

## **Criminal procedure - Disposition**

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## Summary

### Purpose of this chapter

Criminal proceedings may conclude in a variety of ways.

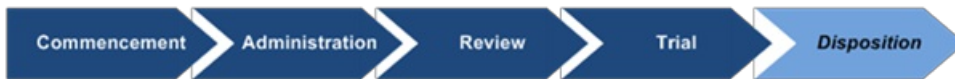
This chapter outlines the most common ways that a prosecution may end, or be disposed of including:

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

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

### Disposition stage

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



### Statutory references

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

### Other criminal procedure-related chapters

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

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

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

### Related information

Other Police Manual chapters with information related to criminal procedure:

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

### Diagram: Criminal Procedure Act - procedure overview

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

## Sentencing

### Prosecutor's responsibility to assist the sentencing court

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

When determining the most appropriate sentencing outcome following a guilty plea or finding of guilt, or for a sentence indication, (see information on [sentence indications](#) in the Review stage chapter), the judicial officer requires sufficient information to ensure that the sentence imposed reflects the purposes and principles of sentencing. The prosecutor must assist the sentencing court in the determination of the appropriate sentence and the avoidance of errors, by providing the necessary information and, where appropriate, making relevant legal submissions.

### Information relevant to sentencing

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

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

### Bail pending sentence

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

### Sentencing in the absence of the defendant

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

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

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

### Correction of erroneous sentence

If the court:	the court may...
<ul style="list-style-type: none"> <li>- imposes a sentence that it may not lawfully impose, or</li> <li>- does not impose a sentence or order that it is required by law to make...</li> </ul>	impose a new sentence or order: <ul style="list-style-type: none"> <li>- on its own motion, or</li> <li>- by application from either party involved, or in certain situations the Chief Executive of the Department of Corrections.</li> </ul>

(ss [180](#) & [181](#) CPA)

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

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

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

## Other types of disposition

### Dismissal

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

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

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

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

Under the Criminal Procedure Act 2011, a dismissal is deemed to be an [acquittal](#) and is a bar to further proceedings relating to the same facts (see information about special pleas and pleas of previous acquittal in the [Administration stage](#) chapter), unless a retrial is granted due to a tainted acquittal or further compelling evidence. Seek specialist legal advice if a tainted acquittal or further compelling evidence is likely, as consent from the Solicitor-General is likely to be required prior to any investigation or application for a retrial.

(ss [151-156](#) CPA)

### Acquittal

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

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

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

### Diversion

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

(s [148](#))

### Insanity

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

Refer to the [People with mental impairments](#) chapter for further information.

### Stay of proceedings

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

### An order for a bond to keep the peace

Any person may apply to a court presided over by a District Court Judge for an order requiring another person to enter into a bond

(with or without sureties) for keeping the peace. See [s366](#) CPA for details of the circumstances in which such an order may be made.



## Appeal provisions

### Appeal pathways

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

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

### Approval to appeal required

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

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

### Timeframes

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

Nature of appeal:	Maximum time limit to file:
Appeal against disclosure order made in the District Court	3 working days ( <a href="#">s33</a> Criminal Disclosure Act 2008)
Appeal against bail decision	20 working days (ss <a href="#">41-49</a> Bail Act 2000 & <a href="#">s273</a> CPA)
Appeal against decision on cost order	20 working days ( <a href="#">s273</a> CPA)
Appeal against pre-trial decisions	20 working days ( <a href="#">s220</a> CPA)
Appeal against sentence	20 working days ( <a href="#">s248</a> CPA)
Appeal against decision on suppression order	20 working days ( <a href="#">s285</a> CPA)
Appeal on a question of law	20 working days ( <a href="#">s298</a> CPA)
<a href="#">Solicitor-General's reference</a>	60 working days ( <a href="#">s314</a> CPA)

