

**Version  
as at 1 April 2022**



**Criminal Procedure Rules 2012**  
(SR 2012/415)

Jerry Mateparae, Governor-General

**Order in Council**

At Wellington this 13th day of December 2012

Present:

Hon Gerry Brownlee presiding in Council

Pursuant to section 386 of the Criminal Procedure Act 2011, section 122(1) of the District Courts Act 1947, and section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice, the Chief District Court Judge, and at least 2 other members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 was a Judge of the High Court and at least 1 was a District Court Judge), makes the following rules.

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**Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**These rules are administered by the Ministry of Justice.**

## Contents

		Page
<b>Part 1</b>		
<b>Preliminary and general provisions</b>		
Subpart 1—Title, commencement, objective, and interpretation		
1.1	Title	6
1.2	Commencement	6
1.3	Objective	6
1.4	Interpretation	6
Subpart 2—Application of rules, amendment of errors, and time		
1.5	Application of these rules	7
1.6	Correction of accidental slip or omission	7
1.7	Extending and shortening time	7
Subpart 3—Exhibits		
1.8	Custody, etc, of exhibits	8
Subpart 4—Provisions relating to speaking in Māori or using New Zealand Sign Language, and translations into Māori		
1.9	Speaking in Māori or using New Zealand Sign Language	8
1.10	Translation of documents into Māori	9
<b>Part 2</b>		
<b>Rules about documents, filing, service, and applications</b>		
Subpart 1—Content of documents and authentication		
2.1	Content of documents	10
2.2	Authentication	10
Subpart 2—Filing		
2.3	How to file document	11
Subpart 3—Service of documents		
2.4	Documents that must be served	11
2.5	How to serve document	12
2.6	How certain documents to be served	12
2.7	Service on lawyer, prisoner, body corporate, Crown organisation, etc	12
2.8	Who is responsible for serving document	13
2.9	Parties must provide address for service	14
2.10	Proof of service	15
Subpart 4—Applications		
2.11	Applications: general provisions	15
2.12	How to make application	16
2.13	How to make written application	16

2.14	How to respond to application	17
2.15	Procedure for dealing with application	17

**Part 3**

**Charging documents, summonses, and warrants**

Subpart 1—Charging documents

3.1	Charging document	18
-----	-------------------	----

Subpart 2—Summonses

3.2	Summons to defendant	19
3.3	Summons to witness	19

Subpart 3—Warrants

3.4	Warrant to arrest defendant	20
3.5	Warrant to detain defendant	20
3.6	Warrant to arrest witness	21
3.7	How to issue warrant	21

**Part 4**

**Procedure before trial**

Subpart 1—Time for certain appearances

4.1	Time of second appearance	22
4.2	Time of case review	22
4.3	Time of trial callover	23

Subpart 2—Pleas and elections

4.4	Entering plea by notice	23
-----	-------------------------	----

Subpart 3—Case management

4.5	Applications under section 58 or 59 of Act relating to case management procedure	23
4.6	Time for filing case management memorandum	23
4.7	Information about case review	24
4.8	Case management memorandum	24

Subpart 4—Sentence indications

4.9	Sentence indications	25
-----	----------------------	----

Subpart 5—Change in court or venue

4.10	Notice of transfer of proceedings to different court or venue	27
------	---	----

Subpart 6—Crown notices

4.11	Crown prosecution notice	27
4.12	Other Crown notices	27

Subpart 7—Other notices

4.13	Notice about first appearance: unrepresented defendant	28
4.14	Notice about protocol offence	28

**Part 5**  
**Procedure for trial**

Subpart 1—Judge-alone trials

5.1	Application of this subpart	29
5.2	Application for pre-trial admissibility hearing	29

Subpart 2—Jury trials

5.3	Application of this subpart	29
5.4	Pre-trial applications	29
5.5	Filing of formal statements	30
5.6	Filing of trial callover memorandum	30
5.7	Information about trial callover	30
5.8	Information that must be contained in trial callover memorandum	30
5.9	Commencing trial	31

**Part 5A**  
**Sentencing**

Subpart 1—Summary of facts if guilty plea entered

5A.1	Summary of facts	32
5A.2	Application for leave to amend summary of facts	32

Subpart 2—Sentencing memoranda

5A.3	Application of this subpart	33
5A.4	Filing of sentencing memoranda	33
5A.5	Sentencing memoranda	33

Subpart 3—Sentencing hearing

5A.6	Sentencing hearing	34
------	--------------------	----

Subpart 4—Assistance to authorities

5A.7	Assistance to authorities	35
5A.8	Assistance to authorities known only to prosecutor	35

**Part 6**  
**Access to court documents**

6.1	Location of rules providing for access to court documents	35
6.2	Application <i>[Revoked]</i>	36
6.3	Decisions under this Part made as part of civil jurisdiction <i>[Revoked]</i>	36
6.4	General right of access <i>[Revoked]</i>	36
6.5	Right of prosecutor and defendant to access court file or documents <i>[Revoked]</i>	36
6.6	Access to documents during proceedings <i>[Revoked]</i>	36
6.7	Meaning of relevant deadline in rule 6.6 <i>[Revoked]</i>	36
6.8	Access to documents or court file in other cases <i>[Revoked]</i>	36
6.9	Restrictions on access <i>[Revoked]</i>	36

6.10	Matters to be taken into account [ <i>Revoked</i> ]	36
<b>Part 7</b>		
<b>Permanent court record</b>		
7.1	Permanent court record to be kept for each court	37
7.2	Details of permanent court record	37
<b>Part 8</b>		
<b>Appeals to District Court or High Court</b>		
<i>Application, interpretation, and urgency</i>		
8.1	Application and interpretation	39
8.2	Departure from this Part for reasons of urgency	39
<i>How to appeal</i>		
8.3	How to give notice of appeal or apply for leave to appeal	39
8.4	Information required for notice of appeal or notice of application for leave to appeal	40
8.5	Notice given out of time	41
8.6	Reply memorandum	41
<i>Appeals involving conduct of trial lawyer or fresh evidence</i>		
8.7	Complaint against trial lawyer	41
8.8	Fresh evidence	42
8.9	Deponent may be required to give evidence orally	42
<i>Hearings on papers</i>		
8.10	Application for hearing on papers	43
8.11	Period allowed for making written submissions	43
8.12	Timing of application on papers	44
8.13	Change of mode of hearing	44
<i>Oral hearings</i>		
8.14	Application for oral hearing	44
8.15	Notice of fixture for oral hearing	44
8.16	Timing of submissions	45
<b>Part 9</b>		
<b>Miscellaneous provision</b>		
9.1	Revocation	45
<b>Schedule 1</b>		
<b>Information to accompany summonses</b>		
<b>Schedule 2</b>		
<b>Names of courts and Registries</b>		

## Rules

### Part 1

#### Preliminary and general provisions

##### Subpart 1—Title, commencement, objective, and interpretation

#### 1.1 Title

These rules are the Criminal Procedure Rules 2012.

#### 1.2 Commencement

These rules come into force on the first day on which the Criminal Procedure Act 2011 is fully in force.

Rule 1.2: these rules brought into force, on 1 July 2013, pursuant to clause 2 of the Criminal Procedure Act Commencement Order 2013 (SR 2013/162).

#### 1.3 Objective

The objective of these rules is to—

- (a) regulate the practice and procedure of District Courts and the High Court in the exercise of their jurisdiction under the Act; and
- (b) secure the just and timely determination of proceedings under the Act.

#### 1.4 Interpretation

- (1) In these rules, unless the context otherwise requires,—

**Act** means the Criminal Procedure Act 2011

**address for filing** means an address of a Registry at which documents may be filed, which address must include both a postal address and an electronic address

**address for service** means a postal address, an electronic address, or any other address for service provided in accordance with rule 2.9

**chief executive** means the chief executive of the department for the time being responsible for the administration of the Act

**CRI** means a criminal reference number given to a proceeding by the Registry of a court

**CRN** means a criminal record number for a charge

**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

**electronic address** includes an email or a fax address

**electronic system used by the Registry** means an electronic system that is approved by the chief executive for any particular or general purpose.

- (2) Unless the context otherwise requires, any term or expression that is defined in the Act and used, but not defined, in these rules has the meaning given by the Act.

## Subpart 2—Application of rules, amendment of errors, and time

### 1.5 Application of these rules

- (1) These rules apply—
  - (a) to proceedings to which the Act applies in a District Court or the High Court; and
  - (b) to related and incidental matters.
- (2) If these rules do not make provision or sufficient provision for a matter that arises in a proceeding, the court may give any directions or rulings about the matter that the court considers appropriate in the interests of justice.
- (3) The rules are subject to any other enactment to the contrary.

### 1.6 Correction of accidental slip or omission

- (1) This rule applies if—
  - (a) any judgment or order, or the reasons for any judgment or order, contain a clerical mistake or an error arising from any accidental slip or omission (whether the mistake, error, slip, or omission was made by an officer of the court or not); or
  - (b) any judgment or order is so drawn up as not to express what was actually decided and intended.
- (2) The court or a Registrar may correct the judgment or order, or the reasons for the judgment or order,—
  - (a) on the court’s or Registrar’s own initiative; or
  - (b) on an application made for that purpose.
- (3) A Registrar may correct the judgment or order, or the reasons for the judgment or order, in accordance with subclause (2) only if the judgment or order in question was made by the Registrar.

