NEW ZEALAND POLICE
Ngā Pirihimana o Aotearoa

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Tēnā koe

Request for information

Thank you for your Official Information Act 1982 (OIA) request of 6 September 2022, in which you asked for information regarding chapters of the Police Manual on criminal procedure and disclosure. You requested:

> *Please provide the following chapters of the Police Manual:*
>
> 1. *Criminal Procedure - Administration stage*
> 2. *Criminal Procedure - Commencement of proceedings*
> 3. *Criminal Procedure - Costs orders*
> 4. *Criminal Procedure - Disposition*
> 5. *Criminal Procedure - Introduction and jurisdiction*
> 6. *Criminal Procedure - Review stage **(CMM** process)*
> 7. *Criminal Procedure - Trial Stage*
> 8. *Criminal Disclosure (if published after 7 July 2016)*

Please find attached copies of all the requested Police manuals.

I trust this is of use to you. If you have any questions, you may contact Ministerial Services at ministerial.services@police.govt.nz.

Yours sincerely

Inspector Paula Holt
Acting Director: Prosecutions and Resolutions
New Zealand Police

NEW ZEALAND POLICE
Ngā Pirihimana o Aotearoa

Police Instructions

Criminal procedure - Administration stage

Summary

Introduction / background

The administration stage of criminal proceedings consists primarily of the administrative court processes from the first appearance through to the entry of a plea. The Criminal Procedure Act 2011 (CPA) and accompanying Criminal Procedure Rules 2012 provide the framework for the expected timing of pleas, administration of suppression provisions, the transfer of proceedings to the High Court, and the involvement of the Crown.

Purpose of this chapter

This chapter:

- details key procedures for prosecutors and O/C cases relating to the administration stage of proceedings
- provides information about the application of the CPA in the District Court, from the first appearance through to the entry of a plea.

The chapter also provides information relating to administrative matters, often first encountered in early court appearances, which may occur at any stage of proceedings, such as:

- remands and adjournments
- warrants to arrest
- involvement of the Crown
- suppression of names and evidence.

The information in the chapter is a reference starting point only. Refer to the Criminal Procedure Act 2011, Criminal Procedure Rules 2012 and associated regulations for full guidance.

Administration stage

The administration stage is the second of these five stages of criminal proceedings:

Statutory references

All references in this chapter to the "Act" or to the "CPA" are to the Criminal Procedure Act 2011, and references to the "Rules" or the "CPR" are to the Criminal Procedure Rules 2012, unless otherwise stated.

Other criminal procedure-related chapters

These linked chapters deal with the various stages of the criminal process:

- Criminal procedure - Introduction and jurisdiction
- Criminal procedure - Commencement of proceedings
- Criminal procedure Administration stage
- Criminal procedure - Review stage (CMM process)
- Criminal procedure - Trial stage
- Criminal procedure Disposition
- Criminal procedure - Costs orders

Different processes apply to youth. See the 'Youth justice' Police Manual chapter for details.

Related information

Other Police Manual chapters with information related to the criminal procedure chapters are:

- Bail
- Charging decisions
- Criminal disclosure
- Prosecution file and trial preparation
- Family harm policy and procedures
- Adult diversion scheme.

Diagram: Criminal Procedure Act - procedure overview

See Criminal procedure - Introduction and jurisdiction for a diagram illustrating the processes to be followed under the Criminal Procedure Act 2011.

First appearance

The first appearance of a defendant in court is a key event in criminal proceedings and the first occasion that the defendant may formally answer the charge(s).

Initial custody, prosecution position on bail and suppression considerations are reviewed by the prosecutor and appropriate submissions made.

As with any other appearance in court, early and thorough disclosure will assist in progressing the prosecution in a timely manner. In most cases the defendant must have receipt of initial disclosure by, or at, the first appearance.

Initial review by the prosecutor

Following an initial review of the prosecution file, the prosecutor should have an understanding of the issues most relevant to the first appearance. Relevant information should be contained in and, where relevant, referenced to supporting information in the initial POL () 258P (prosecution report) completed by the O/C case and endorsed by the O/C's supervisor. Refer also to the 'Prosecution file and trial preparation' chapter for the contents and order of a file for first appearance.

Initial considerations and possible actions

This table outlines some of the initial considerations and possible actions for a prosecutor appearing at the first appearance.

Consideration	Action
Charging document	Check: • that the defendant's particulars and PRN () match the summary of facts • date and place of the alleged offences • whether the statutory reference for the alleged offence, and where appropriate, the penalty provision, is correct. (Note: an incorrect reference is not 'fatal' to the validity unless it is likely to mislead. Refer to Sayer v Police [1963] NZLR 221) • whether the charge wording contains sufficient information to fairly inform the defendant of the offence • whether the time limit for filing the charge has been complied with • the overall appropriateness of the prosecution. See also 'Solicitor-General's Prosecution Guidelines'.
Caption summary	Review content and appropriateness. (See also 'Summary of Facts' in this chapter)

Initial disclosure	• Note whether initial disclosure has been provided to the defendant (a copy of the initial disclosure receipt should be on the file). • Ensure delivery of initial disclosure if it was not completed before the first appearance.
Bail	• Review bail position and whether any statutory onus or restriction applies. (See the 'Bail' chapter for information about granting and opposing bail). • Review opposition and provide relevant documents to the court if bail is opposed or a reverse onus/restriction applies. • Review and amend if appropriate, any proposed bail conditions using the printed bail conditions accompanying the POL () 258P. Do this if bail should only be until the next appearance or for the duration of proceedings. The O/C case proposed conditions should also be in NIA (), and if so, will be received by the court, but not be immediately viewable by the judicial officer. • Provide a copy of the proposed bail conditions to the defence/duty lawyer as a starting point for discussion and agree to conditions using the conditions form, if possible. The defence will provide the proposed bail conditions form to the court registrar, noting the agreement or disagreement of the defence. The form will confirm or amend the original O/C case proposed conditions. • Present prosecution position on bail when the matter is called.
Victim	Review and action any victim associated issues or concerns disclosed. Refer also to 'Victims (Police service to victims)' chapter.
Notification of charges to be heard together	Review the need for a notification of charges to be heard together under section 138 CPA when: • multiple charges arise from, or are linked to a common sequence of events • existing charges or other defendants are associated with the new charge(s). If applicable, notify the court that the charges are to be heard together. This notification may be made orally, or in writing.

Crown	Note the file, and notify the Crown, if the charge(s) require, or will subsequently require, Crown involvement including: • category 4 charges (handled by the Crown from the second appearance) • Crown schedule charges (handled by the Crown after the entry of a plea) • breach of bail matters for charges already transferred to the Crown (e.g. breach of bail for category 4 after the first appearance).
2nd appearance time-frame	Note whether an extension of the timeframe to second appearance may be required either by consent or at the direction of the court. Examples include: • diversion • specialist drug court • fitness to plead and mental health consideration • holding charges. Advise the court if an extension is required and make submissions as to the reasons why.
Proof of service	Check: • summons proof of service is on the prosecution file • request for warrant in lieu is on the file if summons was unable to be served, with supporting documentation • bail bond on file if defendant was released on Police bail.
Transfer	Consider whether a transfer to another court is required given the location of offending and the court of first appearance. See the 'Commencement of proceedings' chapter for information on the location of filing charging documents.

Offences with criteria

When a charge will become a Crown prosecution due to specific criteria, the District Prosecution Manager (DPM) must be notified. The DPM must review the charges in consultation with the local Crown Solicitor and the Crown Law guidance on criteria document, before the second appearance to determine if the criteria are met.

When the DPM and Crown Solicitor are unable to agree, the matter must be urgently referred to the Director: Police Prosecution Service to decide in consultation with the Deputy Solicitor-General.

Plea or adjournment

At the first appearance, a defendant may enter a plea and proceed to the review or disposition stage of proceedings. If they do not enter a plea, the proceedings must be adjourned to a date within the period required by the Criminal Procedure Rules 2012 or to a later date by consent for diversion or mental health enquiries.

High Court charges

If the defendant is charged with a category 4 offence, the first appearance must be in the District Court. The second and subsequent court appearances must be in the High Court nearest to the court of filing.

The Crown assumes responsibility for category 4 prosecutions after the first appearance. (See also 'Crown involvement' in this chapter).
(s36CPA)

Requirement to attend

Unless an exception applies, the defendant must appear in court if they are:

- on Police bail to attend that hearing or have been summonsed to attend that hearing, or
- remanded in custody, or are on bail or at large, to attend that hearing.

Exceptions

Despite the general requirement to attend, a defendant is not required to attend a particular appearance if:

- the court excuses them from attending or orders them to be removed from the court for interruption
- the defendant has pleaded guilty to a category 1 offence by notice and has not indicated that they wish to attend
- the defendant is represented by a lawyer and the hearing is only in respect of:
    - the place or date of the trial

- case review, where the registrar is exercising the court's power under section 57(4) and the defendant is in custody
- an alternative way of giving evidence under subpart 5 of Part 3 of the Evidence Act 2006
- whether 2 or more charges are to be tried together, or whether the charges against 1 defendant are to be tried with charges against 1 or more other defendants
- an application to take oral evidence under section 90
- a matter concerning the admissibility of evidence.

(s118)

Warrant to arrest for failure to attend

A court or registrar may issue a warrant to arrest the defendant to compel them to appear in court if:

- a summons has been issued but attempts to serve the summons have been unsuccessful
- they fail to appear at any stage of proceedings when required to appear.

Note: A warrant to arrest for a category one offence may only be issued by a Judge.
(ss34, 119, 120, 121CPA)

Proceeding in the defendant's absence

When a defendant is required to attend court on a category 1 offence, and fails to appear, proceedings may be conducted in the defendant's absence. Refer to proceeding in the absence of the defendant in the trial stage chapter for the requirements.

Appearance following arrest on warrant

When a defendant appears in court following an arrest on warrant, the prosecutor must review the arrest file as with any first appearance. The Crown must be advised and appear, where the Crown has assumed responsibility for the charges.

The next appearance will ordinarily proceed according to the stage of proceedings that existed at the time the warrant was issued. However, an additional adjournment may be required to confirm witness availability if the matter is at the trial stage.

Note: in particular the required court for the next appearance. (See 'Filing charging documents' in the 'Commencement of proceedings' chapter for information on hearings and transfer.

Second appearance

This section contains the following topics:

- Timeframe for second appearances
- Second appearance and requirement to plead

Timeframe for second appearances

The defendant's second appearance must not be later than 10 working days for category 1 and 2 offences or 15 working days for category 3 and 4 offences after:

- the first appearance, if initial disclosure under section 12(1) of the Criminal Disclosure Act 2008 was made before or at the first appearance
- the date notified by the prosecutor that initial disclosure will be completed, if the disclosure was not completed before or at the first appearance. This date must not be later than the expiry of the mandatory initial disclosure date.

(r 4.1)

The court may extend or shorten the timeframe for the second appearance on its own motion or by consent of all parties. A registrar may extend or shorten the timeframes only by consent of all parties. An extension of time is required for the defendant to complete diversion without entering a plea.
(r 1.7)

Second appearance and requirement to plead

The ability to require a defendant to enter a plea is confirmed in section 39 of the CPA and corresponds with rule 4.1 of the CPR specifying the required timeframe for the second appearance.

Requirement to plead

The court, or a registrar for category 1-3 matters, may require a defendant to enter a plea if they have had initial disclosure. However, if the defendant states an intention to enter a plea outside the jurisdiction of the judicial officer or the registrar, the court or registrar may adjourn the proceedings to a date and time in a court where a judicial officer able to receive the plea is sitting.

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A defendant who is required to enter a plea but who refuses to enter a valid plea is deemed to have pleaded not guilty and the proceedings must be continued accordingly through to the review stage.
(s41CPA)

Entering a plea

When can pleas be entered?

A defendant may voluntarily plead guilty or not guilty, or enter a special plea at any time. The court or a registrar may also require a defendant to enter a plea in certain situations to ensure that prosecutions are not needlessly delayed.

Self represented defendants

Before putting the substance of the charge to a self-represented defendant, the court must be satisfied the defendant:

- has been informed of their rights to legal representation, including the right to apply for legal aid
- has fully understood their rights and had a reasonable opportunity to exercise them.

Court appearances to enter pleas

Any defendant indicating a desire to plead guilty to a charge other than a category 1 offence must be brought before the relevant court to enter a plea.

Defendants represented by a lawyer may plead not guilty or enter a special plea, by filing a notice in the court. Notwithstanding the rule of service on other parties, (see 'Service requirements' in the 'Commencement of proceedings' chapter) the registrar must notify the prosecutor if a notice of a not guilty or special plea is filed.

(Note: a not guilty plea to a category 4 offence may only be entered in the High Court).

Category 1 offences

When a defendant is charged with a category 1 offence, they may enter a plea of guilty, not guilty or a special plea by notice to the court. The decision to enter a plea by notice must be independently made by the defendant. Police must not facilitate the entry of a guilty plea by notice under any circumstances.

Any defendant pleading guilty by notice may also state if they wish to appear in court for sentence, and regardless of whether they do so, include in or with the notice, written submissions to be taken into account at sentencing.

The registrar must notify the prosecutor if a notice of a guilty plea is filed in court. (s38CPA)

Pleas before a registrar

A registrar may receive not guilty pleas for category 1, 2 or 3 offences. Other than receiving a notice of guilty plea under section 38 of the CPA, a registrar may not receive a guilty plea to an offence.

Where a registrar does not have jurisdiction to receive a plea, they may adjourn the proceedings to a date and time in a court where a judicial officer able to receive the plea is sitting.

Pleas before a Community Magistrate or Justice(s)

Justices and Community Magistrates may receive all pleas for category 1 offences over which the CM or JP has full jurisdiction and any category 2 matter over which the CM or JP has sentencing jurisdiction. If the defendant wishes to plead guilty to a charge that a CM does not have full or sentencing jurisdiction over, the defendant must be brought before a Judge to enter the plea.
(s361CPA)

The summary of facts

The summary of facts is one of the most significant parts of the prosecution file. The summary is read following the entry of a guilty plea and may be referred to pre-plea in matters of bail consideration. If the defendant appeals a sentence following the entry of a guilty plea, the High Court may rely on the summary when hearing the appeal. The summary of facts must fairly and accurately reflect the circumstances and seriousness of the offending. Refer to R v Hockley (2009) NZCA 74.

Check that the summary of facts:

- relates to the charging document(s)
- covers all the elements of the offence and:
    - states what the defendant did in relation to the elements, and any consequences of that (e.g. injury or damage)
    - includes the time, date and place of the offence
- provides a fair, accurate, and relevant description of the defendant's actions
- does not contain emotive language
- addresses any aggravating and/or mitigating circumstances
- follows a logical sequence and reads well
- is supported by admissible evidence. (It is accepted that a prosecutor is unlikely to be aware of the available evidence when an arrest case is first called)
- refers to the defendant's explanation, if any
- includes details of any orders sought, such as reparation or return of property, or mandatory orders (e.g. confiscation of car, driver licence disqualification)
- has a separate reparation sheet with victim's particulars available to hand to the Judge for sentencing or a sentence indication (Note: if the amount of reparation is disputed, you must call evidence).

Altering the summary of facts

If the O/C case is asked by defence counsel to alter a summary of facts, consider whether the relevant part:

- is provable by admissible evidence
- forms a material part of the offence.

If the answer to both is 'yes', do not alter the summary without consulting a prosecutor.

Disputing the summary of facts

A defendant can plead guilty to a charge but dispute parts of the summary under the Sentencing Act 2002. Where a charge includes a specific mens rea such as an intent to injure, the summary can not be amended to state that the defendant did not intend to injure the complainant. If a guilty plea is entered, the defendant has admitted all elements of the offence and cannot dispute any of them.

If significant parts are disputed that are not part of the elements of the charge, a disputed facts hearing may be arranged. The Judge should indicate whether they consider the disputed parts to be significant or not and the weight that would be placed on the fact in dispute.
(s24Sentencing Act 2002)

Charges disclosing previous convictions

When a charging document discloses the existence of a previous conviction(s), e.g. driving with excess breath alcohol 3rd or subsequent, the defendant is not required to plead to the allegation of previous convictions unless they plead guilty to the rest of the charge.

Using the example of the excess breath alcohol charge, the defendant should enter a plea to driving with excess breath alcohol and, only if a guilty plea is entered, be required to acknowledge or deny the 3rd or subsequent component of the charge.

In this situation, the defendant must be asked whether or not they have been previously convicted as alleged before they can be sentenced. If they say that they have not been previously convicted as alleged, or do not say that they have, the judicial officer must determine the matter.
(ss44 & 145CPA)

Election of trial by jury

When entering a not guilty plea to a category 3 offence, the defendant may elect to be tried by a jury at the time the not guilty plea is entered. If no election is made the trial proceeds as a Judge-alone trial.

When a jury trial is elected for a category 3 offence, all other joined charges will also be tried before a jury, regardless of the offence category.
(s139CPA)

Further information

See also 'Special pleas' in this chapter.

Special pleas

This section contains the following topics:

- What is a special plea?
- Process when a special plea is entered

What is a special plea?

A special plea is one or more of three pleas that may be entered other than guilty or not guilty under section 45 of the CPA. Some defendants refer to a special plea as "plea and bar" or "plea in bar". This means that they believe there is a bar to proceedings going further.

In New Zealand the only special pleas that, if accepted by the court, would stop or bar criminal proceedings from progressing further are a plea of:

- previous conviction
- previous acquittal
- pardon.

Any other plea must be considered a not guilty plea and continued through to the review stage.

Process when a special plea is entered

When a special plea is entered, a Judge must determine whether the special plea is available to the defendant.

If the defendant enters any of the special pleas, they must provide information about the conviction, acquittal, or pardon on which the plea is based.

In deciding whether a special plea is available, the Judge may consider any evidence that the Judge considers appropriate. Refer also to sections 45-49 of the CPA.

If the Judge decides that a special plea is not available, the defendant must enter a plea of guilty or not guilty. Failure to enter a valid plea will result in the plea being deemed to be a not guilty plea.

Remands, adjournments and holding charges

Seeking remands and adjournments

A defendant is 'on remand' if they are in prison, on bail or at large, pending resolution of the charges against them.

An adjournment is moving the hearing of a case to a later date.

If you are seeking an adjournment, tell the court why it is being sought (e.g. that the charge is a holding charge, or a further witness has been identified that may impact on the proceedings), as the court will want to ensure timeframes for pleas are met. Be prepared for the possibility that the judicial officer may decline the application for an adjournment.

Holding charges

Under section 46 of the CPA, before more charges can be filed against a suspect who was previously convicted of an offence in respect of the same set of facts:

- the charges must relate to a more serious offence, and
- the evidence must not have been available at the time the previous proceedings were commenced.

(s46(2)(b))

This differs from the previous approach under section 359(3) of the Crimes Act 1961 which provided that a person convicted or acquitted of an offence against a person punishable by 3 or more years' imprisonment, could not subsequently be charged with murder or manslaughter if the victim died after the conviction or acquittal, as a result of the conduct constituting the original offence charged.

Unlike section 359 (3) Crimes Act, section 46 CPA has no maximum penalty threshold, and it does not matter what offence a person was previously convicted of.

The court will make an assessment of both section 46(2)(b) matters on a case-by-case basis. Adams commentary is likely to state that the more serious charge can be filed and will be sound, if evidence of the more serious offence was not "readily available" when the original charge was filed. This means that a plea of previous conviction would be available if the current charge could reasonably have been filed at the time of the original charge. This is helpful when considering evidential sufficiency and its relevance to the test for prosecution in the 'Solicitor-General's Prosecution Guidelines'.

Anticipating further evidence supporting more serious charges

Follow this process if you anticipate further evidence will become available in future to support the filing of more serious charges against a suspect.

Role	Recommended action
Investigators	• File the charge that is most appropriate in the circumstances at the time of filing, in accordance with the Solicitor General's Prosecution Guidelines, and • clearly communicate to the prosecutor that more serious charges are being contemplated, along with an indication of the timeframe within which more serious charges are likely to be filed.
Prosecutors	If a guilty plea to the holding charge is intimated, prosecutors should request that the judicial officer does not enter a conviction, pending the filing of more serious charges.

Note: Section 46(2) should be used only as a backstop. You will avoid the need to rely on section 46 by following the practice above.

Examples of how s46(2)(b) CPA works in practice

If an assault victim has not died when a holding charge is filed, but the victim subsequently dies, a charge of murder is permitted under section 46(2), because the evidence that supports filing of the more serious charge (i.e. evidence of the death), was not available at the time the previous proceedings were commenced.

Similarly if the death of an assault victim occurred before the holding charge was filed, but the cause of death was not yet available, a charge of murder is clearly permitted under section 46(2), because evidence supporting the murder charge (i.e. evidence relating to the cause of death) was not available at the time the previous proceedings were commenced.

In case they are called into question later, you should keep a detailed record of any:

- assessments/opinions sourced before filing a lesser charge
- evidential gaps which existed at the time of the filing of the lesser charge.

Crown involvement

The Crown's role under the CPA

The CPA, Crown Prosecution Regulations 2013 and the Crown Law Memorandum of Understanding (MOU ()), all provide for clarity of responsibility. The Crown is responsible for the most serious charges and conducts jury trials. Jury trials must proceed on the basis of the charging document.

Police must, through the MOU (), notify the Crown if a charge will become a Crown prosection. This notification must be made by the prosecutor before the first appearance, or when a non-schedule jury election is made, during the file analysis following a not guilty plea.

Crown responsibilities

When the Crown assumes responsibility for a prosecution, it must file a notice advising the parties that it has taken responsibility for the prosecution.

Following the notification, the Crown may amend, add and withdraw charges as appropriate. In most circumstances, if the Crown apply within the CRP timeframes, the court's leave will not be required for the Crown to make changes to the charges, unless it intends to withdraw all the charges in a prosecution.

Contact your local Police Prosecution Service office for the local protocol on file delivery and liaison with the Crown.

High Court matters

The Crown assumes responsibility for:

- all Category 4 charges after the first appearance, with the second and subsequent appearances required to be in the High Court
- any other matter transferred to the High Court as a result of a protocol determination or an application by either party for the matter to be heard in the High Court.

Crown schedule

The Crown schedule is contained in the Crown Prosecution Regulations 2013 and outlines the charges that must ultimately be prosecuted by the Crown. The list contains many of the former purely indictable matters and a large number of more serious offences. All offences carrying a maximum penalty of 14 years imprisonment or more are generally included unless a proviso applies, such as class A drug possession for supply, where the Crown will only prosecute the most serious cases determined by the application of set criteria. Refer to the regulations for the full list of offences that must be prosecuted by the Crown.

The Crown assumes responsibility for Crown schedule matters after the entry of a plea. Refer also to identification of offences with criteria earlier in this chapter.

Jury trial

When a defendant pleads not guilty to a category 3 offence and elects to be tried by a jury, the Crown assumes responsibility following the entry of a plea if the matter is on the Crown schedule, or on adjournment to the trial callover in all other circumstances. When the matter is not on the Crown schedule, Police maintain responsibility for the review process up to and including the case review hearing.

Police may prosecute some serious offences

This table lists many of the more serious offences and who is responsible for prosecution.

Offence		**Automatic Crown**	**Police**
Crimes Act 1961			
s68	Party/inciting murder outside NZ	Cat 4	
s69(1)& (2)	Party crime outside NZ	Cat 4	
s69(3)	...other than treason, mutiny, espionage		Cat 3
s73	Treason	Cat 4	
s74(3)	Attempted treason	Cat 4	
s76	Accessory to, or failure to prevent treason	Cat 4	
s77	Inciting mutiny	Cat 4	
s78	Espionage	Cat 4	
s79	Sabotage	Cat 4	

s80	Oath to commit an offence		Cat 3
s90	Riotous damage		Cat 3
s92	Piracy	Cat 4	
s94	Piratical act	Cat 3 Crown only	
s95	Attempt to commit piracy	Cat 4	
s96	Conspiracy to commit piracy	Cat 4	
s97	Accessory after the fact to piracy	Cat 3 Crown only	
s98	Slave dealing	Cat 4	
s98AA	Dealing in people under 18 for exploitation	Cat 3 Crown only	
s98C	Smuggling migrants	Cat 3 Crown only	

s98D	Trafficking people	Cat 3 Crown only	
s100	Judicial corruption	Cat 4	
s101	Bribery of judicial officer	Cat 4	
s102	Corruption/bribery/Crown Minister	Cat 4	
s103	Corruption/bribery of MP	Cat 4	
s104	Corruption/Bribery of Police	Cat 3 Crown only	
s105	Corruption/bribery of official	Cat 3 Crown only	
s105A	Corrupt use of official information	Cat 3 Crown only	
s105B	Use or disclosure of personal information disclosed in breach of s 105A	Cat 3 Crown only	

s105C	Bribery of foreign public official	Cat 3 Crown only	
s105D	Bribery outside New Zealand of foreign public official	Cat 3 Crown only	
s109	Perjury, where perjury is committed in the context of a Crown prosecution or in an appeal to the High Court, Court of Appeal, or Supreme Court	Cat 3 Crown only	
s109	Perjury in all other cases		Cat 3
s113	Fabricating evidence where fabrication is committed in the context of a Crown prosecution or in an appeal to the High Court, Court of Appeal, or Supreme Court	Cat 3 Crown only	
s113	Fabricating evidence in all other cases		Cat 3
s115(a)	Conspiring to bring false allegation (offence alleged punishable by imprisonment for 3 years or more)	Cat 3 Crown only	
s115(b)	Conspiring to bring false allegation (offence alleged punishable by imprisonment for less than 3 years)		Cat 3

s116	Conspiring to defeat justice, where that conspiracy is committed in the context of a Crown prosecution or in an appeal to the High Court, Court of Appeal, or Supreme Court	Cat 3 Crown only	
s116	Conspiring to defeat justice in all other cases		Cat 3
s117	Corrupting juries and witnesses	Cat 3 Crown only	
s123	Blasphemous libel		Cat 2
s128 & 128B	Rape/Sexual violation	Cat 3 Crown only	
s129	Attempt/Assault to commit sexual violation	Cat 3 Crown only	
s129A(1)	Sexual connection induced by coercion/ threats	Cat 3 Crown only	
s132	Sexual connection, attempt and indecent act with/on child under 12	Cat 3 Crown only	

s142A	Compelling indecent act with animal	Cat 3 Crown only	
s143	Bestiality		Cat 3
s144A	Sexual conduct with children outside New Zealand	Cat 3 Crown only	
s144C	Organising or promoting child sex tours	Cat 3 Crown only	
s172	Murder	Cat 4	
s173	Attempted murder	Cat 4	
s174	Counselling/procuring murder	Cat 4	
s175	Conspiracy to murder	Cat 4	
s176	Accessory to murder	Cat 3 Crown only	
s177	Manslaughter	Cat 4	
s178	Infanticide	Cat 4	

s179	Aid/abet suicide	Cat 3 Crown only	
s180(1)	Suicide pact where murder or manslaughter	Cat 4	
s180(2)	Suicide pact where one kills themselves	Cat 3 Crown only	
s182	Killing unborn child	Cat 3 Crown only	
s183	Procuring abortion	Cat 3 Crown only	
s188(1)	Wounding with intent	Cat 3 Crown only	
s188(2)	Wounding with reckless disregard		Cat 3
s191(1)	Aggravated wounding	Cat 3 Crown only	
197	Disabling		Cat 3

s198(1)	Discharging firearm/dangerous act with intent	Cat 3 Crown only	
s198(2)	Discharging firearm/dangerous act with reckless disregard		Cat 3
s198A(1)	Using firearm against enforcement officers	Cat 3 Crown only	
s199	Acid throwing	Cat 3 Crown only	
s200(1)	Poisoning with intent	Cat 3 Crown only	
s201	Infecting with a disease	Cat 3 Crown only	
s204	Impeding rescue		Cat 3
s208	Abduction of woman or girl	Cat 3 Crown only	

s209	Kidnapping	Cat 3 Crown only	
s232(1)	Aggravated burglary	Cat 3 Crown only	
s235	Aggravated robbery	Cat 3 Crown only	
s236(1)	Assault with intent to rob	Cat 3 Crown only	
s238	Blackmail	Cat 3 Crown only	
s239(1)	Demanding with intent to steal	Cat 3 Crown only	
s267(1)	Arson	Cat 3 Crown only	

s270	Endangering transport	Cat 3 Crown only	
Misuse of Drugs Act 1975			
ss6(1)(b) or 6(2A) (or equivalent offence under s10)	Manufacture of methamphetamine	Cat 3 Crown only	
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class A drug (except manufacture of methamphetamine) if: a. the quantity of drugs is more than 5 times the quantity of the presumption threshold, including in combination with any other charges being heard together in the proceeding; or b. there is other evidence of large-scale dealing beyond the actual quantity seized; or c. there is substantial evidence derived from a surveillance device involving audio interception.	Cat 3 Crown only	
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class A drug (except manufacture of methamphetamine) if criteria not met for automatic Crown involvement		Cat 3

ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class B drug if: a. the quantity of drugs is more than 10 times the quantity of the presumption threshold, including in combination with any other charges being heard together in the proceeding; or b. there is other evidence of large-scale dealing beyond the actual quantity seized; or c. there is substantial evidence derived from a surveillance device involving audio interception.	Cat 3 Crown only	
ss6(1) or 6(2A) (or equivalent offence under s10)	Dealing in a Class B drug if criteria not met for automatic Crown involvement		Cat 3
s12C	Commission of offences outside NZ (where offence would be ss6(1) or 6(2A) Class A or B)	Cat 3 Crown only	

Protocol offences

What is a protocol offence

Protocol offences are similar to offences that were previously referred to as "middle band" and are able to be tried in the High or District Court dependant upon a judicial decision. The issue of protocol is raised through the review stage of proceedings in respect of those matters where a not guilty plea is entered. If the court determines that the trial should be heard in the High Court, then the Crown will assume responsibility for the prosecution.

Early identification of protocol

Although the issue of protocol is only required to be raised for consideration in matters proceeding to trial, early identification of protocol will assist the process if a not guilty plea is entered. The majority of protocol offences are either category 4 or Crown schedule

offences, however, a limited number that are not automatically Crown matters will be prosecuted by Police. When a protocol offence is identified through file analysis, the District Prosecution Manager must be notified for a decision to recommend or not recommend transfer to the High Court for trial. Any decision to recommend transfer to the High Court must be done in consultation with the local Crown Solicitor.

For a full list of protocol offences, refer to the gazetted protocol.

Suppression of names and information before the court

Overview of suppression provisions

The CPA (sections 194 211) provides the legislative framework and guidelines for the publication or suppression of names and other particulars of criminal proceedings before the courts.

The provisions build upon case law and the public expectation that justice and judicial proceedings should be open, transparent and consistent with the right of the media to report fairly and accurately.

While recognising that the principle of "open justice" should prevail, the CPA also provides for situations where information should be restricted automatically or when the court is satisfied sufficient grounds exist for information to be suppressed.

In addition to the prosecutor and defendant, members of accredited media have a statutory right to be heard in court with regard to suppression orders and may also appeal the decision of the court.

Although interim suppression orders are most common in the early administrative stage of proceedings, suppression of names and evidence may be ordered at any stage through to the final disposition of the charge.

When making, varying or revoking a suppression order, the court must give reasons for its decision in open court (s207). However, the court may, if it is satisfied that exceptional circumstances exist, decline to state in public all or any facts, reasons, or other considerations taken into account to reach the decision.

Offences relating to suppression

It is an offence to...	Maximum penalty

knowingly or recklessly publish details in breach of a suppression order or of automatic suppression	• 6 months imprisonment (individual), or • $100,000 fine (body corporate). (s 211(1))
publish in breach of a suppression order or of automatic suppression (not necessary to prove intent or recklessness)	• $25,000 fine (individual), or • $50,000 (body corporate) (This does not apply to a person that hosts websites or other electronic retrieval systems unless the material is placed or entered by that person). (s211(2))

Related information

See also:

- Automatic suppression
- Suppressing defendant details
- Suppressing other persons details, evidence or submissions

in this chapter.

Automatic suppression

Prohibition against publishing names in specified sexual cases

Section 201 of the CPA automatically prohibits the publication of the defendant's details for offending under section 130 or 131 of the Crimes Act 1961 (incest or sexual conduct with family members).

Section 203 of the CPA prohibits the publication of the name or particulars leading to the identification of any person upon or with whom a specified sexual offence (ss 128 - 142A or 144A of the Crimes Act 1961) has been or is alleged to have been committed unless:

- that person is of or over the age of 18 years, and
- the court, by order, permits such publication.

A complainant in prosecutions relating to the above specified sexual offences, once they have reached the age of 18 years, may apply to the court for an order permitting the publication of their name or identifying particulars, or those of the offender, if the court is satisfied they understand the nature and effect of their decision. Where the offending is incest or sexual conduct with a family member and involves multiple complainants, the court must be satisfied that all complainants consent to the publication.

Automatic protection of identity of child victims and witnesses

Section 204 CPA prohibits the publication of the name, address, or occupation of any person under the age of 18 years who is a complainant or witness in criminal proceedings.

Despite the general prohibition on publication of the details of child complainants, the details of a child who died as a result of the offence may be published.

A complainant or witness in a proceeding may apply to the court for an order permitting the publication of their details once they have reached the age of 18 years and the court is satisfied that they understand the nature and effect of their decision.

Orders restricting disclosure of information about bail

Section 19 of the Bail Act 2000 prohibits the publication of a report or account of any matters dealt with at a bail hearing apart from the following, unless specifically ordered otherwise:

- identity of the defendant applying for bail
- charges faced by the defendant
- decision of the court on the application
- conditions of bail, if bail is granted.

Despite the above, the court may make an order specifically permitting the publication of any other details.

The general prohibition and any additional prohibition ordered by the court remains in force, unless the court directs otherwise, until the expiry of any appeal period or appeal following the conclusion of a prosecution.

Prohibition on publishing details of a sentence indication

Details relating to a request for a sentence indication, or the indication given, may not be published before a defendant is sentenced or the charge is dismissed.

(s63) See also 'Sentence indications' in the 'Review stage (CMM)' chapter).

Related information

See also 'Suppressing defendant details' and 'Suppressing other persons details, evidence or submissions' in this chapter.

Suppressing defendant details

Power to suppress defendant details

The court may prohibit the publication of the defendant's name (including particulars likely to lead to their identification), address and occupation, in addition to any automatic suppression for specified sexual cases.

In prohibiting the publication of details, the court must be satisfied to the standard required by section 200 that an order should be granted.

Any order for suppression may be revoked, reviewed or varied by the court at any time and the reasons for making, varying, or revoking the order must be given in open court. The court may decline to state in public any fact, reason or other consideration, if it is satisfied that exceptional circumstances exist.

Community Magistrates and Justices

Community Magistrates (CMs) and Justices (JPs) may make interim and final suppression orders in any matter for which they have full or sentencing jurisdiction.

