

Prosecution file and trial preparation

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Summary

Introduction

Irrespective of how thoroughly or competently a case is investigated, any lack of attention to detail, documentation and presentation may detract from the prosecution case. During the prosecution process the investigation will be tested and any mistakes or omissions revealed. Cases stand or fall on the quality of the investigation, disclosure, and the prosecution file.

Purpose of this chapter

This chapter explains the file order for prosecution files commenced under the [Criminal Procedure Act 2011](#). The order changes depending on which stage the matter is at in the prosecution process:

- [first appearance](#)
- [case review stage](#)
- [Judge-alone trial](#)
- [jury trial](#).

The chapter also includes guidance on:

- the completion of a number of [prosecution forms](#)
- Officer in charge (O/C's) responsibilities when [preparing for trial](#).

Related information

See the:

- '[Charging decisions](#)' Police Manual chapter for guidance on selecting appropriate charge(s).
- '[Solicitor-General's Prosecution Guidelines](#)' for guidance about whether criminal proceedings should be commenced, and if so, what charges should be laid, and whether the proceedings should continue
- [Criminal procedure](#) chapters for information and guidance on criminal procedure from commencement to disposition, with particular reference to the [Criminal Procedure Act 2011](#).

Who is the audience for the chapter?

The guidance in this chapter is written primarily for officers in charge of cases (O/C case), their supervisors, and other Police employees who prepare prosecution files. It also applies to specialist units with responsibility for part or all of the prosecution file preparation in their area.

General principles, roles and responsibilities

Officer in charge of the case

Responsibility for prosecution file preparation varies within districts / areas. In some cases the O/C case is responsible for all aspects of the investigation, charging decisions and prosecution file preparation. In others, the O/C case is responsible for the investigation only and specialist units have responsibility for confirming charge selection and aspects of the prosecution file preparation.

The O/C case maintains ownership of the investigation process throughout the life of the court proceedings.

The O/C case must deliver their file to the Police Prosecution Service (PPS) in a timely manner to allow specialist units or PPS to carry out their responsibilities. The delivery time of these files can depend on local area policies.

Note: It has been assumed, for the purposes of this chapter, that the O/C case has responsibility for all facets of the prosecution file preparation. Refer to local policies if you have a specialist unit(s) with responsibility for part or all of the prosecution file preparation.

O/C case responsibilities

O/C case responsibilities (or depending on local policies, specialist units may be responsible for some of these tasks) include:

Type	Responsibilities
File quality	<ul style="list-style-type: none"> - Ensure that evidence on the file satisfies the test for prosecution contained in the Solicitor-General's Prosecution Guidelines. - Ensure all outstanding matters are attended to in a timely fashion, i.e. witness statements, exhibits, locating co-offenders and obtaining reparation details. - Respond as soon as possible to requests by specialist units or prosecutors to discuss matters to assist further file preparation. - Return completed files to the specialist unit or prosecutor within the required time frame. - Disclose, in a timely manner all relevant information to the defence and, on an ongoing basis, update the prosecution file. - Liaise with the specialist unit and /or the prosecutor over any file issues. Issues might include discussions on witnesses or exhibits required for court.
Case management	<ul style="list-style-type: none"> - Serve witness summonses for substantive hearings, including any trial. - Ensure formal statements contain the required declaration and are signed where applicable, update Victim Impact Statements, arrange DVD/video transcripts for Judge-alone and jury trials. - Maintain contact with victims, complainants, and witnesses. - Save all electronic documents in a prescribed location. - Maintain ongoing liaison with the Crown where the Crown has assumed responsibility for the prosecution. Complete any enquiries requested by the Crown. - Ensure availability forms are kept up to date. Include any leave and training commitments for all witnesses.
Preparation for court	<ul style="list-style-type: none"> - Prepare exhibits for court. - Contact the PPS Office in person at least three working days before the court hearing and discuss any issues surrounding the prosecution case. - O/Cs must contact the PPS office, without exception, at least the day before a Judge-alone trial for a final briefing with the assigned prosecutor. - Ensure early and continued liaison with the Crown in any Crown matters.

O/C case responsibilities in court

The O/C case (or depending on local policies, specialist units) also has specific responsibilities related to court appearances.