### 1.7 Extending and shortening time

- (1) The court may, at any time, extend a time set by or under these rules for doing anything in a proceeding.
- (2) If a time set by or under these rules for doing anything in a proceeding has not ended, the court may shorten the time.
- (3) A Registrar may exercise the power of the court under this rule if both the prosecutor and the defendant consent.
- (4) In this rule, **time set by or under these rules** includes—

- (a) a period expressed in working days;
- (b) a period expressed by reference to 1 or more events (for example, if certain action is required to be taken before trial callover).

### Subpart 3—Exhibits

#### 1.8 Custody, etc, of exhibits

- (1) A Registrar is responsible for the custody of any exhibit filed, produced, or transferred for a proceeding in that court.
- (2) The court may direct the Registrar—
  - (a) to allow a party to inspect an exhibit the custody of which is the Registrar’s responsibility; or
  - (b) to release such an exhibit to a party.
- (3) A direction by the court under subclause (2) may be made on any terms and conditions that the court considers necessary to preserve the security and integrity of the exhibit or otherwise to preserve its evidential value.
- (4) An exhibit must be transferred to another court—
  - (a) with the appeal file; or
  - (b) if requested by that other court for the purpose of an appeal; or
  - (c) if required for the purpose of determining any proceeding in that other court.
- (5) An exhibit must be returned to the person or party who filed or produced it after the expiration of any appeal period in relation to the proceeding unless—
  - (a) the court has ordered or directed that the exhibit be released, retained, destroyed, forfeited, or confiscated; or
  - (b) the exhibit is subject to a specific statutory regime that governs the release, retention, destruction, forfeiture, or confiscation of the exhibit.

### Subpart 4—Provisions relating to speaking in Māori or using New Zealand Sign Language, and translations into Māori

#### 1.9 Speaking in Māori or using New Zealand Sign Language

- (1) Any person entitled to speak Māori under section 7(1) of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 or to use New Zealand Sign Language under section 7(1) of the New Zealand Sign Language Act 2006 who intends to do so in any proceeding under the Act must either—
  - (a) file a notice under this rule of the person’s intention to speak Māori or use New Zealand Sign Language; or



- (b) include notice of the person's intention to speak Māori or use New Zealand Sign Language in the case management memorandum or trial call-over memorandum.
- (2) The person intending to speak Māori or use New Zealand Sign Language is responsible for serving a copy of the notice filed under subclause (1)(a) on every party in the proceedings.
- (3) Despite subclause (2), where the person intending to speak Māori or use New Zealand Sign Language is a witness, the party calling the witness is responsible for serving the notice.
- (4) The notice must—
  - (a) state the hearing or hearings at which the person intends to speak Māori or use New Zealand Sign Language; and
  - (b) be served not later than 10 working days before the hearing at which the person intends to speak Māori or use New Zealand Sign Language.
- (5) Failure to serve or give notice in accordance with this rule does not prevent a person from speaking Māori or using New Zealand Sign Language in a proceeding, but the proceeding may be adjourned for the purpose of arranging for a competent interpreter to be present.

Rule 1.9(1): amended, on 30 April 2016, by section 50 of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 (2016 No 17).

#### **1.10 Translation of documents into Māori**

- (1) A party or person on whom a document is served may apply to the court for a translation of the document into Māori.
- (2) An application under subclause (1) must be made not later than 10 working days after the document to which it relates is served on the applicant.
- (3) The court or a Registrar may grant the application if satisfied that the party or person is unable to read the document, but could read it if it were translated into Māori.
- (4) Unless the court orders otherwise, every subsequent document in relation to the proceeding that must be served on that party or person will be translated into Māori after it is filed in court.
- (5) The court may at any time order that the translation of any document into Māori be served on any party or person whether or not an application has been made under subclause (1).
- (6) Any translation to which this rule applies—
  - (a) must be certified correct by a person holding a certificate of competency endorsed under clause 4 of Schedule 6 of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016; and
  - (b) must be served by a Registrar on the applicant.

Rule 1.10(6)(a): amended, on 30 April 2016, by section 50 of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 (2016 No 17).

## Part 2

### Rules about documents, filing, service, and applications

#### Subpart 1—Content of documents and authentication

##### 2.1 Content of documents

- (1) This rule applies to any document, other than a charging document, that is required by the Act or these rules to be filed, served, or issued.
- (2) The document must, in addition to the information required by the Act or these rules, include (if known)—
  - (a) the name of the court and Registry (in both English and te reo Māori) where the proceeding to which the document relates will be heard (*see* Schedule 2, which sets out the name, in both languages, of each court and Registry); and
  - (b) the CRI or CRN; and
  - (c) the names of the parties to the proceeding; and
  - (d) the names of the prosecutor and any lawyer or representative conducting the defendant’s case; and
  - (e) the section of the Act or provision of the rules to which the document relates.

Rule 2.1(2)(a): replaced, on 1 April 2022, by rule 4 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

##### 2.2 Authentication

- (1) Any document that is required by the Act or these rules to be filed, served, or issued must be authenticated by the person responsible for its content.
- (2) The person responsible for its content authenticates the document by—
  - (a) signing and dating the document; or
  - (b) in the case of any document in an electronic form, any electronic means that adequately identifies that person and the date of authentication.
- (3) However, an affidavit or other document required to be sworn must be signed and dated.
- (4) In the absence of evidence to the contrary, any document is to be treated as having been authenticated in accordance with this rule.

## Subpart 2—Filing

### 2.3 How to file document

- (1) Any document other than a charging document may be filed in the court—
  - (a) by delivering it to the Registry by hand; or
  - (b) by sending it to the Registry—
    - (i) by sending it to the Registry’s address for filing; or
    - (ii) by sending it to an electronic system used by the Registry.
- (2) Any charging document must be filed—
  - (a) by delivering it to the Registry by hand; or
  - (b) by sending it to an electronic system used by the Registry.
- (3) If any document is filed in accordance with subclause (1)(b) or (2)(b), the document is filed when it is received by the Registry.
- (4) The Registry must acknowledge receipt of any document filed by a person or party sending it electronically.
- (5) A Registrar may require that any document filed by a person or party sending it electronically must also be filed in hard-copy form.
- (6) A Registrar may require that, where a copy of any affidavit or other document that is required to be sworn is filed, the original also be filed.
- (7) If a Registrar has any doubt as to whether any document may be accepted for filing or must be treated as filed, he or she may refer the matter to a Judge, and the Judge may give a direction disposing of the matter.

## Subpart 3—Service of documents

### 2.4 Documents that must be served

- (1) A copy of every document filed must be served on every other party, unless subclause (2) applies.
- (2) It is not necessary to serve—
  - (a) an application for a warrant to arrest the defendant under section 34 of the Act; or
  - (b) a notice of plea under section 37 or 38 of the Act; or
  - (c) an application for a witness summons under section 159 or 160 of the Act; or
  - (d) an application for a warrant to arrest a witness under section 161 of the Act.
- (3) Any summons requiring a person to appear in court under the Act must be served on that person.

- (4) Service of a copy is to be treated as service of the document, unless another enactment expressly requires an original document to be served.

### **2.5 How to serve document**

- (1) Any document that is required by these rules to be served may be served—
- (a) by personal service; or
  - (b) by sending it to the person’s address for service; or
  - (c) if no address for service has been provided, by sending it to the person’s last known postal address or place of residence or business; or
  - (d) by being left for the person at the person’s place of residence with a member of the person’s family living with him or her who appears to be of or over the age of 18 years; or
  - (e) by any other method agreed by the parties or approved by the court or a Registrar.
- (2) Any document is personally served by leaving the document with the person to be served, or, if that person does not accept it, by putting it down and bringing it to the notice of that person.
- (3) This rule is subject to rules 2.6 and 2.7.

### **2.6 How certain documents to be served**

- (1) This subclause applies to any—
- (a) summons in respect of a category 2, 3, or 4 offence;
  - (b) application by a prosecutor for a retrial under section 151 of the Act;
  - (c) application by a prosecutor for a retrial or rehearing under section 177 of the Act.
- (2) Unless otherwise directed by a Judge or unless rule 2.7 applies, a document to which subclause (1) applies that is required to be served on a person must be served—
- (a) by personal service; or
  - (b) by being left for the person at the person’s place of residence with a member of the person’s family living with him or her who appears to be of or over the age of 18 years.
- (3) The court may direct that any document be served by personal service.
- (4) Subclause (3) overrides subclauses (1) and (2).

### **2.7 Service on lawyer, prisoner, body corporate, Crown organisation, etc**

- (1) A document that is required to be served on a person represented by a lawyer who has provided an address for service may be served by delivering or sending it to, or by leaving it with, the lawyer, unless rule 2.6(1) or (3) applies or the court directs otherwise.

- (2) A document that is required to be served on a person may, in the following cases, be served by delivering or sending it to, or by leaving it with,—
  - (a) in the case of a recipient who lives or works on board a vessel (including a vessel belonging to the Royal New Zealand Navy), the person on board who is apparently in charge of the vessel:
  - (b) in the case of a recipient who is a member of the New Zealand Armed Forces, the officer apparently in command of the unit or detachment to which the recipient belongs:
  - (c) in the case of a recipient who is a prisoner, the manager or other person apparently in charge of the prison:
  - (d) in the case of a recipient who is in a youth justice residence, the manager or other person apparently in charge of the residence.
- (3) A document that is required to be served on a body corporate or a Crown organisation may be served—
  - (a) by sending it to the body corporate or Crown organisation for the attention of an officer or employee of that body or organisation:
  - (b) by delivering the document to an officer or employee of the body corporate or Crown organisation at its head office, principal place of business, or registered office, or by bringing it to the officer's notice or the employee's notice if that person refuses to accept it.
- (4) However, if the body corporate to be served is a company or an overseas company in New Zealand, service must be effected in accordance with sections 387 to 392 of the Companies Act 1993.
- (5) A document that is required to be served on an unincorporated society may be served by delivering or sending it to, or by leaving it with, the president, chairperson, secretary, or any similar officer of the society.