### Solicitor-General's reference

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

### Preparing for an appeal to the High Court

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

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

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

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

## Procedure when appealing a decision to the High Court

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

Step	Action
1	<p>The prosecutor must urgently forward (by email) to the <u>PPS</u> Legal Adviser or Police Legal Services Legal Adviser the following material:</p> <ul style="list-style-type: none"> <li>- The decision to be appealed (or, in the case of an oral decision that has not been transcribed, the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible).</li> <li>- A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment.</li> <li>- Any written submissions filed by the Police or the defendant.</li> <li>- Copies of any other information that was before the Court (e.g. pre-sentence reports, victim impact statements, letters of support, etc).</li> <li>- An outline of the importance to the Police of conducting an appeal and any risks in doing so.</li> </ul> <p><b>Note:</b> If this information is not immediately available, the prosecutor may approach the <u>PPS</u> Legal Adviser or Legal Services to informally assess the prospects of a potential appeal in the first instance. The provisional consent of the Solicitor-General may be sought on the basis of the prosecutor's instructions, pending the delivery of the relevant information.</p>
2	<u>PPS</u> Legal Adviser or Legal Services Legal Adviser must consult with the prosecutor who appeared on the prosecution.
3	Where the <u>PPS</u> Legal Adviser or Legal Services Legal Adviser agree an appeal is appropriate, he or she prepares the request with the assistance of the prosecutor who appeared on the prosecution.
4	<p>The <u>PPS</u> Legal Adviser or Legal Services Legal Adviser emails the request to the Solicitor-General, with the following information:</p> <ul style="list-style-type: none"> <li>- the decision to be appealed</li> <li>- a statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment, and</li> <li>- an outline of the importance to the Police of conducting an appeal.</li> </ul>
5	The <u>PPS</u> Legal Adviser or Police Legal Services Legal Adviser advises the prosecutor of the outcome of the request.
6	If the matter is to be appealed, the <u>PPS</u> Legal Adviser or Police Legal Services Legal Adviser drafts the notice of appeal or, in urgent cases, assists the prosecutor to draft the notice of appeal. The notice must be filed by the prosecutor. The file must then be forwarded to the local Crown Solicitor who will appear for Police.

## Preparing for an appeal to the District Court

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

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

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

Step	Action
1	<p>The prosecutor must urgently forward (by email) to the <u>PPS</u> Legal Adviser the following material:</p> <ul style="list-style-type: none"> <li>- The decision to be appealed (or, in the case of an oral decision that has not been transcribed: the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible).</li> <li>- A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment.</li> <li>- Any written submissions filed by the Police or the defendant.</li> <li>- Copies of any other information that was before the Court (e.g. pre-sentence reports, victim impact statements, letters of support, etc).</li> <li>- An outline of the importance to the Police of conducting an appeal and any risks in doing so.</li> </ul> <p><b>Note:</b> If this information is not immediately available, the prosecutor may approach the PPS Legal Adviser to informally assess the prospects of a potential appeal in the first instance.</p>
2	<u>PPS</u> Legal Adviser must consult with the prosecutor who appeared on the prosecution.
3	Where the <u>PPS</u> Legal Adviser agrees an appeal is appropriate and likely to succeed, he or she approves the appeal.
4	The <u>PPS</u> Legal Adviser decides which prosecutor should appear on the appeal in consultation with the PPS Operations Manager.
5	The <u>PPS</u> Legal Adviser advises the prosecutor of the outcome of the request.
6	If the matter is to be appealed, the <u>PPS</u> Legal Adviser drafts the notice of appeal or, in urgent cases, assists the prosecutor to draft the notice of appeal. The notice must be filed by the prosecutor.
7	The <u>PPS</u> Legal Adviser works with the assigned prosecutor to draft submissions and prepare for any oral hearing(s).

## Responding to appeals by the defendant

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

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

## Bail appeals

Refer to "Bail appeals" in the [Bail chapter](#) of the Police Manual.