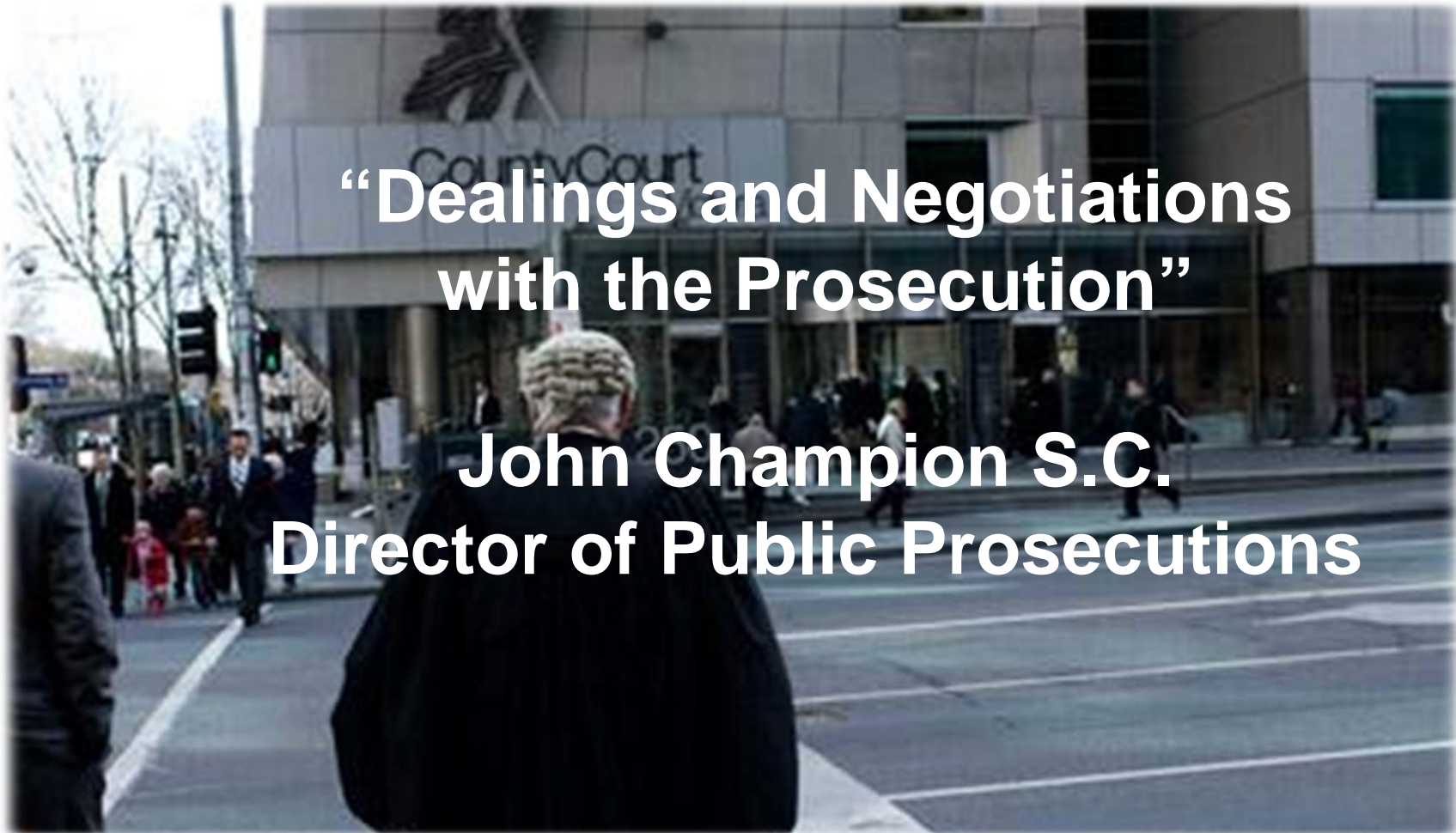




## Foley's List Criminal Law Seminar 20 February 2014

**“Dealings and Negotiations  
with the Prosecution”**

**John Champion S.C.  
Director of Public Prosecutions**



# Introduction

**How to best conduct successful negotiations with the  
Office of Public Prosecutions:**

**1. Applications for Discontinuance**

**2. Plea offers**





# Director's Policies



- Policy 2 - Prosecutorial Discretion
- Policy 9 - Crown's Role of Plea & Sentence
- Policy 22 - Early Resolution

Available on the OPP website:

<http://www.opp.vic.gov.au/Resources/DPP-s-policies>

# Prosecutorial Discretion (Policy 2)



## Two stage test:

1. Reasonable prospect of conviction.  
If not, no prosecution launched.
2. The public interest.  
If there is a reasonable prospect of conviction, then consider will the prosecution be in the public interest



# Plea Negotiations (Policy 22)



Director's Policy on Early Resolution  
Recognises the public interest in identifying  
pleas of guilty.

