?

Ultimately, the decision to accept or reject a plea offer can only be made by the Commonwealth Director or a Senior Prosecutor in the CDPP.

Are there any guidelines regarding plea negotiations?

According to the CDPP Prosecution Policy, charge negotiations are subject to the following restraints:

- » The charges to be proceeded with should bear a reasonable relationship to the nature of the criminal conduct of the defendant;
- » Those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and
- » There is evidence to support the charges.

The **CDPP Prosecution Policy** also states that the prosecution should not agree to a charge negotiation proposal initiated by the defence, if the defendant continues to assert his or her innocence with respect to a charge or charges to which the defendant has offered to plead guilty.

What does the prosecutor take into account when making decisions regarding plea negotiations?

The CDPP Prosecution Policy provides that any decision about whether or not to agree to a charge negotiation proposal must take into account all the circumstances of the case and other relevant considerations including:

- (a) whether the defendant is willing to co-operate in the investigation or prosecution of others, or the extent to which the defendant has done so;
- (b) whether the sentence that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the defendant is already serving a term of imprisonment) would be appropriate for the criminal conduct involved;
- (c) the desirability of prompt and certain dispatch of the case;
- (d) the defendant's antecedents;
- (e) the strength of the prosecution case;
- (f) the likelihood of adverse consequences to witnesses;
- (g) whether it will save a witness, particularly a victim or other vulnerable witness from the stress of testifying in a trial;
- (h) in cases where there has been a financial loss to the Commonwealth or any person, whether the defendant has made restitution or arrangements for restitution;
- (i) the need to avoid delay in the dispatch of other pending cases;
- (j) the time and expense involved in a trial and any appeal proceedings;
- (k) the views of the referring department or agency; and
- (l) the views of the victim, where those views are available and if it is appropriate to take those views into account.

Can I be advised of the CDPP's decision regarding a plea negotiation?

Yes, our Victims of Crime policy states that victims should, on request, be kept informed of plea negotiations and relevant decisions in a timely manner.

What if I am unhappy or disagree with a decision regarding a plea negotiation?

If you are unhappy or disagree with a decision regarding a plea negotiation made by the CDPP you may speak to the Prosecutor concerned. If you are unhappy with the prosecutor's response you may ask for the contact details of their Manager so that you may speak and/or write to them regarding your concerns.

Right of Review

In certain cases, a formal right of review may be sought by the complainant (victim of crime) in relation to decisions made by the CDPP not to commence a prosecution or to discontinue a prosecution.

Feedback and Complaints

Feedback and complaints from members of the public, including victims of crime, may be provided to the CDPP via email (feedbackandcomplaints@cdpp.gov.au) and in writing. Please see our website for further details www.cdpp.gov.au.

More information?

The *CDPP Prosecution and Victims of Crime* policies deal with the issue of charge/plea negotiations and are publicly available via our website, as is more information regarding the role of the CDPP: www.cdpp.gov.au.

The CDPP also has a dedicated website for Victims and Witnesses that provides information concerning a wide range of issues relevant to victims of crime and witnesses. The information on our website is able to be translated into over 100 different languages.