For matters outside the full or sentencing jurisdiction, a CM or JP may grant interim suppression at a first appearance. The granting or renewing of a suppression order at a subsequent appearance by a CM or JP may only be made if both parties agree. A suppression order made by a CM or JP for a matter outside their full or sentencing jurisdiction is only valid for 28 days from the date the order was made.
(s362)

Interim suppression - first appearance

The court may order the interim suppression of the defendant's details until the next court appearance if an arguable case is presented showing that publication would be likely to:

- cause extreme hardship to the person charged with, or convicted of, or acquitted of the offence, or any person connected with that person
- cast suspicion on another person that may cause undue hardship to that person
- cause undue hardship to any victim of the offence
- create a real risk of prejudice to a fair trial
- endanger the safety of any person
- lead to the identification of another person whose name is suppressed by order or by law

- prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- prejudice the security or defence of New Zealand.

Note: The fact that a defendant is well known does not of itself, mean that publication of their name will result in extreme hardship.

Initial orders by registrars

A registrar may make an interim suppression order at the first appearance, if the matter is to be adjourned and all parties consent. An order granted by a registrar is only valid for 28 days. However, the registrar may renew interim suppression at the expiry of the 28 days if the next appearance has not occurred.
(ss200, 206, 208(1)(b))

Further suppression - limited period or permanent

The court may order ongoing suppression of the defendant's details for a limited period or permanently, if it is satisfied that publication would be likely to result in any of the consequences listed under 'Interim suppression first appearance' above.

Victim's views on suppression

The court must take into account any views of a victim before ordering permanent name suppression. Prosecutors mustmake all reasonable efforts to ensure any views the victim has on the application are ascertained and must inform the court of those views. (s28 Victims' Rights Act 2002)

Duration of orders

Prosecutors must be vigilant in clarifying the duration of the suppression order when it is made. If the term of a suppression order is not specified by the court, it has permanent effect.

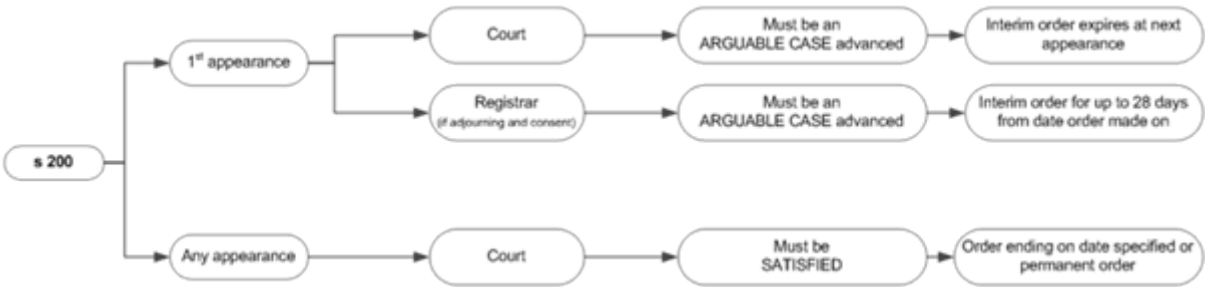
The court may revoke permanent name suppression at any time.

Defendants completing diversion

If a defendant successfully completes diversion and seeks permanent name suppression, they must apply to the court for consideration and determination as above. A defendant, having completed diversion, will not be able to have permanent name suppression granted by a registrar.

Diagram: Defendant suppression

This diagram summarises the defendant details suppression process.



Related information

See also 'Automatic suppression' and 'Suppressing other persons details, evidence or submissions' in this chapter.

Suppressing other persons' details, evidence or submissions

Suppression of witness, victim, or connected person details

In addition to the automatic suppression provisions of the Act, other witnesses, victims and connected persons (those connected with the proceedings or the defendant) may have their details suppressed.
(s202)

The court may make an order prohibiting the publication of the name, address, or occupation of a victim or witness of or over 18 years of age or of a connected person if satisfied that publication would be likely to:

- cause undue hardship to the witness, victim, or connected person
- create a real risk of prejudice to a fair trial
- endanger the safety of any person
- lead to the identification of another person whose name is suppressed by order or by law
- prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- prejudice the security or defence of New Zealand.

Duration of orders

Any suppression order relating to a witness, victim or connected person other than automatic suppression may be for a limited period or permanent. Any order may be renewed, varied or revoked at any stage. If a specific period is not specified, the order is considered permanent.

When can evidence and submissions be suppressed?

The court may make an order forbidding the publication of any report or account of the whole or any part of the evidence adduced or submissions made in any proceedings, if the court is satisfied that publication is likely to:

- cause undue hardship to any victim of the offence
- create a real risk of prejudice to a fair trial
- endanger the safety of any person
- lead to the identification of another person whose name is suppressed by order or by law
- prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- prejudice the security or defence of New Zealand.

It is important that the prosecutor is made aware of any of the above issues that may be present, so that an application for suppression can be made, if required.

Duration of orders

Any suppression order relating to evidence or submissions may be for a limited period stated by the court or permanent. If a specific period is not specified, the order is considered permanent.

Any order may be renewed, varied or revoked at any stage.

Related information

See also 'Automatic suppression' and 'Suppressing defendant details' in this chapter.

Clearing the court

Cases of a sexual nature

In any case of a sexual nature, those permitted in the courtroom when the complainant gives evidence are automatically restricted to the following:

- the Judge and jury
- the prosecutor
- the defendant and any custodian of the defendant
- any lawyer engaged in the proceedings
- any officer of the court
- the Police employee in charge of the case
- any member of the media (media may be excluded if their presence would prejudice the security or defence of New Zealand)
- any person whose presence is requested by the complainant

- any person expressly permitted by the Judge to be present.

Before the complainant in respect of a sexual offence gives evidence, the Judge must ensure that no person other than those referred to above is present in the courtroom, and advise the complainant of their right to request the presence of any person in the courtroom.

Cases not of a sexual nature

In cases other than those of a sexual nature, the court may make an order excluding all or any persons other than:

- the Judge and jury
- the prosecutor
- the defendant and any custodian of the defendant
- any lawyer engaged in the proceedings
- any officer of the court
- the Police employee in charge of the case
- any member of the media (media may be excluded if their presence would prejudice the security or defence of New Zealand).

When can orders be made?

The court may only make the above order in cases other than those of a sexual nature if it is necessary anda suppression order is not sufficient to avoid these risks:

- undue disruption to the conduct of the proceedings
- prejudicing the security or defence of New Zealand
- a real risk of prejudice to a fair trial
- endangering the safety of any person
- prejudicing the maintenance of the law.

Announcements that must be made in court

The court must announce the verdict or decision of the court, and the passing of sentence in public but if satisfied that exceptional circumstances exist may decline to state in public all or any facts, reasons, or other considerations taken into account to reach its decision or verdict, or in determining the sentence.

Police Instructions

Criminal procedure - Commencement of proceedings

Summary

Introduction

The Criminal Procedure Act 2011 (CPA) and the Criminal Procedure Rules 2012 (CPR) formalise the administrative requirements for all matters commenced under the Criminal Procedure Act 2011. Failure to comply with the Act, rules, or regulations may result in costs being ordered against the prosecution or defence.

Purpose of this chapter

This chapter:

- provides information about the application of the CPA in the District Court, from the commencement of criminal proceedings through to first appearance
- outlines the requirements for commencing proceedings, including:
    - advising party details
    - documents filed under the CPA
    - service
    - timeframes for tasks and processes.

The information in the chapter is a reference starting point only. Refer to the Criminal Procedure Act 2011, Criminal Procedure Rules 2012 and associated regulations for full guidance.

Commencement stage

The commencement stage is the first of these five stages of criminal proceedings:

Statutory references

All references in this chapter to the "Act" or to the "CPA" are to the Criminal Procedure Act 2011, and references to the "Rules" or the "CPR" are to the Criminal Procedure Rules 2012, unless otherwise stated.

Other criminal procedure-related chapters

These linked chapters deal with the various stages of the criminal process:

- Criminal procedure Introduction and jurisdiction
- Criminal procedure - Commencement of proceedings
- Criminal procedure - Administration stage
- Criminal procedure Review stage (CMM process)
- Criminal procedure - Trial stage
- Criminal procedure - Disposition
- Criminal procedure - Costs orders

Different processes apply to youth. See the 'Youth justice' Police Manual chapter for details.

Related information

Other Police Manual chapters with information related to criminal procedure chapters are:

- Bail
- Charging decisions
- Criminal disclosure
- Prosecution file and trial preparation
- Family harm policy and procedures
- Adult diversion scheme

Diagram: Criminal Procedure Act - procedure overview

See ‘Criminal procedure - Introduction and jurisdiction’ for a diagram illustrating the processes to be followed under the Criminal Procedure Act 2011.

General administrative requirements

This topic outlines the general administrative requirements that apply to all court proceedings commenced. More detailed information is contained in later sections of the chapter on aspects such as timeframes and the requirements for specific situations.

Advising party details

Prosecution must:	**Defence must:**

include on the charging document: • the particulars of the person commencing the proceeding • the name of the employer of the person commencing the proceeding and particulars of an appropriate contact person in relation to the prosecution notify the defendant and the court of: • the address for service as soon as practicable after proceedings are commenced (usually included on the charging document) • any changes to the address for service where the prosecution is the Crown, notify the defendant and the court that the Crown has assumed responsibility for the prosecution.	notify the prosecutor and the court of: • the address for service as soon as practicable after proceedings are commenced • any changes to the address for service.

(s16, r2.9, 3.1)

Address for service

An address for service:

- must include:
  - a postal address if the party has one
  - an email address if the party has an email address for receiving documents while conducting proceedings under the Act
- may be an address provided by a lawyer representing the defendant.

(r2.9)

Document requirements

All documents required by the CPA, other than a charging document, must contain, or have attached to form part of the document, the following information (if known):

- the name and place of the court where proceedings to which the document relates are being or are to be heard
- the CRI or CRN

- the name of the parties to the proceeding
- the name of the prosecutor and any lawyer or representative conducting the defendant's case
- the section of the Act or provision of the rules to which the document relates
- authentication of the document when it must be filed, served or issued under the Act or rules
- any additional information specifically required for a particular document by the Act or the rules (e.g. the declaration required on evidential statements).

(r2.1)

Authenticating documents

Documents are authenticated by:

- signing and dating the document, or
- when the document is electronic (excluding affidavits or other documents required to be sworn, as these must be sworn, signed and dated), electronic means identifying the person responsible for the content of the document and the date of authentication.

(r2.2)

Filing documents

These documents...	must be filed in the court by:
Any document other than a charging document 14/0	• delivering it to the court registry by hand, or • sending it to the registry by: ◦ mail or fax to a postal address or fax number published by a registrar ◦ an electronic means provided by the court for that purpose.
Charging document	• delivering it to the registry by hand, or • an electronic means provided by the court for that purpose, such as the NIA () interface with the court eBench system.

(r2.3)

Original or copy?

A copy of a document may be filed and service of a copy is to be treated as service of the document, unless an enactment or rule expressly requires an original document to be served.

Where a copy of any affidavit or other document required to be sworn is filed in court, a Registrar may require that the original also be filed.

(r2.3)

When is a document other than a charging document considered to be filed?

When a document is filed by:	then it is filed:
hand delivery to the registry	at the time and date it is hand delivered.
sending it to the registry's address for filing	when it is received by the registry.
fax or an electronic system used by the registry	when it is received by the registry. **Note**: The registry must acknowledge receipt of any document filed electronically.

If there is any doubt as to whether any document may be accepted or treated as filed, a registrar may refer the matter to a Judge for determination. (See also 'Filing charging documents' in this chapter).
(r2.3)

Service requirements

Documents to be served on all parties

All documents filed with the court must also be served on every other party, **except** for:

- applications for a warrant to arrest a defendant or witness
- an application for a witness summons
- a notice of a not guilty or special plea by a defendant represented by a lawyer
- a notice of plea for a category 1 offence.

When a plea is entered by the filing of a notice, the registrar must notify the prosecutor.
(ss37 & 38, r2.4)

Who can serve the document?

The person or party who files any document or prepares any summons to be issued is generally responsible for serving that document. A registrar is responsible for serving notices of appeal or leave for appeal, and any summons other than witness summonses or the initial defendant summons.

Any document may be served on behalf of the person or party responsible for serving that document by:

- any officer or employee of the person or party acting in the course of their official duties
- any constable if the Commissioner of Police has approved service by a constable on behalf of that person or party
- any bailiff, court officer, registrar, or sheriff of the court if the court or registrar is required to serve the document
- any other person approved by the court or a registrar in a particular case.

In the case of a private prosecution or an unrepresented defendant, the court may make directions specifying who is responsible for serving documents.
(r2.8)

How to serve

Any document, other than a summons for a category 2 - 4 offence or an application by a prosecutor for a retrial that is required to be served by the Act or the rules may be served by:

- personal service to the individual. (See also 'personal service' below)
- electronic means, if the party to be served has provided a compatible address for service
- posting the document to an address for service provided by the party to be served, or if no such address has been nominated, to their last known postal address or place of residence or business
- faxing the document to an address for service provided by the party
- any other method agreed by the parties or approved by the court.

(r2.5)

Note: The provisions applying to infringement notices and request for hearings under the Summary Proceedings Act 1957 remain. (See also 'Proceedings for infringement offences' in this chapter.

Personal service

Summonses for category 2-4 offences, applications for a retrial under section 151 of the CPA and any application by a prosecutor for a rehearing under section 177 of the CPA must all be served personally on the defendant. The court may also direct that any document be served personally.

The document is served by leaving it with the person to be served or with a family member living at the same address who appears of or over the age of 18 years. If the person does not accept it, it is served by putting it down and bringing it to their notice.
(r2.6)

Family members

The term "family member" is not defined by the CPA or the rules.

To ensure a consistent approach to serving family members, the definition in the Summary Proceedings Act 1957 outlined below must be used by Police employees. These relationships to the person to be served are to be considered family members:

- father or mother
- spouse, including a civil union partner or de facto partner
- child
- brother or sister
- half brother or half sister.

(s24(2) Summary Proceedings Act 1957)

Other means of service in particular cases

This table details additional means of service on **persons** in particular situations.

If service is required on a person who is...	**you may deliver the document...**
living or serving on board any vessel	to the person on board who at the time of service is apparently in charge of the vessel.

in any barracks, camp or station while serving as a member of any of Armed Forces of New Zealand	at the barracks, camp or station to the adjutant or to the officer for the time being in command of the unit or detachment to which the person to be served belongs.
a prisoner in a prison	to the manager or other person apparently in charge of the prison.
in a youth justice residence	to the manager or other person apparently in charge of the residence.

(r2.7)

Body corporates, Crown organisations and incorporated societies

This table details means of service on body corporates, Crown organisations and incorporated societies.

If service is required on a...	**you may effect service of the document by...**
a body corporate or a Crown organisation	• sending it to the organisation for the attention of an officer or employee of that organisation • delivering it to an officer or employee of the organisation at its head office, principal place of business, or registered office, or by bringing it to the officer's or employee's notice if they refuse to accept it. **Note**: For a company or overseas company in New Zealand, you must effect service in accordance with sections 387 to 392 of the Companies Act 1993.

an unincorporated society	• by delivering or sending it to, or leaving it with, the president, chairperson, secretary, or any similar officer of the society.

(r2.7)

Proof of service

This table outlines how service is proved or when a document is considered served.

When a document is served by...	**service is proved by...**
personal service	• affidavit made by the person who served the document, showing the date, time, mode of service and identity (if known) of the person served • that person on oath at the hearing • providing an authenticated endorsement on a copy of the document served showing the date, time, mode of service and identity (if known) of the person served.
post	in the absence of proof to the contrary: • evidence that the document was sent to an address provided by the party to be served is proof that service was completed, and • the document is treated as having been served on the earlier of: ◦ the third working day after the day on which it is sent by mail, or ◦ the day on which it is received.

fax or an electronic means	in the absence of proof to the contrary, evidence that the document was sent to the address provided by the party to be served is proof that: • service was completed, and • the document was received on the day and at the time it was sent, unless it was sent on a non-working day or after 5 pm on a working day, in which case it must be treated as having been received on the next working day.

Note: Evidence of service as outlined above must be placed on the prosecution file to be available if proof of service is required by the court.
(r2.10)

Service on Sunday

Documents served in relation to a prosecution may be served on a Sunday.

Applications

Making applications

The majority of applications made under the CPA and related statutes may be made in writing or orally without a presumption in favour of either method. When a written application, other than an application for a summons or a warrant, is made, the rules relating to service, notice requirements and responding to an application apply.

Except for applications for a warrant to arrest a defendant or witness, or an application for a witness summons, all written applications must be served on all other parties.
(Part 2 Subpart 4 CPR)

Applications required in writing

Applications made under these CPA sections must be made in writing unless the court directs that it may be made orally:

CPA section	Applications for orders for:
s70	the defendant be tried in the High Court
s78	a pre trial admissibility hearing for a Judge alone trial

s90	an oral evidence order
s101	a pre-trial order for admissibility of evidence in a jury trial
s102 or 103	a Judge alone trial
ss125, 151, or 177	a retrial
ss126 or 177	a rehearing
s138	an order that one or more charges against a defendant be heard separately
s147	the dismissal of a charge
s157	transfer of proceedings
ss180 or 181	an order correcting an erroneous sentence
s364	a costs order
s366	an order for a bond to keep the peace

Applications under other Acts

Applications made under these Acts must be made in writing unless the court directs that it may be made orally:

Act	**Type of application**

Evidence Act 2006	Any application
Land Transport Act 1998 - s105	Applications for an order for a limited licence.
Sentencing Act 2002- s106	Applications for a discharge without conviction.
Other Acts	Any application that the court specifically directs must be in writing.

(r2.12)

Notice of application

A written application is made by filing a notice of application that:

- states the:
  - applicant's particulars
  - order or direction being sought
  - grounds for making the application
- refers to any provision authorising the order or direction being sought
- includes the evidence the applicant relies on, unless the court directs that to be filed separately
- states whether the application or any document attached to it is the original or an amended version (in this case, the version must be identified)
- confirms whether the applicant requests an oral hearing to determine the application, and if so, the estimated length of the hearing.

Each notice of application must also comply with the general document requirements prescribed by the rules
(r2.1, 2.13)

Responding to an application

When an application is required by the CPR to be in writing, a notice of response to it must be filed and served not later than 10 working days after the date the notice of application was served. Each notice of response must state that the party responding consents to the application, or opposes it in whole or in part.

Each notice of response indicating opposition to an application must include:

- the particulars of the respondent
- the grounds for opposing the application
- any evidence the respondent relies on unless the court directs that to be filed separately, or identify the evidence if already filed
- whether the response is the original or an amended version (in this case, the version must be identified)
- whether the respondent requests an oral hearing to determine the application and, if so, the estimated length of the hearing.

(r2.14)

Procedure for dealing with applications

When an application is made in writing and no application for an oral hearing was requested, or no notice of response is filed, the court may make the order or give the direction sought or decline the application. If required, the court may give directions relating to the determination of the application.

When a notice of response is filed opposing the application and requesting an oral hearing, the court may order that an oral hearing be held or give directions relating to the determination of the application, including the directions for the filing of further evidence and the making of an oral evidence order.

Commencing and authorising prosecutions

General principle

Police should exercise proper discretion when deciding whether or not to commence a prosecution. A prosecution should only be commenced after considering the ‘evidential’ and ‘public interest’ tests contained in the 'Solicitor General's Prosecution Guidelines' and where those tests are met. Refer also to the 'Charging decisions' chapter.

How are prosecutions commenced?

Prosecutions are commenced by filing:

- a charging document under the CPA, or
- a reminder notice or notice of hearing for an infringement offence, under the Summary Proceedings Act 1957.

A charging document is not sworn or affirmed, and may be filed electronically using an approved Police/Ministry of Justice system.

An exception exists for breaches of Police safety orders, as these are not criminal prosecutions. Refer to 'Breaches of Police safety orders' and related powers in the 'Police safety orders' chapter.

Authorising prosecution

Commencing a prosecution may be authorised by the following Police employees (including those in a temporary position):

- any constable of or above the rank of sergeant
- any Police employee at the equivalent position level of sergeant, who in the normal course of their duties would supervise staff who make charging decisions
- any Police prosecutor.

Authorisation should be given before the charging document is filed.

Note: A prosecution under the Films, Videos, and Publications Classification Act 1993 (FVPC Act) must be authorised by the District Manager: Criminal Investigations, a Detective Superintendent, or Manager: National Security Investigation Team. For more information see 'Prosecutions' in the 'Objectionable publications' chapter.

Recording approvals

The person authorising a prosecution must:

- note the approval on the appropriate file, indicating the charge(s) to be filed and the offence category
- refer to sections creating the offence and providing the penalty
- endorse the prosecution report POL () 258P.

Attorney-General or Solicitor-General's consent

There are certain charges which require the consent of the Attorney-General prior to the filing of a charging document. For example, bribery and corruption offences under the Crimes Act 1961, inciting racial disharmony under the Human Rights Act 1993, and extraterritorial firearms offences under the Arms Act 1983. A full list of offences requiring consent of the Attorney-General is available here.

It is the O/C case's responsibility to obtain the Attorney-General's consent prior to filing the charging document and they should liaise with Police Legal Services to do so. Likewise, if the O/C is unclear whether a charge requires the consent of Attorney-General, they should contact Legal Services.

The O/C should provide Legal Services with a draft copy of the charging document/s and sufficient material to allow the Attorney-General to properly consider the evidence and relevant circumstances of the alleged offence.

Although it is not a statutory requirement for proof of consent to be filed with the charging document, it is encouraged. The O/C should scan the document containing proof of consent and attach it under the Prosecution Case on NIA, so PPS can see that this procedural requirement has been complied with. A note to this effect should also be recorded in the POL258 report.

Preparing charging documents

Charging documents

A charging document must:

- be in the format provided by the Secretary for Justice (form MOJ9001)
- contain the information required by the CPA and the CPR
- be filed in the correct court either electronically or in hard copy within the required timeframe.

Content of charging documents

Except where otherwise provided by any Act, a charging document:

- must relate to a single offence only
- may be representative, and if so, must be identified as such
- may charge in the alternative several acts or omissions if these are stated in the alternative in the enactment that prescribes it
- must contain sufficient particulars to fairly inform the defendant of the substance of the offence with which they are charged, including:
    - a reference to a provision of an enactment creating the offence that it is alleged the defendant has committed
    - if the charge is representative, the particulars required to be included for representative charges.

A charging document should follow the wording of the relevant statute. Where the offence is a continuing one, such as ‘using’ premises, it is correct to allege that the offence was committed on certain days. When the precise date cannot be established, you may record that the offence was committed ‘on or about’ a certain date or between certain dates. Offences committed as a joint enterprise by two or more defendants should clearly state "together with" each other party.
(s17)

Representative charges

Representative charges must be identified as such in the permanent court record, however, preference should be given to individual charges when these can be clearly identified and meet the 'Solicitor-General's Prosecution Guidelines'.

Representative charges may only be filed if the prosecutor is unable to particularise the charges or if it would be unduly difficult to separate the charges.
(s20)

Unable to particularise

This occurs when:

- multiple offences of the same type are alleged, and
- the offences are alleged to have been committed in similar circumstances over a period of time, and
- the nature and circumstances of the offences are such that the complainant cannot reasonably be expected to particularise dates or other details of the offences.

Example: multiple instances of historic sexual violation in similar circumstances over a period of time.

Unduly difficult to separate

This occurs when:

- multiple offences of the same type are alleged, and
- the offences are alleged to have been committed in similar circumstances such that it is likely that the same plea would be entered by the defendant in relation to all the offences if they were charged separately, and
- because of the number of offences alleged, if the offences were to be charged separately but tried together it would be unduly difficult for the court (including, in any jury trial, the jury) to manage the separate charges,
- the same plea would be likely for all offences.

Example: multiple cheque fraud or other complex repetitive offending.

Alternative charges

A charging document may charge in the alternative several acts or omissions if they are stated in the alternative in the enactment that prescribes it.

A charging document containing an alternative charge, within the same document, must relate to a single offence and not different offences such as burglary and receiving. An example of an offence that may be worded in the alternative is section 188(2) of the Crimes

Act 1961. The wording of this section provides for multiple alternatives, such as wounding with intent to injure, or wounding with reckless disregard, and may be charged in the alternative in the same charging document.

Amending and dividing charges

If a charge is filed as a representative charge or where multiple charges are filed, the court may, on application or by its own motion, order that:

- the charge be worded in the alternative
- the charging document be amended or divided into two or more charges
- two or more charges be amalgamated into a single representative charge.

(ss19 & 20)

Where the court orders that a representative or an alternative charge be divided into two or more charges, an adjournment is required to enable the filing of the new charges before the next appearance. The court will provide the prosecutor with details of the charges to be filed and the prosecutor must ensure charges are filed before the next appearance.

Notification of charges to be heard together

Police may notify the court that two or more charges should be heard together, or the charges against one defendant be heard 'together with' charges against one or more other defendants.
(s138)

Where multiple charges are filed against the same person for the same first appearance date, NIA automatically notifies the court that the charges are to be heard together as part of the electronic filing interface. Charges against more than one defendant that are filed as 'together with' each other for the same first appearance will also be notified to the court via NIA as to be heard together however, the prosecutor should confirm the notification with the court.

Where notification is successful and charges are to be heard together, the charges will have the same CRI number. In NIA, additional charges filed after the first appearance will create a new 'Prosecution Case'. If the prosecutor has successfully notified the court that the charges should be heard together under section 138, the prosecution cases for the initial and additional charges should be joined together.

If additional charges are filed for the same prosecution case after the proceeding has had its first appearance, the prosecutor must notify the court verbally or in writing that the charges are to be heard together.

The charges must be heard in accordance with the notification given by the prosecutor (either via NIA or verbally in court) if the notification is given **before** the entry of a plea.

If the prosecutor seeks to join charges or amend a notification **after** the entry of a not guilty plea, the prosecutor must seek leave of the court. See also notification of charges to be heard together in the administration and review stages of proceedings.

The court may make an order to separate charges following an application by the defendant or of its own motion if it is not in the interests of justice for the charges to be heard together. If the prosecutor wants the charges heard separately, leave to amend the notification that joined the charges must be granted (unless the amendment is sought after a plea is entered).

The following are examples of notifying the Court to join charges.

If notifying the court **before** the entry of a plea	"May it please your Honour, the prosecution seeks to confirm there are 5 charges before you relating to this defendant, those charges to be heard together."
If notifying the court **after** the entry of a plea	"May it please your Honour, There are 5 charges before you relating to this defendant, and the prosecution seeks the leave of the Court to have those 5 charges heard together."

Offences requiring previous convictions

If the defendant is charged with an offence for which the penalty is greater if they have been convicted of that offence or of some other offence, the charging document must also disclose:

- the range of penalties available on conviction for the offence
- the existence of the previous conviction(s) which if admitted or proved against the defendant would make them liable to a greater penalty.

Offence to file false or misleading charging document

Given that charging documents are not sworn or affirmed, the CPA provides a separate offence for knowingly including, or directing another person to include, false or misleading information in a charging document. The offence is a category 3 offence, carrying a maximum penalty of 3 years imprisonment.
(s23 CPA)

Filing charging documents

Who may file a charging document

Any person may commence a proceeding by filing a charging document. For Police, any Police employee may file a charging document once the prosecution is approved. (See 'Authorising prosecutions' in this chapter).

Proving prior consent

Where the leave (or consent or certificate) of a Judge, the Attorney General or another person is required for the filing of a charging document, a memorandum confirming consent must be filed with the court once the charging document is filed.
(s24 CPA)

Where should charging documents be filed

A charging document must be filed in the District Court nearest the place where the offence was committed or where the person filing the document believes the defendant can be found.

If more than one court of filing is possible for multiple charges with different locations, the document may be filed in any one of those courts.

If all parties agree, the charging document may be filed in another court.

You should consider the desired place of trial before filing the charging document as the location of filing usually determines the location of any subsequent trial.

Where two or more charging documents are filed in respect of the same defendant, you may file the charging document in a court in which any one of the charging documents could be filed.

Place of hearing, trial and transfer

Unless a court order is made, or there is a statutory provision to the contrary, a charge must be heard and determined in the court where the charging document was filed.

Youth Court matters are filed in the District Court and heard in the Youth Court, as a division of the District Court. See the 'Youth justice' chapter.

Prosecutions relating to Category 4 matters are commenced in the District Court with the second and subsequent appearances transferred to the High Court nearest the court of filing. Jury trials take place in the court where the charging document was filed unless that court does not have jury jurisdiction (in these cases, the trial takes place in the nearest court with a jury capability.

(See sections 35, 36, 71- 76 of the CPA for additional information).

Any District Court Judge or the High Court may order that a charge be heard and determined by another court. A Community Magistrate, Justice of the Peace or Registrar may, with the consent of each party, order that a charge, punishable by 3 years imprisonment or less, be heard in another court (s157 CPA).

An application to transfer proceedings may be required when:

- the defendant is located and arrested, and a charging document filed, away from the offending location
- the nearest available court for filing the charging document is away from the nearest physical court (e.g. this may occur with after-hours rural arrests)
- multiple defendants or charges exist that should be determined together, in the interests of justice.

There is a general desirability for justice to be seen to be done in the community in which the alleged offending occurred (R v Houghton 23/11/99, CA371/99).

Contact your local PPS office to discuss transferring matters to the court closest to where the offending occurred.

Limitations on Community Magistrates and Justices to transfer

Note that Community Magistrates and Justices may only transfer matters with a maximum penalty of 3 years imprisonment or less, with the consent of all parties.

If the maximum penalty is more than 3 years imprisonment, or when any of the parties do not consent to a transfer, the proceedings must remain in the court of filing.

When proceedings have commenced and must be heard and determined in a particular location, Community Magistrates and Justices may only remand or adjourn matters to that court for any subsequent appearance. The limitation of jurisdiction to transfer proceedings may require an application to be made to a Judge for matters to be returned to the community in which the offending occurred.

Timeframes for filing charges

The timeframes within which charging documents must be filed following the offending are aligned to offence categories and penalties.

This table outlines the general limitation periods for the filing of a charging document. (Different timeframes for particular offences may be mandated by statute, e.g. section 136(3) of the Land Transport Act 1998 provides that there is no limitation period for driving while disqualified and a limited number of other transport related offences).

Offence category	Penalty qualification	Limitation period
Category 1 & 2	• 3 months or less imprisonment, or • fine only of $7,500 or less	6 months after the date on which the offence was committed
Category 1 & 2	• more than 3 months but not more than 6 months imprisonment, or • fine only of $7,501 -$20,000	12 months after the date on which the offence was committed
Category 1 & 2	• more than 6 months imprisonment, or • fine only of 20,001 or more	5 years after the date on which the offence was committed, or later with the Solicitor-General's consent
Category 3	• 3 years or less imprisonment	5 years after the date on which the offence was committed, or later with the Solicitor-General's consent
Category 3	• more than 3 years imprisonment	any time
Category 4	N/A	any time

How to file a charging document

Once the charge is authorised, a charging document must be filed electronically via a joint Police and Ministry of Justice electronic system provided for the purpose. When filed electronically, there is no requirement to file a hard copy with the court unless the court specifically requests it.

This table outlines the steps to file a charging document.

Step	Action
1	Enter authorisation for the prosecution in NIA (). See 'Authorising prosecutions' for details of who can authorise.
2	Enter the charging document in NIA.
3	Unless overridden, the charging document is left in the electronic queue for automatic filing. This will occur at: • 1am on the following day if a summons was issued • 7am on the day of the first appearance if the defendant was arrested on the charge.
4	Override the automated system and force immediate filing when necessary, e.g. when the document is: • required for a court appearance • an electronically queued charge needs to be brought forward to an earlier date, such as the defendant being arrested for breach of Police bail.

Filing charging documents when the computer system is not functioning

If the computer system fails, refer to your local File Management Centre, who will be following business continuity procedures until the system is restored.

Notifying the defendant of charges

Summary

Usually a defendant is notified of a prosecution and the charges in one of three ways:

- arrest followed by filing a charging document and a court appearance
- Police bail with or without conditions
- summons to appear issued by the prosecuting agency.

The commencement of proceedings triggers the first requirements to notify the defendant of a prosecution, the charges and the details of the prosecuting agency. (Refer to the 'Criminal disclosure' chapter for detailed information on disclosure requirements and

'service requirements' in this chapter for information on serving documents and notices).

Arrest

The decision to arrest is separate to a decision to charge. The appearance in court of a person arrested is only one outcome of the arrest process. See also the 'Arrest and detention' and 'Formal warnings' chapters and section 316(5A) of the Crimes Act 1961.

Where the defendant must attend court following arrest due to a decision not to grant Police bail or summons, the defendant is notified of the charges and appears in court. Additional information about the court process as required by the CPR is given to them by the registrar at the court.

Police bail

Following an arrest without warrant, a defendant may be granted Police bail with or without conditions, unless there are restrictions on their release from custody. Police bail advises the defendant of the charges and requires them to attend court on a specific date and time. The defendant risks the possibility of arrest if bail conditions are not met and the prospect of an additional criminal conviction if they fail to appear in court.

(See the 'Bail' chapter for further information).

Police bail with conditions

If conditions are imposed in addition to the requirement to attend court, the date on which the defendant must attend must not be later than 7 days from the date bail was granted. An exception applies if the court at which the defendant is to be bailed will be closed for more than 7 consecutive days following the arrest. In this situation, the date the defendant must attend court must not be later than 14 days from the grant of bail.

(s21 and 21B Bail Act 2000)

Police bail without conditions

If the only condition of Police bail is the requirement to attend court at a specific place and time, the date on which the defendant must attend must not be later than 14 days from the date bail was granted.

Before granting Police bail without conditions, consider whether a constable issued summons would be more appropriate in the circumstances. A summons does not require an arrest and allows for a greater length of time before the first appearance. Failure to appear on a summons may also result in a warrant to arrest.

Summons to appear

A defendant may be summonsed to appear at court by a Police employee without a requirement to arrest first, or seek a summons from the court. A defendant may be summonsed if they have not been arrested under a warrant or if they have not been bailed by Police.

All defendant summonses may be issued by the prosecuting agency. This allows a constable to issue a summons at the road side, at a station, or subsequent to further enquiries. A summons may be issued before or after a charging document is filed and no more than 2 months before the required court appearance.

Written information, in the prescribed form, advising the defendant of the court process is on the back of the defendant's copy of the summons. This includes information relating to entering a guilty plea by notice (commonly known as a guilty letter). The decision to enter any plea by notice must be made independently by the defendant. Police must not facilitate the entry of a guilty plea by notice under any circumstances.

There are 2 forms of defendant summonses, one for general summonses relating to a charge (s28 CPA) and one following an evidential breath test (s29 CPA). Despite the separate legislative provisions relating to the type of summons, both section 28 and section 29 summonses are contained in the same summons form.

Section 28 charge summons

A constable or any other person may issue and serve a summons on a person if they have:

- good cause to suspect the person has committed an offence, and
- filed, or intend to file, a charging document in respect of that offence.