## **2.8 Who is responsible for serving document**

- (1) Subject to rule 8.11 and subclause (2), a person or party who files any document to which rule 2.4(1) applies is responsible for serving the document.
- (2) A Registrar is responsible for serving any notice of appeal or notice of application for leave to appeal.
- (3) If a summons is issued by the court or a Registrar under section 33, 159, or 160 of the Act, the person or party who applied for the summons to be issued is responsible for serving the summons.
- (4) In the case of any other summons issued under the Act, a Registrar is responsible for serving the summons, unless section 28 or 29 of the Act applies.
- (5) Any document may be served on behalf of the person or party responsible for serving that document by—

- (a) any officer or employee of the person or party acting in the course of their official duties;
  - (b) any constable, if the Commissioner of Police has approved service by a constable on behalf of that person or party;
  - (c) any other person approved by the court or a Registrar—
    - (i) to serve documents generally in criminal proceedings; or
    - (ii) to serve documents in connection with the particular proceeding or a class of proceedings that includes the particular proceeding.
- (6) If the court or a Registrar is responsible for serving a document, it may be served by—
- (a) any bailiff, officer, or Registrar within the meaning of section 2 of the District Courts Act 1947;
  - (b) any officer, Registrar, or Sheriff within the meaning of sections 33 to 35 of the Senior Courts Act 2016;
  - (c) any other person approved by the court or a Registrar in a particular case.
- (7) However, the Registrar must seek directions from a Judge specifying who is responsible for serving any documents, and the Judge may give directions for that purpose if either or both of the following apply:
- (a) in the case of a private prosecution, if a Judge determines that the charging document should be accepted for filing under section 26 of the Act;
  - (b) if the defendant is unrepresented.

Rule 2.8(5)(c): replaced, on 15 August 2016, by rule 4 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

Rule 2.8(6)(b): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

## **2.9 Parties must provide address for service**

- (1) The parties must, as soon as practicable after the proceedings are commenced, notify each other and the court of their address for service, which address must,—
- (a) if a party has a postal address, include that postal address; and
  - (b) if a party has an email address for receiving documents while conducting proceedings under the Act, include that email address.
- (2) An address for service on a defendant may be an address provided by a lawyer representing the defendant.
- (3) The parties must notify each other and the court of any changes to their address for service.

## 2.10 Proof of service

- (1) The service of any document may be proved by the person who served the document—
  - (a) by affidavit showing the date, time, mode of service, and the identity (if known) of the person served; or
  - (b) on oath at the hearing; or
  - (c) by providing an authenticated endorsement on a copy of the document served showing the date, time, mode of service, and the identity (if known) of the person served.
- (2) If any document is served by sending it by mail to a postal address, the following provisions apply in the absence of proof to the contrary:
  - (a) evidence that the document was sent to an address that complies with rule 2.5 is proof that service was completed; and
  - (b) the document is treated as having been served on the earlier of—
    - (i) the fifth working day after the day on which it is sent by mail; or
    - (ii) the day on which it is received.
- (3) If any document is served by sending it electronically, the following provisions apply in the absence of proof to the contrary:
  - (a) subject to paragraph (b), evidence that the document was sent to a valid address is proof that service was completed;
  - (b) evidence that the document was sent to a valid address on a day that is not a working day or after 5 pm on a working day is proof that the document was served, but the document must be treated as having been served on the next working day.

Rule 2.10(2)(b)(i): amended, on 20 May 2021, by rule 5 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

## Subpart 4—Applications

### 2.11 Applications: general provisions

- (1) This subpart must be read subject to any requirements of the Act relating to applications.
- (2) Evidence relied on in support of an application must be given in a manner specified in section 83 of the Evidence Act 2006 or, if section 85 of the Criminal Procedure Act 2011 applies, in the form of a formal statement.
- (3) Subject to subclauses (1) and (2), the court may grant leave for an application to be made or determined otherwise than in accordance with this subpart if it is satisfied that to do so would be consistent with the objective in rule 1.3(b).
- (4) This subpart does not apply to applications for leave to appeal.

**2.12 How to make application**

- (1) An application that is required to be in writing must be made by filing a notice of application.
- (2) An application of any of the following kinds must be made in writing:
  - (a) an application under section 70 of the Act for an order that the defendant be tried in the High Court:
  - (b) an application under section 78 of the Act for a pre-trial admissibility hearing in proceedings for a Judge-alone trial:
  - (c) an application under section 90 of the Act for an oral evidence order:
  - (d) an application under section 101 of the Act for a pre-trial order for admissibility of evidence in a jury trial:
  - (e) an application under section 102 or 103 of the Act for a Judge-alone trial:
  - (f) an application under section 125, 151, or 177 of the Act for a retrial:
  - (g) an application under section 126 or 177 of the Act for a rehearing:
  - (h) an application under section 138 of the Act for an order that 1 or more charges against a defendant be heard separately:
  - (i) an application under section 147 of the Act for the dismissal of a charge:
  - (j) an application under section 157 of the Act for the transfer of proceedings:
  - (k) an application under section 180 or 181 of the Act for an order correcting an erroneous sentence:
  - (l) an application under section 364 of the Act for a costs order:
  - (m) an application under section 366 of the Act for an order for a bond to keep the peace:
  - (n) an application under the Evidence Act 2006:
  - (o) an application for an order under section 105 of the Land Transport Act 1998 for a limited licence:
  - (p) an application under section 106 of the Sentencing Act 2002 for a discharge without conviction.
- (3) Any other application may be made orally.
- (4) However, the judicial officer or Registrar to whom the application is to be made may direct that—
  - (a) an application to which subclause (2) applies be made orally:
  - (b) an application to which subclause (3) applies be made in writing.

**2.13 How to make written application**

A party makes a written application by filing a notice of application that—



- (a) states the particulars of the applicant; and
- (b) states the order or direction being sought; and
- (c) states the grounds for making the application; and
- (d) refers to any provision authorising the order or direction being sought; and
- (e) includes the evidence the applicant relies on, unless the court directs that the evidence be filed separately, or identifies the evidence the applicant relies on if already filed; and
- (f) states whether the application and any document attached to it is the original of the application or other document or is an amended version of the original (in which case, the version must be identified); and
- (g) confirms whether the applicant requests an oral hearing to determine the application and, if so, includes the applicant's estimate of the length of the hearing.

#### **2.14 How to respond to application**

- (1) A party responds to an application that is required by or under rule 2.12 to be made in writing by filing and serving a notice of response not later than 10 working days after the date of service of the notice of application.
- (2) A notice of response must state that the party responding—
  - (a) consents to, or does not oppose, the application; or
  - (b) opposes the application or part of the application.
- (3) A notice of response indicating opposition to an application must—
  - (a) state the particulars of the respondent; and
  - (b) state the grounds for opposing the application; and
  - (c) include the evidence the respondent relies on, unless the court directs that the evidence be filed separately, or identify the evidence the respondent relies on if already filed; and
  - (d) state whether the response and any document attached to it is the original of the response or other document or is an amended version of the original (in which case, the version must be identified); and
  - (e) confirm whether the respondent requests an oral hearing to determine the application and, if so, include the respondent's estimate of the length of the hearing.

#### **2.15 Procedure for dealing with application**

- (1) If a party files a notice of response stating that the party consents to, or does not oppose, the application, or no notice of response is filed within the time prescribed by rule 2.14(1), the court may—

- (a) make the order or give the direction sought in the application or decline to do so;
  - (b) give directions relating to the determination of the application.
- (2) If a party files a notice of response stating that the party opposes the application and neither party has requested an oral hearing, the court may—
- (a) make the order or give the direction sought in the application or decline to do so;
  - (b) give directions relating to the determination of the application.
- (3) If a party files a notice of response stating that the party opposes the application and an oral hearing has been requested, the court may—
- (a) order that an oral hearing be held;
  - (b) give directions relating to the determination of the application, including directions for the filing of further evidence and the making of an oral evidence order.

### Part 3

#### Charging documents, summonses, and warrants

##### Subpart 1—Charging documents

#### 3.1 Charging document

In addition to the information required by sections 16 and 17 of the Act, every charging document filed under section 14 or 26 of the Act must include—

- (aa) the name of the court and Registry (in both English and te reo Māori) where the proceeding will be commenced (*see* Schedule 2, which sets out the name, in both languages, of each court and Registry); and
- (a) the category of the offence; and
- (b) the maximum penalty for the offence charged; and
- (c) the date on which the defendant is to appear in court; and
- (d) the prosecutor’s address for service; and
- (e) the court in which, in accordance with section 14(1) or (2) of the Act, the charging document is to be filed; and
- (f) whether the charge is to be dealt with by the Youth Court in accordance with the Oranga Tamariki Act 1989.

