AGREEMENT BETWEEN NSW POLICE FORCE & THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (NSW)

CONCERNING THE CONTENT AND SERVICE OF AN EARLY APPROPRIATE GUILTY PLEA BRIEF and CHARGE CERTIFICATION IN COMMITTAL MATTERS

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 relation to 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 in committal matters ("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.

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.

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 Agreement, 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 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 of the accused person, and

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

The brief must satisfy the above requirements and include the:

- Brief Coversheet.
- 'Brief Items List and Summary of Evidence'.
- Exhibit Summary List (including digital exhibits)
- details of any co-accused who have been charged including names and charges.
- Court Attendance Notices (CANS).
- NSWPF 'Facts Sheet'.
- criminal antecedents of the accused.
- evidence required to satisfy the elements of the offence/s (including the identification of the accused/s).

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 in which the evidence is provided to the ODPP.

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. Disclosure obligations of the ODPP are set out in Chapter 13 of the ODPP's published *Prosecution Guidelines*.

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 establishing an element of the offence:

- statements from corroborating police officers.
- forensic statements.
- expert witness statements.
- formal custody statements.
- continuity statements.
- investigators notes.
- material associated with a Mutual Assistance Request.

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

The NSWPF is responsible for serving the brief on the ODPP and on the accused person or their legal representative. The brief is to be served electronically on the ODPP using the Brief Service Portal, unless there are exceptional circumstances to warrant the service of a physical brief.

The brief is not to be served on the ODPP until the relevant supervisor of the OIC of the case certifies that the brief meets the requirements set out in Parts 2 and 3 of this Agreement. 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 known witnesses have been interviewed and statements taken, subject to Part 3.
- all material has been obtained by NSWPF as required by Part 3.
- the 'Brief Items List and Summary of Evidence' has been signed by the supervisor to reflect that this review has been completed.

If the brief has not been completed by the date ordered by the Court for service, nothing in this Agreement 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 satisfy the elements of the offence or 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 as soon as practicable after receipt of the brief make requests for further evidence by way of requisition to the OIC. The ODPP must use its best endeavours to allow a reasonable timeframe for the OIC to comply with any such request.

Prior to making a requisition to the OIC, 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.

If there is disagreement as to whether further evidence is necessary and/or required under the MOU, the OIC should escalate the issue in accordance with Part 10.

All communication in relation to the requisition is to occur by email. The email communications, whether from the ODPP or the OIC, are to be copied to the Police Prosecutors file management system, by including the current email address and conforming to the required formatting.

Part 6 – Transfer of proceedings from Police Prosecutors to the ODPP

A Police Prosecutor (PP) will appear at the first appearance of an accused person and on subsequent appearances including those related to bail, until a compliant brief has been served and the matter has been adjourned for the filing of a charge certificate.

On the first appearance, a PP will seek an adjournment for the period provided by the Local Court Practice Note for the brief to be served. At the second appearance, if the brief has not been served the PP may seek a further adjournment of an adequate length to allow for service of the brief. If a compliant brief has been served, the PP will appear and list the matter in accordance with the Local Court Practice note for the filing of a charge certificate.

If a matter is exceptional or complex, an application must be made by the PP for additional time to serve the brief, and/or to certify the charges. Guidance is provided in *Appendix B*.

At the Charge Certificate mention, the ODPP will appear and file the Charge Certificate or seek an adjournment for the charge certificate to be filed.

<u>Exceptions</u>

The ODPP will, upon request by the PP with sufficient notice, appear earlier than the Charge Certificate mention in the following 4 situations:

1. the accused is a serving police officer and there exists a conflict preventing Police Prosecutors appearing
2. certain matters where the ODPP has provided advice to NSWPF to file charges (extradited persons, pre-charge advice matters involving high-profile persons)
3. matters where a non-publication/suppression order is required for any prosecution witness
4. matters in which a Local Court Judge specifically requests the Wappearance of the ODPP to assist the court (this is not to be taken to permit blanket requests for the ODPP to appear).

<u>Release applications</u>

NSWPF may request that the ODPP appear in a release application before the timetable is fixed for the filing of a charge certificate, and the ODPP will respond in a timely fashion to that request. Conditions for the making of a request are:

a) the majority of the brief of evidence has been received,
b) the strength of the Crown case is relevant to bail and the ODPP is in a better position to make that assessment, and
c) sufficient notice of the application has been provided to the ODPP by the OIC/Police Prosecutor.

Insufficient evidence to charge certify

If the ODPP is of the view that there is insufficient evidence to support the strictly indictable charge/s, it will withdraw the strictly indictable charge/s and inform the PP in writing of the return of any related sequences for prosecution in the local court, noting that the ODPP has internal procedures governing the appropriateness of returning matters in this situation.

Withdrawal of strictly indictable sequences during case conferencing

If during case conferencing, it is agreed the accused will enter a plea and be sentenced on alternate charges that remain in the local court, the ODPP will appear in such matters until finalisation.

Part 7 – Charge Certification

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

The ODPP will use its best endeavours to provide as much notice as possible for the creation of new CANs and must be made no later than 2 business days before the next court listing. Receipt of the request will be confirmed immediately by the OIC. The charges will be created, at the latest, by the day before the Change Certificate mention.

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 timeframe.

The ODPP will serve the additional CANs on the accused in court unless a prior arrangement has been made with the OIC. The OIC must not create any further CANs without consultation with the ODPP.