Section 29 evidential breath test summons

An enforcement officer may issue and serve a summons on a person if the person:

- undergoes an evidential breath test under section 69 of the Land Transport Act 1998 and the test is positive, and
- does not advise an enforcement officer within 10 minutes of being advised of the matters in section 77(3)(a) of the Land Transport Act 1998 that they wish to undergo a blood test.

If a defendant is summonsed under section 29, section 28 does not apply.

Filing charging documents before or after summons

A charging document must be filed as soon as reasonably practicable after a summons is issued — the date of filing should not be more than 5 working days after the issuing of a summons. The person who issues the summons is responsible for ensuring the charging

document is filed.
(s31 CPA)

Service of summons

Refer to service requirements for procedures for serving documents, including summonses.

Notifying changes in charges

When a defendant is summonsed to appear in court there may be occasions when:

- the charging document contains a charge that is different from that for which the person was summonsed, or
- a decision is made not to file a charging document.

In these circumstances, the person issuing the summons must take all reasonable steps to notify the defendant as soon as practicable, but before the court date. If the person summonsed is notified that a charging document will not be filed, they are not required to appear in court on the date specified in the summons.

(s32 CPA)

All attempts, successful or otherwise, to notify the defendant of a change in charge must be documented and recorded on the POL 258P report (available in Police Forms> Prosecutions) on the prosecution file.

Order to produce

When a defendant or witness is also in custody on other matters, an order to produce issued by the court under section 65 of the Corrections Act 2004 is required.

Follow these steps to obtain an order to produce.

Step	Action
1	File a charging document.
2	Issue the summons to defendant (this may be before or after filing the charging document).

3	Email or fax the court of appearance seeking an order to produce, requesting confirmation when done. Provide the following information: • the name of the defendant • prison • charges • date of appearance.
4	Serve defendant summons on Prison Manager.
5	Court sends the OTP to the prison.

To ensure an accurate record of communication is kept, the fact the defendant is a serving prisoner and the request for an order to produce should be documented in the initial appearance POL 258P to advise the prosecutor.

Warrant in lieu of summons

When a charging document has been filed and a summons issued but has not been able to be served, a warrant to arrest may be issued to compel the defendant to appear.

If the summons relates to:

- a category 1 offence, only a District Court Judge may issue a warrant to arrest the defendant and bring them before a District Court
- a category 2, 3, or 4 offence, a Registrar, Justice, Community Magistrate, or Judge may issue a warrant to arrest the defendant and bring them before a District Court.

Before issuing the warrant, the judicial officer or registrar must be satisfied that all reasonable efforts have been made to serve the summons on the defendant.

(s34 CPA)

Proceedings for infringement offences

Commencing proceedings

Proceedings in respect of infringement offences, prosecuted by Police, are the responsibility of the Police Infringement Bureau (PIB). Proceedings may be commenced by:

- filing a charging document under the CPA (with the leave of a District Court Judge or a registrar), or
- where an infringement notice has been issued, by filing in court a copy of a reminder notice, or a notice of hearing.

Reminder notices

If an infringement notice has been issued, an informant may serve a reminder notice on a person, if:

- 28 days have expired from the date of service
- the infringement fee for the offence has not been paid, and
- the informant has not received a notice requesting a hearing in respect of the offence.

The reminder notice must be in the prescribed form containing substantially the same particulars as the infringement notice.

Filing a reminder notice in court

Once served in accordance with the criteria above, the informant may file in a court a copy of the reminder or infringement notice (with the date and method of service recorded on it).

Court order deemed to have been made

Where a copy of a reminder notice is filed in court within six months of the offence, an order is deemed to have been made that the defendant pay a fine equal to the amount of the infringement fee for the offence, together with costs of the prescribed amount, as if on the determination of a charging document in respect of the offence.

In any proceedings for an infringement offence for which an infringement notice has been issued, it is presumed, unless the contrary is proved, that:

- the infringement notice has been duly issued, and the notice served on the defendant
- any reminder notice or notice of hearing required to be served on the defendant has been served, and
- the infringement fee for the offence has not been paid as required.

(s21)

Notices of hearing

For information on what to do if the defendant requests a hearing, refer to section 21(6) (8) of the Summary Proceedings Act 1957.

Police Instructions

Criminal procedure - Costs orders

Summary

Purpose

This chapter outlines:

- when costs orders may be made
- procedures when making and responding to applications for costs orders
- procedures when costs orders are made against Police
- requirements for appealing costs orders.

Legislative references

Unless otherwise stated, references in this chapter to:

- sections, are to the Criminal Procedure Act 2011 (CPA)
- rules, are to the Criminal Procedure Rules 2012 ("the rules").

When can costs orders be made?

The court may make a costs order where there has been a significant procedural failure in the course of a prosecution, and there is no reasonable excuse for that failure.
(s364)

Costs can be ordered following an application from either party, or on the judge's own motion. Costs may be ordered against the defendant, the defendant's lawyer, or the prosecutor. The prosecutor includes the person who commenced the proceeding (i.e., OC () Case) and any constable or other Police employee authorised by the Commissioner of Police to conduct proceedings (i.e., PPS () Prosecutor).
(s10)

Costs ordered against Police as the prosecutor must be paid by Police direct to the party indicated in the order, which may be the court, the defence counsel, the defendant or to the consolidated fund.

What is a procedural failure?

A procedural failure includes a failure or refusal to comply with a requirement of the Criminal Procedure Act 2011 or the Criminal Disclosure Act 2008, and any associated Rules or Regulations.

Awards are made at the judge's discretion

An award of costs under section 364 CPA is discretionary, and there are no specific considerations listed in the legislation.

Quantum

The quantum of the award is within the judge's discretion, but it must be no more than is 'just and reasonable' in light of the costs incurred by the court, the victims, witnesses and any other person.
(s364(3))

Other criminal procedure-related chapters

These related criminal procedure chapters deal with the various stages of the criminal process:

- Criminal procedure - Introduction and jurisdiction
- Criminal procedure Commencement of proceedings
- Criminal procedure - Administration stage
- Criminal procedure - Review stage (CMM process)
- Criminal procedure Trial stage
- Criminal procedure - Disposition
- Criminal disclosure

Making and responding to applications

Applications for costs orders

Applications from parties for costs must be made in writing, and follow the notice of application/response procedure and timelines set under rules 2.12 - 2.15 Criminal Procedure Rules 2012. However, the judicial officer or Registrar to whom the costs order application is to be made may direct that it be made orally.

Applications for orders must cover the matters detailed in r2.13 and be served on the other party.

Before the Court can make a costs order, the party against whom it is to be made must be given a reasonable opportunity to be heard (s364(5)). It is likely that a separate costs hearing will be scheduled for the parties to make submissions and the decision to be made.

Responding to an application or motion for costs

If a PPS () prosecutor is presented with an application for costs pursuant to section 364 Criminal Procedure Act 2011, follow these steps:

Step	Action
1	A written application from defence complying with r2.13 must be served on Police.
2	If counsel presents an unannounced and unanticipated application for costs, remind them and/or submit to the court that any application under section 364 CPA must be made in writing and follow the notice of application/response procedure under the Criminal Procedure Rules 2012 (rules 2.12 - 2.15).
3	If the court permits an oral application from the defence, or the court proposes to make an order on the court's own motion, the prosecutor must seek an adjournment in order to consider the application and prepare a response. (Section 364(5) CPA provides that the responding party must be given a 'reasonable opportunity to be heard'. You should submit that in order to give effect to natural justice, principles of fairness and section 364(5) an adjournment of 10 working days is required to investigate the claim, take advice, consider the legitimacy of the application and formulate a response.)
4	Contact the PPS () Legal Adviser before responding to any application for costs.
5	Prepare a response in accordance with r2.14.
6	Serve the response no later than 10 working days after the service of the application. (r2.14(1))
7	The matter will then be dealt with in accordance with the procedure in r2.15.

If a costs order is made against Police

Initial action when a cost order is made

If a costs order is made, follow these steps:

Step	Action
1	The prosecutor must take thorough notes of the costs decision made in court, including the exact details of the order, who is to pay, what amount, and to whom. (The court will produce an "order" document informing the party required to pay the costs, who the order has been made to (s364(8) CPA). However, a copy of the decision may not be received from court in time for an internal analysis).
2	On return to the office: • advise the District Prosecution Manager (DPM) that a costs order has been made • add a NIA () case memo to the DOCLOC () case stating that a costs order has been made.
3	The DPM () must immediately notify the PPS () Legal Adviser at PNHQ (), and the relevant District Commander. The District Commander will advise the DPM () which relevant senior manager in the line of command the DPM should engage with for the review (e.g. Area Commander, District Crime Manager, Prevention Manager, Operations Manager).

4	The prosecutor must file a POL () 258 report to their DPM () within three working days about the judge's decision, including: • the judge's reasons given when making the order • the details of the order itself • a summary of the case and the submissions made by both parties • a timeline of when key actions took place with the investigation and prosecution, including the date of disclosures • comment on the standard of the prosecution file and whether all matters from a prosecution perspective have been complied with (refer to the prosecutor notes, copies of NIA () tasks sent, POL () case memos, Disclosure Index, the CMM discussion and document etc). If the prosecutor thinks the costs order made ought to be appealed, they must also include in the POL () 258 why they think the judge's decision to award costs was plainly wrong, and/or that the judge had erred. (See 'Appealing a costs order').
5	Depending on the anticipated time required to carry out an internal review of where the perceived fault lies and who must pay the order, the DPM () may ask Police prosecutors to seek an extension of time for payment. This request may or may not be granted by the courts

Carrying out the review of the order

Follow these steps when considering the costs order.

Step	Action

1	The District Prosecution Manager (DPM) must: • read the prosecutors report and the prosecution file, and have regard to what the judge said while giving the decision • draw their own conclusion as to why costs were awarded against the Police and where in the prosecution process the fault or accountability lies i.e. was it primarily caused by a failure of PPS () or district staff? (In order to form this view, discussion may be required with the relevant district senior manager).
2	Based on the cause of the failure that led to the costs order, the DPM (): • makes a recommendation on whether PPS () or the District should pay the order, or whether costs should be apportioned across the two cost centres • provides this report and a copy of the file to the relevant senior manager in the District, copied to the supervisor of the QC () case.
3	Once the District senior manager has had an opportunity to analyse the file and the costs order, they must meet with the DPM () to discuss and conclude who is responsible to pay the order: District or PPS (). (Costs must usually be paid within 28 days so it is essential that agreement is reached as soon as possible). • If the failure was caused by PPS (), the DPM () should make recommendations about how to address and resolve the issues that caused the failure/s so that they do not occur again. That may be via training, review of policy/practice, legal issues to be addressed and individual performance issues. • If the failure was caused by the District, the District senior manager is responsible for making these recommendations.
4	If unable to agree on the cause of the failure (and therefore who should pay), the file and reports from both the DPM () () and District senior manager, must be forwarded to the PPS () Regional Manager for resolution with the District senior manager.

5	If responsibility for costs is still unable to be resolved, the reports must be escalated to the District Commander and Director: PPS () for final decision. **Note**: Any costs orders greater than $10,000 must be escalated to the District Commander and Director: PPS () due to financial delegations.

Payment of the costs order

The party against whom the costs order has been made must contact the Ministry of Justice Collections Department within 28 days to pay the order unless the judge specifies otherwise

Coding invoices

Invoices must be coded to 32160 (Legal Expenses), with a project code of either:

- 555623 (Costs ordered for failure to comply with Criminal Procedure Act 2011), or
- 555624 (Costs ordered for failure to comply with Criminal Disclosure Act 2008).

Appealing a costs order

Requirements for successful appeals

Any appeal against a costs decision is an appeal against a judge's exercise of their discretion. There are no specific guidelines on what a judge must or must not consider when determining whether to order costs. Thus to successfully appeal, the appellant must show that the decision made was plainly wrong, or the judge erred in some way.

Appeals by the Police against costs orders must always be made by the Solicitor General. Police must seek Crown Law approval before proceeding to filing an application to appeal.

Procedure when an appeal is indicated

On receipt of a POL () 258 indicating that an appeal against a costs order may be warranted, follow these steps:

Step	Action
1	The DPM () advises the District senior manager of the potential appeal, and that the post-order review process is on hold until any appeal process is complete.

2	The DPM () forwards the POL () 258 report and discusses it with their Regional Manager, who in turn forwards the file to the PPS () legal adviser for consideration.
3	PPS (): Legal Adviser reviews the report and determines whether to seek approval from Crown Law to appeal.
4	If Crown Law approve, the PPS () Legal Adviser prepares a Notice of Application within 20 working days of the order being made.

For more information on appeals refer to Appeal Provisions in the 'Criminal Procedure Disposition' chapter.

Costs orders in Crown Prosecutions commenced by Police

Some prosecutions commenced by Police will be conducted by the Crown Solicitor as a Crown prosecution. Costs may be ordered during these proceedings, which could be the result of Police failures. If a costs order is made against the prosecutor whilst the Crown is conducting the proceedings, the Crown Solicitor is responsible for the payment of those costs unless agreed otherwise with Police (refer to 'Schedule E' of the Memorandum of Understanding between Crown Law and Police).

Where the Crown seeks agreement to have some or all of the costs order paid by Police, an internal review process should be followed, the outcome of which should feed into the discussions with the Crown. Subject to when the Crown assumed responsibility for the prosecution, the review may be led by the relevant District senior manager rather than the PPS () District Prosecution Manager.

Police Instructions

Criminal procedure - Disposition

Summary

Purpose of this chapter

Criminal proceedings may conclude in a variety of ways.

This chapter outlines the most common ways that a prosecution may end, or be disposed of including:

- conviction and sentencing, which may be accompanied by additional orders
- the completion of diversion
- withdrawal of the charge (see Withdrawing and amending charges in the Review stage chapter)
- dismissal
- acquittal
- a mental impairment ruling, and
- discharge with or without conviction.

The information in the chapter is a reference starting point only. Refer to the Criminal Procedure Act 2011, the Criminal Procedure Rules 2012 and associated regulations for full guidance.

Disposition stage

The disposition stage is the fifth of the five stages of criminal proceedings.

Statutory references

All references in this chapter to the "Act" or to the "CPA" are to the Criminal Procedure Act 2011, and references to the "Rules" or the "CPR" are to the Criminal Procedure Rules 2012, unless otherwise stated.

Other criminal procedure-related chapters

This chapter is the sixth of linked chapters dealing with the various stages of the criminal process:

- Criminal procedure Introduction and jurisdiction
- Criminal procedure - Commencement of proceedings
- Criminal procedure - Administration stage
- Criminal procedure Review stage (CMM process)
- Criminal procedure - Trial stage
- Criminal procedure - Disposition
- Criminal procedure - Costs orders

Different processes apply to youth. See the Youth Justice Police Manual chapter for details.

Related information

Other Police Manual chapters with information related to criminal procedure:

- Youth justice
- Bail
- Charging decisions
- Criminal disclosure
- Prosecution file and trial preparation
- Family harm policy and procedures
- Adult diversion scheme

Diagram: Criminal Procedure Act - procedure overview

See Criminal procedure - Introduction and jurisdiction for a diagram illustrating the processes following the commencement of proceedings under the Criminal Procedure Act 2011.

Sentencing

Prosecutor's responsibility to assist the sentencing court

Police now participate more actively in sentencing. A prosecutor may be called upon by the judicial officer, or may elect to make sentencing submissions either orally, or in writing. (See also PPS practice note on written submissions and the Chief Justice's Sentencing practice note 2014).

When determining the most appropriate sentencing outcome following a guilty plea or finding of guilt, or for a sentence indication, (see information on sentence indications in the Review stage chapter), the judicial officer requires sufficient information to ensure that

the sentence imposed reflects the purposes and principles of sentencing. The prosecutor must assist the sentencing court in the determination of the appropriate sentence and the avoidance of errors, by providing the necessary information and, where appropriate, making relevant legal submissions.

Information relevant to sentencing

To ensure the court has appropriate information before it, the prosecutor must have knowledge of:

- an agreed summary of facts (unless the defendant is found guilty)
- the defendant's previous conviction history (QHA ())
- maximum and where appropriate, minimum sentences, orders or warnings required
- reparation details for any reparation sought
- details of any co-offenders and the outcome or status of any linked prosecution, including the sentences imposed on all co-offenders
- any victim impact statement prepared in relation to the offence concerned. (See Victim impact statements in the "Victims (Police service to victims)" Police Manual chapter)
- any sentencing presumptions that apply to the charge, such as the presumption in favour of imprisonment for certain offences
- prevailing sentencing levels for comparable offences and defendants (you must be aware of the relevant guideline judgments in which the sentence levels for varying type of offences are set out)
- sentencing jurisdictional limits, if the judicial officer is a Justice or Community Magistrate.

Bail pending sentence

The court may impose additional conditions of bail to ensure that the defendant takes the steps necessary for the sentencing process to progress within a reasonable timeframe (e.g. a requirement to attend for a pre-sentence report interview with a probation officer at a given time and location) and may remand the defendant in custody if they fail to comply with such a condition. See the Bail chapter for additional information.

Sentencing in the absence of the defendant

The court may only sentence in the absence of a defendant when the offence is a category 1 offence and the defendant either:

- pleads guilty in writing and has not indicated a wish to attend, or
- is required to attend court and does not attend, but the prosecutor is present.

(see ss38, 118, 119 & 124 CPA and rules 2.1 & 4.4 Criminal Procedure Rules 2012)

Correction of erroneous sentence

If the court:	the court may...
• imposes a sentence that it may not lawfully impose, or • does not impose a sentence or order that it is required by law to make...	impose a new sentence or order: • on its own motion, or • by application from either party involved, or in certain situations the Chief Executive of the Department of Corrections.

(ss 180 & 181 CPA)

The decision to correct an erroneous sentence may be made by the Judge that imposed the original sentence, or if that Judge is not available, a Judge of the same court, or a District Court Judge if the original sentence was imposed by a Community Magistrate or Justice.

The court may also decide to remove the decision to the first level appeal court to determine as if it were an appeal on a question of law. (s180(3))

In order to impose a new sentence, the court may issue a summons or warrant to arrest to compel the attendance of the defendant for sentencing.

Other types of disposition

Dismissal

The court may dismiss a charge at any stage prior to a finding of guilty or not guilty if:

- no evidence was offered by the prosecutor at trial
- the court is satisfied there is no case to answer (for Judge-alone trials)
- the judge is satisfied that, as a matter of law, a properly directed jury could not reasonably convict the defendant.

The court must give any decision to dismiss a charge in open court.

Note: There is no longer any differentiation between a dismissal on merit and a dismissal without prejudice. An application to withdraw a charge is the preferred option where a prosecutor is faced with offering no evidence without commencing the trial.

Under the Criminal Procedure Act 2011, a dismissal is deemed to be an acquittal and is a bar to further proceedings relating to the same facts (see information about special pleas and pleas of previous acquittal in the Administration stage chapter), unless a retrial is

granted due to a tainted acquittal or further compelling evidence. Seek specialist legal advice if a tainted acquittal or further compelling evidence is likely, as consent from the Solicitor-General is likely to be required prior to any investigation or application for a retrial.
(ss151-156 CPA)

Acquittal

Acquittal is a legal term for a finding of not guilty following a trial. The term is not specifically defined by statute in the simplest form (finding of not guilty). However, acquittal is given an extended definition in sections 151 and 152 of the Criminal Procedure Act 2011 to also include dismissals and the setting aside of a conviction on appeal, when considering the retrial of acquitted persons.

Acquittal also encompasses dispositions under other statutory provisions, e.g. a discharge without conviction (s106 Sentencing Act 2002), that are deemed to be an acquittal. See also sections 34 and 34A of the Policing Act 2008 regarding the retention of identifying particulars.

Usually, when acquitted of an offence by way of a not guilty finding, the prosecution of that charge ends without penalty or sanction against the defendant. Where specific legislative provisions apply, such as those relating to insanity or discharge without conviction, the court may be empowered to make a particular order. In those instances, refer to the applicable legislation.

Diversion

When a prosecution is completed through the successful completion of diversion the prosecutor must notify the court. When notified of the completion of diversion the charge(s) will be dismissed by the court. Refer also to the Adult diversion scheme chapter for further information.
(s148)

Insanity

At any stage before or at a trial, the issue of whether the defendant was insane at the time of the offence can be raised. The process for finding a person not guilty on the grounds of insanity or mental impairment is contained in the Criminal Procedure (Mentally Impaired Persons) Act 2003 as well as section 23 of the Crimes Act 1961.

Refer to the People with mental impairments chapter for further information.

Stay of proceedings

The Attorney-General may, at any time after a charging document has been filed against any person and before that person has been convicted or otherwise dealt with, direct that the proceedings are stayed. The Attorney-General must give notice to the court if a direction to stay proceedings is given. The court will record the direction in the permanent court record, once notified.

An order for a bond to keep the peace

Any person may apply to a court presided over by a District Court Judge for an order requiring another person to enter into a bond (with or without sureties) for keeping the peace. See s366 CPA for details of the circumstances in which such an order may be made.

Appeal provisions

Appeal pathways

Appeals against the decisions of a District Court Judge will usually be to the High Court (with some exceptions). Appeals in the High Court or Court of Appeal are conducted by the Crown.

Appeals against a decision of one or more Justices or one or more Community Magistrates are made to the District Court presided over by a District Court Judge. The only exception to this general rule is an appeal against a disclosure order made by a Community Magistrate or Justice; these appeals are heard in the High Court.

Approval to appeal required

The Solicitor-General must give consent to an appeal before the filing of the notice of appeal for all appeals except for bail appeals. The Solicitor-General's consent is sought via the PPS () Legal Adviser or Police Legal Services. Given the short time frames allowed by legislation for filing a notice of appeal, all the material relating to a possible appeal must be forwarded to the relevant legal advisor with urgency.

Consult your local Police Prosecution Service or Police Legal Services for queries relating to a specific matter.

Timeframes

This table outlines the timeframes within which a Notice of Appeal must be filed for most prosecution appeals.

Nature of appeal:	Maximum time limit to file:

Appeal against disclosure order made in the District Court	**3** working days (s33 Criminal Disclosure Act 2008)
Appeal against bail decision	**20** working days (ss41-49 Bail Act 2000 & s273 CPA)
Appeal against decision on cost order	**20** working days (s273 CPA)
Appeal against pre-trial decisions	**20** working days (s220 CPA)
Appeal against sentence	**20** working days (s248 CPA)
Appeal against decision on suppression order	**20** working days (s285 CPA)
Appeal on a question of law	**20** working days (s298 CPA)
Solicitor-General's reference	**60** working days (s314 CPA)

Solicitor-General's reference

The Solicitor-General may refer a question of law that arises in a trial, or in an appeal against conviction or sentence, without disturbing the outcome of the case in which the question arose.

Preparing for an appeal to the High Court

If you wish to appeal, consult the PPS () Legal Adviser or the nearest Police Legal Services Legal Adviser and no later than 2 working days following the event to be appealed. If the matter relates to an appeal against a disclosure order, or the granting of bail then the legal advisor must be advised no later than the following working day.

If appropriate, consent will be sought from the Crown Law Office. The timeframes for filing an appeal are the maximum timeframes available and as such, the file needs consideration as soon as practicable. If the appeal involves a difficult point of law, it may require lengthy examination.

For an appeal on a point of law, the Crown Law Office requires at least 5 working days to consider the matter. The Police appeal request (as framed by a Police Legal Adviser) will be considered by a Crown Counsel and peer reviewed by a second Crown Counsel before finally being referred to the Solicitor-General for consideration.

If the Solicitor-General consents to the appeal, the relevant Legal Adviser will work with the PPS () to draft and file a notice of appeal. The file will then be transferred to the local Crown Solicitor who will appear for Police.

Procedure when appealing a decision to the High Court

Follow these steps to appeal a decision to the High Court.

Step	Action
1	The prosecutor must urgently forward (by email) to the PPS () Legal Adviser or Police Legal Services Legal Adviser the following material: • The decision to be appealed (or, in the case of an oral decision that has not been transcribed, the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible). • A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment. • Any written submissions filed by the Police or the defendant. • Copies of any other information that was before the Court (e.g. pre-sentence reports, victim impact statements, letters of support, etc). • An outline of the importance to the Police of conducting an appeal and any risks in doing so. **Note:** If this information is not immediately available, the prosecutor may approach the PPS () Legal Adviser or Legal Services to informally assess the prospects of a potential appeal in the first instance. The provisional consent of the Solicitor-General may be sought on the basis of the prosecutor's instructions, pending the delivery of the relevant information.
2	PPS () Legal Adviser or Legal Services Legal Adviser must consult with the prosecutor who appeared on the prosecution.

3	Where the PPS () Legal Adviser or Legal Services Legal Adviser agree an appeal is appropriate, he or she prepares the request with the assistance of the prosecutor who appeared on the prosecution.
4	The PPS () Legal Adviser or Legal Services Legal Adviser emails the request to the Solicitor-General, with the following information: • the decision to be appealed • a statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment, and • an outline of the importance to the Police of conducting an appeal.
5	The PPS () Legal Adviser or Police Legal Services Legal Adviser advises the prosecutor of the outcome of the request.
6	If the matter is to be appealed, the PPS () Legal Adviser or Police Legal Services Legal Adviser drafts the notice of appeal or, in urgent cases, assists the prosecutor to draft the notice of appeal. The notice must be filed by the prosecutor. The file must then be forwarded to the local Crown Solicitor who will appear for Police.

Preparing for an appeal to the District Court

PPS has pre approval from the Solicitor General to appeal decisions by Justices of the Peace and Community Magistrates where the appeal is to be heard before a judge in the District Court. A Police prosecutor may appear and represent the Police in any appeal made to the District Court where Police were the prosecuting agency in the decision appealed. However these appeals must still be approved by the PPS Legal Adviser.

Procedure for appealing decisions of Justices of the Peace or Community Magistrates

Follow these steps to appeal a decision by a Justice of the Peace or Community Magistrate, except for bail appeals.

Step	Action
1	The prosecutor must urgently forward (by email) to the PPS () Legal Adviser the following material: • The decision to be appealed (or, in the case of an oral decision that has not been transcribed: the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible). • A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment. • Any written submissions filed by the Police or the defendant. • Copies of any other information that was before the Court (e.g. pre-sentence reports, victim impact statements, letters of support, etc). • An outline of the importance to the Police of conducting an appeal and any risks in doing so. **Note:** If this information is not immediately available, the prosecutor may approach the PPS Legal Adviser to informally assess the prospects of a potential appeal in the first instance.
2	PPS () Legal Adviser must consult with the prosecutor who appeared on the prosecution.
3	Where the PPS () Legal Adviser agrees an appeal is appropriate and likely to succeed, he or she approves the appeal.
4	The PPS () Legal Adviser decides which prosecutor should appear on the appeal in consultation with the PPS Operations Manager.
5	The PPS () Legal Adviser advises the prosecutor of the outcome of the request.
6	If the matter is to be appealed, the PPS () Legal Adviser drafts the notice of appeal or, in urgent cases, assists the prosecutor to draft the notice of appeal. The notice must be filed by the prosecutor.

7	The PPS () Legal Adviser works with the assigned prosecutor to draft submissions and prepare for any oral hearing(s).

Responding to appeals by the defendant

Follow these steps to respond to an appeal filed by a defendant in a case where the PPS could appear on the appeal (i.e. appeals to the District Court from decisions of Community Magistrates and Justices of the Peace.

Step	Action
1	Upon receiving a notice of appeal, inform the PPS () Legal Adviser that an appeal has been filed by the defendant.
2	The PPS () Legal Adviser discusses the appeal with the prosecutor who appeared on the prosecution.
3	If the PPS () Legal Adviser considers that the opposition is likely to succeed, he or she approves the appeal and decides who should appear on the appeal in consultation with the PPS Operations Manager.
4	The PPS () Legal Adviser advises the prosecutor, as soon as practicable after receiving notice of the appeal, whether or not the Police wish to oppose the appeal.
5	If the appeal is opposed, the PPS () Legal Adviser works with the assigned prosecutor to draft submissions in reply and to prepare for any oral hearing(s).

Bail appeals

Refer to "Bail appeals" in the Bail chapter of the Police Manual.

Police Instructions

Criminal procedure - Introduction and jurisdiction

Policy statement and principles

What

The Criminal Procedure Act 2011 sets out a common five stage procedure applying in the adult jurisdiction to the conduct of criminal proceedings from the commencement of a proceeding through to its disposition (Commencement, Administration, Review, Trial, and Disposition). Different processes apply to youth, detailed in the 'Youth justice' chapter.

The Act details the jurisdiction of the courts and of Justices of the Peace and Community Magistrates. It also prescribes four categories of offences, with all prosecutions being commenced in the District Court.

The Act is supported by more detailed procedural requirements prescribed in the Criminal Procedure Rules 2012.

The 'Criminal procedure' Police Manual chapters detail Police procedures and expectations through the five stages of criminal proceedings Commencement, Administration, Review, Trial and Disposition.

Why

The Criminal Procedure Act 2011 and related Criminal Procedure Rules 2012:

- enable greater use and acceptance of new technology
- provide greater sentencing discretion for the District Courts and opportunities to resolve cases earlier, through sentence indications and case management processes
- limit in-court appearances, with more administrative functions taking place outside the courtroom
- reduce opportunities for delay to occur
- provide incentives and sanctions to encourage compliance with procedural requirements.

How

Police prosecutors (and where applicable, the OC case or other employees involved) will:

- exercise proper discretion when deciding whether or not to commence a prosecution

- comply with general administrative requirements in the Act, including timeframes, that apply to all court proceedings commenced through to disposition
- initially review files to ensure they understand the issues most relevant to first court appearances and consult with Crown Solicitors when certain agreed criteria are met
- be familiar with the laws relating to suppression of names and information before the court
- when a not guilty plea is entered, engage in the review stage with defence lawyers in case management discussions and jointly complete the case management memorandum (unless the defendant is self-represented or the court has directed otherwise)
- be bound by agreements made by any other PPS prosecutor through the case management memorandum process, except in limited specified situations
- seek early resolution of pre-trial issues
- thoroughly prepare for trials covering matters such as admissibility of evidence, briefs of evidence, defences, exhibits, looking after witnesses
- ensure the court has relevant information for sentencing and when appropriate, make submissions on sentencing
- except for bail appeals, seek approval to appeal court decisions through the PPS Legal Adviser or Police Legal services.

Summary

Purpose of this chapter

The Criminal Procedure Act 2011 provides for a common system governing criminal procedure from the commencement of a proceeding, through to disposition.

This chapter provides:

- an introduction to the Criminal Procedure Act 2011 (CPA) and its impact on previous proceedings involving **adult** offenders (see ‘Youth justice’ for procedures applying to youth)
- an overview of the five stages of the criminal procedure process detailed in the Act.

It also:

- includes definitions of key terms used in relation to criminal procedures
- outlines the four categories of offences in the Act
- outlines the jurisdiction of the courts and of Justices of the Peace and Community Magistrates
- explains when costs may be awarded for non-compliance with the CPA, associated rules and regulations and the Criminal Disclosure Act 2008.

Statutory references

All references to the:

- "Act" or the "CPA", are to the Criminal Procedure Act 2011
- "Rules" or the "CPR", are to the Criminal Procedure Rules 2012

unless otherwise stated.

Procedures apply only to adults

The procedures in the Criminal Procedure Act, as outlined in this chapter, apply to adult offenders.

Different processes apply to youth. See the Youth justice chapter for the application of the CPA in the youth jurisdiction and the procedure applying when adults are charged together with one or more youths.

Related criminal procedure chapters

This chapter is the first of linked chapters dealing with the various stages of the adult criminal process:

- Criminal procedure - Introduction and jurisdiction
- Criminal procedure - Commencement of proceedings
- Criminal procedure - Administration stage
- Criminal procedure Review stage (CMM process)
- Criminal procedure - Trial stage
- Criminal procedure - Disposition
- Criminal procedure Costs orders.

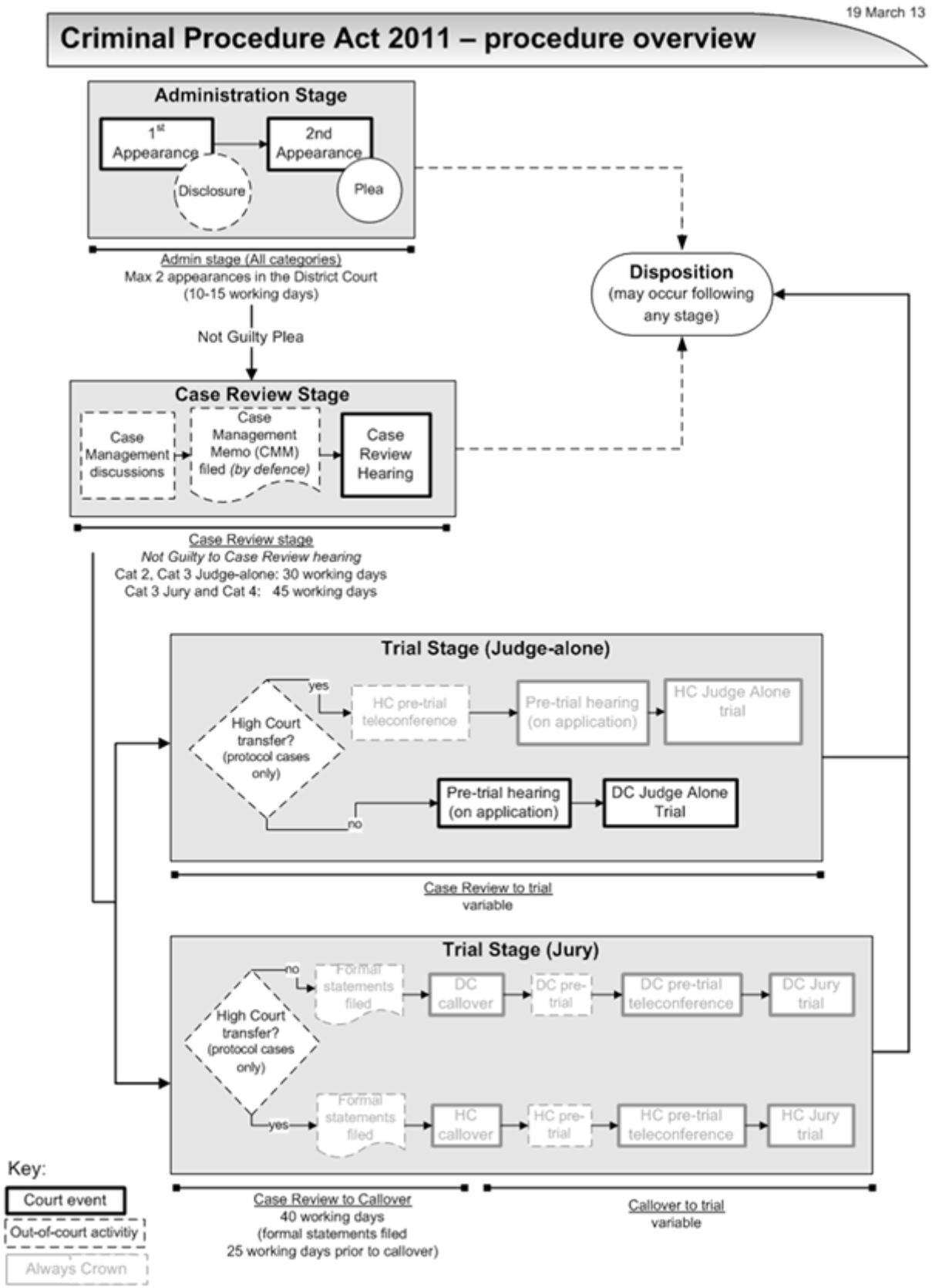
Related information

Other Police Manual chapters with information related to criminal procedure include:

- Youth justice
- Bail
- Charging decisions
- Criminal disclosure
- Prosecution file and trial preparation
- Family harm-related policies
- Adult diversion scheme

Diagram: Criminal Procedure Act - procedure overview

The following diagram illustrates the processes following the commencement of proceedings under the Criminal Procedure Act 2011.



