

OUR REFERENCE
201816119; 2018/121

DIRECTOR'S CHAMBERS



ODPP
New South Wales

YOUR REFERENCE

DATE

3 December 2018

Mr Paul Burton

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HAMILTON NSW 2303

By post and by email: ■■■■■■■■■■

Dear Mr Burton,

**Re: Paul Robert Burton v ■■■■■■■■■■ ■■■■■■■■■■
Court No. 2018/00124077
Listed for mention on 7 December 2018**

I refer to the above matter, which is currently listed for mention before Magistrate Price at the Newcastle Local Court on 7 December 2018.

As previously advised, the defendant's solicitor has made submissions to my Office seeking that I take over and discontinue these proceedings. I also note that, in your submissions, you have requested that I take over and continue the prosecution.

In respect of this matter, I have given careful consideration to the following:

- The submissions provided to my Office on behalf of the defendant dated 8 November 2018;
- The submissions, brief of evidence and other material provided by you on 26 November 2018; and
- The statements of Chief Inspector ■■■■■■■■■■ ■■■■■■■■■■ and Mr ■■■■■■■■■■ ■■■■■■■■■■, as well as the affidavit prepared by Mr Barry Futter, contained in the additional folder of material provided by you on 26 November 2018.

I have also considered the terms of the charge as particularised in the Court Attendance Notice, in which you allege that the defendant used force to prevent you from officiating at the Church of Ubuntu on 19 May 2017.

There is, in my view, no *prima facie* case in this matter. This is because there is insufficient evidence in the prosecution brief to prove beyond reasonable doubt that force was used by any person to prevent you from officiating at the Church of Ubuntu.

In that regard, I note the following in particular:

- In your affidavit dated 19 April 2018, you do not describe any actual force having been used against you or any other person at the Church of Ubuntu. The account given in your affidavit indicates that, although the situation was contentious, it was ultimately resolved by way of negotiation.
- In his statement dated 13 November 2018, Chief Inspector [REDACTED] [REDACTED] states that he did not witness any physical interaction between the defendant and any other party. Chief Inspector [REDACTED] also states that, although he was prepared to use appropriate force if all other options were exhausted, the use of force was avoided.
- The two relevant files of video footage contained in the prosecution brief do not depict any force being used by any person at the Church of Ubuntu.

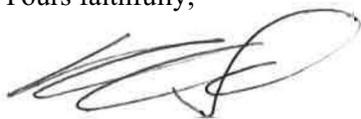
There is, accordingly, no reasonable prospect of a conviction in this matter.

Additionally, as was the case in your previous prosecution against Ms [REDACTED] [REDACTED], I am of the view that this prosecution appears to have been brought for an inappropriate ulterior purpose. That is, to challenge the Department of Family and Community Services' use of its powers under s 43 of the *Children and Young Persons (Care and Protection) Act 1998* to remove the child from the Church of Ubuntu on 19 May 2017. The dispute in respect of that child's removal and ongoing care is, in my view, a conflict of a predominantly civil nature.

For these reasons, I now take over this matter and I decline to proceed further in the prosecution, pursuant to ss 9(1) and 9(4)(b) of the *Director of Public Prosecutions Act 1986* and Guidelines 10(ii), (iii) and (iv) of the DPP Prosecution Guidelines.

I have contacted the Registrar of the Newcastle Local Court to request that Magistrate Price be informed of this decision as soon as possible, and that the matter be removed from the Court's list on 7 December 2018.

Yours faithfully,



Kara Shead SC
Deputy Director of Public Prosecutions