Rule 3.1(aa): inserted, on 1 April 2022, by rule 6 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

Rule 3.1(f): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

## Subpart 2—Summonses

### 3.2 Summons to defendant

- (1) Every summons to a defendant must include—
  - (a) the particulars of the defendant; and
  - (b) the particulars of each charge; and
  - (c) the court and date and time at which the defendant is required to appear; and
  - (d) the consequences of failing to appear in answer to the summons; and
  - (e) the name and title or (in the case of a Crown organisation) unique identifier of the person issuing the summons; and
  - (f) the date of issue of the summons.
- (2) In addition to the information required by subclause (1), a summons must be accompanied by the information set out in Schedule 1.
- (3) For the purposes of subclause (1)(e), **unique identifier** means an identifier, used to identify a person, that is not his or her name and that—
  - (a) is assigned to him or her by the Crown organisation that employs or engages him or her for the purposes of its operations; and
  - (b) uniquely identifies him or her in relation to the Crown organisation.

Rule 3.2(2): amended, on 20 May 2021, by rule 7 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

### 3.3 Summons to witness

- (1) A summons to a witness must include—
  - (a) the particulars of the witness; and
  - (b) the particulars of the defendant; and
  - (c) the offence; and
  - (d) the court and date and time at which the witness is required to appear; and
  - (e) the section of the enactment under which the summons is issued; and
  - (f) details of any document or thing that the witness is required to bring with him or her; and
  - (g) the consequences of—
    - (i) failing to appear in answer to the summons; or
    - (ii) appearing and failing to give evidence; and
  - (h) information about—
    - (i) a witness's right to have 1 or more support persons near him or her when giving evidence; and

- (ii) any fees, travelling allowances, and expenses payable to persons giving evidence; and
  - (i) the name and title of the person issuing the summons; and
  - (j) the date of issue of the summons.
- (2) In this rule and in rules 3.4 to 3.6, **offence** means, as the case may be, the offence—
- (a) with which the defendant has been charged; or
  - (b) of which the defendant has been convicted.

### Subpart 3—Warrants

#### 3.4 Warrant to arrest defendant

A warrant to arrest a defendant must include—

- (a) the section of the enactment under which the warrant is issued; and
- (b) the court issuing the warrant; and
- (c) whether the warrant is directed to every constable, or to a constable, in which case the name of that constable; and
- (d) the particulars of the defendant; and
- (e) the reason for the warrant being issued; and
- (f) the offence; and
- (g) a direction to the constable executing the warrant to bring the defendant before any court; and
- (h) the legal authority for entering premises for the purpose of executing the warrant; and
- (i) the name and title of the person issuing the warrant; and
- (j) the date of issue of the warrant.

#### 3.5 Warrant to detain defendant

A warrant for the detention of a defendant in a prison must include—

- (a) the section of the enactment under which the warrant is issued; and
- (b) the court issuing the warrant; and
- (c) the particulars of the person who is directed to detain the defendant; and
- (d) the particulars of the defendant; and
- (e) the offence; and
- (f) a direction that the defendant be detained in a prison; and
- (g) the duration of the detention; and
- (h) a direction that the defendant be brought before the court when notified by the court to do so; and

- (i) the name and title of the person issuing the warrant; and
- (j) the date of issue of the warrant.

### **3.6 Warrant to arrest witness**

- (1) A warrant to arrest a witness under section 161 of the Act must include—
  - (a) the section of the enactment under which the warrant is issued; and
  - (b) the court issuing the warrant; and
  - (c) whether the warrant is directed to every constable, or a constable, in which case the name of that constable; and
  - (d) the full name, address, occupation (if any), and date of birth of the witness; and
  - (e) the reason for the warrant being issued; and
  - (f) details of the proceedings and the offence; and
  - (g) a direction to the constable executing the warrant to bring the witness before any court; and
  - (h) the legal authority for entering premises for the purpose of executing the warrant; and
  - (i) the name and title of the person issuing the warrant; and
  - (j) the date of issue of the warrant.
- (2) A warrant to arrest and detain a witness under section 165(3)(b) of the Act must include—
  - (a) the information required by subclause (1)(a), (b), (d) to (f), (i), and (j); and
  - (b) the particulars of the person who is to detain the witness; and
  - (c) the place and duration of the detention of the witness.

### **3.7 How to issue warrant**

- (1) For the avoidance of doubt, any warrant issued under the Act may be sent electronically to the person or persons to whom the warrant is directed by means of an electronic system used by the Registry.
- (2) For all legal purposes, the following documents must be treated as the warrant issued under the Act:
  - (a) a copy of the original warrant;
  - (b) a printout, or copy of a printout, of a warrant sent in accordance with subclause (1).

## Part 4

### Procedure before trial

#### Subpart 1—Time for certain appearances

##### 4.1 Time of second appearance

- (1) If initial disclosure under section 12(1) of the Criminal Disclosure Act 2008 has been made to the defendant before or at the defendant's first appearance, the defendant's second appearance must be not later than,—
  - (a) in the case of a category 1 or 2 offence, 10 working days after the first appearance:
  - (b) in the case of a category 3 or 4 offence, 15 working days after the first appearance.
- (2) If initial disclosure under section 12(1) of the Criminal Disclosure Act 2008 has not been made to the defendant before or at the defendant's first appearance,—
  - (a) the prosecutor must notify the court of the date by which initial disclosure is expected to be made; and
  - (b) the defendant's second appearance must be not later than,—
    - (i) in the case of a category 1 or 2 offence, 10 working days after the date notified by the prosecutor:
    - (ii) in the case of a category 3 or 4 offence, 15 working days after the date notified by the prosecutor.
- (3) The date notified by the prosecutor must be not later than the expiry of the applicable date for initial disclosure as defined in section 12(4) of the Criminal Disclosure Act 2008.

##### 4.2 Time of case review

A case review hearing must be not later than—

- (a) 45 working days after the entry of a not guilty plea in all proceedings for—
  - (i) category 4 offences:
  - (ii) category 3 offences where the defendant has elected jury trial:
  - (iii) any remaining proceedings that the Crown has assumed or is to assume responsibility for prior to the case review hearing in accordance with any regulations made and for the time being in force under section 387(1)(a) to (c) of the Act:
- (b) 30 working days after the entry of a not guilty plea in all other proceedings.

#### **4.3 Time of trial callover**

The trial callover must be not later than 40 working days after the proceedings are adjourned for trial callover.

### Subpart 2—Pleas and elections

#### **4.4 Entering plea by notice**

- (1) This rule applies to a notice under section 37 or 38 of the Act.
- (2) In addition to the information required by rule 2.1, the notice must include—
  - (a) every plea entered and the charge to which it relates (by reference to the CRN); and
  - (b) in the case of a guilty plea entered by the defendant under section 38(1) of the Act, any written submissions the defendant wishes to be taken into account in sentencing (regardless of whether the defendant wishes to appear); and
  - (c) in the case of a special plea entered by the defendant, the information required by section 45(3) of the Act.
- (3) In the case of a guilty plea entered by the defendant under section 38(1) of the Act, the notice may give an indication of whether the defendant wishes to appear for sentencing.
- (4) If a not guilty plea is entered by notice to a charge for a category 3 offence and the defendant wishes to elect jury trial in relation to that charge, the notice must record that election and the charge to which it relates (by reference to the CRN).
- (5) When a special plea is entered by filing a notice, a Judge may issue directions for the purpose of determining, under section 49 of the Act, whether the plea is available, including directions about whether further evidence, submissions, or an oral hearing is required.

### Subpart 3—Case management

#### **4.5 Applications under section 58 or 59 of Act relating to case management procedure**

An application by the prosecutor or the defendant for directions under section 58 or 59 of the Act about case management must be made not later than 10 working days after the proceedings are adjourned following the entry of a not guilty plea.

#### **4.6 Time for filing case management memorandum**

The defendant in a proceeding for which a case management memorandum under section 55 of the Act is required must file the memorandum not later than 5 working days before the date of the case review hearing.

#### 4.7 Information about case review

When a proceeding is adjourned for case review under section 54 of the Act, a Registrar must—

- (a) notify the prosecutor and any represented defendant of the following matters:
  - (i) the date by which the defendant must file the case management memorandum; and
  - (ii) the date of the case review hearing;
- (b) serve a notice on any unrepresented defendant stating—
  - (i) the matters that the defendant is required by section 57(2) of the Act to address at the case review hearing; and
  - (ii) the date of the case review hearing.

#### 4.8 Case management memorandum

- (1) In addition to the information required by section 56(1) of the Act, every case management memorandum must include,—
  - (a) if the defendant intends to change his or her plea,—
    - (i) any agreed list of previous convictions and any agreed summary of facts; and
    - (ii) whether the defendant and the prosecutor agree to sentencing proceeding at the case review hearing; and
    - (iii) if the defendant does not agree to sentencing proceeding at the case review hearing, the dates on which the defendant and prosecutor expect to be available for sentencing or for a disputed facts hearing (if applicable); and
    - (iv) details of any outstanding charges that are not included in the case management memorandum and that the defendant and the prosecutor wish to be added for sentencing purposes, and the next hearing date for those charges; and
  - (b) if the defendant requests a sentence indication,—
    - (i) the nature of the sentence indication sought, for example, the type or length (or both) of the sentence sought; and
    - (ii) any agreed list of previous convictions and any agreed summary of facts; and
  - (c) if the defendant has been remanded in custody only until the case review hearing, whether he or she agrees to a further remand in custody or intends to apply for bail; and
  - (d) if the defendant has been remanded on bail only until the case review hearing, whether the defendant intends to apply for bail or consents to being remanded in custody; and



- (da) a summary of facts (including any dispute about the summary of facts the parties wish to raise before the court); and
  - (e) any evidence that the prosecutor or the defendant wishes the court to consider in relation to any application to be made or determined at the case review hearing; and
  - (f) dates on which the prosecutor and the defendant’s lawyer expect to be available for any further hearings that may be required; and
  - (g) details of any failure to engage in, or complete, case management discussions and the reasons for that failure; and
  - (h) details of any other matter that the prosecutor and defendant wish the court to address at the case review hearing.
- (2) If the trial procedure is the Judge-alone procedure, in addition to the information required by section 56(2) of the Act, a case management memorandum must include—
- (a) details of any special arrangements required for the trial, including interpreters, screens, closed-circuit television, facilities for playing video recorded interviews, and video link, and whether the parties consent to those arrangements being made, and the reasons for any objection; and
  - (b) details of any expert witness that the prosecutor or the defendant wishes to call; and
  - (c) details of any young or vulnerable witness that the prosecutor or the defendant intends to call; and
  - (d) notice of any challenge to the admissibility of any proposed evidence that the prosecutor or the defendant intends to make; and
  - (e) dates on which the prosecutor and the defendant’s lawyer expect to be available for the trial.
- (3) If the trial procedure is the jury trial procedure, in addition to the information required by section 56(1) of the Act, every case management memorandum must include the prosecutor’s and the defendant’s estimates of the length of trial.
- (4) In every case, the case management memorandum must indicate whether the Criminal Disclosure Act 2008 has been complied with.