Five stage criminal process

The adult criminal process consists of 5 procedural stages through to completion: commencement, administration, review, trial and disposition.

This table outlines key matters in each stage for the **adult** jurisdiction. (**Note**: The CPA processes do not fully apply to proceedings involving youth. See the 'Youth justice' chapter for the process involving youth offenders).

Stage	**Description**
Commencement	• Criminal proceedings are commenced following a decision to charge for each offence, or where a defendant requests a hearing for an infringement notice. • Defendant is notified of the charge(s) and court appearance through the arrest, police bail, or police summons process. • The prosecution file is prepared, suitability for diversion considered and the file reviewed by a supervisor. • A charging document is filed within the required timeframes, either singularly or with other charges, or with those relating to co-offenders. Representative charges or charges in the alternative may be filed if some prerequisites are met. • The defendant is advised if the charge filed is different from those for which they are summonsed.

Administration	• The defendant's initial appearances in court following the commencement of proceedings in which they receive initial disclosure, seek legal advice and enter a plea. • Interim name suppression may be considered until the next appearance, if there is an arguable case in favour of suppression. • Defendant may be remanded for Police Adult Diversion, if appropriate. • Some offences may require the Crown's involvement following the first appearance. See Crown involvement in the Administration stage chapter. • Second appearance is timed following initial disclosure, usually no more than 10 working days after the first appearance for a category 1 or 2 offence, or 15 working days for a category 3 or 4 offence. • A plea and election, as appropriate, may be required by the judicial officer if the defendant has initial disclosure and an opportunity to have legal representation. This is expected to be the second appearance for most defendants.

Review (CMM process)	• Automatically applies to offence categories 2 - 4 and may apply to category 1 matters if directed. • Following a not guilty plea, dates are set for a case review hearing, and when the defendant is represented by a lawyer, for filing a case management memorandum (CMM). A case management meeting or other contact is scheduled for discussions between the defence lawyer and prosecutor. • The file is reviewed by a prosecutor and the O/C case is notified of the CMM process and their input and further action requested if required. Full disclosure is made. • The CMM meeting or other contact is held out of court between the defence lawyer (where defendant is represented) and the prosecutor. CMM is jointly completed and filed by the defence lawyer outlining any agreements, judicial intervention required (sentence indication, sentence, pre trial rulings) and protocol offences. • Case review hearing is held in court, or completed administratively by a registrar if the CMM indicates a formal hearing is not required. The Court, or Registrar if a hearing is not required, may then adjourn the matter for sentencing, sentence indication, pre-trial applications or trial. • Protocol offences are considered by a District Court and a High Court Judge to determine the location of the trial.
Trial	• The term "trial" covers a Judge-alone trial or a jury trial. • In the District Court, a Judge-alone trial may proceed following the CMM process or a case review hearing. • This stage may also include additional pre-trial hearings and applications prior to the trial. • Formal statements are filed for jury trials in the District or High Court, followed by callover, pre-trial hearings and tele-conferences, ending with the trial.
Disposition	• Disposition may occur within any stage. Simply put, disposition is the completion of the prosecution. • A prosecution may be completed following successful diversion, withdrawal of charges, conviction, sentence, appeal, dismissal, mental impairment finding, mental health orders, and the expiry of any appeal period.

Categories of offences

There are four categories of offences (s6 CPA). All prosecutions are commenced in the District Court.

Offence category	Description	Tried by
Category 1	Offences not punishable by imprisonment or a community based sentence (fine only). An infringement offence is a category 1 offence if proceedings relating to that infringement offence are commenced by filing a charging document, rather than by issuing an infringement notice. Exclusions: • an offence that if committed by a body corporate is punishable by only a fine, but would be punishable by a term of imprisonment if committed by an individual.	Any trial will be a Judge-alone trial, tried by: • District Court Judge • one or more Community Magistrates • one or more Justices of the Peace
Category 2	Offences punishable by a community-based sentence or less than two years' imprisonment. Also includes: • an offence that if committed by a body corporate is punishable by only a fine, but would be punishable by a term of less than two years imprisonment if committed by an individual.	• Tried by Judge at a Judge-alone trial • Protocol offences are considered for transfer to the High Court for trial • Parties may apply to have offence transferred to the High Court for Judge-alone trial

Category 3	Offences punishable by two years' imprisonment or more. A defendant may elect a jury trial. Also includes: • an offence that if committed by a body corporate is punishable by only a fine, but would be punishable by a term of two years imprisonment or more if committed by an individual.	• Tried by Judge-alone unless defendant elects trial by jury • In some instances the court may order a Judge alone trial for long and complex cases or where there are issues of juror intimidation (ss102& 103 CPA) • Protocol offences are considered for transfer to the High Court for trial • The prosecutor or defendant may apply to have offence transferred to the High Court for trial.
Category 4	An offence listed in schedule 1 of the CPA.	• Tried by High Court jury (commenced in the District Court and transferred to the High Court following first appearance (s36 CPA) • The court may order a Judge-alone trial for long and complex cases or where there are issues of juror intimidation (ss 102&103 CPA).

Conspiring, attempting and being an accessory

If an offence is in any given category, then the following is also an offence in that category:

- conspiring to commit that offence
- attempting to commit that offence, or inciting or procuring or attempting to procure any person to commit an offence of that kind that is not committed
- being an accessory after the fact to that offence.

Offenders liable to higher penalties

If an offence is punishable by a greater penalty because the defendant has previously been convicted of that offence or of some other offence, the offence is an offence in the category that applies to offences punishable by that greater penalty only if the charge alleges that the defendant has such a previous conviction.

An example is driving with excess breath/blood alcohol, where a first or second offence is category 2, third or subsequent offences are category 3.

Definitions

This table outlines the meanings of terms used in the Criminal procedure chapters. For additional or more substantive definitions refer to section 5 of the CPA and rule 1.4 of the CPR.

Term	Meaning
Authenticate	Authentication for the purposes of the CPA is a manner in which a person responsible for the content of a document indicates an acceptance of the information in it. The person may authenticate a document by: • signing and dating it • in the case of documents in an electronic form, by electronic means that adequately identifies the person responsible for the document's content and date of the authentication. Note that any document that must be sworn, such as affidavits, must be signed and dated.
Before the trial	In the case of a: • Judge-alone trial, means before the trial formally begins • jury trial, means before the defendant is given in charge to the jury.

Case Management Memorandum (CMM)	The document jointly completed by the defence and the prosecution and filed in court by the defence lawyer as part of the review stage. The CMM covers matters such as: • changes in pleas or charges • whether there is any intervention or order(s) required to be made by a judicial officer to progress the case. If the case will proceed to a Judge alone trial, information is also provided to assist with the scheduling of the trial and to ensure the trial will be ready to proceed. Unrepresented defendants must attend a case review hearing where the same information is provided and discussed with the defendant. See also information on the CMM process in the Review stage (CMM process) chapter.
Case Review Hearing	A hearing scheduled following the entry of a not guilty plea for offence categories 2-4. The hearing is scheduled to follow the completion of the CMM. At this hearing, any matter requiring judicial intervention may be discussed and ruled upon. If pre-trial judicial intervention is not required, the case review hearing may be heard administratively before a Registrar.
Category of offence	See offence categories in this chapter.
Charging document	The document filed in court commencing a prosecution outlining the details of the offence charged. A charging document remains relevant throughout the life of any prosecution. (See also information on charging documents in the Commencement of proceedings chapter).

Community-based sentence	A sentence of: • community work • supervision • intensive supervision • community detention (s 44 sentencing Act 2002)
Complainant	The person against whom the offence is alleged to be committed. This term is specifically used only when required in a statutory context such as the suppression provisions of the CPA. In all other circumstances the term victim is to be used.
Continuing offence	An offence where there is a maximum penalty for the initial offence and an additional maximum penalty for each period of time (stipulated in the offence statute) that the offence continues.
Court	A court presided over by a judicial officer (not a registrar) with authority to exercise the court's jurisdiction in relation to the matter.
Crown prosecution	A prosecution conducted by the Crown. Refer to the Crown Prosecution Regulations made under section 387 of the CPA and also "Crown involvement" in the Administration stage chapter.
Crown prosecutor	A Crown Solicitor or a lawyer representing a Crown Solicitor or any other lawyer employed or instructed by the Solicitor-General to conduct a Crown prosecution.

Defendant	Any person charged with an offence including: • a person against whom proceedings have been commenced by the filing of a charging document in relation to an offence in any category • a Crown organisation, if proceedings are brought against it for an offence referred to in section 6 of the Crown Organisations (Criminal Liability) Act 2002 • a person in respect of whom an application is made for a bond to keep the peace.
Document	A document in **any** form. Section 5 of the CPA gives an extensive definition of document. Without limitation, it may include: • a document in an electronic form • any writing on any material • information recorded or stored by means of a tape recorder, computer, or other device or material subsequently derived from that information • labels, markings, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means • books, maps, plans, graphs, or drawings: • photographs, films, negatives, tapes, or any other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.
Electable offence	A category 3 offence (punishable by 2 or more years imprisonment) whereby the defendant may elect to be tried by a jury.
Electronic	Includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic.

Formal statement	A statement required to be filed in jury trial proceedings following the case review hearing date. Formal statements need not be written. Formal statements may be recorded in any medium by a person who is a potential witness in a criminal proceeding where the statement: • contains the evidence of that witness, or • is accompanied by, a declaration by the witness that the statement is true and was made with the knowledge it is to be used in court proceedings. If the statement is made by a person under 18 years of age, it must include the person's age. Additional requirements exist under s82 of the CPA, if the statement is written and the person making the statement cannot read it. (See also 'Formal statements' in the 'Prosecution file and trial preparation'.
Infringement offence	Any offence under any Act in respect of which a person may be issued with an infringement notice
Judicial officer	A High Court Judge (HCJ), a District Court Judge (DCJ), a Community Magistrate (CM), or a Justice of the Peace (JP).
Judge-alone trial	A trial presided over by a judicial officer without a jury.
Jury trial	A trial presided over by a Judge and a jury.
Level of trial court	Either the District Court or the High Court as determined by the offence category, or a High Court Judge. See also 'protocol offences' and 'Crown involvement' in the Administration stage chapter.

Permanent court record	The permanent record of criminal proceedings maintained by the court in accordance with the s184 of the CPA and part 7 of the CPR. The permanent court record is, subject to the power of the court to amend it, conclusive evidence of the matters recorded in it.
Plea	The defendant's formal response to the allegation in a charging document. If the defendant has initial disclosure the court should require them to enter a plea at the second appearance of the charge, if a plea was not stated at the first appearance. The defendant may plead either guilty or not guilty, or enter a special plea. (see ss37 49 CPA).
Private prosecution	A proceeding against a defendant in respect of an offence that is not: • a public prosecution, or • a proceeding in respect of an offence commenced by or on behalf of a local authority, or other statutory public body or board.
Private prosecutor	A prosecutor conducting a private prosecution.
Prosecutor	The person who is for the time being conducting the prosecution case against the defendant.
Protocol offence	A category 2 or 3 offence that is covered by the protocol established under s66 of the CPA requiring consideration as to whether the trial should be held in the High Court rather than the District Court. See also 'Protocol offences' in the Administration stage chapter.
Rules of court	Rules made pursuant to CPA, District Courts Act 1947, or the Judicature Act 1908

Sentence indication	A statement by the court indicating to the defendant what the court would or would not (as the case may be) be likely to impose as a sentence if a guilty plea is entered to the charge or to another offence. A defendant may seek a sentence indication at any stage of proceedings prior to the commencement of a trial. Refer to 'Sentence indications' in the Review stage (CMM Process) chapter for further information.
Special plea	One or more of three pleas that may be entered other than guilty or not guilty under s45 of the CPA. The only special pleas that may be entered are a plea of: • previous conviction • previous acquittal • pardon Refer to ss45-49 for the requirements following the entering of a special plea. See also 'Special pleas' in the Administration stage chapter.
Trial	Either a Judge-alone trial or a jury trial where evidence is heard and a determination of guilt is made.
Victim	The same definition of victim as contained in s4 of the Victims' Rights Act 2002.
Working day	A day that is not: • Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or • A day in the period commencing on 25 December in one year and ending on 15 January in the next year.

Jurisdiction of the courts

General jurisdiction

New Zealand courts have jurisdiction over all offences:

- for which the offender may be proceeded against and tried in New Zealand and all acts done or omitted in New Zealand (s5 Crimes Act 1961)
- where any act or omission forming part of the offence, or any event necessary to the completion of the offence, occurs in New Zealand. This:
    - applies whether the person charged with the offence was in New Zealand or not at the time of the act, omission or event (s7 Crimes Act 1961))
    - means any case where any ingredient of the offence is committed or occurs in New Zealand, e.g. where a person obtains something under false pretences from a New Zealand resident by way of letters written from overseas.

Jurisdiction when acts are committed outside New Zealand

New Zealand courts have **no** jurisdiction over acts committed outside New Zealand unless an enactment gives the court that power (s6 Crimes Act 1961).

This table lists some provisions giving New Zealand courts jurisdiction over acts committed outside New Zealand.

Section - Crimes Act 1961	**Jurisdiction over people...**
s68(1) & (2)	in New Zealand who are parties to murder outside New Zealand, where the act complained of would have constituted murder under New Zealand law
s69(3)	in New Zealand who are parties to an offence other than murder punishable by life or by 2 or more years imprisonment outside New Zealand, where the act complained of would have constituted a offence under New Zealand law
s73	who commit treason within or outside New Zealand
s77	who incite mutiny within or outside New Zealand

s92	who commit piracy within or outside New Zealand
s98	who deal in slaves within or outside New Zealand
s205	who commit bigamy within or outside New Zealand
s175	who conspire to commit murder within or outside New Zealand

Jurisdiction with Attorney-General's consent

This table lists provisions giving New Zealand courts jurisdiction, if the

Attorney-General consents, when acts may have been committed outside New Zealand.

Section	**Jurisdiction (with the Attorney-General's consent) over...**
s7A Crimes Act 1961	people who commit an offence against the Crimes Act in the course of carrying out a terrorist act (where certain requirements are met) wholly outside of New Zealand
ss78, 78A and 78B Crimes Act 1961	people who commit espionage or wrongfully communicate, retain or copy official information
ss98C and 98D Crimes Act 1961	smuggling migrants and trafficking in people by means of coercion
s7 Continental Shelf Act 1964	acts that take place on, under, above or about any installation being used in connection with the exploitation of New Zealand's continental shelf for minerals and petroleum

s3 Antarctica Act 1960	acts committed in the Ross Dependency and other parts of Antarctica
ss5 & 15 New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987	people who are servants or agents of the Crown, who manufacture or obtain any nuclear explosive device, or who aid any other person to manufacture or obtain such a device
ss8 and 400 Crimes Act 1961	offences committed upon certain ships and aircraft beyond New Zealand
ss144A Crimes Act 1961	sexual conduct with children and young people outside New Zealand

District Court's jurisdiction

The District Court has jurisdiction to deal with a proceeding for any offence with the following limitations:

- where the level of the trial court for a proceeding in respect of a category 2 or 3 offence is the High Court, a District Court has jurisdiction over the proceeding only until the time it is transferred to the High Court
- in a proceeding in respect of a category 4, a District Court has jurisdiction to deal with the proceeding only for the first appearance.

(s9CPA)

District Court Judge

A District Court Judge without a jury warrant may exercise the full jurisdiction of the District Court except for:

- jury trial matters, or
- when limited by another statute, e.g. High Court only bail for certain drug dealing defendants (see Bail chapter).

A District Court Judge may also hear and determine appeals against decisions of Justices of the Peace and Community Magistrates.

A District Court Judge has jurisdiction over any matter and may now sentence up to the maximum penalty for the offence, with the following restrictions:

- **Life imprisonment** if sentencing for an offence with a maximum penalty of life imprisonment and the court has reason to believe that a sentence of life imprisonment may be appropriate, sentencing must be transferred to the High Court (s114(2)(a) CPA)
- **Preventive detention** - if the court has reason to believe that a sentence of preventive detention is available and may be appropriate, sentencing must be transferred to the High Court (s114(2)(b) CPA)
- **Category 4 offence** - sentencing for a category 4 offence must occur in the High Court (s114(2)(c) CPA)

All offences have a single penalty.

District Court jury trial Judge

A District Court Judge with a general (Judge alone) warrant has the same sentencing powers as a District Court Judge with a jury trial warrant. However, only a jury trial Judge has jurisdiction over jury trials.

Jurisdiction of Justices of the Peace and Community Magistrates

When can Justices and Magistrates preside?

The jurisdiction of Justices and Community Magistrates varies depending on the offence charged or the function being carried out.

Their criminal jurisdiction is conferred by sections 355 - 363 of the CPA.

Note: Justices of the Peace and Community Magistrates are not always legally qualified.

Full jurisdiction

Full jurisdiction includes an ability to hear evidence and determine guilt or otherwise by way of a Judge alone trial and conclude proceedings through to final disposition. Any trial of a charge that is not within the full jurisdiction of one or more Justices or one or more Community Magistrates, must be before a District Court Judge or, where applicable, a High Court Judge.

This table details when Justices of the Peace and Community Magistrates have full jurisdiction.

Courts presided over by...	**Have jurisdiction over...**
one Justice	• category 1 offences where the enactment creating the offence expressly provides for that jurisdiction
two or more Justices	• infringement offences • category 1 offences where the enactment creating the offence expressly provides for that jurisdiction, e.g. category 1 offences under the Land Transport Act 1998 subordinate transport regulations (other than regulations relating to heavy motor vehicles) (s 135(2) Land Transport Act 1998)
one or more Community Magistrate(s)	• a category 1 offence in respect of which a District Court presided over by 1 or more Justices has jurisdiction under section 355(1) or (2)(a)of the CPA • a category 1 offence, if the enactment creating the offence or another enactment states that the jurisdiction may be exercised by 1 or more Community Magistrates • a category 1 offence punishable by a fine not exceeding $40,000 that is prescribed by regulations • an infringement offence.

Sentencing jurisdiction

If the defendant pleads guilty, one or more Community Magistrates may impose sentence in respect of certain category 1 and 2 offences. This table outlines the type of offence and possible disposition options available to them.
(s357 359 CPA).

Category 1 or 2 offence (not being a continuing offence) penalty:	**Disposition options available if defendant pleads guilty:**

• maximum imprisonment (if any) does not exceed 3 months; and • maximum fine (if any) does not exceed $7,500	under the Sentencing Act 2002, 1 or more of the following: • sentence of reparation • sentence to pay a fine • sentence of supervision • sentence of intensive supervision • sentence of community work on the offender: • sentence of community detention • discharge without conviction and, if the court thinks fit, make an order under s106(3) • convict and discharge and, if the court thinks fit, make an order under s108(2) • order to appear for sentence if called upon and, if the court thinks fit, make an order under s110(3) • a non-association order • disqualify from holding or obtaining a driver licence under s124 • order the confiscation of a motor vehicle under ss128 or 129 • order that an offender is prohibited from acquiring any interest a motor vehicle under s131(2)) • set aside the disposition by the offender of a motor vehicle or of an interest in a motor vehicle under s131(3)

Limited and administrative jurisdiction

Justices and Community Magistrates may have specific administrative or sentencing jurisdiction for criminal matters. This table details some examples. If you are unsure and the matter is not listed, consult the PPS.

Courts presided over by...	**May...**

one or more Justices	• receive and require pleas to be entered for category 1-3 charges. If the defendant wishes to plead guilty to a charge that a Justice does not have full or sentencing jurisdiction over, the defendant must be brought before a Judge to enter the plea (s361 CPA) • grant interim suppression (see 'Suppression' in the Administration stage chapter) • renew suppression if consented to • grant/decline bail except when bail is restricted • hear oral evidence after an oral evidence order is made (excludes complainant oral evidence in cases of a sexual nature) (ss 95-96 CPA) • issue a warrant to arrest in lieu of summons or for non-appearance for category 2 - 4 offences • withdraw a warrant to arrest before it is executed (s163(1) CPA) • adjourn proceedings and remand the defendant to the appropriate court, including proceedings outside the jurisdiction of a Justice • adjourn proceedings and consider custody in the Youth Court when youth first appears following arrest (see 'Criminal procedure in the Youth Court' in the Youth justice chapter) • exercise administrative functions, such as issuing warrants, where the enactment specifically gives jurisdiction

one or more Community Magistrate(s)	• receive and require pleas to be entered for category 1-3 charges. If the defendant wishes to plead guilty to a charge that a Community Magistrate does not have full or sentencing jurisdiction over, the defendant must be brought before a Judge to enter the plea (s 361 CPA) • grant interim suppression (see 'Suppression' in the Administration stage chapter) • renew suppression if consented to if charge is beyond full or sentencing jurisdiction • grant/decline bail except when bail is restricted • hear oral evidence after an oral evidence order is made (excludes complainant oral evidence in cases of a sexual nature) (ss 95-96 CPA) • issue a warrant to arrest in lieu of summons or for non-appearance for category 2 4 offences • withdraw a warrant to arrest before it is executed (s 163(1) CPA) • adjourn proceedings and remand the defendant to the appropriate Court, including proceedings outside the jurisdiction of a Community Magistrate • adjourn proceedings and consider custody in the Youth Court when youth first appears following arrest (see 'Criminal procedure in the Youth Court' in the Youth justice chapter) • adjourn proceedings and consider custody in the Youth Court when youth first appears following arrest (see 'Criminal procedure in the Youth Court' in the Youth justice chapter) • exercise administrative functions, such as issuing warrants, where the enactment specifically gives jurisdiction • sentence in some instances (see sentencing jurisdiction)

No jurisdiction over continuing offences

Despite the above, Justices and Community Magistrates have no jurisdiction over a continuing offence. A Judge-alone trial or sentencing of a continuing offence must be by a Judge. (ss355(3), 356(2)& 357(4))

Declining jurisdiction and transfer to a District Court Judge

Despite having jurisdiction over a particular charge, a Community Magistrate may decline jurisdiction and adjourn the matter to a District Court Judge.

A District Court Judge may also direct, if he/she considers it appropriate, that any matter before one or more Justices or Community Magistrates, be transferred to a District Court Judge.
(ss360and 363)

Access to court documents

The rights to and limitations on access to court documents in criminal proceedings are dealt with by the District Court (Access to Court Documents Rules) 2017, made under section 386(1) CPA and section 228 of the District Court Act 2016.

The term 'access' is defined as, to search, inspect, or copy under the supervision of an officer of a court.

General right of access

Unless a specific restriction on access applies, every person has the right to access the following court documents:

- the permanent court record under Part 7 of the CPR 2012
- any published list providing notice of a hearing
- any judgment, order, or minute of the court given in a criminal proceeding, including any record of the reasons given by a judicial officer
- any judicial officer's sentencing notes.

However, the court may direct that judgments, orders, or sentencing notes not be accessed without the permission of the court.

Any request to exercise a general right of access may be made orally to a Registrar, but if the request relates to a document with a specific restriction on access, or a requirement for permission from the court, the Registrar may require the request to be made in writing.

Right of prosecutor and defendant to access court file or documents

The prosecutor and the defendant in a criminal proceeding, and their lawyers, may access the court file during or after the completion of the criminal proceeding. They may also copy any part of the file or document, under the supervision of the Registry. However, if there is more than 1 defendant, a defendant or defendant's lawyer may only access the court file with the permission of the Judge.

A Judge may also direct that the court file or any document relating to a criminal proceeding may not be accessed without permission of the court.

Restriction on access

Access to any document is subject to any statutory provision or court order that limits or prohibits access or publication. Furthermore, the following documents require the specific permission of a Judge prior to a grant of access:

- any pre trial judgement, order, or minute in a criminal proceeding, including any bail judgement order or minute
- any document containing evidence of a complainant or of a person who gives or intends to give propensity evidence
- electronically recorded documents of interviews with a defendant
- any document that identifies, or enables the identification of a person, if the publication of any matter relating to the person's identity (e.g. the person's name) is forbidden by an enactment or by an order of the court or a Registrar
- any document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of the court
- any document containing evidence provisionally admitted into evidence and any document containing evidence that has been ruled inadmissible by the court.

Access during proceedings

Any person who is not a party to proceedings requires specific permission of the court to access documents between the time that proceedings are commenced and the expiry of any appeal period. The person seeking access must request access in writing, identifying the requested document and the reasons for the request.

The process for accessing and objecting to requests for access of court documents during proceedings is:

Step	Action
1	A request for access to any document is made informally to a Registrar in writing: • identifying the person and giving the persons' address • identifying the requested document • giving the reasons for the request, and • setting out any conditions of the right of access that the person proposes and would be prepared to meet were a Judge to impose those conditions (e.g. conditions preventing or restricting a person from disclosing the document or its contents, or conditions enabling the person to view the document but not copy it).

2	A Registrar must promptly serve on the parties or their lawyers a copy of the request. If the request relates to any document that is subject to a specific direction or a restriction, the Registrar must refer the request to a Judge to determine.
3	A party who wishes to object, must before the relevant deadline, give written notice of the objection to a Registrar, the person who made the request, and the other parties or their lawyer. On receipt of an objection, a Registrar must promptly refer the objection and the request to a Judge to determine.
4	Unless the document is subject to a specific direction or a restriction, a Registrar must promptly give the person who made the request access to the document if: • the Registrar receives no objection before the expiry of the relevant deadline, or • the parties or their lawyer earlier agree that the person be given access.

Deadlines for objecting to access to documents during proceedings

The deadline for giving a notice of objection to access documents is whichever of the following applies:

- if the copy of the request is received on a day on which a pre-trial hearing or the trial is proceeding, 3 pm on the first working day after the day on which the copy is received
- if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.

Objections - in practice

The prosecutor must give written notice of objection to the Registrar, the person who made the request, and to the other parties or their counsel, within the relevant deadline.

Special attention should be given to sexual cases, family violence cases, cases involving undercover witnesses, and any references to informants.

Where possible, prosecutors should confer with the O/C case, bearing in mind the tight timeframes for filing a written Notice of Objection.

Grounds for objection or release

The factors that the court will consider in determining a request for access or objection are covered in rule 12 District Court (Access to Court Documents) Rules 2017. These are:

- the orderly and fair administration of justice
- the right of the defendant in criminal proceedings to a fair trial
- the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice
- the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person
- the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, trials and decisions
- the freedom to seek, receive, and impart information
- whether any document to which the application or request relates is subject to any restriction under rule 7
- any other matter that the Judge thinks appropriate.

Police should refer to the relevant matters listed above when developing their notice of objection.

Because there is no guarantee that the Judge will allow the parties to be heard as part of determining the objection, it is recommended that full grounds for objection are stated in the Notice of Objection.

Determining an objection

Where the Registrar receives an objection, the Registrar must refer the objection and request to a Judge for determination. Once a determination has been made, the Registrar (or delegated court staff) will notify parties as soon as the decision comes to hand.

Seeking restriction of access early

It is important that any Judge's orders restricting access are obtained in respect of formal written statements at the time they are submitted to court. This should ensure the court does not apply the default release position and a safeguard exists in the absence of a timely objection being entered.

Finally, the extremely short time-frame to raise an objection should be noted and, in the absence of sufficient time to fully consider a matter of concern, prosecutors may wish to raise an objection as a regular practice.

Costs and sanctions

Cost orders

See Criminal procedure – Costs orders for information on:

- when costs orders can be made under the Criminal Procedure Act (note costs may also be awarded under the Costs in Criminal Cases Act 1967)
- procedures for making and responding to applications
- what to do when costs orders are made against Police.

Sentencing consideration

In addition to costs that may be ordered, the Sentencing Act 2002provides additional aggravating and mitigating factors relating to compliance and non-compliance with the CPA, associated rules and regulations, and the Criminal Disclosure Act 2008.
(s9 Sentencing Act 2002)

Police Instructions

Criminal procedure - Review stage (CMM process)

Summary

Purpose of this chapter

This chapter describes the review and case management memorandum (CMM) process for criminal proceedings for adults and outlines the responsibilities of prosecutors and the O/C case at the key stages. (See the 'Youth justice' chapter for procedures applying to youth).

The chapter also provides information relating to procedural matters, often encountered in the review stage, which may occur at any stage of proceedings, such as:

- withdrawing and amending charges
- sentence indications.

The information in the chapter is a reference starting point only. Refer to the Criminal Procedure Act 2011 (CPA), Criminal Procedure Rules 2012 and associated regulations for full guidance.

Review stage

The review stage is the third of these five stages of criminal proceedings:

Statutory references

All references in this chapter to the "Act" or to the "CPA" are to the Criminal Procedure Act 2011, and references to the "Rules" or the "CPR" are to the Criminal Procedure Rules 2012, unless otherwise stated.

Other criminal procedure-related chapters

These linked chapters deal with the various stages of the criminal process:

- Criminal procedure - Introduction and jurisdiction
- Criminal procedure Commencement of proceedings
- Criminal procedure - Administration stage
- Criminal procedure - Review stage (CMM process)

- Criminal procedure - Trial stage
- Criminal procedure Disposition
- Criminal procedure - Costs orders

Different processes apply to youth. See the 'Youth justice' Police Manual chapter for details.

Related information

Other Police Manual chapters with information related to the criminal procedure chapters are:

- Bail
- Charging decisions
- Criminal disclosure
- Prosecution file and trial preparation
- Family harm policy and procedures
- Adult diversion scheme.

Diagram: Criminal Procedure Act - procedure overview

See Criminal procedure - Introduction and jurisdiction for a diagram illustrating the processes following the commencement of proceedings under the Criminal Procedure Act 2011.

Overview of the review (CMM) process

The review stage of criminal proceedings and the CMM process commence upon the entry of a not guilty plea and require both the prosecutor and lawyer for the defendant to discuss the charges.

This table outlines the key steps involved in the review process.

Stage	Description
1	Not guilty plea is entered and charge(s) adjourned to a case review hearing date that is not later than: • 30 working days after the entry of a not guilty plea for non-Crown judge-alone trials • 45 working days after the entry of a not guilty plea for jury trials and Crown prosecutions.

2	Case management meeting is scheduled.
3	File is fully reviewed by a prosecutor and O/C notified, and if needed: • additional information requested of the O/C • file returned for remedial action.
4	Defence lawyer and prosecutor engage in case management discussions and jointly complete the case management memorandum.
5	Defence lawyer files the case management memorandum not less than 5 working days before the case review hearing.
6	Case review hearing is held when required or the case: • proceeds direct to trial • is adjourned for a guilty plea and sentence, or other disposition such as withdrawal of charges.

When does the CMM process apply?

Commencement of CMM process

Following the entry of a not guilty plea, criminal proceedings move to the review stage. If the matter is a Crown only matter by virtue of the Crown Prosecution Regulations 2013 or the offence being a category 4 matter, the Crown will conduct those proceedings in liaison with the O/C case.

What cases are included in the CMM process?

All category 2-4 matters (see 'Categories of offences' in the 'Introduction and jurisdiction' chapter) must follow the mandatory case management memorandum (CMM) process unless the defendant is self represented or the court directs otherwise. (See an 'overview of the process' in this chapter).

Category 1 offences proceed direct to trial unless a direction for inclusion in the CMM process is made.

Category one offences - directions for inclusion in CMM process

Although category 1 offences are excluded from the mandatory CMM process, a judge may direct that the CMM process be followed in whole or in part or give any other directions relating to the management of the case. Such a direction may be given by a judge on the judge's own motion or on the application of either party if it is likely to facilitate resolution or is otherwise in the interests of justice.

An application for case management direction may be appropriate where there are a large number of witnesses or the charges are complex.

Applications for inclusion in the case management process must be made within 10 working days of the entry of a not guilty plea.
(s59CPA, r4.5CPR)

Departure from CMM process

As well as the ability to include matters in the CMM process, the court may direct the departure from all or part of the CMM process, or give other directions on the management of the case. Either party may apply for departure from the process, and the court may also direct such an action on its own motion.

The court is most likely to depart from the CMM process in matters clearly unable to be resolved and where there would be no advantage in following the process. The court may also direct departure where specialist courts, such as Family Violence Courts, are operating.
(s58CPA, r4.5)

Procedures at key stages of the CMM process

Scheduling the CMM meeting

As soon as the not guilty plea is entered, the prosecutor should provide defence lawyers an appointment schedule for the case management meeting with available dates. The defence lawyer must be encouraged to make the appointment using the available schedule.

The meeting date should be at least 10 working days before the case review hearing. This timeframe allows for any issues raised or queried through discussion to be resolved before the review hearing wherever possible.

If the defence lawyer does not wish to set an appointment to meet, either in person, by phone, or email, at the time the plea is entered, it is the lawyer's responsibility to contact the prosecutor to arrange a time. In this situation it is good practice to contact the defence lawyer.

Review file and notify O/C case

Following the scheduling of the case management meeting, the file must be reviewed by a prosecutor applying the Solicitor-General's Prosecution Guidelines and noting any case-specific issues such as witnesses, evidence, propensity, protocol offences, or pre-trial applications.

If, following review, an extension of time is required for the CMM due to the need to await FSR () results or other identified factors, an application for departure from the case review timeframe must be made within 10 working days of the entry of the not guilty plea. (r4.5)

The O/C case must be notified of the pending meeting if the prosecutor identifies issues that require a response or action. The notification may be made by way of a task in NIA () for the O/C case, or, only when extensive work is required, by returning the file to the O/C case for action. The O/C case must be given an opportunity to discuss with the designated prosecutor any evidential issues that could result in the withdrawal of charges.

Any additional information in response to a prosecutor's request for action must be provided to the designated prosecutor no later than 3 working days before the scheduled meeting.

Protocol offences

When a charge is identified as a protocol offence through the file review (see 'Protocol offences' in the 'Administration stage' chapter) and the defendant maintains a not guilty plea, the prosecutor must provide the prosecution position on whether the trial should be held in the District or High Court.

If a protocol offence, other than one automatically prosecuted by the Crown, is identified, the prosecutor must notify the District Prosecutions Manager and any submission as to the appropriate court made through the CMM must be peer reviewed. Where the prosecution position is a recommendation that the trial occur in the High Court, submissions must be filed in support of that recommendation in consultation with the local Crown Solicitor.

