

Criminal procedure - Commencement of proceedings

Table of Contents

Table of Contents	2
Summary	4
Introduction	4
Purpose of this chapter	4
Commencement stage	4
Statutory references	4
Other criminal procedure-related chapters	4
Related information	4
Diagram: Criminal Procedure Act - procedure overview	5
General administrative requirements	6
Advising party details	6
Address for service	6
Document requirements	6
Authenticating documents	6
Filing documents	7
Original or copy?	7
When is a document other than a charging document considered to be filed?	7
Service requirements	8
Documents to be served on all parties	8
Who can serve the document?	8
How to serve	8
Personal service	8
Family members	8
Other means of service in particular cases	9
Body corporates, Crown organisations and incorporated societies	9
Proof of service	9
Service on Sunday	10
Applications	11
Making applications	11
Applications required in writing	11
Applications under other Acts	11
Notice of application	12
Responding to an application	12
Procedure for dealing with applications	12
Commencing and authorising prosecutions	13
General principle	13
How are prosecutions commenced?	13
Authorising prosecution	13
Recording approvals	13
Attorney-General or Solicitor-General's consent	13
Preparing charging documents	14
Charging documents	14
Content of charging documents	14
Representative charges	14
Unable to particularise	14
Unduly difficult to separate	14
Alternative charges	15
Amending and dividing charges	15
Notification of charges to be heard together	15
Offences requiring previous convictions	16
Offence to file false or misleading charging document	16
Filing charging documents	17
Who may file a charging document	17
Proving prior consent	17
Where should charging documents be filed	17

Place of hearing, trial and transfer	17
Limitations on Community Magistrates and Justices to transfer	17
Timeframes for filing charges	18
How to file a charging document	18
Filing charging documents when the computer system is not functioning	19
Notifying the defendant of charges	20
Summary	20
Arrest	20
Police bail	20
Police bail with conditions	20
Police bail without conditions	20
Summons to appear	20
Section 28 charge summons	21
Section 29 evidential breath test summons	21
Filing charging documents before or after summons	21
Service of summons	21
Notifying changes in charges	21
Order to produce	21
Warrant in lieu of summons	22
Proceedings for infringement offences	23
Commencing proceedings	23
Reminder notices	23
Filing a reminder notice in court	23
Court order deemed to have been made	23
Notices of hearing	23

Summary

Introduction

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

Purpose of this chapter

This chapter:

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

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

Commencement stage

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



Statutory references

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

Other criminal procedure-related chapters

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

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

Different processes apply to youth. See the [Youth justice](#) Police Manual chapter for details.

Related information

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

- [Bail](#)
- [Charging decisions](#)
- [Criminal disclosure](#)
- [Prosecution file and trial preparation](#)
- [Family harm policy and procedures](#)
- [Adult diversion scheme](#)

Diagram: Criminal Procedure Act - procedure overview

See 'Criminal procedure - [Introduction and jurisdiction](#)' for a diagram illustrating the processes to be followed under the Criminal Procedure Act 2011.

General administrative requirements

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

Advising party details

Prosecution must:	Defence must:
<p>include on the charging document:</p> <ul style="list-style-type: none"> - the particulars of the person commencing the proceeding - the name of the employer of the person commencing the proceeding and particulars of an appropriate contact person in relation to the prosecution <p>notify the defendant and the court of:</p> <ul style="list-style-type: none"> - the address for service as soon as practicable after proceedings are commenced (usually included on the charging document) - any changes to the address for service <p>where the prosecution is the Crown, notify the defendant and the court that the Crown has assumed responsibility for the prosecution.</p>	<p>notify the prosecutor and the court of:</p> <ul style="list-style-type: none"> - the address for service as soon as practicable after proceedings are commenced - any changes to the address for service.