Stage	Responsibilities
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Stage	Responsibilities
First appearance	<ul style="list-style-type: none"> - Check charging documents are filed correctly. - Prepare the prosecution file. - Prepare a POL 258 P Report for PPS (Police Forms> Prosecutions). - Make any necessary amendments before delivering the file to PPS. - Complete an initial disclosure package for the duty solicitor and place it on the back of the file, i.e. Charging Document(s) Summary of Facts, History, Opposition to Bail with an initial disclosure record. (See the 'Criminal disclosure' chapter). - Complete a full disclosure package containing all available relevant information for disclosure at the first appearance. Fill in the disclosure index and place a copy on file. - Prepare and forward agreed documents to the Court Victims Advisor, i.e. CSV1 form, Summary of Facts, Victim Impact Statement. - Identify witnesses to be called and exhibits to be produced if a not guilty plea is entered using the POL 275 witness list. - Consider and highlight any applications that may be required under the Evidence Act 2006 if a not guilty plea is entered. - Identify any outstanding enquiries that need to be undertaken. - Note the availability of victim, witnesses and Police employees. This should be incorporated into one availability sheet. - Forward to supervisor for file evaluation, minuting and sign-off.
Case review stage	<ul style="list-style-type: none"> - Complete any tasks requested by the prosecutor following the prosecution file analysis process, case management meeting with defence, or the case review hearing. - Identify any changes to witnesses to be called or exhibits to be produced since the first appearance. - Confirm the availability of victim, witnesses and Police employees. This should be incorporated into one availability sheet. - Ensure compliance with Victim Impact Statement currency requirements (see the 'Victims (Police service to victims)' chapter). - Disclose further documents if required. Record disclosure on the Disclosure Index, and ensure the prosecution file is updated. - Consider and highlight any applications that may be required under the Evidence Act 2006. - The PPS or the Crown (not the O/C case) is responsible for all post charge discussions with defence counsel relating to charge resolution or amendment to the charging regime. - Identify any outstanding enquiries that need to be undertaken, e.g. scene photos/diagrams to be prepared. - Identify if an extension of time for filing formal statements will be required for any jury trial. Discuss any extension requirements and reasons with PPS or the Crown, if the file has transferred to the Crown, before case review. Any extension of time requirement must be clearly outlined in writing to assist the prosecutor with any subsequent application that may be made. - Prepare an updated POL 258 P Report for PPS or the Crown, where applicable, if the information contained in the first appearance POL 258 P has changed as a result of additional information. - Advise the PPS, or the Crown if applicable, of any outstanding disclosure and the due date.
Judge-alone trial	<ul style="list-style-type: none"> - Maintain ongoing liaison with the PPS or the Crown, where it has assumed responsibility for the prosecution. Complete any enquiries requested by either. - Prepare briefs of evidence, where required, for each witness. - Ensure all witnesses are summonsed and the prosecutor informed of this. - Ensure compliance with Victim Impact Statement currency requirements (see 'Victims (Police service to victims)'). - Complete a POL 258 P Prosecutors Report for PPS, or the Crown. - Prepare a CJSU cover sheet (if applicable).

Stage	Responsibilities
Jury trial file	<ul style="list-style-type: none"> - Maintain ongoing liaison with the Crown. - Prepare the formal statements following advice in the 'Formal statements' section in this chapter. - Prepare any exhibits referred to in the formal statements to a 'trial ready' stage. Each exhibit must be labeled for easy identification (include Police file number, case name, exhibit number/reference, District Court name, date of filing, O/C case name). - Deliver three copies of the formal statements (or an electronic copy, if to be filed electronically) to the relevant Crown office no later than 5 working days after the proceeding has been adjourned for trial callover. - File any exhibits required by the formal statements with the court in consultation with the Crown and notify the Crown when completed. - Serve a copy of any exhibits that are also documents on the defence. - Ensure all witnesses are summonsed and the Crown informed of this.
All court phases	<p>-</p> <p>Remember you will always be the O/C file. You should know the file, liaise with witnesses before court, uplift exhibits and discuss your case with the assigned prosecutor at least three days out from the trial date, and in any event, at least one working day before the hearing.</p> <p>Note that Courts take a firm position on requests for trial date changes and normally require compelling reasons. Applications for adjournments require judicial oversight and must be filed by the PPS or Crown, if they have responsibility. If you have a good reason for not being able to attend the court hearing (e.g. overseas), submit a report as early as possible to the prosecutor or discuss it with them. Each court will have a different practice for changing hearing dates.</p>

Responsibilities in relation to evidence

Consider these points relating to specific types of evidence:

Evidence type	Comment
Photographs	If you are taking photographs for a file, record "description, time, date, location of taking, name of photographer".
Witness availability	Always ensure there is only one witness availability calendar, covering all witnesses for a six month period. This should be on every first appearance file and updated as required. Ensure all leave and training commitments are marked on the calendar.
Charging advice	Refer to ' Charging decisions ' in the Police Manual.
When to create a file	<ul style="list-style-type: none"> - Every youth jointly charged must be the subject of a separate part file. - A prosecution or enquiry part file should be created when there are different actions required for one file.
Prosecutor's intention to call evidence	<p>Draw the prosecutor's attention to potential issues in the case that may require them to file applications pursuant to the Evidence Act 2006. These would generally relate the prosecution intention to call evidence under these headings:</p> <ul style="list-style-type: none"> - hearsay evidence - identification evidence - modes of evidence:- the way in which evidence is proposed to be given by complainants and witnesses, especially when an application is required for those under 18 - propensity evidence.