Protocol Annex to be filed by prosecutor

When a defendant pleads not guilty to a protocol offence, a Ministry of Justice Protocol Annex Court of Trial Protocol for Category 2 and 3 Offences form must be filed by the prosecutor.

The form should be completed with the defence lawyer at the same time the CMM is completed, and must be filed by the prosecutor no later than 5 working days before the case review hearing or as otherwise directed by the court. When the defendant is self

represented, the form must be completed and filed by the prosecutor within the same time frame.

The Crown only assumes responsibility for a non-Crown schedule protocol offence if the High Court makes a direction that the trial is to be in the High Court.

Location of meeting

The case management discussion should be conducted during a face to face meeting with the defence lawyer. When a meeting 'in person' is not possible due to geographic distance or necessary due to the nature of the specific file, the discussion may be conducted by telephone, or email.

Each **prosecution office** must ensure that a suitable meeting location is available. Meetings should be held at a central location convenient to the prosecutor and the majority of defence lawyers in the area serviced. The location of an 'in person' meeting may be a room at the local court, Police station / PPS () office, or Public Defence Service office, depending on the site specific needs.

A positive, cooperative relationship between the designated prosecutor and the court registry staff responsible for the CMM process will also assist.

Case management meeting and memorandum

The purpose of case management discussions and the CMM is to ascertain whether the proceeding will proceed to trial and if so, to ensure that any arrangements necessary for its fair and expeditious resolution are made. The defence and the prosecutor are jointly responsible for completing the CMM following discussion and evaluation of the prosecution file. However, the CMM must be filed by the defence within the timeframes set by the court and the rules.
(s55CPA)

Where two or more charges for the same defendant are to be heard together, only one CMM is required encompassing all charges.

Completing the CMM

The CMM must be completed methodically. If the defence lawyer or prosecutor makes an oral statement during the meeting about relevant matters, the other party should prompt the inclusion of the statement in the CMM document, as the court will refer to that document if required.

Refer to section 56 of the CPA and rule 4.8 of the Criminal Procedure Rules 2012 for all the matters to be discussed and included in the CMM. Although not mandatory, any fact in issue or not disputed may be included in the CMM. The narrowing of issues and removal of unnecessary facts will assist in reducing the time required for the trial and allow the judge to concentrate on the key issues involved.

Following completion of the CMM

When the discussion and CMM are completed at the time of the meeting, the prosecutor must retain a copy for the prosecution file. If the completed CMM is not provided to the prosecutor at the meeting, the defendant must serve a copy on the prosecutor.

When the CMM is completed after the case management meeting, or the meeting is conducted remotely by telephone, the prosecutor must clearly document what was agreed. When served with a copy of the CMM, the prosecutor must ensure that the CMM filed accurately represents the discussion held.

Where the CMM identifies that the matter will proceed to:

- a judge alone trial, the registrar will, without the need for judicial involvement, vacate the date previously set down for the case review hearing and adjourn the matter direct to the trial
- a jury trial and the Crown has not previously assumed responsibility for the charge(s), the file must be forwarded to the Crown, if a case review hearing is not required. The O/C case must liaise with the Crown regarding the filing of formal statements.

Agreements made through CMM binding on all PPS prosecutors

Any agreement made by a prosecutor through the CMM process must be clearly documented, along with the reasons for that agreement. Agreements made at the meeting and included in the CMM are binding on a subsequent prosecutor as a matter of Police Prosecution Service policy. An agreement may only be deviated from:

- with the approval of the District Prosecutions Manager, and
- if the agreement was wrong in law, or
- if significant information impacting on the decision later becomes available.

Failure by defence to attend meeting

When the defence fails to attend the CMM meeting, the prosecutor must document all attempts made to jointly complete the CMM. This information will assist the court:

- to understand the prosecutor's best endeavours to comply with the legislation
- in considering sanctions against the defendant or defence lawyer, when appropriate (see 'Criminal procedure - Costs orders').

Failure by defence to file CMM

The prosecutor must not file the CMM if the defence lawyer fails to do so. The obligation to file the CMM rests with the defence, despite the obligation to jointly complete the memorandum.

Although the prosecutor must not file the CMM, they should have a copy of the CMM if it was completed and not filed. If no meeting took place, the prosecutor must have knowledge of the prosecution sections of the CMM ready for discussion with the judge at the case review hearing.

Case review hearing

If the CMM indicates a need for judicial involvement, the case review hearing will occur as scheduled.

The case review hearing must deal with any matter identified in the CMM as requiring judicial intervention. The Criminal Procedure Rules also require that any application for a pre-trial evidence admissibility hearing under section 78(2) of the Act must be made no later than the case review hearing, or 10 working days after full disclosure if full disclosure has not been provided by the case review, for a judge-alone trial. However, when an admissibility issue arises at a later point in time, departure from the time frames may be granted.
(r1.7 & 5.2)

Unrepresented defendants

When a defendant is not represented by a lawyer, the CMM process does not occur.

The delegated prosecutor must review the file as it would for matters where the defendant is represented. The prosecutor must prepare to raise and address at the case review hearing all issues that, if the defendant was represented, would have been addressed in the CMM.

Withdrawing and amending charges

Withdrawing charges

Whenever possible, the consideration of a decision to withdraw a charge must be communicated to the O/C case in advance, outlining the rationale and providing an opportunity for a response. The prosecutor withdrawing a charge must clearly record the reason for the withdrawal on the prosecution cover sheet with supporting file notes made if there is insufficient space on the cover sheet.

An application to withdraw a charge should be made as early as possible before a trial, normally at the case review hearing. The withdrawal of a charge pursuant to section 146 of the CPA will not be a bar to any other proceeding for the same matter.

The charge is withdrawn by seeking leave of the court and referring the judicial officer to the CMM previously filed and the CRN. Where a withdrawal is sought at a hearing other than the case review hearing, the prosecutor must seek leave of the court to withdraw the particular CRN.

Amending charges

A charge, including any particulars, may be amended by the court at any stage in a proceeding before the delivery of the court's verdict or decision.

If an amendment is sought through the CMM process, the court will be aware of the request in advance, with the required details provided in the memorandum. The prosecutor should refer the court to the previously filed CMM.

If an amendment is sought at a hearing other than the case review hearing, the prosecutor must seek leave of the court and provide the details of the amendment sought, including the precedent code if the code also requires amendment.

Amendments to charges may be made on the application of the prosecutor or defendant, or on the court's own motion.

Procedure if charge amended before trial

An amendment to a charge requires the defendant to enter a plea to the charge as amended. If one offence is substituted for another offence in respect of which the defendant may elect trial by jury and the defendant so elects, the matter follows the jury trial process.

Any previous pre-trial rulings continue to the extent that they still apply.

The issues of protocol, Crown schedule offences, applications for a High Court trial and category 4 offences must be addressed afresh. The Court may also direct further case management discussions and processes. (See the 'Administration stage' chapter for information about protocol offences and the Crown Prosecutions Regulations schedule).

Refer to sections 133-136 of the CPA and amending charges during a trial for additional information.

Pre-trial applications

Pre-trial applications applying to judge-alone trials

The need for a pre-trial application should, whenever possible, be identified through the file analysis and case review preparation.

Any pre-trial matter not resolved at a case review hearing must be dealt with through a formal pre-trial application heard and determined in the trial stage of proceedings. The exception is applications for anonymity orders which should be made as soon as possible if witness anonymity criteria apply.

Early resolution of issues is desirable

The early resolution of pre-trial issues can provide additional security for vulnerable witnesses (e.g. where there are mode of evidence applications) and certainty for the prosecutor about the admissibility of any evidence it was intended to adduce at the trial.

Although any section 78 pre trial admissibility applications and any other matter required to be determined pre trial must be included in the CMM, there may be occasions where a change of circumstances requires an application to be made at a later date. Examples may include mode of evidence applications for an elderly witness previously willing to give evidence in the normal manner, or applications for evidence to be taken pre trial when a witness obtains employment overseas. In these situations an application must be made as soon as reasonably practicable after the prosecutor becomes aware of the issue.

Early evidence

When a prosecutor becomes aware that a witness intends to leave the country before the trial, a decision must be made as to whether a pre-trial application should be made to have their evidence taken in advance. The decision will depend on a consideration of the nature of the evidence, the supporting information available and the context of the individual case. An application for the production of a hearsay statement may be appropriate in some situations and applications for a particular mode of evidence may be appropriate in others.

Witness anonymity

In limited exceptional circumstances it may be possible, with the prior approval of the Solicitor-General, to apply to the court for an order protecting the identity of a witness before trial under section 110 of the Evidence Act 2006.

Advice must be sought from a Police legal advisor if an application for an anonymity order may be required - applies to all prosecutions requiring the Solicitor-General's consent.

Sentence indications

Introduction

Sentence indications in criminal proceedings are provided for by sections 60 - 65 of the CPA and can lead to earlier guilty pleas. A sentence indication is available in either the District or High Court.

What is a sentence indication?

A sentence indication is a statement by the court indicating to the defendant what the court would or would not (as the case may be) be likely to impose as a sentence if a guilty plea is entered to the charge or to another offence.

In giving a sentence indication the court may indicate a sentence of:

- a particular type or types, or
- a particular type or types within a specified range (e.g. periods of time or monetary amounts), or
- a particular type or types and of a particular quantum (e.g. periods of time or monetary amounts).

The indication must be recorded and given in open court.
(ss60& 62CPA)

When can a sentence indication be given?

A sentence indication may be given only at the defendant's request at any time before a trial. Most commonly an indication will be given at the review stage, after being requested through the CMM.

The court may only give a sentence indication if it is satisfied that it has sufficient information. The court musthave:

- an agreed summary of facts
- the previous conviction history (QHA) of the defendant, and
- a copy of any victim impact statement prepared in relation to the offence concerned under the Victims' Rights Act 2002. (See 'Victim impact statements' in the 'Victims (Police service to victims)' chapter).

Additional information may be required

The court **may** also require additional information including, but not limited to, the following:

- any charge upon which the defendant seeks a sentence indication
- the steps taken by the prosecutor to advise any victim that a sentence indication has been sought
- submissions from the prosecutor and defendant in relation to:

    - the appropriate type of sentence, sentence range, or quantum of sentence for the charge(s) upon which a sentence indication is sought
    - aggravating factors that the prosecutor contends or the defendant concedes should increase the sentence, or mitigating factors that the defendant contends or the prosecutor concedes should lower the sentence
    - whether the offender was on parole or bail at the time of the alleged offending
    - whether there are co defendants, where the prosecutor and defendant contend that the defendant ranks in the hierarchy of defendants, and how the giving of a sentence indication may affect co-defendants
    - whether any co defendants have already been sentenced and if so the sentence that person(s) received
    - whether, if applicable, the quantum of reparation is agreed by the prosecutor and defendant

- where available
    - a recent pre-sentence report
    - a drug and alcohol assessment
    - a medical report
    - a psychiatric/psychological report.

(r4.10)

Parties may have an opportunity to be heard

The court may give the prosecutor and the defendant an opportunity to be heard before giving a sentence indication. (See also PPS submissions database).
(ss61 and 62CPA)

Effect and duration of sentence indications

A sentence indication is only binding on the judicial officer that gave it and not on any other. It lasts until the date specified by the court. If no expiry date is specified, the indication expires 5 working days after it was given.

Usually, a defendant may seek only one sentence indication in a proceeding unless there has been a change in circumstances that is likely to materially affect the question of the appropriate sentence type or quantum.

A sentencing indication ceases to be valid:

- at the expiry of the indication period, or
- if information becomes available to the court after the indication was given but before sentencing, and

- the judicial officer is satisfied that the information materially affects the basis on which it was given.

Offence to publish details

One of the key purposes in the sentence indication regime is to actively encourage earlier guilty pleas. If however, a defendant does not accept a sentence indication, the fact of the sentence indication request and the details of the indication may not be referred to in evidence or published.

It is an offence to knowingly publish any information about a request for a sentence indication or the indication given, before a defendant is sentenced or the charge is dismissed. The maximum penalty is:

- 3 months imprisonment for an individual, or
- $50,000 for a body corporate.

Police Instructions

Criminal procedure - Trial stage

Summary

Background

The trial stage is the third stage of criminal proceedings and takes place following the case management memorandum (CMM) process. (See the 'Review stage' chapter for information about the CMM process). The trial stage involves all matters from review up to and including either a judge-alone trial or a jury trial.

It is within this stage that the Crown assumes responsibility for any elected jury trials not on the Crown list (see information on 'Crown involvement' in the 'Administration stage' chapter). Formal statements are filed by the Crown for all jury trials prior to the callover.

Purpose of this chapter

This chapter is targeted towards prosecutors but will also assist the O/C case and others involved in the trial process. More detailed information relating to O/C case file preparation is contained in the 'Prosecution file and trial preparation' chapter.

This chapter outlines:

- matters to consider when preparing for judge-alone trials
- procedures for the conduct of judge-alone trials
- proceeding with a trial in the absence of the defendant
- the responsibilities of prosecutors and O/C cases when working with witnesses and victims
- the processes involved with jury trials.

The information in the chapter is a reference starting point only. Refer to the Criminal Procedure Act 2011 (CPA), Criminal Procedure Rules 2012 and associated regulations for full guidance.

Trial stage

The trial stage is the fourth of these five stages of criminal proceedings:

Statutory references

All references in this chapter to the "Act" or to the "CPA" are to the Criminal Procedure Act 2011 (CPA), and references to the "Rules" or the "CPR" are to the Criminal Procedure Rules 2012, unless otherwise stated.

Other criminal procedure-related chapters

These linked chapters deal with the various stages of the criminal process:

- Criminal procedure - Introduction and jurisdiction
- Criminal procedure - Commencement of proceedings
- Criminal procedure Administration stage
- Criminal procedure - Review stage (CMM process)
- Criminal procedure - Trial stage
- Criminal procedure Disposition
- Criminal procedure - Costs orders.

Different processes apply to youth. See the 'Youth justice' Police Manual chapter for details.

Related information

See other Police Manual chapters with information related to criminal procedure:

- Youth justice
- Bail
- Charging decisions
- Criminal disclosure
- Prosecution file and trial preparation
- Family harm policy and procedures
- Adult diversion scheme

See also the Police Prosecution Service professional development page on the intranet for PPS training resources that may assist with trial preparation.

Diagram: Criminal Procedure Act - procedure overview

See Criminal procedure - Introduction and jurisdiction for a diagram illustrating the processes following the commencement of proceedings.

Preparing for judge-alone trials

Preparing prosecutions of category 1-3 judge-alone trials

All category 1-3 judge alone trials are prosecuted by the Police Prosecution Service unless the Crown has assumed responsibility for the prosecution.

The preparation phase is one of the most important tasks in prosecuting a case. It follows the case management discussions held with the defence lawyer. During the case review stage a file analysis is required for all prosecutions proceeding to trial. Both the file analysis and case management memorandum assist prosecutors preparing for trial.

Before entering the court room for a judge-alone trial, set time aside to review each file carefully. Consider:

- what the prosecution must prove
- the strength of the case
- possible defences
- agreements made through the CMM and case review
- the case theory
- the cross examination strategy
- witnesses' specific needs, including any Evidence Act 2006 applications, relevant to the case.

Some of these questions will have already been considered and documented. Where remedial action or further enquiries were highlighted following case review, an additional review of those matters is required.

Additional information to assist prosecutors preparing for a judge trial is available on the Police intranet>Home> Training>Police Prosecution Service professional development.

Pre-trial hearings

Where a pre trial ruling is required and no application has been filed, the prosecutor must file the application as soon as practicable after becoming aware of the issue.

Any pre-trial application mentioned, or identified through the review stage and not finalised at the case review hearing will be determined at a pre-trial hearing if granted, or at the trial, depending on the judge's ruling.

Formal written statements(FWS)

Check that all evidence contained in the FWS is admissible. In some instances, where the original witness statement fulfils the requirements of a FWS a separate FWS of evidence may not be required. Do not include in the FWS (O/Cs) or lead (prosecutors) any evidence from the witness that is inadmissible.

The prosecutor must be advised where necessary, of any matter relating to a particular witness that may affect their evidence. For example, a witness may have some impediment or be unlikely to 'come up to brief' because of hostility.

Defences

Consider likely defences when preparing the file. While the issues in contention may have been narrowed through the CMM process, continued liaison with the defence lawyer may also assist.

Justification and excuse

The prosecution is required to prove beyond reasonable doubt all the elements of the offence. It is not however required to disprove every possible defence, irrespective of whether there is evidence to support such a defence.

If there is some evidence which might support a particular defence however, so that it is possible for a court to acquit on the basis of that defence, the prosecution case must be sufficient to exclude the defence beyond reasonable doubt.

The onus of proving the defendant’s guilt remains on the prosecution, and if the defence evidence, together with all the other evidence, leaves the judge in reasonable doubt, then the defendant is entitled to be acquitted.

A simple way of describing the onus borne by the parties in those sorts of situations is that the defence bears an evidential onus to raise the possibility that a court could acquit on the basis of the relevant defence, and the prosecution bears the overall onus of establishing guilt beyond reasonable doubt. For example, if the defendant is charged with an offence that he acted without a reasonable excuse, and subsequently produces evidence showing that the defendant had a reasonable excuse, it is for the prosecution to prove beyond reasonable doubt that the excuse was not reasonable.

Employees preparing files for prosecution must be mindful of the fact that the legal burden of proof rests on the prosecution. In particular, they should clearly identify in every case, any excuse etc raised by the defendant or others in interview or that can reasonably be anticipated and, to the extent possible, advise how that excuse etc may be rebutted through direct evidence or cross-examination.

Refer also to R v Tavete [1988] 1 NZLR 428, *R v Somerfield* [2009] NZCA 231.

Exhibits

Be aware of the exhibits and who will produce them. If there are a number of exhibits, use a list to show the order in which they will be produced and the name of the witness producing them.

Orders relating to items seized

Where necessary, an order for forfeiture or disposal of exhibits or items seized may be required on conviction. See sections 149-163 of the Search and Surveillance Act 2012 and the 'Procedures applying to seized and produced things' chapter for further information.

Legal research

Prosecutors must have a copy of relevant legislation for the hearing and where possible, of the leading relevant cases. Contact the PPS legal adviser if assistance is required finding this.

Discussions with O/C case

Discuss the case with the O/C case prior to a defended hearing. This assists in identifying any issues or problems with the case, before the hearing.

Interviews with prosecution witnesses by the defence

Defence counsel has the right to interview anyone, including prospective prosecution witnesses. Similarly, the prosecutor can interview defence witnesses, if they know who they are. As a professional courtesy, you should advise defence counsel that you intend to approach a defence witness.

However, while defence counsel has the right to interview any witness, the witness can refuse to discuss the matter. Where necessary, you should warn a witness of a possible approach by the defence and explain that they:

- are free to discuss the matter with the defence counsel
- can decline to be interviewed, and if they wish, direct defence counsel to the O/C case
- can, if interviewed:
    - have any other person present
    - request a copy of any notes taken or statement signed by them.

Assure them that, if they wish to speak to defence counsel, Police will be available to accompany them and support them at any interview.

Police employees asked to provide interviews

Any Police employee requested by the defence to provide an interview should discuss the matter with the local District Prosecutions Manager before any interview takes place.

Defence misconduct during interviews of prosecution witnesses

If you become aware of alleged inappropriate conduct by defence counsel in the interviewing or attempted interviewing of a prosecution witness, promptly report the circumstances to the District Prosecutions Manager to consider further action.

Conduct of judge-alone trials

Part 5 of the CPA governs the conduct of trials.

Opening statement

In a judge-alone trial, neither the prosecutor nor the defendant may make a full opening statement unless directed by the judge, other than a short outline of:

- the charge(s) the defendant faces, by the prosecutor
- the issue(s) at the trial, by the defendant.

Where the prosecutor believes that an opening statement will assist the court, leave must be sought from the judicial officer. Complex prosecutions or matters involving a large number of witnesses are examples of when it may be appropriate to seek leave to give an opening statement.

Order for presenting evidence

Unless the court directs otherwise, the prosecutor and the defendant must call evidence in this order:

- the prosecutor may adduce the evidence in support of the prosecution case
- the defendant may adduce any evidence they wish to present
- subject to section 98 of the Evidence Act 2006, the prosecutor may adduce evidence in rebuttal of evidence given by or on behalf of the defendant.

Without limiting the above, the court may give the defendant leave to call one or more witnesses (e.g. an expert witness) immediately after the prosecutor has called a particular witness or witnesses.

Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time when it is to be given, be given before or after evidence is given in support of the alibi.

Unless the court directs otherwise, neither party may address the court on the evidence given by either party. However, the defendant, whether or not they intend to call evidence, may address the court at the end of the prosecutor's case to submit that the charge should be dismissed.

Decision of the court

Following the hearing of evidence and any submissions, the court must consider the matter and may find the defendant guilty or not guilty.

The court must give reasons for its decision and may, if it thinks fit, reserve its decision. If the court reserves its decision, it must:

- give it at any adjourned or subsequent court sitting, or
- record the decision, authenticate it, and send it to the registrar.

If a decision is sent to the registrar, the registrar must deliver it at a time and place they determine. A reserved decision delivered by the registrar has the same force and effect as if given by the court on that date. The reasons for the court's decision may accompany the court's decision or be given later.

Proceeding in the absence of the defendant

Category 1 offences

If the defendant fails to appear on a category 1 offence when required to be present, and the prosecutor appears, the court may determine the matter in the defendant's absence.

If the court proceeds in the defendant's absence, the defendant's lawyer, if present, may continue to represent the defendant. Any evidence of a fact or opinion that would be admissible if given by oral evidence is also admissible if given by way of an affidavit or a formal statement in these circumstances. A formal statement admitted as evidence must be treated as evidence on oath given in a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

If the defendant is found guilty in their absence, the court may proceed to sentence them. The defendant may be advised of the result by notice of the court with an opportunity to apply for a rehearing within 15 working days of the notice.
(ss118, 119, 124, 126 CPA)

Infringement notices

If a defendant disputes an infringement notice, a notice of hearing is issued and a copy served on the defendant. The notice of hearing is treated as if it were a category 1 charging document and the copy served, as a summons requiring the defendant's attendance in court.

If the defendant fails to appear on a notice of hearing, the matter may be determined in their absence in same manner as any other category 1 offence.
(ss118, 119, 124, 12 6CPA & s 21Summary Proceedings Act 1957)

Category 2-4 offences

In limited circumstances, it may be possible to proceed with a trial in the defendant's absence for category 2-4 offences. The Solicitor-General's Prosecution Guidelines provide guidance on when this may be appropriate. Examples include:

- where the offending is particularly traumatic, e.g. sexual or violent offending, and the prospect of giving evidence is especially distressing; or
- where there are multiple co defendants who have attended for trial and wish to have the charges heard.

Notwithstanding these examples, the prosecutor must be able to identify clear public interest factors rendering it demonstrably in the interests of justice to proceed in the absence.

If the court **is** satisfied the defendant has a reasonable excuse for non-attendance, the court can proceed with the trial only if satisfied the defendant's absence will not prejudice their defence.

If the court **is not** satisfied the defendant has a reasonable excuse for non-attendance, the trial may proceed in the defendant's absence if it is in the interests of justice to do so. These matters must be considered when determining the interests of justice:

- any information available to the court about the reasons for the defendant's absence
- any issues that the defendant has indicated are in dispute and the extent to which their evidence is critical to an evaluation of those issues
- the likely length of any adjournment, given the particular interests of victims and witnesses that a trial takes place within a reasonable time of the events to which it relates and the effect of any delay on the memories of witnesses
- the nature and seriousness of the offence
- the interests of any co-defendant.

A judge-alone trial in the defendant's absence proceeds in the same manner as it would if the defendant were present.

Before attempting to proceed in the defendant's absence, you should request the matter be stood down temporarily to enquire as to the reasons for the absence. If there is any doubt or concern about an application to proceed in the defendant's absence, seek advice from a Senior Prosecutor, Principal Prosecutor or District Prosecutions Manager.

A warrant to arrest the defendant may be issued when the defendant fails to appear for trial irrespective of whether the court proceeds in their absence. However, a defendant may not be sentenced on a category 2-4 matter in their absence.

Related information

See also:

- warrants to arrest (see information on arrest warrants in the 'First appearance' section of the 'Administration stage' chapter)
- adjournments (in the 'Administration stage' chapter)
- amending charges (in the 'Commencement of proceedings' chapter).

Withdrawal or dismissal of charges

If a charge is withdrawn by leave, there is no bar to further proceedings for the same matter. When a matter is dismissed for any reason, including when no evidence is offered without opening the case, further proceedings are prohibited unless a narrow set of circumstances apply (e.g. a tainted acquittal).

If there is an intimation from the judge, or an application from the defence, that the charge be dismissed, the prosecutor should seek leave to withdraw the charge if they believe that there should be an ability to recommence the prosecution.

It may be desirable to seek the withdrawal of the charge(s) if one or more key witnesses fail to appear and there is insufficient other evidence to proceed without the evidence, an adjournment is not possible and a hearsay application is unlikely to succeed.
(ss146, 147, 151-156 CPA)

Looking after witnesses

Prosecutor's responsibilities

Although you may have appeared in court many times, remember the witness may be giving evidence for the first time. Recalling your own nervousness when you first gave evidence or appeared as a prosecutor will help you appreciate the genuine fear many witnesses feel.

The witness' welfare is in the hands of the prosecutor and the O/C case and you will undoubtedly influence their future attitude toward the Police and the justice system. It is your responsibility to put witnesses at ease before a hearing, although the O/C case plays some part by explaining courtroom procedure at the time of the initial interview or when serving the summons. They must also ensure the witness is present at the hearing.

Summons

As soon as possible following the setting of the trial date, witnesses must be summonsed to appear. The court requires a POL () 275 witness list and an application for summons with the witness details to enable a summons to be issued and served. (Access the POL 275 in Police Forms> Prosecutions).

The courts will prepare and issue the summonses within 3 working days of receiving the Police request for summons on the POL () 275. Police should arrange service of witness summonses as soon as practicable to give witnesses sufficient notice of the date they are required to attend trial. Best practice is to ensure there is at least 3 working days between service and the attendance date.

Before the trial

If possible, try to speak with each witness before the trial. A lack of proper advice often results in a well-intentioned, truthful witness being unfairly embarrassed. A nervous witness is also more likely to have a lapse of memory. The interests of justice are served when witnesses are aware of court procedure before entering the witness box and give their evidence in a relaxed, truthful manner.

Suggestions for putting witnesses at ease

Suggestions to put the witness at ease:

- Introduce yourself.
- Show the witness where they will be giving evidence and the best stance to adopt (side on but turned slightly toward the bench).
- Explain the need to speak loudly and slowly and to watch the clerk, so their evidence can be heard and recorded.
- Politely point out that it is essential to speak the truth.
- Explain that the judge and defence counsel will probably ask questions and they will need to listen carefully.
- Suggest they pause and mentally check the answer before replying to a question. Point out that some witnesses reply hastily and then are embarrassed by having to retract or modify their answers.
- Advise that if, after pausing, they don't know or are uncertain of the answer, they should say so.
- Advise them that, if they don't understand the question, they should say so.
- Ask them if they have any questions or concerns.
- Ask them to read any signed statement they made to refresh their memory.
- Ensure they are aware of the manner in which the evidence will be elicited.

Preserving evidence integrity

When preparing a witness for court it is important that Police are not perceived as telling a witness what evidence to give. Be careful not to put words into the witness' mouth or leave yourself open to a complaint of encouraging a witness to mislead the court. It is acceptable to ask a witness what they will say in answer to a particular question but it is not acceptable to tell them what the answer to a particular question should be.

To safeguard the integrity of evidence, the O/C case must also advise witnesses not to discuss their evidence with other witnesses while waiting to give their own evidence or after they have given their evidence and been excused from the court.

Vulnerable witnesses

Pay particular attention to the care and consideration of witnesses who are more vulnerable to the pressures of giving evidence, for example:

- children
- complainants in sexual cases
- family violence victims
- people with disabilities
- people for whom English is not a first language.

The court provides services to assist witnesses such as interpreters, screens, and the option of remotely given evidence. As applications for these services may need to be made to the court pre trial, it is important to discuss concerns with the prosecutor and Victim Adviser of Court Services at an early stage and well in advance of the hearing.

Where a complainant is aged below 18 years, the O/C case must advise the prosecutor at an early stage of the age and the preferred mode of evidence for that witness. (Refer s107Evidence Act 2006).

See the 'Administration stage' chapter for information about witness name suppression.

Witnesses leaving the country

If the O/C case learns that a witness is intending to leave New Zealand before giving evidence, the matter must be urgently discussed with the prosecutor so an alternative mode of evidence may be applied for.

During the hearing

When in court, the prosecutor must keep the witness informed of what will happen next. Use phrases like:

- "Thank you Ms Smith, would you please answer any questions from Mr Jones" (indicating the defence counsel).
- "I have no re-examination. Does Your Honour have any questions?"

The prosecutor's assistance should not end when the witness' evidence is given. You can also help/ liaise with the O/C case about such things as transport arrangements and the speedy payment of expenses. This promotes goodwill and encourages people to offer their services again.

Witness expenses

A witness giving evidence is entitled to witness expenses as set out in the Witnesses and Interpreters Fees Regulations 1974.

The O/C case is responsible for:

- ensuring any witness expenses to be paid by Police, are paid
- completing the expense claim form on behalf of the witness and getting it signed by the prosecutor
- ensuring the claim form is submitted.

Expense claims by Police as witnesses

Police employees called as witnesses for the Crown cannot claim witness fees or allowances but may be paid allowances and/ or refunded expenses if travel is required.

Employees summonsed as witnesses in an official capacity by a party other than the Crown, must recover any fees, allowances or expenses from the party responsible for the summons and deliver it to their district's business services manager for payment to the public account. The employee is entitled to be paid allowances or refunded expenses if travel is required.

Employees summonsed as witnesses in a private capacity:

- should claim any expenses incurred from the party responsible for the summons
- must attend in their own time and take any absence from duty as days off, annual leave or leave without pay.

Further information

Refer to the 'Victims (Police service to victims)' Police Manual chapter for information about Police legal responsibilities for victims at court.

The Ministry of Justice has publications or information for court users on their website including these brochures:

- Speaking Maori in Court
- Using sign language in Court
- Let's talk Court
- Off to Court being a witness
- Off to Court - supporting a young witness.

Police conduct as witnesses

Professional conduct

Employees as witnesses must remember that they are representing the New Zealand Police. Police evidence is often vital to the prosecution case and in cases of wider public interest, a focus of media attention.

Police employees giving evidence must do so in a clear and concise manner that reflects the professional standards of Police and Police values. Under cross examination by defence counsel, maintain the same unbiased and fair presentation of evidence to avoid any perception that Police are being obstructive to the court.

When mistakes are made

If a situation arises where Police may have made a mistake during the investigation or perhaps some action that should have been undertaken was overlooked:

- inform the prosecutor of any potential issues before the hearing so they are fully briefed and prepared to deal with the issue should it arise
- be open and honest with the court as to the circumstances.

Often a frank and open acknowledgement of a mistake made will effectively blunt defence criticism of Police action.

Criticism of Police evidence/witness

Where any criticism of Police evidence/witness is received from the court, the prosecutor must notify the PPS Regional Manager in writing outlining the issue(s) that arose. The PPS Regional Manager must then assess the appropriate level of further escalation of the matter. The 'No surprises policy' must also be adhered to during this process.

The Director: PPS must be notified of all serious criticisms.

Police witnesses for the defence or non-Police cases

Where a Police employee is summonsed or elects to give evidence, other than as a Police prosecution witness, they must as soon as practical before the hearing:

- forward a copy of the summons to their supervisor or, if no summons has been received, inform their supervisor that they have been called or intend to give evidence, and
- submit a report on the nature of the evidence they are likely to be called upon to give. The report should also outline any documents (e.g. reports, emails, briefs of evidence) being used in giving evidence.

Employees appearing in court proceedings that have **no** connection to their employment in the New Zealand Police must not wear their Police issued uniform. The uniform is a 'statement' of authority and it is not appropriate to wear it when their employment is not a factor in the hearing (e.g. disputes tribunal, child custody (Family Court), civil matter). It is not necessary to furnish a report as to the nature of the evidence they may be called upon to give, as they are there in a private capacity and not in uniform.

If the matter is being prosecuted by the Crown or Police, the prosecutor should be advised at an early stage by the employee who is planning to give evidence.

See also the restrictions on wearing uniform when called by the defence or in non-Police cases, in the 'Dress standards for court> When must/must not uniform be worn in court' section of the 'Uniform, dress standards and appearance' chapter.

Crown prosecutions and jury trials

Overview

When the Crown is required to appear to prosecute defendants either due to the offence category, offence type, or an election, the prosecution file must be delivered to the local office of the Crown Solicitor as soon as practicable. The Crown may assume responsibility for a file as early as following the first appearance for category 4 matters or as late as following the case review hearing for jury trials not on the Crown list. (Refer to 'Crown involvement' in the 'Administration stage' chapter for detailed information on when the Crown will assume responsibility).

Early liaison

As with any prosecution, early and thorough preparation and disclosure will assist the prosecution and the defence. As soon as the file is transferred to the Crown, the O/C case should liaise with the allocated Crown prosecutor to discuss the prosecution.

If the prosecution is a judge-alone trial prosecuted by the Crown due to the Crown Regulations, the file must be prepared in the same way as in any other judge-alone matter. However, the prosecution liaison will be with the Crown.

Local liaison and communication protocols with the office of your local Crown Solicitor must be followed. Consult with your Police Prosecution Service office to ensure you are aware of the requirements in your district.

Filing exhibits

Police file exhibits on behalf of the Crown to preserve the chain of custody. Exhibits should be filed in the trial court no later than one week before the date upon which a trial is scheduled to commence.

The exceptions to this are:

- video interviews and transcripts, which should be filed with the formal statements (r5.5 CPR)
- any documentary exhibits and any other exhibit that the Crown would rely on to survive an application for discharge, which should be filed with the formal statements so pre trial applications may proceed at short notice. This is important because exhibits may be held at local Police stations some distance from the trial court, making transfer at short notice difficult.

Exhibits should be filed with a POL 2116 (Located in Police Forms> Prosecutions). Once filed, a copy of the POL () 2116 stamped by the receipting registrar should be emailed to the Crown prosecutor and defence counsel, so everyone has a complete record of what has been filed.

