

APPENDIX C

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 17]

INTERAGENCY PROTOCOL FOR INDEMNITIES & UNDERTAKINGS

1. This interagency protocol has been approved by the Attorney General to apply to applications for, and revocations of, indemnities (s 32 *Criminal Procedure Act 1986*) and undertakings (s 33 *Criminal Procedure Act 1986*).
2. The protocol applies to applications made by agencies of government, including the Director of Public Prosecutions (“DPP”). It does not apply to applications made by, or on behalf of, individuals.
3. The protocol applies to revocations where the initial application for the indemnity was made by a government agency (the applicant). It does not apply to revocations where the initial application was made by, or on behalf of, individuals.

Applications

4. Applications should be in accordance with the guidelines published by the DPP in the Prosecution Guidelines. The Crime Commission has agreed to submit its applications to the Attorney General through the DPP.
5. Any matter not dealt with in the DPP’s guidelines, which the applicant considers relevant to the application, should be expressly stated. If any matter which an applicant, not being the DPP, considers relevant to the application comes to the attention of the applicant after the application has been submitted, it is the responsibility of the applicant to formally and promptly draw that matter to the attention of the DPP in writing.
6. The DPP may request or recommend that the Attorney General grant an indemnity or an undertaking, or may recommend that the Attorney General not grant an indemnity or an undertaking, or may provide advice to the Attorney General in relation to an application for an indemnity or an undertaking.
7. Prior to the DPP settling advice and any recommendation to the Attorney General concerning an application, the DPP will first notify the applicant of any concerns the DPP has about the application and/or the applicant’s recommendation and invite the applicant to comment.
8. Any request, recommendation or advice from the DPP to the Attorney General will include a copy of the original submission by the applicant supporting the application, as well as any additional submissions made in response to a notification under paragraph 7 of this protocol.
9. When the DPP sends a request, recommendation or advice to the Attorney General it is processed by the Legal & Community Services Division within the Attorney General’s Department and briefed to the Crown Advocate to advise the Attorney General.

10. The Crown Advocate may discuss any concerns the Crown Advocate has about the application with the applicant and/or the DPP if the Crown Advocate believes that would be of assistance before advising the Attorney General on the application.
11. With the consent of the Attorney General, the Crown Advocate may discuss the DPP's request, recommendation or advice with the applicant.
12. Where considered necessary to assist the Crown Advocate to prepare advice to the Attorney General, the Crown Advocate may convene a conference involving relevant parties.
13. In exceptional cases, the Attorney General may, upon receipt of the Crown Advocate's advice, convene a further conference with the relevant parties to discuss the issues arising from the application.
14. For the purpose of such discussion, the Attorney General may consider it appropriate to disclose the substance of the Crown Advocate's advice to the applicant and the DPP on a confidential basis.

Revocations

15. The DPP may request or recommend that the Attorney General revoke an indemnity or an undertaking, or may provide advice to the Attorney General in relation to the revocation of an indemnity or an undertaking.
16. Prior to the DPP settling advice and any recommendation to the Attorney General concerning a revocation application or advice, the DPP will first notify the original applicant of any grounds it has for seeking a revocation and invite the applicant to comment.
17. Any request, recommendation or advice from the DPP to the Attorney General will include a copy of any submissions made by the applicant in response to a notification under paragraph 16 of this protocol.
18. When the DPP sends a request, recommendation or advice to the Attorney General concerning a revocation it is processed by the Legal & Community Services Division within the Attorney General's Department and briefed to the Crown Advocate to advise the Attorney General.
19. The Crown Advocate may discuss any concerns the Crown Advocate has about the revocation with the applicant and/or the DPP if the Crown Advocate believes that would be of assistance before advising the Attorney General on the application.
20. With the consent of the Attorney General, the Crown Advocate may discuss the DPP's request, recommendation or advice with the applicant.
21. Where considered necessary to assist the Crown Advocate to prepare advice to the Attorney General, the Crown Advocate may convene a conference involving relevant parties.
22. In exceptional cases, the Attorney General may, upon receipt of the Crown Advocate's advice, convene a further conference with the relevant parties to discuss the issues arising from the proposed revocation.

23. For the purpose of such discussion, the Attorney General may consider it appropriate to disclose the substance of the Crown Advocate's advice to the applicant and the DPP on a confidential basis.

FORMS OF IMMUNITIES

To.....[1]

Indemnity under Criminal Procedure Act 1986, s 32

If you actively co-operate in an inquiry into the conviction/the committal/the trial [2]

of.....[3] for [4]

and if your evidence there is the truth, the whole truth and nothing but the truth, I grant you indemnity from prosecution for:

1. [5]; or
2. [6] any associated offence in respect of matters relevant to the inquiry/trial[7] and covered by your evidence at an inquiry/trial; or [8]
3. [9].

Attorney General
[date]

To..... [10]

Undertaking under Criminal Procedure Act 1986, s 33

If you actively co-operate in criminal proceedings [11] against.....

.....[12]

for..... [13]

and if your evidence there is the truth, the whole truth and nothing but the truth, I undertake that

- evidence which you give or produce;
- the fact that you do so; and
- information or evidence obtained as a result

will not be used in proceedings against you except in respect of the falsity of your evidence.

Attorney General
[date]

[1] Full name of witness.

[2] Delete whichever is inapplicable.

[3] Insert name of accused or person whose conviction is subject to inquiry.

[4] Describe offence.

[5] Describe offence for which witness is in jeopardy.

[6] This sub-paragraph represents the form of words appropriate to a grant of indemnity from prosecution in respect of matters which emerge in the evidence.

[7] Delete whichever is inapplicable.

[8] The word "or" should be deleted if sub-paragraph 3 is not used.

[9] If an offence already suspected is to be the subject of indemnity, it should be fully described. For example, it could read "any part had by you in the cultivation and supply of cannabis by between the years and inclusive" to indemnify an accomplice.

[10] Insert name of witness

[11] Section 33 cannot be used for inquiries

[12] Insert name of accused.

[13] Describe offence.