Rule 4.8(1)(da): inserted, on 15 August 2016, by rule 5 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

## Subpart 4—Sentence indications

### 4.9 Sentence indications

- (1) If the defendant requests a sentence indication in the case management memorandum, any written submissions that the defendant or prosecutor wishes to make and any relevant information that the defendant or prosecutor wishes to

- bring to the court's attention, including, but not limited to, that specified in sub-clause (2), must be—
- (a) included in the case management memorandum; or
  - (b) filed not later than 5 working days before the date of the case review hearing.
- (2) In addition to the information specified in section 61(3) of the Act, before giving a sentence indication the court may (without limitation) require that all or any of the following information be provided to the court:
- (a) any charge upon which the defendant seeks a sentence indication:
  - (b) the steps taken by the prosecutor to advise any victim that a sentence indication has been sought:
  - (c) submissions from the prosecutor and defendant in relation to—
    - (i) the appropriate type of sentence, sentence range, or quantum of sentence for the charge or charges upon which a sentence indication is sought:
    - (ii) 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:
    - (iii) whether the offender was on parole or bail at the time of the alleged offending:
    - (iv) 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:
    - (v) whether any co-defendants have already been sentenced and, if so, the sentence received by each person:
    - (vi) whether, if applicable, the quantum of reparation is agreed by the prosecutor and defendant:
  - (d) where available,—
    - (i) a recent pre-sentence report:
    - (ii) a drug and alcohol assessment:
    - (iii) a medical report:
    - (iv) a psychiatric report:
    - (v) a psychological report.

## Subpart 5—Change in court or venue

### 4.10 Notice of transfer of proceedings to different court or venue

- (1) This rule applies if a proceeding is transferred to a different court or venue under the Act.
- (2) A Registrar of the court or venue from which the proceeding is transferred must serve on the parties and witnesses a notice of the transfer and any other relevant details.
- (3) A notice under subclause (2) must include the date and time at which, and the place at which, the defendant or witnesses must report to the court.
- (4) This rule is subject to section 77 of the Act.

## Subpart 6—Crown notices

**Note:** Subpart 6 should be read in conjunction with the requirements set out in regulations 4 to 6 of the Crown Prosecution Regulations 2013. Regulation 4 specifies what a Crown prosecution is, regulation 5 specifies the time from which the Solicitor-General must assume responsibility for proceedings that are Crown prosecutions, and regulation 6 sets out the notice periods when amending, adding, or withdrawing charges. As at 1 April 2016, under regulation 6(1)(a) of the Crown Prosecution Regulations 2013, the notice period for many prosecutions expires on the date of the case review hearing.

Subpart 6 Note: inserted, on 15 August 2016, by rule 6 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

### 4.11 Crown prosecution notice

- (1) This rule applies to notices under section 189 of the Act.
- (2) The notice must include—
  - (a) a statement to the effect that the Crown has assumed responsibility for the prosecution of each charge specified in the notice; and
  - (b) details of each charge to which the notice relates, including each CRN; and
  - (c) details of the Crown prosecutor, including an address for service.

### 4.12 Other Crown notices

- (1) A notice filed under section 190 of the Act to amend any charges must include—
  - (a) a statement to the effect that the Crown is amending the charge specified in the notice; and
  - (b) details of each charge to which the notice relates, including each CRN; and

- (c) details of the amendment (which must meet any applicable requirements of section 17 of the Act and rule 3.1).
- (2) A notice filed under section 191 of the Act to add any new charges must include—
  - (a) a statement to the effect that the Crown is adding the charges specified in the notice; and
  - (b) details of each new charge being added (which must meet any applicable requirements of section 17 of the Act and rule 3.1).
- (3) A notice filed under section 192 of the Act to withdraw any charges must include—
  - (a) a statement to the effect that the Crown is withdrawing the charges specified in the notice; and
  - (b) details of each charge being withdrawn, including each CRN.

#### Subpart 7—Other notices

##### **4.13 Notice about first appearance: unrepresented defendant**

- (1) This rule applies to an unrepresented defendant who—
  - (a) is making his or her first appearance; and
  - (b) does not have any other criminal proceedings commenced against him or her, and has not been served with a summons or been released on police bail.
- (2) A Registrar must give the defendant a notice containing the information set out in Schedule 1.

Rule 4.13(2): amended, on 20 May 2021, by rule 8 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

##### **4.14 Notice about protocol offence**

- (1) This rule applies in any proceedings that include a protocol offence.
- (2) The prosecutor must file in the court hearing the proceeding a notice that—
  - (a) identifies the protocol offence and the class of the protocol offence;
  - (b) states whether the proceeding must be transferred to the High Court because the defendant is charged with a stage-3 offence;
  - (c) states the appropriate court for trial;
  - (d) identifies any jointly charged defendant;
  - (e) states whether a protocol determination has already been made against a jointly charged defendant;
  - (f) states the qualifying features for an offence described in the protocol as a class 1 or class 2 protocol offence;

- (g) identifies details of any other matter the prosecutor or the defendant wishes the court to consider, including any of the matters in section 67(4)(b) of the Act.
- (3) If the defendant is represented by a lawyer, the notice filed under subclause (2) must be jointly completed by the prosecutor and the defendant’s lawyer.
- (4) The notice filed under subclause (2) must be filed no later than—
  - (a) 5 working days before the date of the case review hearing; or
  - (b) before the date specified by the court for the filing of the notice.
- (5) In this rule, **stage-3 offence** has the same meaning as in section 86A of the Sentencing Act 2002.

Rule 4.14: inserted, on 15 August 2016, by rule 7 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

## **Part 5**

### **Procedure for trial**

#### Subpart 1—Judge-alone trials

##### **5.1 Application of this subpart**

This subpart applies if the procedure is a Judge-alone trial.

##### **5.2 Application for pre-trial admissibility hearing**

- (1) An application under section 78(2) of the Act for the purposes of obtaining a pre-trial order to the effect that particular evidence is admissible at trial must be made not later than—
  - (a) at the case review hearing; or
  - (b) if full disclosure under section 13(1) of the Criminal Disclosure Act 2008 has not been made at the case review hearing, 10 working days after that full disclosure has been made.
- (2) If subclause (1)(b) applies, the prosecutor must advise the defendant and the court of the expected date of full disclosure.

#### Subpart 2—Jury trials

##### **5.3 Application of this subpart**

This subpart applies if the procedure is a jury trial.

##### **5.4 Pre-trial applications**

Any pre-trial applications, including those under sections 90, 101, 102, and 103 of the Act, must be made not later than at trial callover.

**5.5 Filing of formal statements**

- (1) The prosecutor must file the formal statements required by section 85 of the Act not later than 15 working days before the trial callover date.
- (2) If a video interview is to be filed as, or with, a formal statement, the prosecutor must file at the same time a transcript of the interview.

Rule 5.5(1): amended, on 15 August 2016, by rule 8 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

**5.6 Filing of trial callover memorandum**

- (1) The prosecutor must file the trial callover memorandum required by section 87(1) of the Act not later than 15 working days before the trial callover date.
- (2) A defendant who is represented by a lawyer must file the trial callover memorandum required by section 87(2) of the Act not later than 5 working days before the trial callover date.

**5.7 Information about trial callover**

When a proceeding is adjourned under section 57(3)(b) of the Act for trial callover, a Registrar must—

- (a) notify the prosecutor and any represented defendant of the following matters:
  - (i) the date by which the prosecutor must file formal statements;
  - (ii) the date by which the prosecutor's trial callover memorandum must be filed;
  - (iii) the date by which the defendant's trial callover memorandum must be filed;
  - (iv) the date of the trial callover;
- (b) serve a notice on any unrepresented defendant stating, in addition to the matters in paragraph (a)(i), (ii), and (iv), the matters that the defendant is required by section 89 of the Act to address at trial callover.