Jury process

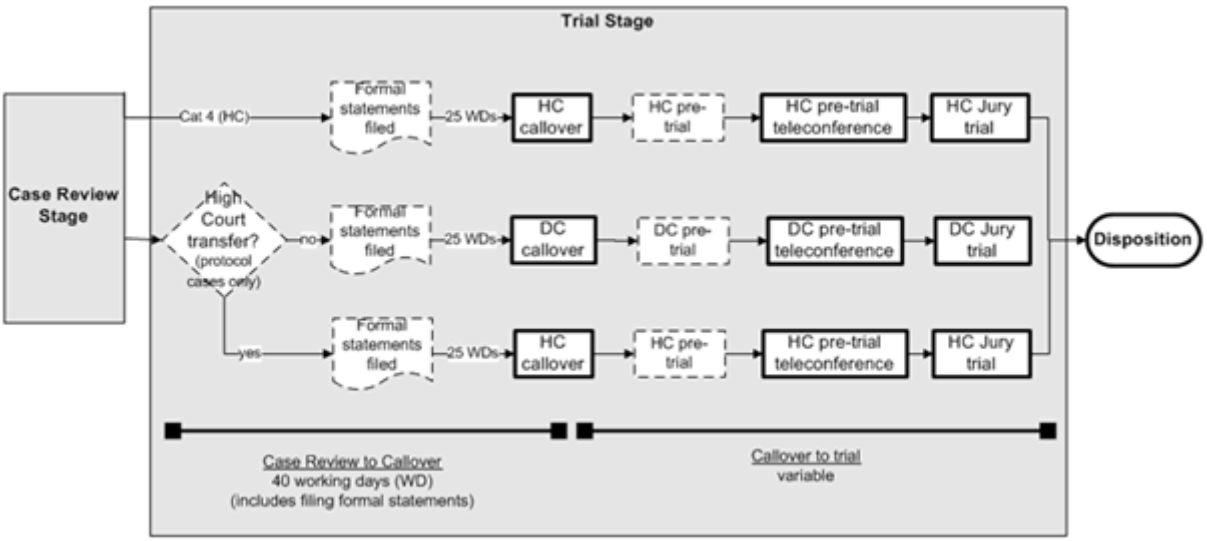
Prosecutions that proceed along the jury trial path commence in the same way as any other prosecution and follow the same process as a prosecution proceeding to a judge-alone trial until the case review hearing.

Following the case review hearing, formal statements must be filed by the Crown no later than 25 days before callover. Exhibits are filed by the O/C case, or the exhibits officer when there is one, in close proximity in time to the filing of formal statements. Refer to the 'Prosecution file and trial preparation' chapter for detailed information on preparing and filing formal statements.

As with a judge-alone trial, it is essential that witnesses are kept up to date with the case progress and any witness related issues communicated to the prosecutor in a timely manner.

Diagram: Jury process

This diagram highlights the jury process from case review through to disposition.


Trial Stage
Case Review Stage
Cat 4 (HC)
Formal statements filed
25 WDs
HC callover
HC pre-trial
HC pre-trial teleconference
HC Jury trial
High Court transfer? (protocol cases only)
no
Formal statements filed
25 WDs
DC callover
DC pre-trial
DC pre-trial teleconference
DC Jury trial
yes
Formal statements filed
25 WDs
HC callover
HC pre-trial
HC pre-trial teleconference
HC Jury trial
Disposition
Case Review to Callover
40 working days (WD)
(includes filing formal statements)
Callover to trial
variable

Police Instructions

Criminal disclosure

Executive summary

Key things to note in this chapter are:

- Police do not have discretion to decide when to disclose relevant information. The Criminal Disclosure Act 2008 (CDA) prescribes **what must be disclosed**, and **when**. Staff must adhere to the timeframes for initial, full and other disclosure as set out in the CDA and this chapter.
- Failure to disclose the appropriate information at the appropriate time will result in consequences for the case being prosecuted and possibly against those responsible for the failure to disclose.
- Do not wait for a statutory trigger, a request from defence counsel, or an upcoming court event before delivering disclosure. Do so proactively at the earliest opportunity and continue to regularly disclose information as it becomes available.
- All relevant information on all case files must be recorded by the O/C case in a Disclosure Index in NIA (). (If that's unsuitable in major investigations due to file size, the Index in the Serious Crime Template may be used). Start recording when the file is first constructed and continue until all information and exhibits have been accumulated.
- Full disclosure includes all relevant information and is not limited to the standard information listed in the Act. All relevant information in the hands of the prosecution should be made available to the defence subject **only** to exceptions allowing information to be withheld to avoid prejudice to the wider public interest.
- While prosecutors are not required to disclose information that is not in their possession or control, or held in a recorded form at the time, retaining information relevant to an investigation and associated police activities in an unwritten form to avoid disclosure would likely constitute a breach of the Code of Conduct.
- Disclosure obligations are ongoing - as new material emerges from the investigation, it must be reviewed for relevance, considered for disclosure, recorded on the Disclosure Index and if appropriate disclosed as soon as reasonably practicable.
- Always seek specialist advice through your supervisor where complicated disclosure issues arise.
- Criminal disclosure can be by electronic or hard copy format. Documents disclosed by electronic means must be in PDF format and **all redactions must be made using the approved redaction software Adobe Pro 9 or higher.** Take particular care to ensure that **sensitive or informant information** is removed. Supervisors are responsible for ensuring the requirements for electronic redaction are met.

- All disclosure - initial and full disclosure packs, additional and ongoing disclosure - must be reviewed and signed off by a supervisor before being released. Supervisors must take ownership and responsibility for the standard of prosecution files and the disclosure delivered by their staff to ensure high standards are met.
- The Criminal Disclosure Act 2008 only applies to video interviews of suspects. It does not apply to video record of interviews (VRIs) of witnesses. Disclosure of VRI of witnesses (and any transcript) at any time during a proceeding is governed by the Evidence Act 2006 and Evidence Regulations 2007.

Introduction to criminal disclosure

Summary

This Police Manual chapter details:

- the practice of criminal disclosure by New Zealand Police
- key duties and responsibilities for police employees.

The primary audience is frontline constables, File Management Centres (FMC ()) or Criminal Justice Support Units (CJSU ()) undertaking disclosure work, supervisors and prosecutors.

Introducing the disclosure system

The Criminal Disclosure Act 2008 (CDA) applies to the disclosure of prosecution materials relevant to all criminal proceedings in New Zealand. All section references in this chapter are to the CDA unless otherwise stated.

The purpose of the Act is to promote fair, effective, and efficient disclosure of relevant information between the prosecution and the defence, and by non-parties, for the purposes of criminal proceedings (s3).

The Act details obligations for Police and other parties to disclose specific information or types of information within set timeframes or timeframes referenced by reasonableness. The key principle is that in criminal proceedings the prosecution is required to disclose all relevant information, unless there is good reason to withhold it.

Police must:

- ensure initial disclosure is delivered prior to, or at the first appearance
- disclose all relevant and available information on the prosecution file to the defendant or their lawyers address for service, at the earliest available opportunity
- not wait for a statutory trigger, a request from defence counsel, or an upcoming court event to deliver disclose. Police will proactively and regularly disclose information as it becomes available.

The disclosure system applies to **all** criminal proceedings commenced by Police including case files prepared by GDB (), CIB () and Road Policing. Cooperation between Police district (frontline and legal) staff, Police prosecution staff and Crown Solicitors is necessary for the system to operate efficiently and effectively.

Links to Police strategic documents and goals

The Police approach to criminal disclosure provides opportunities to enhance service delivery to meet Police's strategic goals.

The system provides integral standardised checks and balances, ensuring disclosure is delivered quickly, competently and to a high standard. Records and operating systems ensure effective reviewing of disclosure decisions can be undertaken in a timely manner. Through these characteristics the system links directly to the core values (see PDF below) of professionalism and integrity applied in the New Zealand Police Code of Conduct.

Our Values.pdf 2.31 MB

The principles underpinning the Criminal Disclosure Act 2008 link directly to the idea of integrity in the criminal justice system. Quicker more reliable disclosure assists the criminal justice system operate more efficiently and provides the public with greater reassurance around the integrity of its operations. This type of reassurance is led by the integrity of the way Police operate.

Overview of disclosure obligations

Earlier, fuller disclosure helps the defence to become familiar with the case, promoting earlier guilty pleas, facilitating meaningful case management discussions, and ensuring court and police time is used effectively and efficiently.

Disclosure obligations and deadlines

This table outlines the four types of disclosure covered by the Act, when the obligation to disclose commences and the timeframes for disclosure.

Disclosure obligation described	**The legal obligation to disclose commences...**	**Deadline**

Mandatory initial disclosure (list provided in the Act) (s12(1))	at the commencement of proceedings	As soon as practicable, but **no later than:** • 15 working days from the commencement of proceedings • first appearance, in Youth Court
Requested initial disclosure (specifically requested information from the list provided in the Act) (s12(2))	after the commencement of proceedings	As soon as reasonably practicable (don't wait until the next substantive hearing).
Full disclosure (any available relevant information including "standard information" listed in the Act) (s13)	after a not guilty plea has been entered	As soon as reasonably practicable.
Requested additional disclosure (any relevant information specifically requested) (s14)	after a not guilty plea has been entered	As soon as reasonably practicable.

Commencement of proceedings

"Commencement of proceedings" is defined in section 9 as the **earliest** of these criteria:

- the service of a summons
- the defendant's first appearance in court following their arrest, or in response to the filing of a charging document
- the date on which the defendant is granted Police bail under section 21 of the Bail Act 2000

- the filing of a notice of hearing under, or in accordance with, section 21(8) Summary Proceedings Act 1957 (applies specifically to infringements defined in that Act. This criterion is triggered when the defendant requests a hearing or for mitigating factors to be heard at court).

Practical application of the definition of "prosecutor"

All the disclosure obligations in the CDA affecting Police arise from obligations imposed on the "prosecutor". However, section 6 defines 'prosecutor' as something more than the prosecutorial staff generally engaged by Police (i.e. Police Prosecutors and Crown Solicitors). The definition includes any Police employee (or counsel) who is responsible for a file, which includes the O/C case, Criminal Justice Support Units (CJSU ()), file briefers, Police prosecutors and in some cases, Crown Solicitors.

However, Police have taken a pragmatic and practical approach towards ensuring they properly meet the obligations under the CDA. This means the O/C case retains disclosure responsibilities beyond the period they are immediately responsible for a file. Where a District has a Criminal Justice Support Unit (CJSU ()), the CJSU may take on the responsibility for disclosure. It is up to each District to identify what disclosure responsibilities are taken on by the District CJSU.

Supervisors, CJSUs, Police prosecutors and Crown solicitors will at various times take on responsibilities for the prosecution but many obligations relating to the disclosure of new information and the management of exhibits must remain with the O/C case. This is necessary because the O/C case retains the primary relationship with these types of information and evidence.

> **Note**: The use of the term "prosecutor" in this chapter relates only to Police prosecutors.

Official information or criminal disclosure?

Police can withhold information requested under the Official Information Act 1982 and Privacy Act 2020, if it is information that:

- could be sought under the CDA, or
- could be sought under the CDA and has been disclosed to, or withheld from, the defendant under the CDA.

(ss 38 and 39)

Use the CDA to consider requests for information that is...	**Use the Official Information Act 1982 and Privacy Act 2020 to consider requests for information...**
• covered by sections 12 and 13 (initial and full disclosure) • relevant. Obligations under the CDA begin with the commencement of proceedings and continue for as long as information related to the proceedings is held by Police.	• before the commencement of proceedings, or • if the matter does not relate to criminal proceedings, or • are not covered by the CDA.

Disclosure process outlined

Introduction

The Criminal Disclosure Act 2008 sets obligations for Police and other parties to disclose specific information or types of information within set timeframes or timeframes referenced by reasonableness.

Key stages in the disclosure

This table outlines the key stages of the process to be followed to ensure Police meet all statutory requirements for disclosing information to defendants.

Stage	**Description**
1	Prepare case files.
2	Prepare initial disclosure.
3	Review case and deliver initial disclosure.
4	Prepare full disclosure.

5	Review case and deliver full disclosure.
6	Additional and ongoing disclosure.

Each of these stages has distinct obligations arising directly from the Act requiring compliance by all Police employees.

For a diagrammatic view of the disclosure process, see the 'Flowchart: General overview of disclosure (modified for Police from the diagram in section 3 CDA):

General_overview_disclosure_flowchart.pdf 17.02 KB

Variations in procedures in some situations

The six key disclosure stages and the procedures pertaining to each apply to all Police initiated criminal proceedings from the commencement of those proceedings. They continue until the case is disposed of.

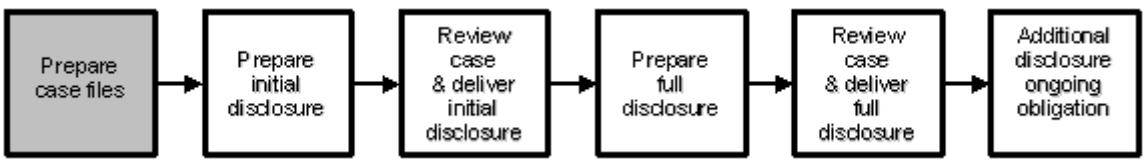
However, some variations to the way Police employees are expected to manage information requests and mandatory disclosure apply in major investigations due to the volume of information that needs to be considered.

Costs orders

Section 364 Criminal Procedure Act 2011 provides for the court to make costs orders where, in the course of a prosecution, there has been a significant procedural failure or refusal to comply with a requirement of the Criminal Disclosure Act 2008 or any associated Regulations, and there is no reasonable excuse for that failure.

Information on costs orders procedure can be found in the Criminal procedure Costs orders chapter.

Preparing case files



O/C case responsibilities

The O/C case is responsible for:

- investigating incidents
- filing charging document
- preparing prosecution files and other supporting materials, including the disclosure index.

At some locations, File Management Centres (FMC ()) or Criminal Justice Support Units (CJSU ()) take over the file preparation once the investigation and charging duties have been completed. In this scenario, all tasks attributed to the O/C case once the investigation and charging phases are complete, apply to those Units, but the overall responsibility for file ownership remains with the O/C case.

Record all relevant information using a disclosure index

All relevant information on all case files must be recorded by the O/C case in a Disclosure Index (generated from the NIA () Disclosure Module). Start recording information when the file is first constructed and continue until all information and exhibits have been accumulated. This is generally just before the trial. (For information about how to complete the Disclosure Index see Procedures for creating the disclosure index and completing disclosure).

Providing the Disclosure Index to defence

Whenever disclosure is delivered to defence, a record of what is being disclosed must be included, and a copy of that record placed on the prosecution file for the prosecutor.

The NIA () Disclosure Module generates a basic Initial Disclosure Record for initial disclosure. A Disclosure Index (also in the NIA Disclosure Module) is more comprehensive and should be used for any disclosure provided beyond the minimum requirements of initial disclosure.

Construction of files

The starting point for disclosure obligations is the investigation file. Where possible, all information relating to the Police investigation and prosecution must reside on the prosecution case file. This is because all information Police collect during the course of the investigation and prosecution must be considered for disclosure.

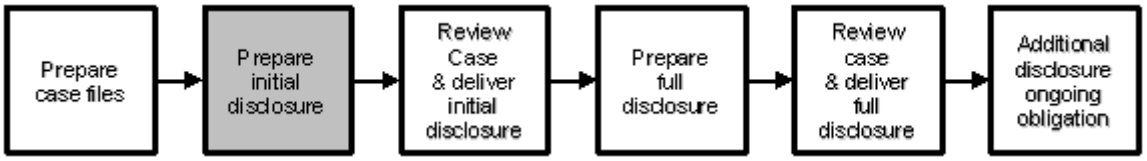
Where the prosecution file is a part file (because the investigation file is too large to be used practically) or a summons file has been created as a part file, the Disclosure Index becomes even more important. All the relevant information on the investigation file and summons file must be properly recorded in the index, as it is the main tool the supervisor uses when reviewing and/or signing off the file for disclosure purposes.

Note: Documents disclosed by electronic means must be in PDF format. **All redactions must be made using the approved redaction software Adobe Pro 9 or higher** which permanently redacts texts and images from PDF files. See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for detailed information on preparing electronic files and redaction.

National prosecution case file standard at "first appearance"

When preparing a case file for first appearance, use the national file order in the 'Prosecution file and trial preparation' chapter.

Preparing initial disclosure



Introduction

This section outlines:

- when information must be disclosed as part of initial disclosure
- the information that must be disclosed.

Employee responsibilities summarised

This table summarises the broad responsibilities of employees involved at this stage of the disclosure process.

O/C Case	Prosecutor
• Monitor disclosure timeframes. • Advise prosecutor of need for time extension application. • Ensure all available information that can be released is disclosed. • Log all requests for further initial disclosure and respond as soon as practicable.	• Apply for time extensions if required. • Facilitate delivery of initial disclosure at first appearance (if not delivered before).

Delivery of initial disclosure

Initial disclosure must be delivered at:

- the commencement of proceedings, or
- "as soon as practicable" after commencement, but no later 15 working days after commencement.
- within a longer period as allowed by a court or registrar, or
- if the defendant is a child or young person, no later than first appearance.

In practice, this usually means the O/C case gives a disclosure package to the prosecutor to provide to the defence at the first appearance (unless the O/C case has already provided it).

You should include **two** disclosure packs on the first appearance file:

	Contents
1. Initial disclosure (usually for the duty lawyer)	A pack that complies with the minimum requirements of s12(1) CDA: • copy of the charging document • summary of facts • Q History printout • POL2127 Initial Disclosure Record (which includes notice of the defendant's right to apply for further information).
2. "Full" disclosure (for the assigned counsel, or duty lawyer if a resolution is likely at first appearance)	Initial disclosure PLUS all other available, relevant information on the prosecution file.

If any disclosure packs are still on the prosecution file after first appearance, the prosecutor will deliver the pack to the defence upon receipt of the address for service (preferably by post or electronic means). Note: If electronic delivery is chosen, disclosed documents must be in PDF format and redacted using **Adobe Pro 9 or higher version**. See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for more information.

Where commencement of proceedings is by way of summons, it may be some weeks before the first appearance. In these circumstances the O/C case should prepare initial disclosure before or as soon as the summons has been served. Service of the summons and delivery of initial disclosure should be completed at the same time wherever possible.

If defence counsel make contact to seek initial disclosure prior to first appearance (and where there is sufficient time to prepare), initial disclosure should be delivered to them.

Requested information

The defence may request in writing further specific information after the commencement of proceedings. Where the information exists, police must provide the information as soon as reasonably practicable after the request is received.

If the prosecutor receives a request, they should send the O/C case a NIA () Task to action the request.

Procedure

Use the steps in this table as a guide when preparing initial disclosure.

Step	Actions by O/C
1	As soon as proceedings have commenced, the O/C case must consider whether the mandatory initial disclosure information can be provided within 15 working days of commencement. If it cannot be provided, the prosecutor must apply to the court or registrar to extend the deadline for providing disclosure (s12(4)(c)). (These applications should be rare, since the minimum requirements for initial disclosure are not demanding).
2	Prepare: • mandatory information in accordance with CDA requirements • all other relevant and releasable information available at that time, not just the minimum requirements • a relevant and accurate record of what has been disclosed and withheld in the NIA disclosure module. **Note**: Documents disclosed by electronic means must be converted to PDF format. (See 'Creating PDF files' in Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information on how to convert).

3	Prepare the Initial Disclosure Record from the NIA Disclosure Module.
4	Proceed to Review case and deliver initial disclosure.

Managing timeframes

As a general rule, the O/C case should maintain effective liaison with the defendant or defence counsel to advise them of delays in providing disclosure within statutory timeframes and when they can expect delayed materials. This approach will promote a better understanding of police operations and reduce the incidence of defence applications to the court for undisclosed materials.

If the O/C case is unable to make initial disclosure under section 12 by the applicable date, they should advise the prosecutor that an application for a later delivery date (under s12(4)(c)) is necessary. The prosecutor must then apply in writing to the court or registrar citing the grounds for requiring an extension.

Composition of information for initial disclosure

Initial disclosure- mandatory information

This table lists the information that must be prepared and delivered to the defendant as part of initial disclosure after the commencement of proceedings.

Materials to be disclosed	**CDA requires disclosure of...**	**CDA section**

Initial Disclosure Record or covering letter to defence counsel (both found in the NIA () Disclosure Module). These documents include a paragraph explaining the defendant's right to apply for further information and the contact details for the O/C case and prosecutor.	a summary of the defendant's right to apply for further information under section 12(2).	12(1)(b)
A copy of the charging document printed from NIA (). **Note**: this does not have to be a 'filed' charging document it is sufficient to include a draft charging document that is intended to be filed.	copy of the charging document.	12(1) (aa)
POL () 262 Summary of facts, which includes the maximum and minimum offence penalty.	• a summary that is sufficient to fairly inform the defendant of the facts on which it is alleged that an offence has been committed and the facts alleged against the defendant • the maximum penalty and the minimum penalty (if one is provided for) for the offence.	12(1)(a) & (c)

NIA () prosecution report: defendant QHA ().	• a list of the defendant's previous convictions that are known to the prosecutor • list of any previous offences proved to have been committed by the defendant and of a kind to which section 284(1)(g) of the Children, Young Persons, and Their Families Act 1989 applies, that are known to the prosecutor.	12(1)(d) (e)
Opposition to bail form and receipt.	Not required by the Act, but generally available at this phase of proceedings.	
Any other relevant information available at the point of delivery.	Not required by the Act, but considered Police best practice.	

Initial disclosure - further requested information

If requested by defence counsel, the O/C case must prepare and deliver these items where they exist, except where they can be withheld under sections 15 -18 of the Criminal Disclosure Act 2008 (CDA) or section 16 of the Victims' Rights Act 2002.

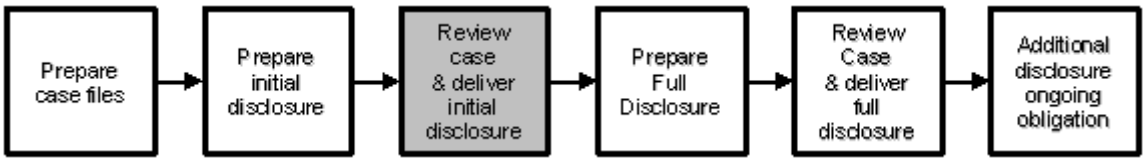
Police materials to be disclosed	**What the CDA requires...**	**CDA section**
Disclosure Index (If disclosure is delivered over more than one occasion, an updated index must be provided with each batch of materials disclosed).	a list of any information described in section 12(2)(a)-(j) that the prosecutor refuses under sections 15-18 to disclose and: • the reason for the refusal, and • if the defendant so requests, the grounds in support of that reason, unless giving those grounds would itself prejudice the interests protected by section 16, 17 or 18 and (in the case of interests protected by section 18) there is no overriding public interest.	12(2)(k)

POL275 Witness and exhibit list.	• the names of any witnesses the prosecutor intends to call at the hearing or trial • a list of the exhibits that are proposed to be produced on behalf of the prosecution at the hearing or trial.	12(2)(a) & (b)
Notebook entries and defendant statements.	a copy of all records of interviews with the defendant.	12(2)(c)
Job sheets, briefs of evidence, and witness statements (including any formal statements that have been prepared).	a copy of: • all records of interviews of prosecution witnesses by a law enforcement officer that contain relevant information • job sheets and other notes of evidence completed or taken by a law enforcement officer that contain relevant information.	12(2)(d) & (e)
ESR () reports, official breath and blood testing receipts, device logbook entries and device calibration certificates.	a copy of any records of evidence produced by a testing device that contain relevant information.	12(2)(f)
POL () FVIR (), burglary/crash maps, crime scene and victim photographs, notebook entries.	a copy of any diagrams and photographs made or taken by a law enforcement officer that contain relevant information and are intended to be introduced as evidence as part of the case for the prosecution.	12(2)(f)
Suspect's rights and excess breath alcohol (EBA ()) forms, notebook entries.	a copy of relevant records concerning compliance with the New Zealand Bill of Rights Act 1990.	12(2)(i)

Video copy of a defendant interview.	a video copy of any video interview with the defendant.	12(2)(h)
Hand written or typed statements, notebook entries, audio interviews.	a copy of any statement made by, or record of an interview with, a co-defendant in any case where the defendants are to be proceeded against together for the same offence.	12(2)(j)

Note: Documents disclosed by electronic means must be in PDF format. All redactions **must** be made using **Adobe Pro 9 or higher version**. See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for detailed information on preparing electronic files and redacting information electronically.

Review case and deliver initial disclosure



Employee responsibilities summarised

This table summarises the broad responsibilities of those involved at this stage of the disclosure process.

O/C Case	Supervisor
• Provide supervisor with materials to review. • Make any changes suggested by supervisor. • Manage disclosure timeframes effectively. • Ensure copies of partially disclosed materials and the original materials are placed on the case file.	• Review materials, providing feedback on any changes required. • Provide field guidance to O/C case.

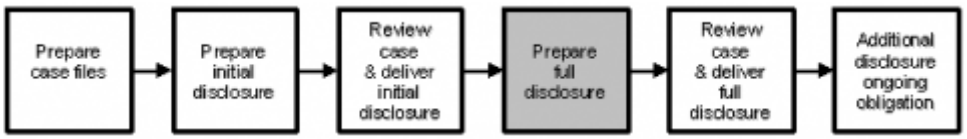
Procedures for reviewing the case and delivering initial disclosure

Use this table as a guide when reviewing the case and delivering initial disclosure.

Step	Action
1	The O/C case must provide their supervisor with a prosecution file that includes an initial disclosure pack for reviewing purposes. When preparing the initial disclosure pack, follow the procedures for: • creating a disclosure index • considering information covered by sections 12 and 13 (initial and full disclosure) • reviewing material for relevance • copying and editing material to be disclosed. **Note**: Documents disclosed by electronic means must be in PDF format**. All redactions must be made using Adobe Pro 9 or higher version.** See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for detailed information about preparing and redacting electronic files and the requirements for supervisors' approvals.
2	The O/C case's supervisor: • reviews the materials prepared for disclosure when necessary and provides feedback to the O/C case on any changes that are required • signs off the initial disclosure materials before they are released for provision or delivery to the defendant, duty solicitor, or defendant's counsel. The Initial Disclosure Record or Disclosure Index (generated from the NIA () Disclosure Module) should be the primary aid to assist the supervisor review disclosure materials. The index is not a replacement for reviewing individual documents, but is a guide to the materials requiring specific attention and the decisions (and reasoning) made by staff in relation to those materials.
3	If the materials require any remedial work, the O/C case should do this before the disclosure materials are delivered.

4	Where complicated disclosure issues arise, seek specialist advice. Areas that may require advice commonly include: • withholding information and reasons for withholding, and • managing partial disclosure and selecting the right information for deletion.
5	Once disclosure materials have been reviewed and/or signed off, arrange delivery to the defendant or their counsel within the specific timeframes by: • post, before first appearance, if the defendant is summonsed or released on Police bail, or • placing on the prosecution file for the prosecutor to deliver at first appearance, if the defendant was arrested and taken to court immediately.
6	Where materials for mandatory initial disclosure have not been delivered before the first appearance in court, hand the materials to the prosecutor to pass on to defence counsel. (**Note**: In terms of best practice, the O/C case must take all reasonable steps to deliver the materials earlier and not just hand the materials to the prosecutor immediately after the materials have been prepared).
7	The O/C case follows procedures for delivering materials to the defendant or defendant's counsel personally.

Prepare full disclosure



Summary of O/C case responsibilities

At this stage of the disclosure process, the O/C case is responsible for:

- Preparing full disclosure materials

- Advising prosecutor of need for time extension application
- Monitoring case file materials to fulfil the ongoing disclosure obligation.

Timeframes for providing full disclosure

Full disclosure must be provided as soon as reasonably practicable after the defendant enters a not guilty plea to a charge (this includes denying a charge in the Youth Court jurisdiction).

While the legislative trigger for full disclosure is the entry of a plea, Police best practice is to deliver all relevant information to the defence as soon as it is available (including before the entry of a plea). In practice this means preparing a 'full' disclosure pack for the first appearance file.

In any event, to facilitate meaningful case management discussions between the prosecution and defence, the OC () case must ensure any relevant information not already provided to the defence before the plea is delivered at least five working days before out of court case management discussions.

The prosecutor must advise the O/C case (by a NIA () Task) that a defendant has entered a not guilty plea and the obligation to provide full disclosure has been triggered.

O/C case responsibilities

The O/C case has these responsibilities when preparing full disclosure:

- Prepare full disclosure materials for review and then delivery as soon as is reasonably practicable
- Prepare the Disclosure Index
- Advise the prosecutor of any anticipated delay to relevant information, and when they can expect the information to be disclosed
- Monitor case files to fulfil the ongoing disclosure obligation.

Standard information for full disclosure

Section 13(2)(a) states that full disclosure includes all relevant information and is not limited by the standard information listed in the Act. Therefore the following table should only be used as a **guide** and Police should follow the general principle of releasing all relevant information that cannot be withheld under one of the reasons listed in the Act.

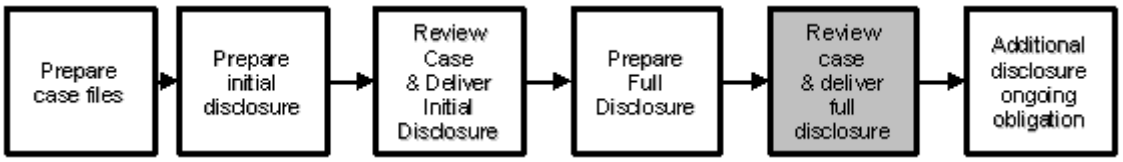
Police materials to be disclosed	**What the CDA requires...**	**CDA section**

Updated Disclosure Index (If disclosure is delivered over more than one occasion, then an updated index must be provided with each batch of materials disclosed.)	a list of any relevant information that the prosecutor refuses under sections 15- 18 to disclose and: • the reason for the refusal, and • if the defendant so requests, the grounds in support of that reason, unless giving those grounds would itself prejudice the interests protected by section 16, 17 or 18 and (in the case of the interests protected by section 18) there is no overriding public interest.	13(2)(b)
• Witness statements • Fingerprinting Officer's statement • Scene of Crime Officer's statement	a copy of any statement made by a prosecution witness.	13(3)(a)
Signed or unsigned briefs of evidence in relation to a prosecution witness (including any formal statements)	a copy of any brief of evidence that has been prepared in relation to a prosecution witness.	13(3)(b)
Notebook entries	the name and, if disclosure is authorised under section 17, the address of any person interviewed by the prosecutor who gave relevant information and whom the prosecutor does not intend to call as a witness, and: • any written account of the interview, (signed or unsigned), and any other record of the interview, and • any statement made to the prosecutor by the person.	13(3)(c)
Statements		
Video interviews		
Video synopses, video transcript		

Witness OHA () with	any convictions of a prosecution witness that are	13(3)(d)

Witness [redacted] with irrelevant material deleted or convictions listed in the cover letter	any convictions of a prosecution witness that are known to the prosecutor and that may affect the credibility of that witness.	13(3)(d)
Exhibit list	a list of all exhibits that the prosecutor proposes to have introduced as evidence as part of the case for the prosecution.	13(3)(e)
Exhibit schedule	a list of all relevant exhibits in the prosecutor's possession that they do not propose to introduce as evidence.	13(3)(f)
Expert statements, analyses or reports	a copy of any relevant information supplied to the prosecutor by a person or people the prosecutor considered calling to give evidence as an expert witness or witnesses, but elected not to do so.	13(3)(h)
Medical reports	a copy of any information supplied to the prosecutor in connection with the case by any person or people the prosecutor proposes to call to give evidence as an expert witness or witnesses.	13(3)(g)
Analyst reports, fingerprint technician statement		
Any other information available at the point of delivery (e.g. nominated persons form, scene examination reports)	any relevant information, including, without limitation, the information (standard information) described in section 13(3).	13(2)(a)

Review case and deliver full disclosure



Employee responsibilities summarised

This table summarises the broad responsibilities of those involved at this stage of the disclosure process.

O/C Case	Supervisor
• Provide supervisor with materials to review. • Make any changes suggested by supervisor. • Manage disclosure timeframes effectively. • Ensure copies of partially disclosed materials and the original materials are placed on the case file.	• Review materials, providing feedback on any changes required. • Ensure requirements for electronic redaction are complied with (see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter). • Provide field guidance to O/C case.

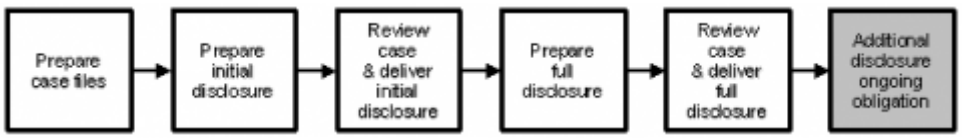
Procedures

Use this table as a guide when reviewing prepared full disclosure materials and delivering them to the defendant. (These procedures are similar to those for reviewing initial disclosure).

Step	Action
1	The O/C case provides their supervisor with a prosecution file that includes: • a full disclosure pack • an updated Disclosure Index.

2	The O/C case reviews any previous decisions to withhold materials to determine whether the grounds for withholding still apply.
3	The supervisor reviews and/or signs off the prepared materials and file as appropriate, broadly following the same procedures as for reviewing the case and delivering initial disclosure. Use the Disclosure Index to identify items requiring particular attention during the review and seek specialist advice when necessary. Ensure procedures for electronic redaction are complied with, taking particular care with **sensitive or informant information** (see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter).
4	The supervisor signs the Disclosure Index relating to the full disclosure package.
5	The O/C case ensures disclosure materials are delivered to the defence counsel **as soon as is reasonably practicable**. Delivery can be conducted by mail, electronic device or by handing the information to defence counsel directly.

Additional disclosure and the ongoing obligation to disclose



Additional disclosure

Requests for additional disclosure can be made by the defendant or their lawyer any time after the full disclosure requirement arises. This request need not be in writing.

These requests must be processed "as soon as reasonably practicable".

Summary of responsibilities

This table outlines the responsibilities of those providing additional disclosure (after full disclosure has been completed).

O/C case	Supervisor	Prosecutor
• Log and track additional requests for disclosure • Prepare materials • Deliver materials • Advise prosecutor if information needs to be withheld and the grounds.	• Review materials, providing feedback on any changes required • Ensure the requirements for electronic redaction are complied with (see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter). • Maintain an overview of disclosure delivery practices • Provide field guidance to O/C case.	Forward any additional requests for disclosure to the O/C case to log and action.

Procedure when additional disclosure is requested

Use this table as a guide when additional disclosure is requested.

Step	Action
1	The O/C case: • logs the requests for additional disclosure and tracks the preparation of the materials • confirms the provision of the materials to defence counsel. (The logging of requests also gives supervisors an opportunity to maintain an overview of disclosure delivery practices).
2	The O/C case prepares additional disclosure material and considers if information should be withheld. The information prepared for disclosure should include an updated Disclosure Index.

3	The O/C case's supervisor reviews the information when it is prepared and/or signs it off. Any changes the supervisor requests should be made by the O/C and signed off before the information is delivered to defence counsel.
4	The O/C case delivers the material to the defendant or defendant's counsel. Consider the format in which the information is held when determining the delivery method.

Withholding additional information

Section 14(2) allows prosecutors to withhold requested information, if:

- the information is:
  - not relevant
  - may be withheld under ss15, 16, 17 or 18, or
- the request appears to be frivolous or vexatious.