- Provides for proactive consideration of resolution prospects.

Based on proper assessment of the evidence  
by expert prosecutors.





# Plea Offers

**There are many factors that need to be taken into account by the Crown when considering offers to plead guilty (outlined in Policy 2.6.6)**

- Forensic difficulty
- Admissibility of evidence
- Credibility or availability of witnesses
- Long and expensive trials for relatively minor matters, with minimal or no penalty
- Conviction v Unpredictability of a contested trial and the risk of acquittal
- Witnesses experiencing the trauma of giving evidence



# Discontinuance Applications & Offers of Settlement...



“.... are treated seriously within the OPP but just as importantly, they are treated by an established procedure, at each stage of the process being looked at by different individuals, in many cases leading to my ultimate decision”.

**ORDERED & STRUCTURED PROCESS**

**CHECKS & BALANCES**

**TRANSPARENCY**

# Discontinuance Applications & Offers of Settlement...

There are some formalities to be mindful of:

1. Do it in Writing
2. The Internal Process – There is One
3. Put the Arguments – State Clearly What You Want







# The Role of the Crown on Sentence

## ***Barbaro v The Queen; Zirilli v The Queen [2014] HCA 2***

1. To draw the attention of the judge to what are submitted to be the facts that should be found;
2. The relevant principle that should be applied; and
3. What has been done in comparable cases.





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PUBLIC PROSECUTIONS  
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# Further information: [www.opp.vic.gov.au](http://www.opp.vic.gov.au)



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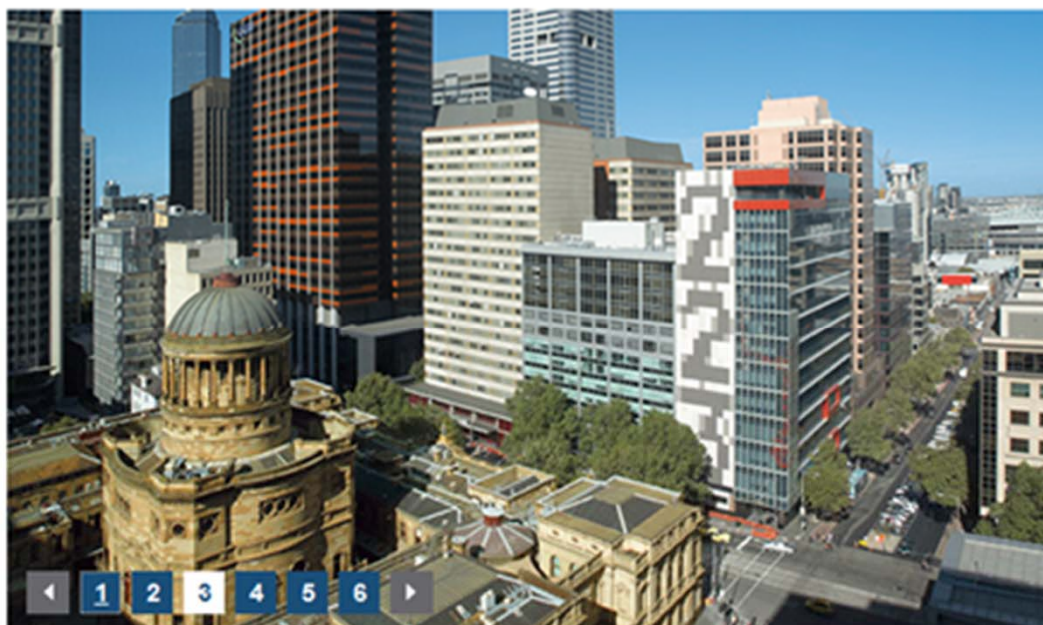
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## Strong prosecutions outcomes

Guilty outcomes were obtained in  
88 per cent of serious crimes  
prosecuted in Victoria in  
2011/12.

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