**5.8 Information that must be contained in trial callover memorandum**

In addition to the information required by section 88 of the Act, a trial callover memorandum must include—

- (a) details of any applications that have been made, and whether any matter relating to an application can be determined at the trial callover hearing; and
- (b) an indication of whether pre-trial applications are likely to require a pre-trial hearing or can be dealt with by the Judge at trial callover or trial; and

- (c) any evidence that the prosecutor or the defendant wishes the court to consider in relation to any application to be made or determined at the trial callover; and
- (d) details of any other matter that the prosecutor and defendant wish the court to address at the trial callover hearing; and
- (e) details of any special arrangements required for the trial, including interpreters, screens, closed-circuit television, facilities for playing video recorded interviews, and video link, and whether the parties consent to those arrangements being made, and the reasons for any objection; and
- (f) details of any expert witness that the prosecutor or the defendant wishes to call; and
- (g) details of any young or vulnerable witness that the prosecutor or the defendant intends to call; and
- (h) details of any evidence in formal statements on which the prosecutor does not intend to rely at trial; and
- (i) notice of any challenge to the admissibility of any proposed evidence that the prosecutor or the defendant intends to make; and
- (j) dates on which the prosecutor and the defendant's lawyer are available for the trial; and
- (k) a summary of facts prepared by the prosecutor.

### **5.9 Commencing trial**

- (1) Before the jury is empanelled, a Judge or Registrar must inform the potential jurors of the charge or charges that the defendant faces.
- (2) Unless a Judge has directed that the jury choose a foreperson at a different time, the jury must retire to choose a foreperson after the jurors are sworn but before the case is opened or the defendant is given in charge.
- (3) After the jury has been sworn, the prosecutor must provide a copy of the charge list to each juror and each defendant, and the defendant must be asked to plead to each charge on the charge list.
- (4) The charge list must itemise the first charge on which the defendant is charged as "charge 1" and any further charges sequentially in the same manner.
- (5) If there are multiple charges, the Judge may direct the manner in which the charges are put to the defendant.
- (6) The defendant must be given in charge to the jury after the jurors have each received a charge list.
- (7) After the defendant has been given in charge to the jury and an address by the Judge (if any), the trial must proceed in accordance with the requirements of section 107 of the Act.

## Part 5A

### Sentencing

Part 5A: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

#### Subpart 1—Summary of facts if guilty plea entered

Subpart 1 heading: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

#### 5A.1 Summary of facts

- (1) At the time that a defendant pleads guilty,—
  - (a) the prosecutor must provide to the court and the defendant a summary of facts about the offence and the facts alleged against the defendant; and
  - (b) the defendant must advise the court whether the summary of facts is accepted.
- (2) If the defendant does not accept the summary of facts,—
  - (a) the defendant must identify the facts disputed; and
  - (b) the defendant and the prosecutor must try to resolve the dispute.
- (3) If the dispute is resolved, the prosecutor must advise the court of the resolution and of any agreed amendment to the summary of facts as soon as practicable.
- (4) If the dispute is not resolved within 10 working days after the guilty plea is entered, the prosecutor and the defendant must notify the court of that fact and seek an indication in accordance with section 24(2) of the Sentencing Act 2002.

Rule 5A.1: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

#### 5A.2 Application for leave to amend summary of facts

- (1) This rule applies if the Solicitor-General, in accordance with any regulations made under section 387(1)(a) to (c) of the Act, assumes responsibility for a Crown prosecution after the defendant pleads guilty.
- (2) If the Solicitor-General or other Crown prosecutor wishes to add material matters of aggravation to the summary of facts, he or she may, by application in writing, seek the leave of the court to amend the summary of facts provided under rule 5A.1.
- (3) If the court grants leave under subclause (2), rule 5A.1 applies to the amended summary of facts as if it were the summary of facts first provided under that rule.
- (4) An application for leave under subclause (2) must be made within 15 working days after the guilty plea is entered.

Rule 5A.2: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).



## Subpart 2—Sentencing memoranda

Subpart 2 heading: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

### 5A.3 Application of this subpart

This subpart applies to sentencing hearings—

- (a) in the High Court:
- (b) in the District Court, if the Crown has assumed or is to assume responsibility for the proceeding prior to sentencing in accordance with any regulations made under section 387(1)(a) to (c) of the Act:
- (c) in any other criminal proceedings, if the Judge directs that sentencing memoranda be filed.

Rule 5A.3: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

### 5A.4 Filing of sentencing memoranda

- (1) The prosecutor must file a sentencing memorandum in accordance with rule 5A.5(1) no later than 5 working days before the date of the sentencing hearing.
- (2) The defendant must file a sentencing memorandum in accordance with rule 5A.5(2) no later than 3 working days before the date of the sentencing hearing.

Rule 5A.4: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

### 5A.5 Sentencing memoranda

- (1) A sentencing memorandum filed by the prosecutor must contain the following information (to the extent applicable):
  - (a) the purposes and principles of sentencing of particular relevance to the proceeding:
  - (b) the appropriate starting point, including a copy of any decision relied on that is not a guideline judgment:
  - (c) any aggravating factors, both in relation to the offending itself and factors personal to the defendant:
  - (d) any mitigating factors, both in relation to the offending itself and factors personal to the defendant, including what reduction should be made for any guilty plea:
  - (e) the appropriateness of imposing a sentence or order of reparation, with supporting reasons, if the court is lawfully entitled to impose a sentence or order of reparation under Part 2 of the Sentencing Act 2002:
  - (f) the appropriateness of a sentence requiring electronic monitoring, with supporting reasons:
  - (g) whether a sentence of preventive detention or a minimum period of imprisonment is sought:

- (h) whether any supplementary orders, such as protection orders, are sought:
  - (i) the sentence imposed on any co-defendant, including sentencing notes if available:
  - (j) any other relevant matter.
- (2) A sentencing memorandum filed by the defendant must (to the extent applicable)—
- (a) identify any information contained in the sentencing memorandum filed by the prosecutor that is disputed:
  - (b) contain the following information:
    - (i) information that the defendant relies on that is in dispute under paragraph (a):
    - (ii) the appropriate starting point, including a copy of any decision relied on that is not a guideline judgment or another judgment referred to in the prosecutor’s sentencing memorandum:
    - (iii) any mitigating factors, both in relation to the offending itself and factors personal to the defendant, including what reduction should be made for any guilty plea:
    - (iv) the appropriateness of imposing a sentence or order of reparation, with supporting reasons, if the court is lawfully entitled to impose a sentence or order of reparation under Part 2 of the Sentencing Act 2002:
    - (v) the appropriateness of a sentence requiring electronic monitoring, with supporting reasons:
    - (vi) whether the defendant wants the Judge to take account of any restorative justice process or other matter listed in section 10 of the Sentencing Act 2002:
    - (vii) any other relevant matter.

Rule 5A.5: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

### Subpart 3—Sentencing hearing

Subpart 3 heading: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

#### **5A.6 Sentencing hearing**

- (1) Unless the court directs otherwise,—
- (a) the order of submissions is that the prosecutor goes first, followed by the defendant:
  - (b) there is no right of reply, except with the leave of the Judge:
  - (c) the summary of facts is taken as read.

- (2) A direction under subclause (1) may be given on the court’s own motion or on the application of the prosecutor or the defendant.

Rule 5A.6: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

#### **Subpart 4—Assistance to authorities**

Subpart 4 heading: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

##### **5A.7 Assistance to authorities**

- (1) Where the defendant wants assistance given by him or her to the Police or other authorities to be taken into account on a confidential basis at sentencing, the prosecutor and the defendant must prepare a joint memorandum for consideration by the Judge.
- (2) The memorandum must be placed in a sealed envelope and provided to the court by the defendant no later than 3 working days before the sentencing hearing.
- (3) The confidential information must not be referred to in open court by the prosecutor or the defendant.

Rule 5A.7: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

##### **5A.8 Assistance to authorities known only to prosecutor**

- (1) Despite rule 5A.7, if the confidential information is not known to the lawyer for the defendant, the prosecutor must prepare a memorandum for consideration by the Judge, including submissions on whether that information should be disclosed to any other person.
- (2) The memorandum must be placed in a sealed envelope and provided to the court by the prosecutor no later than 5 working days before the sentencing hearing.

Rule 5A.8: inserted, on 15 August 2016, by rule 9 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

## **Part 6**

### **Access to court documents**

#### **6.1 Location of rules providing for access to court documents**

The rules providing for access to documents in the custody or control of the High Court, Court of Appeal, or Supreme Court in criminal proceedings are set out in the District Court (Access to Court Documents) Rules 2017.

Rule 6.1: replaced, on 1 September 2017, by rule 18(2) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

Rule 6.1: amended, on 20 May 2021, by rule 9 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

## **6.2 Application**

*[Revoked]*

Rule 6.2: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.3 Decisions under this Part made as part of civil jurisdiction**

*[Revoked]*

Rule 6.3: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.4 General right of access**

*[Revoked]*

Rule 6.4: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.5 Right of prosecutor and defendant to access court file or documents**

*[Revoked]*

Rule 6.5: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.6 Access to documents during proceedings**

*[Revoked]*

Rule 6.6: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.7 Meaning of relevant deadline in rule 6.6**

*[Revoked]*

Rule 6.7: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.8 Access to documents or court file in other cases**

*[Revoked]*

Rule 6.8: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.9 Restrictions on access**

*[Revoked]*

Rule 6.9: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **6.10 Matters to be taken into account**

*[Revoked]*

Rule 6.10: revoked, on 1 September 2017, by rule 18(3) of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

## **Part 7**

### **Permanent court record**

#### **7.1 Permanent court record to be kept for each court**

- (1) For the purposes of the Act, a Registrar of a court at any place must keep a record called the permanent court record.
- (2) The permanent court record may be kept in electronic or hardcopy form.
- (3) Entries about a matter that are required to be made in the permanent court record must be made by the judicial officer who presided over the matter or by a Registrar.
- (4) An entry in accordance with subclause (3) or a correction under subclause (6) or (7) must be authenticated by the judicial officer or Registrar who made the entry or correction.
- (5) Despite subclause (4), the judicial officer who presided over the matter may authenticate any entry or correction made by a Registrar.
- (6) A judicial officer or Registrar may at any time correct an entry made by that person in the permanent court record, or direct that it be corrected, if satisfied that it was erroneous in any respect.
- (7) A Judge may at any time correct an entry in the permanent court record if the person who made the entry is not available and the Judge is satisfied that the entry was erroneous.
- (8) If any correction is made under subclause (6) or (7), the original entry must remain on the record.
- (9) The contents of the permanent court record are provable by a certified copy or extract provided by a Registrar.