If information is being withheld in these circumstances the O/C case must as soon as is reasonably practicable provide the defence with the reason(s) and ground(s) for withholding.

When withholding information on the ground that the request was **frivolous or vexatious**, the O/C case should collate all evidence that supports this ground. Proof of a pattern of frivolous or vexatious activity by the defendant or defence counsel will be the most compelling evidence.

Ongoing disclosure

The Police obligation to disclose all relevant material held on a case file continues beyond the initial, full and additional disclosure obligations in the CDA (s13(5)).

The O/C case and their supervisor must ensure that every time new material emerges from the investigation that:

- it is reviewed for relevance and considered for disclosure
- the disclosure decision is recorded on the Disclosure Index
- the material is disclosed, if appropriate, as soon as reasonably practicable.

Similarly, prosecutors should check that any materials they receive, during the period in which they have responsibility for the case file, have been recorded on the Disclosure Index and considered for disclosure.

Summary of responsibilities

This table outlines the responsibilities of those providing additional disclosure (after full disclosure has been completed).

O/C case	Supervisor
• Ensure all materials are reviewed and disclosed appropriately fulfilling police's ongoing disclosure obligation. • Review earlier withheld information regularly to ensure it can still be withheld or should be disclosed.	• Maintain an overview of disclosure delivery practices. • Ensure the requirements for electronic redaction are complied with (see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter). • Provide field guidance to O/C case on the ramifications of the ongoing obligation.

Regular review of withheld materials

The O/C case should also regularly review all withheld materials (either fully or partially) on the case file to ensure the materials can still legitimately be withheld. This process is best conducted:

- when initial and full disclosure requirements are completed
- whenever an additional request is completed, and
- shortly before the case goes to court.

Take care to ensure information is disclosed so the defence has adequate time to review it. This enables counsel to have meaningful conversations with the defendant, thereby promoting the possibility of earlier case resolution.

Major investigations

Flexibility may be required in major investigations

Large investigations may require a more flexible approach to managing disclosure obligations. These investigations may relate to:

- serious violent offending
- organised crime (theft and drugs), or
- fraud.

They will typically comprise multiple offenders who are charged with Category 3 or 4 offences. It is the size of the case file and the number of potentially disclosable documents produced by these investigations that pose the greatest challenge to disclosure requirements under the CDA.

It is also likely that these proceedings will be Crown Prosecutions, and the O/C case will need to liaise closely with the Crown Solicitor regarding disclosure.

Key factors to consider

Police do not have discretion to decide when to disclose relevant information. The CDA prescribes:

- what is to be disclosed, and
- when it is to be disclosed.

Failure to disclose the appropriate information at the appropriate time will result in consequences for the case being prosecuted and possibly against the people responsible for the failure to disclose. For proceedings commenced after 1 July 2013, this may include costs ordered against Police if the departure from what would have been acceptable practice is significant. However, there is still room for flexibility as long as the requirements in the CDA are met.

Major investigation disclosure under the Criminal Disclosure Act 2008

This table outlines the requirements that Police working on major investigations need to fulfil to ensure compliance with the CDA.

Require-ment	Obligation commences	Deadline	Information required	Risk/problem areas

Mandatory initial disclosure	At the commencement of proceedings (s9)	As soon as reasonably practicable but no later than 15 working days from commencement	Refer Composition of initial disclosure - mandatory information table. (s12(1)) lists the required information).	Disclosure must be provided within 15 working days of commencement. Advise defence of the ability to request further information under s12(2)
Requested initial disclosure	Upon written request after criminal proceedings are commenced (s9)	As soon as reasonably practicable	Refer Composition of initial disclosure - requested information table. (s12(2) lists the information that may be requested by the defence).	Requirement to provide an index of relevant materials not disclosed (s12(2)(k)) (Disclosure Index)

Full disclosure	After the defendant pleads not guilty (s13(1))	As soon as reasonably practicable. (See Timeframes for providing full disclosure).	Refer Full disclosure - standard information table. (s13(2) states any available relevant information including "standard information" listed (s13(3))	Requirement to provide: • an updated index of relevant materials not disclosed (s13(2)(b)) • lists (in a timely manner) of exhibits to be, and not to be, introduced to court as evidence (s13(3)(e) & (f)) (Disclosure Index)
Requested additional disclosure	Upon request (verbal or written) after the defendant pleads not guilty	As soon as reasonably practicable	s14(1) states any particular requested information that is: • relevant • not withheld, or • not the subject of a frivolous or vexatious request.	Requirement to provide an updated index of relevant materials (s14 (3)) (Disclosure Index).

Ongoing require-ment to disclose	After full disclosure has been provided (s13(5))	As soon as reasonably practicable	Refer Full disclosure - standard information table. (s13(2) states any available relevant information including "standard information" listed (s13(3))	Failing to ensure this ongoing obligation is monitored and fulfilled appropriately. Failing to record this information in an updated index of relevant materials (Disclosure Index).

Managing exhibits (s19)	After s13(3)(e) and (f) exhibits lists have been disclosed.	As soon as reasonably practicable after a request for access to an exhibit.	Any exhibits included in the lists created under s13(3)(e) and (f).	Failure to provide exhibit lists in a timely manner may delay the defence's access to exhibits and promote applications to the court under s30. Failure to record decisions for withholding or restricting access to exhibits may promote successful challenges to restrictions on exhibits.

File indexing

In most instances a Disclosure Index generated from the NIA () disclosure module will be used for indexing all relevant information on a case file and recording disclosure decisions relating to that information. However, the size of case files for major investigations may be an impediment to using the NIA Disclosure Index.

The requirement to provide indexes is listed in the table above and must be followed. If the NIA () Disclosure index cannot be used, staff may develop their own index so long as it contains:

- the name and brief description of each piece of relevant material on the case file
- all decisions relating to those materials including:
    - the decision to fully or partially withhold the material
    - the reason (section of the Act) it was withheld under
    - the grounds for why it was withheld (short general explanation)

- when the materials were disclosed
- who disclosed the materials and how they were disclosed
- a version dating facility and PRN () number for identification purposes
- a mechanism for the supervisor to sign the materials off.

The **Serious Crime Template** provides a Disclosure Index in Microsoft Excel which meets these requirements:

	serious-crime-template-download-instructions 2017.docx	437.72 KB

Whenever a copy of the Index is disclosed it must also be added to the case file and attached to the NIA Disclosure Record. If the index is only held in an electronic format, save a copy of the version disclosed (password protected) in an electronic file that can be made available to the prosecutor or Crown prosecutor when necessary.

Court order obligations in major investigations

The defence may apply for court orders that have an effect on disclosure requirements and access to exhibits. These court orders must be factored into disclosure and exhibit management for major investigations. Orders can include requirements to:

- disclose witness or informant's contact details (s17(2))
- disclose information (s30)
- abide by specific conditions for inspection of an exhibit (s31)
- meet a specific timetable for the disclosure of materials (s32).

Follow these steps when dealing with court orders.

Step	Actions by O/C case
1	Notify the O/C case as soon as a notification of a defendant's application for a court order is received (in NIA () or by the prosecutor or Crown prosecutor).
2	The O/C case must: • liaise with the prosecutor or Crown prosecutor to inform them of the background to the application and assist in preparing submissions, if required • locate the information or exhibit(s) under application, so that they are readily accessible if required.

3	The prosecutor or Crown prosecutor must notify the O/C case of the outcome of the application and the requirements of any order(s) created as a result.
4	The O/C case must action any order(s) in accordance with the stipulated requirements both as to content and timeframes.

Getting advice and assistance

Supervisor's responsibility to support disclosure

The O/C case must notify their supervisor when they have identified issues they cannot deal with themselves.

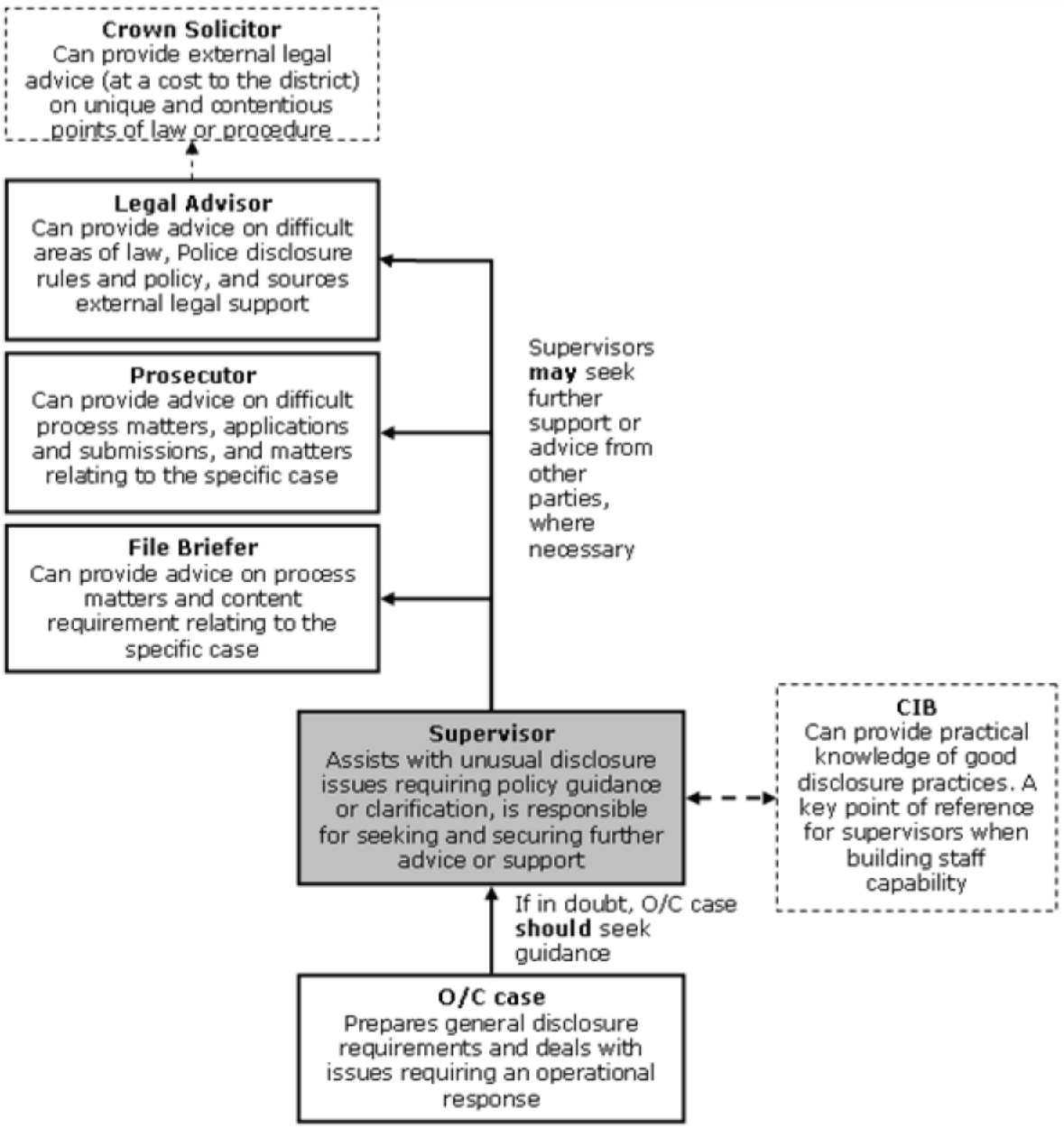
Supervisors act as the focal point for securing additional support and advice on legal or procedural matters relating to disclosure. If the supervisor cannot address issues raised about disclosure, they can escalate the matter and seek further advice and support from other parties and specialists in accordance with the flowchart below.

Supervisors must also ensure requirements for electronic redaction are complied with, taking particular care with **sensitive or informant information** (see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter). Adherence to the electronic redaction protocols is critical in preventing serious breaches of confidentiality which may jeopardise an individual's personal safety and privacy.

Supervisors should share advice received

Supervisors should disseminate advice received on legal and procedural disclosure matters among their staff. In this way, all staff can maintain an up-to-date working knowledge of effective disclosure practices.

Flowchart showing disclosure support model



Documenting disclosure requests and provision

Introduction

This section outlines requirements for:

- creating a Disclosure Index when an investigation case commences
- recording all relevant information on the index
- logging and monitoring disclosure requests and when disclosure is provided
- preparing and editing material for disclosure
- recording decisions about the review and disclosure of individual items of relevant information.

The procedures in this section apply to **all** mandatory and requested disclosure throughout the case.

Disclosure Index

The O/C case must create a Disclosure Index when an investigation case file is commenced and regularly update it during the life of the case file. The index does not need to be provided to the defence for initial disclosure (an Initial Disclosure Record can be used instead) but must be provided for all subsequent disclosure i.e. requested initial disclosure, full disclosure and additional disclosure.

The Disclosure Index satisfies CDA requirements to provide a list of the relevant contents of the case file (s12(2)(k), s13(2)(b) and s14(3)) and provides an open and transparent basis for disclosure decisions by recording:

- all of the relevant information on the investigation case file
- who created and disclosed each relevant document and when it was disclosed
- decisions regarding disclosure of each relevant document.

The Disclosure Index also:

- enables supervisors, O/C station, senior sergeants, and Police and Crown prosecutors to effectively and efficiently review disclosure materials and disclosure decisions
- gives defence counsel a table of all relevant documents on a file and disclosure decisions in relation to that information compliant with the CDA
- assists in gaining judicial confidence and approval by giving the Judge a table of all relevant documents on file and reasons for withholding information. This is particularly useful where an application to review a decision to withhold information is made.

Procedures for creating the Disclosure Index and completing disclosure

Follow these steps for creating and completing a Disclosure Index.

Step	Action
1	Create a Disclosure Index when an investigation case file is commenced, using the NIA Disclosure Index.

2	Complete this information in the index: • defendant's particulars name, date of birth, PRN () and CRN(s) • O/C case's particulars - name, QID (), phone number and (the email address will pre populate from QID) • name of the O/C case's supervisor • the description and disclosure status (withholding reasons and grounds if appropriate) of each piece of relevant information • the version date of the index and case file DOCLOC () number (to easily identify the index version and applicable case file).
3	Carefully consider all information on an investigation file for relevance and to see if it is covered under sections 12 and 13. Regularly update the index by logging all relevant material in the index. **Note**: Only relevant material needs to be logged. Failure to apply the relevance test appropriately could have serious consequences for the prosecution.
4	Prepare disclosure materials and submit them to your supervisor for review and/or sign off with a prepared Disclosure Index. **Note**: Documents to be disclosed by electronic means must be in PDF format**. All redactions must be made using Adobe Pro 9 or higher version.** See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information about preparing and redacting electronic files and the requirements for supervisors' approvals.
5	The supervisor reviews and/or signs off the file and signs the Disclosure Index.

6	The O/C case completes the 'date disclosed' column of the Index to reflect the date the information was disclosed to the defence. The O/C case should sign the final version of the Index before providing it to the defence. As the Disclosure Index is a record for the defence and the prosecutor, the proper completion of the signoff is essential to the effective prosecution of the case.
7	Provide a new version of the index to the defence every time disclosure materials are delivered (subsequent to initial disclosure). Keep a copy of each version of the Disclosure Index on the file.

Delivery of disclosure

Deliver disclosed materials to defence counsel as soon as is reasonably practicable, or for mandatory documents for initial disclosure, within 15 working days of the commencement of proceedings.

Provide additional requested initial disclosure as soon as reasonably practicable. Requests of this type are likely to be rare, as all available disclosure should be prepared for the first appearance and sent to the defendant following the receipt of an address for service.

If there has been a delay in providing mandatory or requested information, get that information to the defence counsel as soon as possible. This will enable counsel to have meaningful conversations with the defendant, promoting the possibility of earlier case resolution.

Early delivery of disclosure also facilitates the mandatory case management procedures required by the Criminal Procedure Act 2011. Any issues with outstanding disclosure must be recorded by the prosecution and defence in the case management memorandum. Delays or failure to provide disclosure may result in costs being ordered against Police.

Delivery method

Delivery of initial disclosure may be conducted by handing the materials to the prosecutor to pass on to defence counsel, if it has not already been provided by the first appearance.

All further disclosure should be delivered by the O/C case by mail, electronic device or by handing it directly to the defence counsel (s10).

When choosing electronic delivery, all documents disclosed must be in PDF format**. All redactions must be made using Adobe Pro 9 or higher version.** See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information about preparing and redacting electronic files and the requirements for supervisors' approvals.

If double-sided documents are included among disclosure materials, bring this to the attention of the defendant or defendant's counsel. This will help to avoid unnecessary requests for information that has already been disclosed, but mistakenly overlooked by the recipient.

Receipt of posted and electronically sent materials

Disclosure materials that are posted are considered to have been received four days after being posted (s10(3)). These timeframes also apply to electronic disclosure. This may have implications when timetabling or timing is an issue.

Refusal to accept materials

If the defence refuses to accept the materials, the O/C case should bring the existence and availability of the materials to their attention. In this situation, making the defendant or defendant's counsel aware of the materials will fulfil police obligations for delivery under section 10(1).

Logging and monitoring processes

All requests for and provision of disclosure under the CDA must be logged and tracked. Logging ensures disclosure obligations arising out of a statutory trigger or a request are recorded and can be monitored and managed effectively. While defence counsel should be encouraged to make requests in writing, requests for additional disclosure can be made orally.

Requests received by prosecutors or other Police employees must be tasked to the appropriate O/C case. A NIA () Task is recommended, as it can be viewed by anyone looking at the NIA () case, including the O/C's supervisor. The O/C case must ensure all requests are logged and a supervisor must regularly monitor requests to ensure compliance with the CDA.

The logging process should involve an assessment of whether disclosure can be delivered within the required timeframes. This assessment must be made quickly so that if disclosure cannot be made within the timeframe, an application for a time extension for initial disclosure under section 12(4) can be filed with the court or registrar. If there are to be lengthy delays related to any type of disclosure, the defence should be notified as soon as

practicable. Good communication may limit defence applications to court for undisclosed information. This logging process will initially be a manual process, but will move towards an electronic solution in the future.

Tasking disclosure requests to the O/C case

Follow these steps to create a NIA () Task about disclosure to the O/C case when a request for disclosure is received from the defence.

Step	Action
1	Open the NIA () Case, and click on the Tasks node on the left hand side.
2	Right mouse click in the lighter grey area of the screen and select 'Create'.
3	Enter the Assignee (QID () of person who will receive the Task), the Target date (when the task is due), the Narrative (what you would like done), then click Create.
4	As soon as reasonably practicable, the O/C case reviews the request and prepares the materials.
5	The O/C case advises their supervisor of any delay or access issues arising in relation to the request. Any delay or access issues relating to the request must be communicated to the defence in a timely manner. The prosecutor should be advised of the need for an application for time extension on mandatory initial disclosure, if required.
6	Having actioned the disclosure requirement, the O/C case updates the NIA () Task to indicate it is complete.

Editing / redacting materials

Police are obliged to disclose all relevant information where no reason to withhold it exists (s16(2)). In practical terms, this means passages that need to be withheld within an otherwise discloseable document need to be blacked out in such a way that counsel cannot see the underlying text.

For the purposes of disclosure, a copy should be made of all original relevant material on file, as only copied information is provided in disclosed materials. While all the decisions around what should be disclosed need to be made (in the first instance) by the O/C case, administrative staff can assist by collating and copying materials.

Electronic editing / redaction

All disclosure being delivered electronically must be in PDF format and redacted **using Adobe Pro 9 or higher version.** See Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information on:

- creating electronic disclosure files
- how to edit and redact information required to be disclosed, including sensitive information, to ensure that information removed cannot be recovered by the defence
- file naming conventions for electronic files
- page numbering
- security and encryption
- requirements for supervisors' approval
- delivery procedures.

Manual editing procedure

Follow these steps to manually edit documents for disclosure. (See Electronic editing / redaction above for all disclosure being delivered electronically).

Step	Action
1	The O/C case photocopies the original file and highlights the parts or pages of the file that should be withheld.
2	The O/C case discusses the completed highlighted file with the supervisor to reach agreement on what should be withheld.

3	Once agreement has been reached, the O/C case or office administrator prepares a blacked out version. If: • only a few lines need removing, use a permanent black marker pen and a ruler to black out text • substantial parts of the document need removing, cover those parts with a bit of scrap paper and stamp the paper with "deletions have been made to this page".
4	When sections of a document have been covered using a permanent black maker, the O/C case or office administrator copies the blacked out version and on the copy recoats any sections previously blacked out. Unless these sections are recoated using a permanent black marker they can be revealed by manipulating the shade settings on a photocopying machine.
5	The O/C case or office administrator copies the blacked out version (or double blacked out version for sections deleted by permanent black marker): one copy for the file and one for each requester. This way if someone challenges the deletions, a working copy and an exact replica of what was sent are on the file. Without a copy of disclosed material on the file: • the prosecutor has no record to refer to at court of what was disclosed to the defence • the defence will have the only copy of materials that were partially disclosed.
Note: It is important to keep statutory timeframe requirements in mind when preparing disclosure materials. Materials should be prepared with enough time for the sign-off processes to be conducted effectively. The importance of signing off materials must never be underestimated.	

Format for disclosed information

Information need only be disclosed in the format it is held in (s10(4)).

When determining the material's mode of delivery, the O/C case should consider the format in which the material is held and produced and whether this format is readily accessible to the defence. For example, providing electronic copies of a written document may not be appropriate where the defence has little or no access to a computer. If electronic disclosure is the method selected, you **must** follow the procedures in Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for creating and maintaining electronic disclosure files and for ensuring the security of the information disclosed.

It would be good practice in some circumstances to liaise with the defence with a view to practical discussions around any issues with format, and keep a record of same. This will maintain good faith on the part of Police and most likely provide a clear indication of the most appropriate format for disclosure that will be unlikely to negatively impact on progressing the case.

Maintaining an electronic criminal disclosure file

Introduction

Section 10 Criminal Disclosure Act 2008 provides that information required to be disclosed may be delivered by electronic means, and disclosed in an electronic form.

Delivery of disclosure in an electronic format requires the disclosure information to be held electronically - hence the creation of an electronic disclosure file. Prosecution files maintained electronically can be disclosed in electronic or hard copy format.

Deciding whether to maintain an electronic disclosure file

Not all prosecution files need to be converted to electronic files and disclosed electronically. It may be more efficient for smaller, straight-forward prosecutions to manage disclosure in hard copy format.

Consider the following when deciding whether to maintain an electronic disclosure file:

- the anticipated scale of the investigation and prosecution process
- the availability of technology within your office (i.e. scanners)
- the technical capability of the O/C case or the person responsible for disclosure
- defence agreement to receive disclosure in a particular format
- whether a lot of the material is already held in electronic format (e.g. phone data)
- whether the investigation file is being run as an electronic file, hard copy file or a combination of both.

Procedures for creating, maintaining and disclosing electronic disclosure files

You must comply with the procedures in Electronic redaction and disclosure (Part 10 of the "Information Management, Privacy and Assurance" Police Manual chapter) when making disclosure electronically. That chapter details procedures for:

- creating electronic criminal disclosure files using **Adobe Pro 9 or later versions**
- creating electronic disclosure files for **sensitive and informant information** (some variations in procedure apply)
- converting information to PDFs and the PDF standards that apply
- file naming and page numbering using Adobe Pro 9 or later versions
- redacting information electronically from documents to be disclosed
- the security requirements to be applied to documents being disclosed electronically
- using email to deliver criminal disclosure.

Relevance

Reviewing for relevance

Reviewing information or evidence on a case file for relevance could start when the investigation case file is first compiled and should start once proceedings have commenced and at regular intervals thereafter. Information received after disclosure has been delivered, should also be reviewed promptly.

Any information previously withheld should be reviewed at regular intervals to determine whether circumstances supporting the information being withheld have changed. As soon as the information is found to be disclosable, it should be disclosed.

Test for relevance

Information or an exhibit is relevant if it tends to **support** or **rebut**, or **has a material bearing on**, the case against the defendant (s8 CDA).

Even with a statutory definition for "relevant", it can be difficult to assess whether information or exhibits are relevant. When determining whether information or an exhibit:

	consider whether it...
"**supports" or "rebuts**" the case against the defendant	• will help or hinder the defendant's ability to defend the charges against them

has a "**material bearing**" on the case against the defendant	• would or might detract from the prosecution case or assist the defence or incriminate another person.

Rebuttal information

Distinguishing rebuttal information from purely irrelevant information can also be difficult. However, it includes the result of any enquiry that differs from what might have been expected, given the prevailing circumstances. Police must retain material or information that points towards a fact or an individual and also that which casts doubt on the suspect's guilt or implicates another person.

Examples of rebuttal evidence

Examples of rebuttal information include:

- closed circuit television footage that did not record the crime, location, or suspect in a manner that is consistent with the prosecution case
- a police notebook record of a person present at a particular location at the time that an offence is alleged to have taken place stating they saw nothing unusual
- a fingerprint from a crime scene that cannot be identified as belonging to a known suspect
- any other failure to match a crime scene sample with a sample taken from the accused.

Procedure for reviewing information

These steps must be followed when reviewing information or evidence on a case file.

Step	Action
1	Review all information on the investigation file to determine whether it is: • specifically required to be disclosed under section 12 or section 13 CDA, or • relevant to the case against the defendant as defined in the CDA.

2	Determine whether any of the information should be withheld (e.g. the document contains sensitive information about police operations or witness or informant details).
3	Determine whether any of the information that should be withheld can be partially or entirely withheld under one of the disclosure exceptions listed in sections 15 -18 CDA.
4	Seek advice from a prosecutor or legal advisor about any issues relating to this decision-making process if they cannot be resolved through your supervisor.

Withholding information

Deciding whether to withhold or disclose

All "relevant" information in the hands of the prosecution should be made available to the defence subject **only** to exceptions needed to avoid prejudice to the wider public interest.

Once information or exhibits have been confirmed as relevant, determine whether they should be withheld. Police staff must consider the spirit of the CDA and the efficiency aims it was designed to deliver in making this determination.

If there are concerns about disclosing the information that outweigh the benefit of releasing it, consider whether the evidence or information is permitted to be withheld.

Grounds for withholding information

This table outlines the general situations in which information to which the defendant would otherwise be entitled may be withheld. Every document must be considered and if relevant, disclosed unless a reason for withholding applies. For example, in some situations POL () 258s may be withheld, in others they need to be disclosed. It depends on the content of the POL 258 in question.

Police may withhold/refuse to disclose information when...	**Examples of Police material**	**CDA section**

at the time a disclosure obligation would arise or at the time a request for disclosure is made, the prosecutor: • is not in possession or control of that information; or • does not hold the information in recorded form. **Note**: Prosecutors are **not** required to record information or to obtain information for sole purpose of disclosure.	The information is not usually recorded and genuinely does not exist.	s15
disclosure of the information is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.	Operational orders, operational plans for surveillance, AOS () call outs, covert operations or other information that discloses a similar type of content. Materials or aspects of materials that refer to police informants including who they are and any contact details or other personal information.	s16(1)(a)
disclosure of the information is likely to endanger the safety of any person.	Threat of violence to any person accompanied with the ability to deliver on that threat. (**Note**: Using this section in the Disclosure Index as a reason for withholding information may exacerbate the threat. **Seek advice from legal advisor before using this section**).	s16(1)(b)

the information is material prepared by or for the prosecutor to assist the conduct of the hearing or trial.	Purely administrative POL () 258 reports that do not include any undisclosed information relevant to the case. (**Note**: POL () 258s are not withholdable as of right, although disclosure would be rare).	16(1)(c)(i)
the information is a communication dealing with matters relating to the conduct of the prosecution and is between: • the prosecutor and another person employed by the same person or agency that employs the prosecutor, or • the prosecutor and any adviser to the prosecutor.	Purely administrative communications (emails, faxes and other memos) between prosecutors and any other Police staff member or legal or technical advisor that do not include any undisclosed information relevant to the case.	s16(1)(c)(ii)
it is analytical or evaluative material prepared, in connection with an investigation that led to the defendant being charged, by a person employed by a person or agency for another person employed by that person or agency or for the prosecutor.	Charts, analyses and schedules.	s16(1)(c)(iii)

the information is subject to sections 108 and 109 of the Evidence Act 2006 (which relates to information about undercover police officers).	Materials or aspects of materials that reference undercover police officers who have a Commissioner's Certificate attesting to their duty and protecting their identity and are likely to give evidence.	s16(1)(d)
the information is subject to a pre-trial witness anonymity order under s110 Evidence Act 2006 or a witness anonymity order under s112 Evidence Act 2006.	Witness anonymity orders.	s16(1)(e)
the information is subject to s16 Victims Rights Act 2002 (which relates to information about witnesses' addresses).	Any materials or aspects of materials that list a victim's address or contact details - except where the information is contained in a charge and it is necessary to disclose the information in order to ensure the defendant is fully and fairly informed of the nature of the charge.	s16(1)(f)

disclosure of the information would be likely to prejudice: • the security or defence of New Zealand or the international relations of the Government of New Zealand, or • the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country, or • any agency of such a government or any international organisation.	Information from Interpol or other jurisdictions used for an investigation. Information sourced through diplomatic channels.	s16(1)(g)
disclosure of the information would be likely to facilitate the commission of another offence.	This includes information that might detail the existence of a person or property with a propensity to being victimised (e.g. security/access codes to a secure residence or computer system).	s16(1)(h)
disclosure of the information would constitute contempt of Court or contempt of the House of Representatives.	Name suppression orders or any information already the subject of a restriction as to disclosure imposed by a court or House of Representatives, or a briefing paper or departmental report to a select committee that has yet to report back to the House on the matter.	s16(1)(i)
the information could be withheld under any privilege applicable under the rules of evidence.	Information generated as part of a doctor-patient or solicitor-client relationship.	s16(1)(j)

disclosure of the information would be contrary to the provisions of any other enactment.	When another Act prohibits the disclosure of information such as in the Protected Disclosures Act (Whistleblowers Act) or Tax Administration Act 1994.	s16(1)(k)
the information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source.	Information already released in the media or on a website.	s16(1)(l)
the information has previously been made available to the defendant.	Information already provided under an Official Information Act or Privacy Act request or through previous disclosure of materials, or the document has been provided to the defendant by another agency (e.g. Ministry of Justice)	s16(1)(m)
the information does not exist or cannot be found.	The information has been genuinely misplaced or is not recorded and therefore does not exist.	s16(1)(n)
the information: • reflects on the credibility of a witness who is not to be called by the prosecutor to give evidence but who may be called by the defendant to give evidence; and • is not for any other reason relevant.	Information that challenges the credibility of a defence alibi witness.	s16(1)(o)

the information identifies, or may lead to the identification of, the address of the place where a witness or informant lives, e.g. their: • postal, residential or email address • fax or phone number. The information may be disclosed to the defendant only with the consent of the witness or informant or with the leave of the Court.	This justifies partially withholding information and is likely to affect: • summaries of facts • POL () 258 reports • witness statements, or • any other document listing details of witnesses and informants. Mask or black out the witness/informant details and disclose the rest.	s17
disclosing the information would: • disclose a trade secret; or • be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information.	Manufacturer's technical manuals e.g. workings of a secret device or process not covered by patent. Costings or charging information.	s18

Part documents may still need to be disclosed

Police can only withhold the specific information listed in the reasons for withholding. Where that does not include a full document, the part of the document which is disclosable should be disclosed (s16(2)).

When withholding reasons no longer apply

Where previously withheld information no-longer fits within a withholding reason (thereby becoming disclosable) disclose it as part of Police's ongoing disclosure obligation (s16(3)).

Selecting withholding reasons

It is important to be specific when selecting withholding reasons. The information should fit clearly within a withholding reason rather than have the 'potential to fit' and only the information that fits the reason should be withheld. Listing a large number of withholding reasons could appear insincere and potentially create more work later if Police are asked to justify their withholding reasons.

Further restrictions on disclosure

Overriding the exceptions

The exceptions listed in sections 15 to 18 are not absolute. Under section 30 the defence may apply to the court to review any police decisions to withhold relevant information. The court may overturn and order the disclosure of material if the interests protected by withholding of that information are outweighed by other considerations that make it desirable, in the public interest, to disclose the information (s 30(1)(b)).

The public interest was addressed in *R v McFarlane* [1992] 1 NZLR 495 citing this quote from the Australian case *Young v Quin* (1985) 59 ALR 225:

> "The public interest has two aspects which may conflict: one that harm should not be done to the community by disclosure of material; the other that the administration of justice should not be frustrated by the withholding of material which should be produced if justice is to be done".

Therefore, section 30 can be seen to apply a balancing test to remedy rare situations where the legitimate withholding of relevant information is likely to cause an injustice.

Disclosure of witnesses' previous convictions

Previous convictions of witnesses must be disclosed if convictions are relevant to the credibility of that witness (*Wilson v Police* [1992] 2 NZLR 533). However, convictions that are not relevant do not have to be disclosed. A test for determining whether a conviction is relevant or not was laid down in *Wilson v Police* (at p 537):

> "As to the kind of conviction within the scope of the duty the test must be whether a reasonable jury or tribunal of fact could regard it as tending to shake confidence in the reliability of the witness."

Convictions that should generally be disclosed include:

- convictions for perjury or attempting to pervert the course of justice
- convictions for assault or violence related offending when the witness is the alleged victim - the defence may be that the witness (who has previous convictions for violence) was in fact the aggressor
- dishonesty convictions which exhibit a propensity to lie.

Procedure

Provide a list of convictions to the defence simultaneous with full disclosure or as soon as possible if a witness is later identified.

If you leave out any convictions Police consider not relevant, include a notice advising that information has been withheld.

> **Note**: The Criminal Records (Clean Slate) Act 2004 will not form legitimate grounds for withholding a witnesses convictions as section 19(3)(b)) of that Act permits Police to disclose criminal record information if it is relevant to criminal proceedings before a court.

Withholding witness and informant details

Section 17 restricts the disclosure of a witness's or informant's home address and telephone number. This information may be provided to the defence if the witness's or informant's permission is obtained. You should pursue obtaining this permission only once you have received a request from the defence with details about the reason for accessing permission.

The defence may also apply to the District Court for the witness's contact details under section 17(2). In considering whether to order the disclosure of this information the court is required to weigh the prejudice to the defendant in not releasing the information against

the harm such a release would likely cause. Prosecutors should provide submissions to assist the court in making this determination, particularly if the disclosure would be likely to cause harm.

Identification witnesses

Section 14A of the Criminal Disclosure Act (CDA)) enables a defendant to request information on an identification witness (defined as **a person who claims to have seen the offender in the circumstances of the offence**). This provision is an exception to the Police obligation to withhold the address and contact details of witnesses and informants in section 17.

Under section 14A , once a charge has been laid the defendant may request:

- the name and address of an identification witness
- statements of any descriptions of an offender made by an identification witness to the police or a prosecutor, and
- any identikit pictures or other drawings made by an identification witness or from information supplied by an identification witness.

