Double Jeopardy

Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- VPMP Crime reporting and investigation
- VPMP Briefs of Evidence
- VPMP Property management
- VPMP Disposition of offenders

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

The following instruction applies to all operational personnel.

Procedures and Guidelines

1. Background

- Chapter 7A, *Criminal Procedure Act* (the Act), provides for an exception to the double jeopardy rule to allow police in certain circumstances to reinvestigate certain serious offences (s.327M(2)) of which a person has previously been acquitted.
- This exception rule extends to offences which occurred outside Victoria, if the law of that state permits an acquitted person to be retried
- This provision does not apply to a person who was found guilty of a lesser offence in the same set of circumstances, unless the acquittal was tainted
- Authorisation for reinvestigation must be obtained in writing from the DPP

2. Grounds for re-investigation

2.1 Offence type

- Double jeopardy only applies to those serious offences listed at s.327M(2) of the Act.

2.2 Conditions

There are prior conditions which are to be adhered to for the exception rule to apply:

- The offence to be reinvestigated is to be:
  - in the same indictment as the charge for an offence of which the person was acquitted (s.327E(1)); or
  - any other offence of which the person could have been convicted at the trial for the offence of which the person was acquitted.
- The DPP cannot authorise a reinvestigation unless satisfied that:
  - there is, or likely to be, sufficient new evidence of the commission of the offence by a person
  - it is in the public interest for the reinvestigation to proceed; and
  - the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the reinvestigation (s.327(4)).

3. Application for reinvestigation

3.1 Authorisation

Authorisation for reinvestigation is to be approved in writing by the DPP. Only the Chief Commissioner, a Deputy Commissioner or Assistant Commissioner may apply to the DPP for an authorisation (unless in urgent circumstances, see below).

3.2 Approval process

Where an informant reasonably believes there are sufficient grounds to conduct further investigations after an acquittal, in that:

- there is a relevant offence type
- the required conditions apply

they are to:

- Complete *Application for reinvestigation after acquittal* [Form 1414] and attach to the application file:
  - report outlining:

        - relevant background and circumstances of the case
        - circumstances of acquittal
        - grounds for reinvestigation (see above)
    - copy of original brief
    - court extract of result of original hearing
    - other supporting documentation

- Forward file to Local Area Commander for approval and forwarding through line management to SCaOC T&CC for consideration and liaison with DPP who can provide initial brief advice.

- On approval from the DPP, the Assistant Commissioner Crime will recommend resource allocation for reinvestigation, either directly or via Serious Crime and Organised Crime Tasking and Coordination Committee (SCaOC T&CC).

4. Reinvestigation

- On notification that the application has been approved by the DPP, the member may progress the reinvestigation, this includes:
    - questioning and searching the person;
    - conducting a forensic procedure on the person;
    - searching property (including any vehicle) or premises owned or occupied by the person and seizing evidence;
    - using surveillance devices in accordance with the *Surveillance Devices Act 1999*
    - undertaking any activity authorised by a warrant issued under Part 2-5, *Telecommunications (Interception and Access) Act 1979*

- Activity not included under the meaning of reinvestigation (s. 327E) do not require prior approval from the DPP, such as:
    - re-interviewing witnesses
    - re-examining existing forensic evidence

- For subsequent brief preparation and authorisation processes, have regard to **VPMP Briefs of evidence**.

- For subsequent exhibit management, have regard to **VPMP Property management.**

5. Urgent action exemption

5.1 Urgent circumstances

- The Act (s.327E(6)&(7)) provides for initiation of reinvestigation in urgent circumstances pending authorisation from the DPP if the applicant reasonably believes :

  - urgent action is required to prevent the reinvestigation being substantially and irrevocably prejudiced; and
  - it is not reasonably practicable in the circumstances to obtain the authorisation before taking action

- In these circumstances, members are to seek written approval from a Superintendent or above.

5.2 Superintendent approval for reinvestigation

- A Superintendent may give written authorisation for urgent action to be taken where they reasonably believe this onus of proof has been met (s.327E(6)).

- Comply with the approval process outlined above, as soon as practicable and not exceeding three days, and include:
  - in the report, additional information outlining:
    - the reason for the urgency
    - the action taken
    - the disposition of the offender
  - the written authority from Superintendent

- The investigation is not to proceed further until written authorisation from the DPP has been received

6. Re-Trial

6.1 Grounds for retrial

The DPP may apply to the Court of Appeal to set aside the previous acquittal and authorise the continuation of the prosecution for the charge in the indictment.

The DPP may make an application to the Court of Appeal only once in relation to a particular acquittal (s.327J). The application must specify whether it is based on:

- Fresh and compelling evidence (s. 327C); or

- Tainted acquittal (s. 327D); or

- Administration of justice offence (s. 327B)

Fresh and compelling –

Evidence relating to an offence of which a person was acquitted is:

- Fresh if:
  - it was not adduced at the trial of the offence; and

  - could not, even with reasonable diligence, have been adduced at the trial; and

- Compelling if:
  - reliable
  - substantial; and
  - highly probative in the context of the issues in dispute at the trial of the offence.

Tainted acquittal -

An acquittal will be tainted if:

- The person or another person has been convicted (whether or not in Victoria) of an administration of justice offence in connection with the trial resulting in the acquittal; and

- It is more likely than not, had it not been for the commission of the administration of justice offence, the person would have been convicted of the first mentioned offence at the trial.

Administration of justice offence -

An administration of justice offence means:

- Perjury or subornation of perjury;

- Pervert, attempting to pervert, conspiracy to pervert the course of justice

- Bribery of a public official being a judge of the County or Supreme Court

- A substantially similar offence against the law of a place outside of Victoria corresponding to these offences

- Where an informant reasonably believes there are sufficient grounds to request the DPP to consider an application for a retrial, in that:
  - there is a relevant offence type as listed in s. 327M(2)
  - it meets one of the 3 grounds for retrial.

6.2 Approval process

If members are applying for retrial without reinvestigation they are to:

- Provide an initial report outlining:
  - What original evidence is still available
  - What new evidence is presented and its probity value
  - How the new evidence may prove the commission of the offence

- Attach to the report:
  - copy of original brief

  - court extract of result of original hearing
  - other supporting documentation

- Forward file to Local Area Commander for approval and forwarding through line management to SCaOC T&CC for consideration and liaison with DPP who can provide initial brief advice.

6.3 Disposition of offender

There is a presumption of bail for matters of re-indictment pending determination of the DPP's application (s.327G). Have regard to **VPMP Disposition of offenders**.

Further Advice and Information

For further advice and assistance regarding these Policy Guidelines, contact your supervisor, or Serious Crime and Organised Crime Desk.

Update history

Date of first issue	16/03/12 (FF 070250/11)	
Date updated	**Summary of change**	**Force File number**