#### **7.2 Details of permanent court record**

The permanent court record for a court at any place must record such of the following particulars relating to each charge filed in the court as are applicable:

- (1) the name and place of the court:
- (2) the judicial officer or Registrar who presided over each hearing:
- (3) the jurisdiction exercised:
- (4) the particulars in relation to the name provided under section 16(2)(e) of the Act:
- (5) the name of any private prosecutor who commences a proceeding:
- (6) the particulars of the defendant provided under section 16(2)(a) of the Act:
- (7) a description of the charge, including—
  - (a) the enactment creating the offence; and

- (b) the date on which the offence was alleged to have been committed; and
  - (c) whether the charge is a representative charge or an alternative charge; and
  - (d) the date the charging document was filed; and
  - (e) the date and other details of any appeal relating to the charge:
- (8) the Attorney-General's consent to the charge being filed:
  - (9) in the case of a private prosecution, any directions and orders by a Judge relating to the filing of a charge:
  - (10) hearing dates:
  - (11) remand dates:
  - (12) pleas entered and changes of plea:
  - (13) form of trial (Judge-alone or jury trial):
  - (14) place of trial:
  - (15) any warrant issued in respect of a defendant or witness:
  - (16) the outcome of any application for bail:
  - (17) dismissal or withdrawal of a charge:
  - (18) order for a retrial or rehearing:
  - (19) transfer to a different court or venue:
  - (20) determination of the charge, including—
    - (a) verdict (guilty or not guilty):
    - (b) acquittal on ground of insanity:
    - (c) substitution of one offence for another offence:
    - (d) outcome of special pleas:
    - (e) leave decision for any appeal:
    - (f) stay of prosecution:
    - (g) jury verdict, and whether unanimous or by majority:
    - (h) deemed conviction under section 376:
  - (21) orders made on appeal:
  - (22) warnings given under any enactment:
  - (23) suppression orders:
  - (24) costs orders:
  - (25) orders for a bond to keep the peace:
  - (26) orders made under section 375 of the Act for payment of a fine and costs in an infringement offence case:

- (27) any other judgment or order (other than the reasons for the judgment or order).

## **Part 8**

### **Appeals to District Court or High Court**

#### *Application, interpretation, and urgency*

#### **8.1 Application and interpretation**

- (1) This Part applies to—
- (a) every application to a District Court or to the High Court for leave to appeal to which Part 6 of the Act applies; and
  - (b) every appeal to a District Court or to the High Court to which Part 6 of the Act applies.
- (2) In this Part,—
- appellant** includes an applicant for leave to appeal
- respondent** includes an intended respondent.

#### **8.2 Departure from this Part for reasons of urgency**

- (1) In the case of any application or appeal to which this Part applies, the appeal court may on its own initiative, or on the application of a party, direct, authorise, or accept a departure from a requirement of this Part for reasons of urgency.
- (2) If an application for leave to appeal to which section 223 of the Act applies is filed in any case where the High Court is the second appeal court in accordance with section 224(a) of the Act, a Registrar must refer the application to a Judge for directions under subclause (1).

#### *How to appeal*

#### **8.3 How to give notice of appeal or apply for leave to appeal**

- (1) A party appeals by filing a notice of appeal in—
- (a) the registry of the appeal court that is nearest to the registry of the court in which the charging document was filed under section 14(1) of the Act; or
  - (b) if the proceedings were transferred to another court or a different registry of the same court under section 75, 76, 157, or another provision of the Act, the registry of the appeal court that is nearest to the registry of the court to which the proceedings were transferred.
- (2) If leave is required for an appeal, a party must file a notice of application for leave to appeal instead of a notice of appeal, in accordance with subclause (1)(a) and (b).

- (3) The appellant must file sufficient additional copies of the notice of appeal or notice of application for leave to appeal so that a Registrar can provide 1 copy for each other party.
- (4) If the appellant is filing the document electronically, there is no need for any additional copies to be filed unless the Registrar requires the notice to be filed in hard-copy form under rule 2.3(5).
- (5) The appellant need not file a notice of appeal if the appeal court gives leave to appeal or determines that leave to appeal is to be determined simultaneously with the appeal.

Rule 8.3(1): replaced, on 15 August 2016, by rule 10 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

Rule 8.3(2): replaced, on 15 August 2016, by rule 10 of the Criminal Procedure Amendment Rules 2016 (LI 2016/162).

#### **8.4 Information required for notice of appeal or notice of application for leave to appeal**

- (1) A notice of appeal or notice of application for leave to appeal must include—
  - (a) particulars of the appellant; and
  - (b) particulars of the decision for which leave is being sought to appeal or that is being appealed, including the date and place at which it was made; and
  - (c) a copy of the decision against which the appeal is sought to be made (if available); and
  - (d) the grounds of the appeal; and
  - (e) the section of the Act relied on for appeal or to be relied on if leave is granted.
- (2) In addition to the information required under subclause (1), the notice must also include particulars of such of the following as are applicable:
  - (a) lawyer's contact details:
  - (b) legal aid status:
  - (c) the prison at which the appellant is located:
  - (d) if there is to be an oral hearing, whether the appellant seeks leave to be present under section 326 of the Act and, if so, why:
  - (e) whether the appeal or application for leave to appeal is out of time and, if so, the reasons for seeking an extension of time:
  - (f) if the proposed appeal relates to the admissibility of evidence at trial, the disputed evidence in question and its relevance to the trial:
  - (g) if the proposed appeal challenges the exercise of a judicial discretion, why the challenge meets the criteria for reversing the exercise of a discretion:



- (h) if the proposed appeal challenges a factual finding in the decision to be appealed, the evidence to be relied on:
  - (i) any exhibits required for the appeal:
  - (j) in relation to a pre-trial determination, when the trial is likely to be.
- (3) A notice of application for leave to appeal must also include,—
- (a) in the case of an application for leave to appeal to which section 328 of the Act applies, whether the appellant seeks the application for leave to be considered at an oral hearing and any arguments in support:
  - (b) any other information relevant to whether the application should be considered at an oral hearing or on the papers.

### **8.5 Notice given out of time**

A notice that is given out of time must be treated as if it contains an application for extension of time.

### **8.6 Reply memorandum**

- (1) A respondent who is served with a notice of application for leave to appeal must, not later than 5 working days after service of that notice, file and serve on the applicant a reply memorandum.
- (2) The respondent's reply memorandum must state—
  - (a) whether the respondent consents to, opposes, or does not oppose the application, and (if applicable) the reasons for opposing it; and
  - (b) whether, if the respondent opposes the application, the respondent considers the application should be heard separately from, or simultaneously with, the proposed appeal, and the reasons for that view.

#### *Appeals involving conduct of trial lawyer or fresh evidence*

### **8.7 Complaint against trial lawyer**

- (1) If a ground of appeal is that there was a miscarriage of justice because of the conduct of the appellant's lawyer at the trial or sentencing (**trial lawyer**), particulars of the conduct concerned must be given in—
  - (a) the notice of appeal; or
  - (b) a memorandum to be filed and served by the appellant not later than 30 working days after filing the notice of appeal.
- (2) The appellant must, not later than 30 working days after filing the notice of appeal, file and serve on the prosecutor any affidavits that relate to the ground of appeal.
- (3) The prosecutor must file and serve any affidavit in reply not later than 20 working days after the service of the appellant's affidavit.

- (4) With the leave of the appeal court, a party who wishes to cross-examine a deponent who has sworn an affidavit on behalf of the other party must, not later than 15 working days after service of the affidavit, file and serve on the other party a notice of cross-examination specifying the deponent the party wishes to cross-examine.
- (5) A party on whom a notice is served under subclause (4) must—
  - (a) immediately advise the deponent that he or she is required for cross-examination; and
  - (b) advise the deponent of the hearing date of the appeal as soon as it is known; and
  - (c) ensure that the deponent is present at the hearing for cross-examination.
- (6) If the appellant wishes to waive privilege under section 65 of the Evidence Act 2006 in respect of communications between the appellant and the trial lawyer, the appellant must, not later than 30 working days after filing the notice of appeal, provide to the prosecutor a waiver of privilege in respect of all communications of that kind.

### **8.8 Fresh evidence**

- (1) If a ground of appeal is that there was a miscarriage of justice because further evidence has become available since the trial, particulars of the further evidence must be set out in—
  - (a) the notice of appeal; or
  - (b) a memorandum to be filed and served by the appellant not later than 30 working days after filing the notice of appeal.
- (2) The appellant must, not later than 30 working days after filing the notice of appeal, file and serve on the prosecutor any affidavits that relate to the ground of appeal.
- (3) The affidavits must—
  - (a) set out the further evidence; and
  - (b) explain why the further evidence was not available at the trial and why it could not, with reasonable diligence, have been called.
- (4) The prosecutor must file and serve any affidavit in reply not later than 15 working days after service of the appellant's affidavit.