Section 14A enables the prosecutor to apply for an order excusing the obligation to provide the name and address of an identification witness, if Police have concerns about the protection of that witness or any other person. This may be appropriate where the witness is also the victim, who is not already known to or is estranged from the defendant. It is section 14A(3) and not sections 16 or 17 of the CDA or section 16 of the Victims' Rights Act 2002 that should be used to withhold identification witness details.

Digitally recorded oral notations

Digitally recorded oral notations containing information similar to written notes of evidence should be disclosed as soon as required under the Criminal Disclosure Act.

The first requirement for disclosure of this information is under section 12(2)(e) as notes of evidence. At this point only disclose the information when requested. If it is not requested, it becomes disclosable under section 13(2)(a) when the defendant has pleaded not guilty to a charge.

Infringement offences (as defined in section 2(1) Summary Proceedings Act) are not subject to the disclosure requirements in section 12 of the CDA. This means the obligation to disclose digitally recorded oral notations arises as part of the section 13(2) (a) requirements, once Police have received a request for a hearing or for mitigating factors to be heard in court (refer to s9(d)).

Disclose these files on a compact disc or by email in the first instance. If the defence then cannot access the file, transcribe the audio file and disclose the transcript.

While an audio file might generally be considered to be an exhibit to be played in court, audio files that are oral notations are unlikely to be considered exhibits. This is because these notations are generally prepared in a written format that would become disclosable at a fairly early point in the proceedings. A mere change to the information's recording format should not alter the obligation to disclose the information.

Victim's information and victim impact statements

Section 16 of the Victims' Rights Act 2002 (VRA) prohibits the disclosure of a victim's precise address in evidence or information provided to the court, without the consent of the court. Section 16A of the VRA, however, allows for the disclosure of victims' addresses where the information is contained in a charge and it is necessary to disclose the information in order to ensure the defendant is fully and fairly informed of the nature of the charge.

Step	Action
1	Copies of victim impact statements should **never** be disclosed with general disclosure packs. In general, victim impact statements are not required until a defendant has pleaded guilty to or been found guilty of an offence. Commonly, disclosure of victim impact statements will be done by the prosecutor in court when the defendant has entered a guilty plea.
2	If defence counsel specifically request disclosure of the victim impact statement, provide them with a copy of a POL2124 (Disclosure Index) and provide the reason for withholding the information as: "Disclosure contrary to the Victim Rights Act 2002 - section 16".
3	Retain a copy of the Disclosure Index for the prosecution file.

General disclosure rules about specific types of information

This table provides some general rules for specific Police information.

Information item	Disclosure rule/guide
POL () 258 Reports	Should be disclosed if they contain information about the defendant or other individuals, (i.e. witness statements not contained in other disclosable documents). However they should be withheld if they are only an internal communication between an investigator and prosecutor (See *Tonkin v Manukau District Court* 26/7/01).
Jobsheets	Should be disclosed, however any witness or informant contact details must be withheld.
Notebook information	Should be disclosed, however any witness or informant contact details must be withheld. See below for further information about disclosing notebook information.
Tactical options reports	Usually disclosable - if a defendant is charged with an offence for which the use of force report is relevant - resisting arrest, assault on Police - report must be released (see *Pearce v Thompson* [1998] 3 CRNZ () 268).
O/C Case availability form	Generally not relevant but should be used by the prosecutor to engage with counsel regarding the discussion of hearing dates.
Legal opinions	Must be withheld.
Card reports	Should be disclosed but could be withheld if the release would be likely to prejudice the maintenance of the law.
Custody sheets	Should be disclosed.

Search warrant applications	Should be disclosed but could be withheld if the release would be likely to prejudice the maintenance of the law.
Police informants	Any parts of a search warrant affidavit which identifies a Police informant may be withheld.
Affidavits in support	May be withheld (in full or part) to protect informants.
Information revealing police investigative techniques	Includes operational orders, operational plans for surveillance, Armed Offender Squad call-outs, covert operations and how Police obtain information. **Test**: would disclosing the method/technique be likely to prejudice the maintenance of the law (make the Police job harder)?
Alibi witness interview notes	Interview notes should be disclosed. Any information that reflects on the credibility of the alibi witness can be withheld under s16(1)(o).
Commercial confidentiality	Any information that would either disclose a trade secret or unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information, may be withheld (s18).
Event chronology	Disclose when they contain relevant information but delete any personal details.

Ministry of Justice bail application memorandum (or other documents from other organisations)	The information has previously been made available to the defendant (s16(1)(m)).
Photo montages	Should be disclosed.
POL () 1310 (Family violence formset)	Body injury maps and risk and lethality reports can be used in court to support the prosecution case and should be disclosed. Other information on the POL1310 (FV () formset) should be assessed for relevance.
Suspect video records of interview (VRI) and transcripts	You must disclose, unless there are grounds for withholding. See Disclosure of video interviews, transcripts and TASER data.
Victim/witness video records of interview (VRI) and transcripts	Disclosure of victim/witness VRI (and any transcript) to defence at any time during a proceeding is governed by the Evidence Act 2006 and Evidence Regulations 2007, not the CDA. See Disclosure of video interviews, transcripts and TASER data.
PEACE - Adult sexual offending	The process for using video as evidence in chief is governed by the Evidence Regulations not the CDA.

Police notebooks

It is important to ensure all relevant information in Police notebooks is disclosed unless it can be legitimately withheld. This is particularly important when multiple notebooks have been used or temporary staff have been involved in an investigation.

Give attention to the ongoing obligation to provide late annotations. These entries can often contain information important to both the defence as well as the prosecution.

Even inadvertent failure to disclose notebook information may result in a negative impact on the case's resolution as well as a negative perception about the Police ability to disclose information in a professional manner.

Administrative documents containing relevant facts

Always remember that if a chart, POL () 258 report or a secret briefing paper contains factual information relevant to the charge or defendant (which has not already been disclosed) then that information must be disclosed. However, the rest of the document may still be withheld - only the relevant factual part of the document needs to be disclosed to the defence.

Disclosure of video interviews, transcripts and TASER data

Introduction

Video records of interview(VRI)are an electronic means of recording what a witness or defendant has to say about an event, and may or may not form part of the evidence in a proceeding. Not all of the content of a video recorded interview will necessarily be relevant or admissible.

Suspect interviews

You must disclose the suspect's VRI unless there are grounds for withholding it.

Follow these steps if a suspect interview has been recorded on video and contains relevant information.

Step	Action
1	Consider whether the entire interview, part of it, or none of it is discoverable.

2	Disclose the video record the earlier of: • upon written request of the defendant as part of further initial disclosure (s12(2) CDA), **or** • as part of full disclosure (s13CDA).
3	If the video is to be shown at a trial (judge-alone or jury), prepare a transcript as soon as practicable after the Case Review Hearing, and provide the transcript to the defence and the Judge before the trial.

Victim and witness interviews

All victim and witness interviews conducted on video by Police are conducted under subpart 1 of part 1 Evidence Regulations 2007. As such, the Criminal Disclosure Act 2008 **does not apply** to video record of interviews (VRIs) (s42(2)). The requirement in rule 2.4(1) of the Criminal Procedure Rules 2012 that a filed document must be served on the defence also **does not apply** (eg, when the VRI is filed as a formal statement).

Disclosure of VRI (and any transcript) at any time during a proceeding is instead governed by the Evidence Act 2006 (EA) and Evidence Regulations 2007 (ER). The specific disclosure regime in the Evidence Regulations applies to all VRIs conducted under those Regulations - children and adult.

A transcript of a victim/witness VRI must be prepared and disclosed as soon as practicable after the entry of a not guilty plea (reg 28(1) ER).

A VRI **must not** be disclosed to defence. Police must offer the opportunity to **view** a working copy of the VRI to the defendant and/or their lawyer (reg 20 ER).

If a direction has been given under section 103 Evidence Act for the witness to give their evidence in an alternative way (ie, by way of VRI), section 106(4) requires the VRI to be disclosed to defence unless a Judge directs otherwise. In every instance where a direction is sought under section 103 EA, Police **must** seek a further direction for non-disclosure of the VRI under section 106(4) EA.

TASER evidence disclosure

Process for considering TASER disclosure

This table outlines the process to be followed when considering the disclosure of TASER data.

<table>
<tr><th>Stage</th><th>Description</th></tr>
<tr><td>1</td><td>Determine whether the TASER data is relevant to the charges before the Court.

In some situations it will be obvious that the data is relevant, e.g. where a defendant is charged with "assaulting police" and is arguing self-defence. In other cases it will be less clear, e.g. with any charges, if the defendant is seeking the exclusion of their statement on the basis on an unlawful arrest.

Seek the advice of a legal adviser if you are unable to determine whether the data is relevant.</td></tr>
<tr><td>2</td><td>If you have determined that the TASER data is relevant, consider whether it should be withheld.

<table><tr><th>If there are grounds for withholding...</th><th>If there are no grounds for withholding...</th></tr><tr><td>record the existence of the data and the grounds for withholding it on the Disclosure Index.</td><td>advise the O/C case of the file to obtain the data, which is stored on the Evidence.com database.

The O/C case will then need to contact their district CJSU, to arrange for the data to be made available for sharing in a digital form.

Note: There may be facility for the CJSU to enable the court and defence counsel to access the TASER data on Evidence.com</td></tr></table></td></tr>
</table>

3	If you have determined the TASER data should be disclosed, advise counsel for the defendant of the data's existence and invite them to view it at the Police station subject to appropriate conditions. **Do not**: • allow counsel to record the data by any means (e.g. camera phone) • provide counsel with a copy of the data in any shareable format.
4	If counsel is not satisfied with viewing the footage at the station and requests a copy of the TASER data, advise them to make an application for it under section 30 of the Act.
5	Note that all **relevant** information must be recorded on the Disclosure Index, even if withheld. TASER data that is not relevant only needs to be included on the Disclosure Index when the defendant has specifically requested it as "additional disclosure". In these circumstances, the data should be withheld under section 14(2)(a) and recorded on the Index accordingly.

Submissions on applications for disclosure under section 30

If an application under section 30 is made for the disclosure of TASER data, PPS () must prepare and file submissions on behalf of Police, requesting that the data only be released subject to these conditions:

- the data must be provided to counsel for the defendant only
- the data must be held personally by counsel and not be released to any other person including the defendant
- the data must not be shown to anyone except the defendant and other defence witnesses, and
- the data must be returned to Police at the conclusion of the case.

(*R v Wainohu* [2010], DC () Hamilton, CRI 2010-091-008782)

Self-represented defendants

If defendants are self- represented, follow these steps.

Step	Action
1	If you have determined the TASER data should be disclosed, advise the defendant of the data's existence and invite them to view it at the Police station subject to appropriate conditions.
2	Ensure the defendant is adequately supervised during the viewing of the TASER data. Do not allow the defendant to record it by any means (e.g. camera phone) and do not give them a copy of the data in any format.
3	If the defendant is not satisfied with viewing the footage at the station and requests a copy of the TASER data, advise them to seek legal advice and that they may apply to the Court for it to be disclosed under s30 of the Act.
4	If the defendant makes a section 30 application, PPS () must oppose this with written submissions filed in support of the opposition. The submissions should include information about the risk of the TASER data entering the public domain, and the inability to impose appropriate conditions in line with *R v Wainohu* when the defendant is self-represented. Seek assistance from the PPS () legal adviser if required.
5	If the defendant's application is successful and the court orders the TASER data be released, contact a legal adviser and request that consideration be given to appealing the decision. Do not release the data unless all appeal options have been exhausted.

Downloading TASER evidence

See the "TASER evidential downloads and disclosures" section in the TASER (Electronic Control Devices) Police Manual chapter for information about preparing TASER data for disclosure.

Court ordered disclosure and obligations to record information

Obligation to record information

Police have always had to record all information relevant to an investigation and associated police activities. Section 15 CDA provides that a prosecutor is not required to disclose information, if the prosecutor:

- is not in possession or control of that information at the time, or
- does not hold the information in recorded form at the time.

Notwithstanding this limitation, Police must still record all information relevant to an investigation and associated police activities. If relevant information was retained in unwritten form for the purposes of avoiding disclosure this would likely constitute a breach of the Code of Conduct.

The Public Records Act 2005 requires the Police to create and maintain full, accurate records of its affairs, in accordance with normal prudent business practice. Prosecutions are based on written material. Information that is not recorded cannot be used in the prosecution. Recording all information relevant to the case against the defendant ensures Police puts its best foot forward.

Court-ordered disclosure

In addition to the rules established for initial, full and additional disclosure, courts are empowered to provide direction on disclosure where appropriate. This table outlines some of the orders courts may make.

Courts may order...	**Notes /authority**
disclosure of relevant information from non-parties to the prosecution.	This disclosure is made only on: • the defence's application after a not guilty plea • the first appearance of a child or young person in a Youth Court. (ss24-29)

particular information to be disclosed.	when a prosecutor has failed to disclose that information or has purposefully withheld that information under section 14, section 16, section 17 or section 18. (s30)
timetabling orders for the production of disclosable information within specific timeframes.	These orders may arise as a result of failed performance or where the timing for the delivery of specific evidence/information is integral to the preparation of the defence. (s32)
the provision of a witness or informant's address which has been withheld under section 17(1).	The defendant can make an application under section 17(2) to the District Court for such an order.
set conditions for the inspection of exhibits.	Refer to Court exhibit orders.

Other non-party disclosure

Non-party disclosure

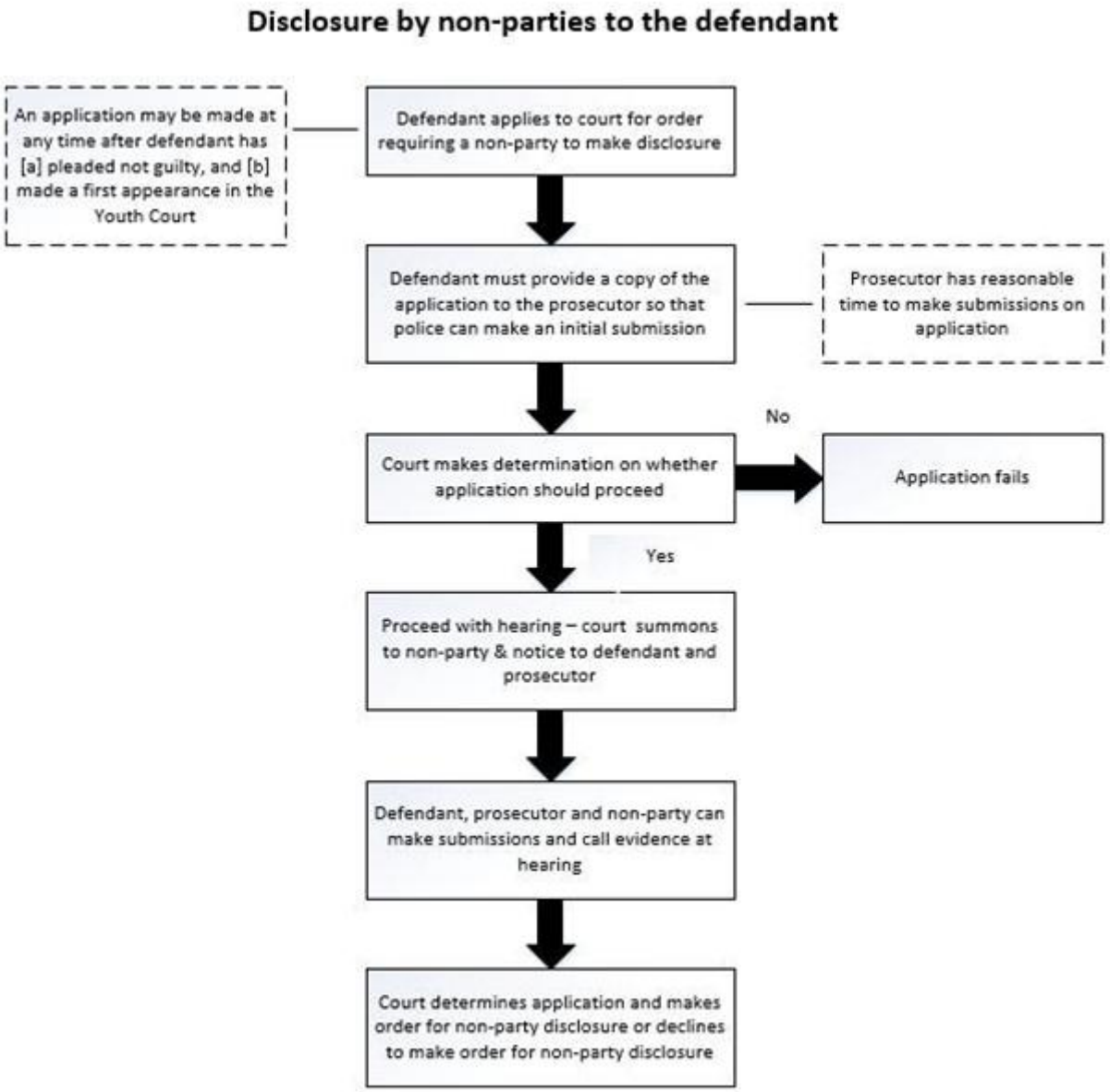
Duties of disclosure under the CDA are imposed on the prosecutor and the defence. All other categories of person are to be treated as non-parties.

Section 24(2) enables the defence to apply for disclosure of information from a non-party. Applications will be lodged with the District (or Youth) Court registry after full disclosure requirements arise (after first appearance for Youth Court). A copy of the application must be provided to the prosecutor (s24(4)). The prosecutor has a reasonable period in which to prepare a submission on the application. This information is included in the court's consideration of the application and whether it can proceed to a hearing. The court may also invite submissions from the non-party that holds the information.

If the court decides to proceed with the application, a summons is served on the non- party (s26(1)(a)) and the prosecutor is advised that a hearing will take place (s26(1)(b)). The defendant, prosecutor and non-party may make submissions or call evidence at the hearing (s27(1)). The hearing will be closed (s 27(5)) and the judge may order or refuse to order a disclosure of material request (s29(1) and (2)). The result of the hearing will be updated in NIA ().

Flowchart: Process for a non-party disclosure application

This flowchart shows the process for disclosure by non-parties to the defendant.



Defence disclosure

Alibi

The defendant must provide the prosecutor with a notice, containing the particulars of any alibi witness they intend to use in court (s22(1)), within 10 working days after the defendant has:

- entered a not guilty plea for an offence, or
- as a child or young person, makes a first appearance in the Youth Court.

The particulars must include the witness's name and address or any information that might provide material assistance in finding that witness.

If this information is not provided to the prosecutor within the required timeframe, the prosecutor should ensure this fact is recorded in the Case Management Memorandum.

Whenever a defendant puts forward an alibi under section 22(1), the O/C case must ensure a prosecution report (OHA ()) and an active charges report are prepared on the witness. The O/C case should also make inquiries to confirm or rebut evidence in support of the alibi. This information must be provided to the prosecutor as soon as reasonably practicable.

Procedure when alibi witnesses are interviewed

The O/C case should not interview an alibi witness unless the prosecutor requests them to do so. If an interview is requested, follow this procedure.

Step	Action
1	Advise the defence counsel of the proposed interview and give them a reasonable opportunity to be present.
2	If the accused is not represented, endeavour to ensure the witness is interviewed in the presence of some independent person not being a Police employee.
3	Make a copy of a witness's signed statement taken at any such interview available to defence counsel through the prosecutor. Any information that reflects on the credibility of the alibi witness can be withheld under s16(1)(o).

Expert evidence

If the defendant intends to call an expert witness during proceedings, they must disclose to the prosecutor:

- any brief of evidence to be given or any report provided by that witness, or
- if that brief or any such report is not available, a summary of the evidence to be given and the conclusions of any report to be provided.

This information must be disclosed at least 10 working days before the date fixed for the defendant's hearing or trial, or within any further time the court may allow.
(s23(1))

Failure to disclose

Consequences

Consequences for failing to disclose information appropriately under the CDA relate to the level of impact the failure has, or could reasonably be expected to have caused, and when the failure to disclose was discovered. Early cases of non-disclosure are likely to be dealt with using defence applications to court for:

- leave to disclose an informant or witness's address (s17(2))
- provision of initial or full disclosure if not received (disclosure order) (s30(1)(a)(i))
- registrar or court order setting conditions for inspection of an exhibit (s31(1))
- timetabling directions relating to full disclosure material (timetabling order) (s32(1)).

For more serious cases of non-disclosure, section 34(2) empowers the court to either:

- exclude the evidence
- with or without requiring the evidence to be disclosed, adjourn the hearing or trial, or
- admit the evidence if it is in the interests of justice to do so.

A major failure could see:

- evidence being excluded
- the case being dismissed (under the court's inherent jurisdiction), or
- a retrial ordered.

Failure to disclose may also negatively affect the perception of a professional police service.

Section 364 of the Criminal Procedure Act 2011 makes provision for costs orders against the Prosecution if there has been a procedural failure deemed 'significant'.

Personal responsibility

Under sections 32(4) and 34(4) the prosecutor or other Police employees may personally be held to account for failing to disclose information through powers under any other enactment or rule of law (this includes being held in contempt of court).

The Code of Conduct may also have implications for Police employees. The code requires employees to:

- obey all lawful and reasonable instructions unless there is good and sufficient cause to do otherwise
- abide by the provisions of all New Zealand legislation, together with instructions, standards, policies and procedures set by Police.

Prosecutors who are lawyers may also be held to account for poor disclosure practices under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rule 13.12. This requires a prosecuting lawyer to act fairly and impartially at all times and in doing so, to comply with all obligations concerning disclosure to the defence of evidence material to the prosecution and the defence.

Managing exhibits

Allowing inspection of exhibits

Police must allow the inspection of exhibits under section 19(1) when:

- the defence asks the Police to allow inspection, and
- the exhibit(s) specified are referred to in a list of exhibits supplied under section 13(3)(e) or (f).

This means the requirement to allow inspections can arise only after full disclosure requirements have been triggered and lists of the exhibits Police are holding (exhibit schedule) and/or intend to use during prosecution (exhibit list) have been disclosed to the defence.

This requirement is not an absolute obligation. Police may place conditions on the inspection of exhibits if they are necessary to ensure:

- the security and integrity of the exhibit or otherwise maintain its evidential value, and
- in the case of an exhibit needed for use on an ongoing basis for law enforcement purposes, the exhibit can be used for an ongoing law enforcement purposes, or
- compliance with any conditions the court imposes under section 31.

Police may also refuse an inspection of an exhibit, if:

- that exhibit is needed for use on an ongoing basis for enforcement purposes, and

- the imposition of conditions would not enable the inspection to take place without prejudicing ongoing law enforcement.

Responsibility for exhibits

In most cases, the O/C case is responsible for managing exhibits. When the O/C case receives a request from the defence to inspect an eligible exhibit, they should:

- notify the defence of when and how this may take place as soon as reasonably practicable
- copy and disclose to the defence any exhibits that can reasonably be reproduced.

If inspection conditions or the withholding of an exhibit are necessary, advise the defence as soon as reasonably practicable, first by phone and then confirming by mail. This will ensure the defence is aware of the circumstances relating to their request for an exhibit, and a written record confirms what was communicated.

Defence access to ESR examinations

Requests for information in reports

All requests from the defence for details of ESR () analysts' reports should be dealt with in the course of normal criminal disclosure rules under the CDA.

Blood alcohol charges

In cases relating to blood alcohol charges, defence requests to discuss the case with an ESR () analyst, or for a sample for private analysis should be made in accordance with section 74(5) of the Land Transport Act 1998. ESR will refer any requests made directly to them to PNHQ () for referral to the 'authorised person'.

Accessing ESR examinations in criminal cases

Formal requests for access to exhibits will be made by defendants under sections 19 or 31 of the CDA. Police can refuse or restrict access to the relevant exhibit in certain circumstances under the Act and the defence is not permitted as of right to test the actual Police exhibit, e.g. a blood-stained shirt. These requests require careful consideration to ensure Police obligations under the CDA are met and that adequate safeguards to any examination are applied for under the Act. Reasons for applying conditions or withholding access to exhibits must always be recorded.

Refer to the O/C case, all requests by the defence:

- to discuss a case
- to test a Police exhibit

- to have ESR () perform a particular test on a Police exhibit
- for defence experts to be present during the examination of an exhibit or experimentation by ESR ()
- for ESR () to test materials supplied by the defence
- for information about general techniques employed by an analyst during testing.

The O/C case will discuss and determine defence requests in consultation with the Crown prosecutor, district CSM and the ESR () as required. Where any doubt exists as to the handling of any defence requests in terms of the impact on the Police case, Police policy, or the CDA, seek advice from the National Crime Manager at PNHQ () or a Police legal advisor as appropriate.

Non party orders for disclosure by ESR

Under section 24 CDA a person or agency other than the prosecutor may be ordered to disclose information to the defence. This may be used by the defence to obtain information directly from ESR (). Refer any requests under section 24 for an order (non party order) granting a hearing to determine whether information held by the ESR should be disclosed to the defendant, to the O/C case. The O/C case will consult with the CSM, ESR, prosecutor, Crown solicitor or Police legal advisor as necessary.

If disclosure is ordered, conditions may be placed on the disclosure to protect the public interest and the privacy interests of the person to whom the information relates. Appropriate submissions should be prepared for consideration on the application.

Court exhibit orders

Section 31 enables both Police and the defence to apply to the court or the registrar for an order as to:

- whether the defendant may inspect a particular exhibit(s) under the CDA or in accordance with an order under the Act
- the conditions that will apply to the defendant's inspection of a particular exhibit(s).

The court or registrar must have regard to the public interest, ensuring the security and integrity of the exhibit and whether the exhibit is required for ongoing law enforcement purposes. The abilities enabled under section 19 are substantial, so it is only likely to be in rare circumstances that prosecutors will apply for these types of orders on behalf of police.

Defence applications will be a more common scenario, making the recording of reasons for applying conditions or withholding exhibits essential. Prosecutors will need this information, if they are to provide properly informed submissions on defence applications under section 31.

Working with the Police Infringement Bureau (PIB)

Disclosure not usually required in PIB cases

Most of the cases the Police Infringement Bureau (PIB ()) handle do not give rise to disclosure obligations because they deal with infringement offences that are largely uncontested.

Infringement offences defined

An "infringement offence" is any offence under any Act in respect of which a person may be issued with an infringement notice.
(s2(1) Summary Proceedings Act 1957).

Disclosure responsibilities for PIB initiated prosecutions

Proceedings are deemed to have been commenced under section 9(d) once PIB () receives a request from a defendant for a hearing or for mitigating factors to be heard at court. Full disclosure must then be provided in accordance with section 13. As a general rule, all information specified for mandatory initial disclosure should also be provided to the defendant. Initial disclosure timelines do not apply to infringement offences (s12(3)).

When PIB () receive the request for hearing, they enter the charge in NIA () and create the SP10A which is posted to the Court. PIB send a copy of the SP10A (with nominal hearing date) and any other relevant information available (e.g., copy of the ticket, speed camera photographs, 'red light' photographs) to the defendant. The PIB send a copy of this disclosure pack to the O/C case who will prepare the prosecution file (including the prosecution cover sheet). The O/C case must disclose any other relevant information on the file to the defendant prior to the nominal hearing date. The O/C case completes a prosecution file, and forwards to the Prosecution office at least one week prior to the nominal hearing date.

PIB () is also responsible for commencing proceedings for a small number of traffic offence notices (TONs). Once PIB receives the notice from district staff, PIB enters it into NIA which generates the SP1 (i.e., information/ summons), and forwards the SP1 to the designated District Court. The PIB send the file back to the O/C case who will prepare the prosecution file (including the prosecution cover sheet, diversion reports, Victim Impact Statements). The O/C case must disclose any other relevant information on the file to the defendant prior to the first appearance. The O/C case completes a prosecution file, and forwards to the Prosecution office at least one week prior to the first appearance.

Role of Police Prosecution Service

General responsibilities of prosecutors

Prosecutors have a general obligation to review all cases before going to court. This is generally done to apply the evidential and public interest tests, and check that the charges have been laid appropriately. It is appropriate for prosecutors to also review disclosure as part of the case review process.

Sometimes other Police staff (including the O/C case and supervisors) approach prosecutors for guidance on matters relating to specific cases such as procedural issues, submissions and applications. Where possible, prosecutors should endeavour to offer this type of mentoring assistance, as it will aid the prosecution of cases more generally.

Local PPS () offices are also responsible for processing disclosure requirements on PIB case files.

Challenges to disclosure

Prosecutors have a key role in managing challenges to disclosure, including:

- out of court - advising defence about delays in getting disclosure out, intentions to withhold information, conditions on viewing exhibits and so on
- in court - making applications for court-ordered disclosure and appealing court decisions
- advocating the Police position by conveying police disclosure decisions and reasons to the defence and the court.

Receiving and actioning disclosure requests

Prosecutors must play an active role in ensuring disclosure for each case operates smoothly and effectively by:

- providing initial disclosure to defence counsel at first appearance, when necessary
- ensuring any disclosure requests received from the defence are forwarded to the O/C case (via a NIA () Task)
- providing notice of delays and estimate of time for disclosure delivery to the defence when necessary, and
- checking whether previously withheld information has become disclosable after any change in circumstances.

Defence disclosure

The CDA requires the defence to disclose specific information in certain circumstances, so the prosecutor should:

- act as the conduit for receiving defence alibi and expert witness disclosure information
- challenge the defence if information is not provided in accordance with the CDA

- seek to secure adjournments when the defence adduces evidence in court that should otherwise have been disclosed before the hearing.

Applications and submissions

Prosecutors have a key role in making applications and submissions that are necessary to ensure Police mount the best possible prosecution, including providing:

- service of applications for extensions to initial disclosure delivery and conditions on access to exhibits
- submissions on non-party disclosure, requests for disclosure, timetabling orders, challenges to non-disclosure or access to exhibits.

Where prosecutors make applications or submissions they must provide the court with two copies of the documents; one copy for the court itself and another for the court's service of those documents on the defence.

Undisclosed information adduced in court

Section 34(3) prohibits the court from excluding evidence adduced in court by the defence where the court has not given the defence notice of the requirement to disclose such evidence. However, the court may adjourn proceedings if the prosecution so requests.

Prosecutors should actively seek an adjournment when the evidence adduced is significant enough to require the prosecutor to have time to review the material and prepare to challenge it.

Working with Crown solicitors

Good working relationships are necessary

The relationship between Police and Crown prosecutors (within Crown solicitor's offices) is important to the effective management of disclosure. Police cases that are prosecuted by Crown prosecutors are generally serious in nature. The effective prosecution of these cases is important not only because of the public interest in bringing serious offenders to justice but also because of the significant amount of work that Police put into investigating these types of offences.

Police and Crown prosecutors must foster a good working relationship to ensure that the disclosure requirements under the CDA are met appropriately. Failure to meet disclosure requirements will probably result in negative consequences for the case being prosecuted and possibly for the Police and Crown solicitors themselves (including cost orders). Getting it right is important.

Responsibility for disclosure

The O/C case retains disclosure responsibilities beyond the point at which a Crown prosecutor takes responsibility for the prosecution of a case. This is important because the O/C case will:

- have the best relationship with case file material that attracts disclosure obligations
- possibly continue to investigate the case and create new material
- be responsible for management of exhibits, and
- have control over the Disclosure Index (see Police Forms> Prosecutions> Criminal Disclosure Act) that will require regular updating and disclosure in accordance with the provisions in the CDA.

Crown prosecutors will forward any material they generate, that falls within the ambit of the CDA (e.g. expert briefs of evidence or documents relating to the briefing of a witness), to the O/C case so it can be:

- reviewed for disclosure purposes (tested for relevance)
- logged in the Disclosure Index, and
- disclosed, if required.

Field guidance

Role of supervisors

Supervisors, O/C stations and senior sergeants have an integral field guidance role in the disclosure system (refer to the flowchart disclosure role clarification). Using supervisors as coaches means an essential support and mentoring facility is available to all staff at the most crucial developmental and practical stages. These senior staff need to have a strong working knowledge of good disclosure practices, comprising both knowledge in this manual and knowledge gained from practical experience.

To maintain a high standard of disclosure practice, senior operational staff must take ownership and responsibility for the standard of prosecution files and the disclosure delivered by staff operating under them. This includes ensuring that the rules regarding electronic disclosure are complied with (see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter).

The best way to ensure staff maintain the high standard is by providing effective field guidance.

Field guidance

Reviewing disclosure materials provides the most common opportunity to coach and mentor and is the essential check within the disclosure system. Without this check, relevant information could be inappropriately withheld or overlooked and used to undermine the

prosecution case at court. Reviewing materials also provides an opportunity to identify and remedy any gaps or further lines of inquiry not adequately followed up, which can bolster the prosecution case.

The Disclosure Index is an essential tool to assist supervisors with their field guidance role. The index is a complete record of all relevant materials on a case file and all disclosure decisions made about those materials. Supervisors should use both the index and the original materials on the case file when reviewing.

Supervisors should remind staff about statutory timeframe requirements when preparing disclosure materials. Materials should be prepared with enough time for the sign-off processes to be conducted effectively.

Supervisors must take a practical approach to reviewing disclosure materials prepared by their staff. All materials must be signed off by a supervisor before being delivered to defence counsel. To sign the materials off, the supervisor must sign the Disclosure Index. It is also critical that supervisors ensure electronic disclosure and redaction procedures are followed - see Electronic redaction and disclosure (Part 10 of the 'Information Management, Privacy and Assurance' chapter). Non-compliance, particularly in relation to sensitive or informant information, may seriously jeopardise an individual's personal safety and privacy, leading to an employment investigation for the employees concerned.

However, reviewing all materials before signing them off may be difficult, particularly in areas with high case loads. Supervisors should prioritise the review of disclosure materials for complex cases or where materials have been prepared by inexperienced staff. Effective staff mentoring practices will aid supervisors in determining and improving the disclosure preparation skill levels of their staff.

Opportunities for proactive coaching should also be explored. This may include advice about improving general problematic areas of disclosure for all staff delivered through line-up training. However, dealing with specific areas of performance with staff members through one-on-one coaching sessions may be useful as well.

General overview of disclosure flowchart

Download the general overview of disclosure flowchart:

General_overview_disclosure_flowchart.pdf	17.02 KB

Disclosure role clarification

Download the disclosure role clarification:

	65.5 KB

Disclosure_role_clarification.doc

NIA disclosure module

The Disclosure module in NIA () is used to record information relating to disclosure documents released to defence counsel during the prosecution process. Download the NIA disclosure: Quick reference guide:

Disclosure_quick_reference_guide.doc	832 KB

Forms - Requests for Victim Impact Statements

Form - Response to a request for a Victim Impact Statement: section 25 decision pending

Download the Response to a request for a Victim Impact Statement – section 25 decision pending form

Response_to_a_request_for_a_Victim_Impact_Statement_-_s_25_decision_pending.doc	40.5 KB

Form - Response to a request for a Victim Impact Statement: delivery of document

Download the Response to a request for a Victim Impact Statement – delivery of document

Response_to_a_request_for_a_Victim_Impact_Statement_-_delivery_of_document.doc	41.5 KB