

Criminal procedure - Review stage (CMM process)

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Summary

Purpose of this chapter

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

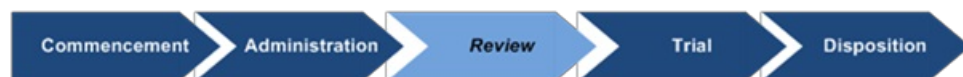
The chapter also provides information relating to procedural matters, often encountered in the review stage, which may occur at any stage of proceedings, such as:

- [withdrawing and amending charges](#)
- [sentence indications](#).

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

Review stage

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



Statutory references

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

Other criminal procedure-related chapters

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

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

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

Related information

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

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

Diagram: Criminal Procedure Act - procedure overview

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

Overview of the review (CMM) process

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

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

Stage	Description
1	Not guilty plea is entered and charge(s) adjourned to a case review hearing date that is not later than: <ul style="list-style-type: none"> - 30 working days after the entry of a not guilty plea for non-Crown judge-alone trials - 45 working days after the entry of a not guilty plea for jury trials and Crown prosecutions.
2	Case management meeting is scheduled.
3	File is fully reviewed by a prosecutor and O/C notified, and if needed: <ul style="list-style-type: none"> - additional information requested of the O/C - file returned for remedial action.
4	Defence lawyer and prosecutor engage in case management discussions and jointly complete the case management memorandum.
5	Defence lawyer files the case management memorandum not less than 5 working days before the case review hearing.
6	Case review hearing is held when required or the case: <ul style="list-style-type: none"> - proceeds direct to trial - is adjourned for a guilty plea and sentence, or other disposition such as withdrawal of charges.

When does the CMM process apply?

Commencement of CMM process

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

What cases are included in the CMM process?

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

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

Category one offences - directions for inclusion in CMM process

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

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

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

Departure from CMM process

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

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

([s58CPA](#), [r4.5](#))

Procedures at key stages of the CMM process

Scheduling the CMM meeting

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

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

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

Review file and notify O/C case

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

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

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

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

Protocol offences

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

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

Protocol Annex to be filed by prosecutor

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

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

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

Location of meeting

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

by telephone, or email.

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

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

Case management meeting and memorandum

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

(s55CPA)

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

Completing the CMM

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

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

Following completion of the CMM

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

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

Where the CMM identifies that the matter will proceed to:

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

Agreements made through CMM binding on all PPS prosecutors

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

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

Failure by defence to attend meeting

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

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

Failure by defence to file CMM

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

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

Case review hearing

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

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

([r1.7](#) & [5.2](#))

Unrepresented defendants

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

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

Withdrawing and amending charges

Withdrawing charges

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

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

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

Amending charges

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

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

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

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

Procedure if charge amended before trial

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

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

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

Refer to sections [133-136](#) of the CPA and amending charges during a trial for additional information.

Pre-trial applications

Pre-trial applications applying to judge-alone trials

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

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

Early resolution of issues is desirable

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

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

Early evidence

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

Witness anonymity

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

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

Sentence indications

Introduction

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

What is a sentence indication?

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

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

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

The indication must be recorded and given in open court.

(ss [60](#) & [62](#) CPA)

When can a sentence indication be given?

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

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

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

Additional information may be required

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

- any charge upon which the defendant seeks a sentence indication
- the steps taken by the prosecutor to advise any victim that a sentence indication has been sought
- submissions from the prosecutor and defendant in relation to:
 - the appropriate type of sentence, sentence range, or quantum of sentence for the charge(s) upon which a sentence indication is sought
 - aggravating factors that the prosecutor contends or the defendant concedes should increase the sentence, or mitigating factors that the defendant contends or the prosecutor concedes should lower the sentence
 - whether the offender was on parole or bail at the time of the alleged offending
 - whether there are co-defendants, where the prosecutor and defendant contend that the defendant ranks in the hierarchy of defendants, and how the giving of a sentence indication may affect co-defendants
 - whether any co-defendants have already been sentenced and if so the sentence that person(s) received
 - whether, if applicable, the quantum of reparation is agreed by the prosecutor and defendant
- where available
 - a recent pre-sentence report
 - a drug and alcohol assessment
 - a medical report
 - a psychiatric/psychological report.

([r4.10](#))

Parties may have an opportunity to be heard

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

(ss [61](#) and [62](#)CPA)

Effect and duration of sentence indications

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

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

A sentencing indication ceases to be valid:

- at the expiry of the indication period, or
- if information becomes available to the court after the indication was given but before sentencing, and
- the judicial officer is satisfied that the information materially affects the basis on which it was given.

Offence to publish details

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

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

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