



New South Wales

Director of Public Prosecutions Regulation 2020

under the

Director of Public Prosecutions Act 1986

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Director of Public Prosecutions Act 1986*.

MARK SPEAKMAN, MP

Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the *Director of Public Prosecutions Regulation 2015*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following—

- (a) the summary offences that are prescribed summary offences for the purposes of the *Director of Public Prosecutions Act 1986*,
- (b) the form in which police officers investigating alleged indictable offences must disclose to the Director of Public Prosecutions relevant information, documents and things obtained during the investigation,
- (c) savings and formal matters.

This Regulation is made under the *Director of Public Prosecutions Act 1986*, including sections 3(1) (definition of **prescribed summary offence**), 15A and 37 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Director of Public Prosecutions Regulation 2020

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Director of Public Prosecutions Act 1986

1 Name of Regulation

This Regulation is the *Director of Public Prosecutions Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Director of Public Prosecutions Regulation 2015*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

consent includes authorisation, sanction and any similar authority.

the Act means the *Director of Public Prosecutions Act 1986*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Prescribed summary offences

(1) For the purposes of the definition of **prescribed summary offence** in section 3(1) of the Act, all summary offences are prescribed, other than those that may not be prosecuted except with the consent of a Minister or a person authorised by a Minister to grant consent on behalf of the Minister.

(2) A summary offence that would not otherwise be a prescribed summary offence (because of the fact that it may not be prosecuted except with the consent of a Minister or a person authorised by a Minister to grant consent on behalf of that Minister) is a prescribed summary offence for the purposes of the Act—

(a) if the Minister concerned makes an order under section 11(2) of the Act in relation to offences of that kind, or

(b) in relation to proceedings for a particular offence, if the Minister concerned refers the offence to the Director for prosecution.

5 Prescribed form for law enforcement officer disclosure

For the purposes of section 15A of the Act, disclosures by a law enforcement officer to the Director must—

(a) be in the form set out in Schedule 1, and

(b) be completed, signed and dated by the law enforcement officer, and

- (c) be signed and dated by the law enforcement officer's relevant superior officer, being—
 - (i) in the case of a disclosure by a police officer—another police officer who holds a rank in the NSW Police Force senior to that police officer, or
 - (ii) in the case of a disclosure by an officer of the New South Wales Crime Commission—the Commissioner or an Assistant Commissioner of the Commission, or
 - (iii) in the case of a disclosure by an officer of the Law Enforcement Conduct Commission—the Chief Commissioner, a Commissioner or an Assistant Commissioner of the Commission, or
 - (iv) in the case of a disclosure by an officer of the Independent Commission Against Corruption—the Commissioner or an Assistant Commissioner of the Commission.

6 Savings

- (1) The *Director of Public Prosecutions Regulation 2015* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Director of Public Prosecutions Regulation 2015*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Disclosure certificate (for prosecutions and advisings)

(Clause 5)

(Director of Public Prosecutions Act 1986, section 15A)

Matter of:

Charge No(s) [if applicable]:

For indictable or summary offence(s) of:

Acknowledgement

I am aware that as a law enforcement officer investigating an alleged indictable or summary offence I have a duty, under section 15A of the *Director of Public Prosecutions Act 1986*, to disclose to the Director of Public Prosecutions (**the DPP**) all relevant material if the DPP is involved in the prosecution of the offence.

I understand **relevant material** to be all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

I am aware that my duty to disclose continues until the DPP decides that the accused person will not be prosecuted for the alleged offence(s), the accused person is found guilty or acquitted, or the prosecution is terminated.

I am aware that my duty to disclose as outlined above is subject to claims of privilege, public interest immunity or statutory immunity. I am aware that such claims are to be directed as follows:

- (a) for police officers—through my Commander to the Manager, Information Access and Subpoena Unit of the NSW Police Force,
- (b) for other law enforcement officers—through my manager to the Commissioner or an Assistant Commissioner of the agency of which I am an officer.

I am aware that the duty to disclose is also subject to any statutory publication restriction. A **statutory publication restriction** is a prohibition or restriction on publication imposed by or under section 176 or 177 of the *Law Enforcement Conduct Commission Act 2016*, section 45 of the *Crime Commission Act 2012* or section 112 of the *Independent Commission Against Corruption Act 1988*.

Certification

I certify that the information I have given in Schedules 1, 2 and 3 is true, to the best of my knowledge and belief.

Schedule 1 relates to relevant protected material, being relevant material not contained in the brief of evidence, that is the subject of a claim of privilege, public interest immunity or statutory immunity. I am aware that I am required to disclose to the DPP the existence and nature of all such material. I am aware that I must retain the material for as long as my duty to disclose exists and provide the material to the DPP on request. I acknowledge that if I object to the disclosure of relevant protected material to the DPP, I can request a conference with the responsible solicitor in the Office of the Director of Public Prosecutions to discuss reasons for this.

Schedule 2 relates to relevant material, not contained in the brief of evidence, that is the subject of a statutory publication restriction. I am aware that I am required to disclose to the DPP the existence of any such material, and the nature of the material, but only to the extent not prohibited by the statutory publication restriction. I am aware that I must retain the material for as long as my duty to disclose exists.

Schedule 3 relates to relevant unprotected material, being relevant material not contained in the brief of evidence, that is not the subject of a privilege or an immunity claim or a statutory publication restriction. Unless impracticable to do so, I have attached a copy of all such material to this certificate. If a copy of any such material has not been provided, I am aware that I must retain the material for as long as my duty to disclose exists and facilitate access to the material by the DPP.

Undertaking

I undertake to advise the DPP in writing, as soon as practicable, if I become aware of any additional information, documents or other things that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Signed [officer responsible for investigation of case]:

Date:

Name:

Rank [*if applicable*]:

Received and noted by superior officer*

Signed [*superior officer*]:

Date:

Name:

Rank [*if applicable*]:

*If the disclosing law enforcement officer is a police officer, this form must be signed by a police officer who holds a rank in the NSW Police Force senior to the law enforcement officer. If the disclosing law enforcement officer is an officer of the NSW Crime Commission, the Independent Commission Against Corruption or the Police Integrity Commission, this form must be signed by the Commissioner or an Assistant Commissioner of that agency.

Schedule 1: relevant protected material that is subject of claim of privilege or immunity

Certification*

Yes

No

There is relevant protected material, not contained in the brief of evidence, that is the subject of a claim of privilege, public interest immunity or statutory immunity. That material is described in this Schedule below.

Description of item

Privilege/immunity sought**

Schedule 2: relevant material that is subject of statutory publication restriction

Certification*

Yes

No

There is relevant material, not contained in the brief of evidence, that is the subject of a statutory publication restriction and the existence of which I can disclose without contravening the statutory publication restriction. That material is described in this Schedule below. [*Describe the material only to the extent not prohibited by the statutory publication restriction*]

Description of item

Schedule 3: relevant unprotected material that is not subject to claim of privilege or immunity or statutory publication restriction

Certification*

Yes

No

There is relevant unprotected material, not contained in the brief of evidence, that is not the subject of a claim of privilege or immunity or a statutory publication restriction. That material is described in this Schedule below.

Description of item	Copy attached?***	
	Yes	No
<i>*Tick either yes or no in relation to the statement</i>		
<i>**Describe the nature of the privilege or immunity claim in relation to each item</i>		
<i>***Tick either yes or no in relation to each item</i>		
Request for meeting with ODPP solicitor*		
	Yes	No
I object to the disclosure of relevant protected material and request a conference with the responsible solicitor in the Office of the Director of Public Prosecutions.		

**Tick either yes or no in relation to the statement*