(s [16](#), r [2.9](#), [3.1](#))

Address for service

An address for service:

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

(r [2.9](#))

Document requirements

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

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

(r [2.1](#))

Authenticating documents

Documents are authenticated by:

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

(r2.2)

Filing documents

These documents...	must be filed in the court by:
Any document other than a charging document	<ul style="list-style-type: none"> - delivering it to the court registry by hand, or - sending it to the registry by: <ul style="list-style-type: none"> - mail or fax to a postal address or fax number published by a registrar - an electronic means provided by the court for that purpose.
Charging document	<ul style="list-style-type: none"> - delivering it to the registry by hand, or - an electronic means provided by the court for that purpose, such as the NIA interface with the court eBench system.

(r2.3)

Original or copy?

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

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

(r2.3)

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

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

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

(r2.3)

Service requirements

Documents to be served on all parties

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

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

When a plea is entered by the filing of a notice, the registrar must notify the prosecutor.

(ss [37](#) & [38](#), r [2.4](#))

Who can serve the document?

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

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

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

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

(r [2.8](#))

How to serve

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

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

(r [2.5](#))

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

Personal service

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

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

(r [2.6](#))

Family members

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

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

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

(s24(2) Summary Proceedings Act 1957)

Other means of service in particular cases

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

If service is required on a person who is...	you may deliver the document...
living or serving on board any vessel	to the person on board who at the time of service is apparently in charge of the vessel.
in any barracks, camp or station while serving as a member of any of Armed Forces of New Zealand	at the barracks, camp or station to the adjutant or to the officer for the time being in command of the unit or detachment to which the person to be served belongs.
a prisoner in a prison	to the manager or other person apparently in charge of the prison.
in a youth justice residence	to the manager or other person apparently in charge of the residence.

(r2.7)

Body corporates, Crown organisations and incorporated societies

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

If service is required on a...	you may effect service of the document by...
a body corporate or a Crown organisation	<ul style="list-style-type: none"> - sending it to the organisation for the attention of an officer or employee of that organisation - delivering it to an officer or employee of the organisation at its head office, principal place of business, or registered office, or by bringing it to the officer's or employee's notice if they refuse to accept it. <p>Note: For a company or overseas company in New Zealand, you must effect service in accordance with sections 387 to 392 of the Companies Act 1993.</p>
an unincorporated society	- by delivering or sending it to, or leaving it with, the president, chairperson, secretary, or any similar officer of the society.

(r2.7)

Proof of service

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

When a document is served by...	service is proved by...
personal service	<ul style="list-style-type: none"> - affidavit made by the person who served the document, showing the date, time, mode of service and identity (if known) of the person served - that person on oath at the hearing - providing an authenticated endorsement on a copy of the document served showing the date, time, mode of service and identity (if known) of the person served.
post	<p>in the absence of proof to the contrary:</p> <ul style="list-style-type: none"> - evidence that the document was sent to an address provided by the party to be served is proof that service was completed, and - the document is treated as having been served on the earlier of: <ul style="list-style-type: none"> - the third working day after the day on which it is sent by mail, or - the day on which it is received.
fax or an electronic means	<p>in the absence of proof to the contrary, evidence that the document was sent to the address provided by the party to be served is proof that:</p> <ul style="list-style-type: none"> - service was completed, and - the document was received on the day and at the time it was sent, unless it was sent on a non-working day or after 5 pm on a working day, in which case it must be treated as having been received on the next working day.

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

([r2.10](#))

Service on Sunday

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

Applications

Making applications

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

Except for applications for a warrant to arrest a defendant or witness, or an application for a witness summons, all written applications must be served on all other parties.

([Part 2 Subpart 4](#) CPR)

Applications required in writing

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

CPA section	Applications for orders for:
s70	the defendant be tried in the High Court
s78	a pre-trial admissibility hearing for a Judge-alone trial
s90	an oral evidence order
s101	a pre-trial order for admissibility of evidence in a jury trial
s102 or 103	a Judge-alone trial
ss125, 151, or 177	a retrial
ss126 or 177	a rehearing
s138	an order that one or more charges against a defendant be heard separately
s147	the dismissal of a charge
s157	transfer of proceedings
ss180 or 181	an order correcting an erroneous sentence
s364	a costs order
s366	an order for a bond to keep the peace

Applications under other Acts

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

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

([r2.12](#))

Notice of application

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

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

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

Responding to an application

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

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

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

(r2.14)

Procedure for dealing with applications

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

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

Commencing and authorising prosecutions

General principle

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

How are prosecutions commenced?