Supervisor's responsibilities

The supervisor of the O/C case must:

- ensure the prosecution file is prepared to the standards set out in this chapter
- coach the O/C case if there are file deficiencies to ensure it is completed to a professional standard
- check, minute and sign all files submitted by the O/C case before forwarding to another workgroup
- ensure NIA has been updated with the correct file assignment information.

Preparing prosecution files

Purpose

The three purposes of a prosecution file are to:

- ensure the accountability of the charging officer for action taken
- enable effective review of the decision to prosecute
- further the prosecution process in court or through alternative resolution measures, e.g. diversion.

Prosecution files are constructed with an understanding of the needs of the groups that use them (i.e. [PPS](#) prosecutors and Crown solicitors). The information in the files can also be used for a variety of functions, including:

- assessing bail
- providing [sufficient evidence](#) to support the current charge(s)
- providing a basis for effective disposition, particularly through sentencing.

The O/C case should consider these purposes and functions when preparing a prosecution file.

Principles

When preparing a prosecution file, remember your ultimate 'audience' is the Judge, or Judge and jury. Pay particular attention to:

- **Evidential content** - reflects an officer's ability as an investigator, their understanding of the criminal statute and the laws of evidence, and ability to brief
- **Presentation** - this includes the 'professionalism' factor and is demonstrated by the file's physical appearance (i.e. file neatly put together, free of typing and grammatical errors, Summary of Facts concise and covering the ingredients of the offence)
- **Construction** - the arrangement (file order) of the file documents to meet the required standards.

The extent to which the O/C case applies these principles and meets the file standard can have two effects:

- it reflects on the individual officer's performance, and
- the ability of the prosecution case to be progressed effectively.

Remember the file must contain all **relevant** evidential and disclosable information. 'Relevant' in this context means information that can support or rebut the case against the defendant. Where there is a working prosecution file, ensure that all relevant information is also on the prosecution file.

Matters related to evidential content are required to satisfy the evidential and public interest tests set out in the [Solicitor-General's Prosecution Guidelines](#) as adopted in the [PPS Statement of Policy and Practice](#) and such other subject specific prosecution policies that may be established from time to time.

File structure

Each document has a place in the file and serves a specific purpose. Note:

- A [POL 250](#) Prosecution Cover Sheet (in Police Forms or self populated in [NIA](#) - refer [NIA Prosecution Forms](#) on the intranet) must be completed and printed on white paper for each prosecution file. Both the O/C case and the prosecutor are required to complete aspects of this coversheet. Documents must not be placed above the prosecution file cover sheet.
- All documents attached to a prosecution file should be relevant to the file - remember that many documents on a prosecution file are subject to disclosure.
- As a general rule, plastic sleeves should not be attached to a file (unless used to protect an exhibit).
- Physical exhibits should not be attached to a file, except:
 - copies of photographs
 - copies of documentary exhibits
- (The O/C case or O/C exhibits (as appropriate) should safely secure the original documentary evidence).
- The file should be secured with a file pin and not stapled together.
- Very few files warrant being organised in a ring binder.
- Coloured paper inserts must not be used.

Files being sent to the Crown

The Crown assumes responsibility for Crown prosecutions at different stages of the proceedings in accordance with the Criminal Procedure Act 2011, associated rules and regulations. Refer to the [Crown involvement](#) section of the Administration stage chapter for greater detail of when responsibility is assumed for a particular file. Refer also to the [Memorandum of Understanding](#) (MOU) between the Solicitor-General and the Commissioner of the Police outlining the processes and standards expected to be followed for Police initiated prosecutions involving the Crown.

When the Crown assumes responsibility for a prosecution, PPS must send the file to the Crown within:

- 5 working days of the date the Crown assumed responsibility, or
- a shorter timeframe and as a matter of priority if required in a particular case (e.g. if an appearance is required by the Crown the day after the Crown assumed responsibility).

The O/C must be aware that ongoing liaison with the Crown may be required from as early as the first appearance, depending on the offence type and category. As such, clear identification of the O/C and relevant supervisor is required in the initial POL 258 P report.

Local arrangements for preparing files for the Crown should be discussed with the local PPS office.

NIA Prosecution form set

Wherever possible the NIA prosecution form set should be used to generate prosecution forms. This ensures that an electronic copy of the form is kept and able to be accessed when the hard copy file cannot.