### **8.9 Deponent may be required to give evidence orally**

- (1) This rule applies if, in an appeal based on a ground described in rule 8.7 or 8.8, an affidavit is filed on behalf of a party (**party A**) and served on the other party (**party B**).
- (2) If party B requires the deponent who has sworn the affidavit to give his or her evidence orally, party B must, not later than 15 working days after service of

- the affidavit, file and serve on party A a notice (an **oral evidence notice**) stating that requirement.
- (3) If party B consents to the deponent giving his or her evidence in chief by the affidavit but requires the deponent to be cross-examined, party B must, not later than 15 working days after service of the affidavit, file and serve on party A a notice (a **cross-examination notice**) stating that requirement.
  - (4) If party A is served with an oral evidence notice or a cross-examination notice, party A must—
    - (a) immediately advise the deponent that he or she is required to give his or her evidence orally or be available for cross-examination (as the case may be); and
    - (b) advise the deponent of the hearing date of the appeal as soon as it is known; and
    - (c) ensure that the deponent is present at the hearing.
  - (5) If party B does not serve an oral evidence notice with respect to the affidavit, party A may assume that party B consents to the deponent giving his or her evidence by the affidavit.

### *Hearings on papers*

#### **8.10 Application for hearing on papers**

Rules 8.11 to 8.13 apply if the court decides to determine an application for leave to appeal on the papers.

#### **8.11 Period allowed for making written submissions**

- (1) In this rule, **appointed period** means a period appointed under subclause (3).
- (2) For the purposes of this rule, the time allowed for making submissions begins to run on the date on which the relevant notice or material is served on the appellant or respondent.
- (3) The Registrar must appoint a period of not less than 20 working days within which submissions may be made by the appellant in support of the application.
- (4) Notice of the appointed period must be given by a Registrar to—
  - (a) the appellant; and
  - (b) the respondent.
- (5) The Registrar must send to the respondent a copy of all written submissions received by the court from the appellant within the appointed period, and the respondent may make written submissions within—
  - (a) 10 working days if the respondent is the Solicitor-General; or
  - (b) 20 working days in the case of any other respondent.

- (6) A copy of all written submissions received by the court from the respondent within the applicable period stated in subclause (5) must be sent by a Registrar to the appellant, and—
  - (a) the appellant may make written submissions in reply within a period of not less than 10 working days appointed by a Registrar; and
  - (b) a Registrar must send the respondent a copy of the appellant's submissions in reply.
- (7) The appellant and respondent must file sufficient additional copies of his or her submissions so that a Registrar can provide 1 copy for each other party.
- (8) If the appellant or respondent is filing the document electronically, there is no need for any additional copies to be filed unless the Registrar requires the document to be filed in hardcopy form under rule 2.3(5).

### **8.12 Timing of application on papers**

The court must not begin hearing an application on the papers until all the periods prescribed or directed under rule 8.11 have expired, unless all the required documents have been received.

### **8.13 Change of mode of hearing**

- (1) If the court decides to change the mode of hearing and orders a hearing involving oral submissions,—
  - (a) a Registrar must allocate a fixture; and
  - (b) notice of the time and place fixed for the hearing of the application must be given in accordance with rule 8.15(3).
- (2) The submissions already filed constitute the written submissions for the hearing unless the court otherwise directs.
- (3) If the court decides not to change the mode of hearing, it may give its decision on that matter at the same time as it gives its decision on the merits of the appeal or application.

### *Oral hearings*

### **8.14 Application for oral hearing**

Rules 8.15 and 8.16 apply if an oral hearing is to be held.

### **8.15 Notice of fixture for oral hearing**

- (1) This rule applies to a hearing for an appeal or, if an oral hearing is to be held, for an application for leave to appeal.
- (2) A Registrar must allocate a fixture.
- (3) Notice of the time and place fixed for the hearing must be given by a Registrar to—

- (a) the appellant; and
- (b) the respondent; and
- (c) if the appellant or the respondent is in custody and the court has granted the appellant or the respondent leave to be present at the hearing, the chief executive of the department for the time being responsible for the administration of the Corrections Act 2004.

#### **8.16 Timing of submissions**

- (1) The appellant must file and serve on the respondent the appellant's written submissions on all appeal points not later than 15 working days before the hearing date.
- (2) In the case of an application for leave to appeal that is to be determined at an oral hearing, the submissions must include any reasons why leave should be granted.
- (3) The respondent must file and serve on the appellant the respondent's written submissions on all appeal points not later than 10 working days before the hearing date.
- (4) However, if the appeal is against a determination in respect of bail,—
  - (a) the appellant's submissions under subclause (1) must be filed and served not later than 2 working days before the hearing date; and
  - (b) the respondent's submissions under subclause (3) must be filed and served not later than 1 working day before the hearing date.

## **Part 9**

### **Miscellaneous provision**

#### **9.1 Revocation**

The Criminal Proceedings (Access to Court Documents) Rules 2009 (SR 2009/134) are revoked.

## Schedule 1

### Information to accompany summonses

rr 3.2, 4.13

#### **Appearing in court**

If you are charged with an offence that is not punishable by imprisonment, you may be entitled to enter a guilty plea without having to come to court. Contact your local court for more information.

When you do appear in court, the judicial officer or Registrar will make a decision whether you are held in custody, on bail, or free to go (at large) until you have to come back to court.

If you do not come to court when you are meant to, a warrant for your arrest may be issued.

#### **Availability of free legal advice**

##### *Community law centres*

Your local community law centre can give initial legal advice free of charge. More information is available from the community law centre website.

##### *Duty lawyers*

On the day you have to come to court, you can ask to see a duty lawyer. Duty lawyers are at court and can give free legal advice to people who have been charged with an offence.

##### *Legal aid*

If you want a lawyer to act for you, but you think you cannot afford one, you may apply for criminal legal aid. Ask the duty lawyer, your nearest community law centre, or legal aid office how to apply. Information on legal aid is also available from the legal services website.

#### **Diversion**

The prosecutor who filed charges against you may operate a diversion scheme. You can ask the prosecutor whether they operate a diversion scheme and whether you will be offered diversion.

#### **Prosecution disclosure duties**

Before, when, or soon after you first appear in court, the prosecution must give you:

- a copy of the charging document; and
- a summary of facts (what the prosecution says happened); and
- a summary of your right to ask for further information; and

- the maximum penalty for the offence (and minimum penalty, if applicable);  
and
- a list of any previous convictions that the prosecutor knows you have.

## Schedule 2

### Names of courts and Registries

rr 2.1(2), 3.1

Schedule 2: inserted, on 20 May 2021, by rule 10 of the Criminal Procedure Amendment Rules 2021 (LI 2021/87).

<b>Name of court and Registry in English</b>	<b>Name of court and Registry in te reo Māori</b>
Alexandra	Manuherekia
Ashburton	Hakatere
Auckland	Tāmaki Makaurau
Blenheim	Te Waiharakeke
Chatham Islands	Wharekauri
Christchurch	Ōtautahi
Dannevirke	Tāmaki-nui-a-Rua
Dargaville	Tākiwira
Dunedin	Ōtepoti
Gisborne	Tūranganui-a-Kiwa
Gore	Maruawai
Greymouth	Māwhera
Hamilton	Kirikiroa
Hastings	Heretaunga
Hāwera	Hāwera
Huntly	Rāhui Pōkeka
Hutt Valley	Te Awakairangi
Invercargill	Waihōpai
Kaikohe	Kaikohe
Kaikōura	Kaikōura
Kaitaia	Kaitaia
Levin	Taitoko
Manukau	Manukau
Marton	Tūtaenui
Masterton	Whakaoriori
Morrinsville	Morenawhira
Napier	Ahuriri
Nelson	Whakatū
New Plymouth	Ngāmotu
North Shore	Ōkahukura
Oamaru	Te Oha-a-Maru
Ohakune	Ōhakune
Ōpōtiki	Ōpōtiki
Palmerston North	Te Papaioea
Papakura	Papakura
Porirua	Porirua
Pukekohe	Pukekohe
Queenstown	Tāhuna
Rotorua	Te Rotorua-nui-a-Kahumatamomoe



<b>Name of court and Registry in English</b>	<b>Name of court and Registry in te reo Māori</b>
Ruatoria	Ruatōrea
Taihape	Taihape
Taumarunui	Taumarunui
Taupō	Taupō-nui-a-Tia
Tauranga	Tauranga Moana
Te Awamutu	Te Awamutu
Te Kuiti	Te Kūiti
Thames	Pārāwai
Timaru	Te Tihi-o-Maru
Tokoroa	Tokoroa
Waihi	Waihī
Waipukurau	Waipukurau
Wairoa	Te Wairoa
Waitākere	Waitākere
Wellington	Te Whanganui-a-Tara
Westport	Kawatiri
Whakatāne	Whakatāne
Whanganui	Whanganui
Whangārei	Whangārei-terenga-parāoa

Michael Webster,  
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.  
Date of notification in *Gazette*: 20 December 2012.

## Notes

### **1** *General*

This is a consolidation of the Criminal Procedure Rules 2012 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Criminal Procedure Amendment Rules 2021 (LI 2021/87)

Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193): rule 18

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Senior Courts Act 2016 (2016 No 48): section 183(b), (c)

Criminal Procedure Amendment Rules 2016 (LI 2016/162)

Te Ture mō Te Reo Māori 2016/Māori Language Act 2016 (2016 No 17): section 50

Criminal Procedure Act Commencement Order 2013 (SR 2013/162)