Part 8 – Responsibility to inform and consult with Complainants

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

Upon receipt of the brief and the contact details for the complainant/s, the ODPP is

responsible for updating victims on the progress of the case and consulting on the charges that are being considered in the certification process.

Part 9 – Child Sexual Offence Evidence Provisions

Where a matter being committed for trial is to be dealt with in accordance with Child Sexual Offence Evidence Provisions in Div 1A of Part 5 of Chapter 6 of the *Criminal Procedure Act*, a complete brief should to be served by the Committal date, recognising that a child's pre-record hearing will be listed expeditiously following Arraignment.

Part 10 – Escalation of disputes

In the first instance the OIC and the ODPP lawyer handling the matter should attempt to resolve any dispute about any issue arising under this Agreement.

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

If the dispute remains unresolved it is to be escalated to the Commander, PAC/PD and the relevant Deputy Solicitor for Public Prosecutions.

If the dispute still remains unresolved it is to be escalated to the Assistant Commissioner, Police Prosecutions & Licensing Enforcement Command and the Solicitor for Public Prosecutions for resolution.

Part 11 – Review

This Agreement will be reviewed by the Parties within 3 years from the date of its commencement.

Signed

Sally Dowling SC

Director of Public Prosecutions (NSW)

Date: 4 August 2026

Malcolm Lanyon APM

NSW Commissioner of Police

Date: 2 July 2026

APPENDIX A:

Evidence to be included in the Brief[1]	**Acceptable Alternative Forms of Evidence (where not yet obtained in admissible form)**
Key[2] police and key witness statements, including from the OIC.	Not applicable
Complainant's signed statement or transcript of recorded interview	In offences other than sexual assault or violence: notebook with jurat and signature accompanied by a typed version
Witness statements and/or transcript of interview	For non-key witnesses: handwritten signed statements in police notebook
DVEC recording and transcript	Not applicable
Other evidence containing admissions by an accused	Not applicable
Photographs or documentary evidence	Statement producing evidence is not required provided photographs contain captions explaining their origin
Identification Parade[3]	Statement producing the recording is not required DVD recording of parade is required
Electronic Recorded Interview of a Suspected Person (ERISP) transcript	Not applicable
CCTV Footage	Statement producing the footage is not required to be provided. A synopsis is to be provided which includes details about where the CCTV footage originates from. The video must be playable without additional software.
Other Audio-Visual Material (e.g. Body worn video, Search Warrant Video)	Relevant recordings, property seizure form and exhibit list (from Forensic Database) are to be provided. Transcript of relevant portions.

[1] Where evidence to be included in the brief is in a language other than English, a translation is required.
[2] The word 'key' is to emphasise that where there are important police or witness statements, there is no alternative inadmissible form
[3] Identification Parade includes photograph parade

Evidence to be included in the Brief[1]	**Acceptable Alternative Forms of Evidence (where not yet obtained in admissible form)**
Police scientific evidence (includes DNA, fingerprint, ballistics, drug and chemical analysis)	Result from Forensic Database 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 identified. Key calls will need to be transcribed
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, and 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.

APPENDIX B:

Exceptional and Complex matters

The following guidance is provided as to which cases may fall into the category of exceptional or complex matters, as referred to in the Second Reading Speech by the Attorney-General when introducing the EAGP reforms in Parliament. These are matters in which there are legitimate operational reasons for the brief of evidence to take longer to prepare, and/or for the certification deadline to be extended beyond the usual 6-month deadline. This test aligns with sections 67(3) and (4) of the *Criminal Procedure Act*, permitting an extension beyond the usual deadline for certification in the interests of justice due to the "complexity of the matter".

Brief service extensions

Examples of exceptional or complex matters that could require additional time for the brief to be served are:

- The prosecution is a large-scale matter involving an exceptional number of accused and/or witness/complainants whose statements are unable to be obtained within the usual timeframe.
- The prosecution relies on specialised forensic evidence which will not be available within the standard time period (e.g. an autopsy for death matters)
- The prosecution relies on an exceptionally large volume of surveillance material that requires transcribing and/or translating and summarizing
- The prosecution relies on digital evidence that requires a referral for expert opinion or extraction (i.e. SEEB referral)
- The prosecution relies on key brief items which are unable to be obtained within the usual time period as they require statutory notices or subpoenas to produce to be issued and returned.
- The prosecution relies on statement/s from key witness/es which are unable to be obtained within the standard time period due to exceptional circumstances (e.g. complainant in hospital etc.)

The extension period sought must be based on accurate and informed advice as to the exact timeframe for the production of that material.

Charge Certification extensions

Examples of exceptional or complex matters that could require additional time for charge certification are:

- The prosecution involves an exceptional number of charges
- The prosecution involves an exceptionally large brief (greater than 6 lever-arch volumes)
- The prosecution relies on an exceptionally large volume of surveillance/recorded material which requires reviewing
- The prosecution relies on specialised expert evidence and/or involves exceptionally complex legal issues.

To determine the appropriate period of extension to be sought, the Police Prosecutor should where possible rely on advice provided by the relevant ODPP Managing Solicitor.

Matters in which the "interests of justice" justify an extension

Local Court Practice Note Comm 3 at paragraph 5.1 allows the court to vary the timetable for brief service and certification where the Court is satisfied that a departure from the timetable is in the interests of justice. A variation is thus available and should be sought under paragraph 5.1 in matters where it is in the interests of justice for additional time to be allowed for brief service and/or charge certification, yet in which the circumstances may not rise to the levels of complexity and exceptionality set out above.