Prosecutions are commenced by filing:

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

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

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

Authorising prosecution

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

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

Authorisation should be given before the charging document is filed.

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

Recording approvals

The person authorising a prosecution must:

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

Attorney-General or Solicitor-General's consent

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

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

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

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

Preparing charging documents

Charging documents

A charging document must:

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

Content of charging documents

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

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

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

(s [17](#))

Representative charges

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

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

(s [20](#))

Unable to particularise

This occurs when:

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

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

Unduly difficult to separate

This occurs when:

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

Example: multiple cheque fraud or other complex repetitive offending.

Alternative charges

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

A charging document containing an alternative charge, within the same document, must relate to a single offence and not different offences such as burglary and receiving. An example of an offence that may be worded in the alternative is section [188\(2\)](#) of the Crimes Act 1961. The wording of this section provides for multiple alternatives, such as wounding with intent to injure, or wounding with reckless disregard, and may be charged in the alternative in the same charging document.

Amending and dividing charges

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

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

(ss [19](#) & [20](#))

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

Notification of charges to be heard together

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

(s [138](#))

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

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

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

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

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

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

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

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

Offences requiring previous convictions

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

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

Offence to file false or misleading charging document

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

([s23](#) CPA)

Filing charging documents

Who may file a charging document

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

Proving prior consent

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

(s24 CPA)

Where should charging documents be filed

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

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

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

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

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

Place of hearing, trial and transfer

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

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

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

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

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

An application to transfer proceedings may be required when:

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

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

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

Limitations on Community Magistrates and Justices to transfer

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

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

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

Timeframes for filing charges

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

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

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

How to file a charging document

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

This table outlines the steps to file a charging document.

Step	Action
1	Enter authorisation for the prosecution in NIA. See ' Authorising prosecutions ' for details of who can authorise.
2	Enter the charging document in NIA.
3	Unless overridden, the charging document is left in the electronic queue for automatic filing. This will occur at: <ul style="list-style-type: none">- 1am on the following day if a summons was issued- 7am on the day of the first appearance if the defendant was arrested on the charge.
4	Override the automated system and force immediate filing when necessary, e.g. when the document is: <ul style="list-style-type: none">- required for a court appearance- an electronically queued charge needs to be brought forward to an earlier date, such as the defendant being arrested for breach of Police bail.

Filing charging documents when the computer system is not functioning

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

Notifying the defendant of charges

Summary

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

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

The commencement of proceedings triggers the first requirements to notify the defendant of a prosecution, the charges and the details of the prosecuting agency. (Refer to the '[Criminal disclosure](#)' chapter for detailed information on disclosure requirements and '[service requirements](#)' in this chapter for information on serving documents and notices).

Arrest

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

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

Police bail

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

(See the '[Bail](#)' chapter for further information).

Police bail with conditions

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

([s21](#) and [21B](#) Bail Act 2000)

Police bail without conditions

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

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

Summons to appear

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

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

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

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

Section 28 charge summonses

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

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

Section 29 evidential breath test summons

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

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

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

Filing charging documents before or after summonses

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

([s31 CPA](#))

Service of summonses

Refer to [service requirements](#) for procedures for serving documents, including summonses.

Notifying changes in charges

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

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

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

([s32 CPA](#))

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

Order to produce

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

Follow these steps to obtain an order to produce.

Step	Action
1	File a charging document.
2	Issue the summons to defendant (this may be before or after filing the charging document).
3	Email or fax the court of appearance seeking an order to produce, requesting confirmation when done. Provide the following information: <ul style="list-style-type: none">- the name of the defendant- prison- charges- date of appearance.
4	Serve defendant summons on Prison Manager.
5	Court sends the OTP to the prison.

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

Warrant in lieu of summons

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

If the summons relates to:

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

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

(s34 CPA)

Proceedings for infringement offences

Commencing proceedings

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

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

Reminder notices

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

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

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

Filing a reminder notice in court

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

Court order deemed to have been made

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

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

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

(s21)

Notices of hearing

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