Alternatives to prosecution

Police adult diversion

All files being considered for Police diversion must be prepared to the standard for [first appearance files](#).

Refer to the '[Adult diversion scheme policy](#)' in the Police Manual for further information about diversion.

Alternative resolutions / formal warnings

A prosecution file is not required for a [formal warning](#).

Refer to the '[Charging decisions](#)' chapter in the Police Manual.

Files for first appearance

Follow this order when preparing a prosecution file for first appearance. Note: Where available, use the [NIA Prosecution Formset](#) to complete the forms listed below, otherwise use Police Forms > Prosecutions.

File Order (Top to bottom)	Document	Explanation
1	Administrative documents	
a	POL 250 Prosecution Coversheet	
b	DOC LOC case coversheet	
c	DOC LOC case file statistics	Not required if a part file
2	Reports	
a	POL 258 P Prosecution Report	Follow the format provided by the guidance on the form (purple text) and clearly identify if any interview was visually recorded
b	Witness Availability Form	One sheet to cover all witnesses, both police and civilian, for the upcoming 6 months
3	Disclosure	
a	Copy of Initial Disclosure Record / Letter	After disclosure initially made
b	Disclosure Index	Only if one has been created at this time
4	Charge documents	
a	Charging documents	In CRN numerical order
b	Record of victim contacts printed off NIA (Case Management electronic POL1060 info)	Where necessary
c	Proposed bail conditions printout	Two copies
d	POL 128 Opposition to bail	If bail opposed - Opposition to bail and associated papers must also be copied into judge's pack and disclosure pack
e	Notice of bail	If Police bail was granted
f	Summons - proof of service	If summonsed to appear
g	POL 262 Summary of Facts	Three copies plus one in disclosure and one in judge's pack
h	POL 395 Reparation Schedule	If applicable. A copy for the judge and prosecutor only (separate from Summary of Facts)
i	POL 392 Victim Impact Statement	If applicable and in compliance with Victim Impact Statement currency requirements (see ' Victims (Police service to victims) '). One copy for each Summary of Facts
j	POL 275 Witness list	

File Order (Top to bottom)	Document	Explanation
k	CSV1 form <u>POL</u>	
5	<u>NIA reports</u>	
a	Full history, bail history, active charges, warnings history	
b	<u>QP, QVR</u>	When relevant
6	Statements and evidence	
a	Victim / Complainant statement	
b	Witness statements	
c	Offender statement	
d	Job sheets	
e	Officer's statements	
f	Synopsis of evidence within the <u>POL</u> 258 P	Only the key part of admission or denials
g	Notebook entries	Photocopied
h	<u>EBA</u> documents	Photocopied
7	Miscellaneous documents	
a	Notifications and Alerts	Include statutory notifications, e.g. pursuit, Search and Surveillance notifications, use of force etc.
b	Investigation documents	Trespass Orders, Protection Orders, DVD/video interview, historic documents, computer documents, search warrants, <u>NIA</u> , POL1310, Pol 23 Offence Report (O/R), PSO, or Traffic Crash Report.
c	Disclosure documents	Attach in a separate pack to the back of the file. The earlier and more complete the disclosure, the higher the likelihood of an early case resolution.

Note: In regard to parts 6 and 7, it is accepted that some of these documents may not be immediately available due to continuing investigations. If not available at first appearance, they should be added to the file as soon as is practicable.

Youth Court files

The unique documentation relating to Youth Court prosecution files should form a subset of documents filed with miscellaneous documents. This includes the POL 388 Youth check list (Police Forms> Children and Young persons), copy of the section 262 CYPFA Record of Outcome of the Family Group Conference from the Youth Justice Coordinator, and the POL 388A Nominated Person Advisory sheet (Police Forms> Children and Young persons).

Their purpose is relevant to the decision to prosecute and not proof of the charges.

See the [Youth justice](#) chapter for more information.

Files for case management meeting and case review

Preparing the documentation

When requested by the prosecutor to provide additional information or to undertake further enquiries, complete those tasks and forward the file at least **5 working days** (unless advised otherwise by the prosecutor) before the case management meeting so that the prosecutor has all the information to prepare for discussion with the defence counsel.

Even if the file is retained by the prosecutor following the entry of the not guilty plea, always ensure that all available disclosure is sent to the defendant or their counsel at the defendant's address for service and update the disclosure index on the prosecution file. A disclosure pack (see '[Prepare full disclosure](#)' in the 'Criminal disclosure' chapter) should never be left attached to the file.

When returning the file to either PPS or the Crown, submit the file in this order.

Where available, use the NIA Prosecution Formset to complete the forms listed below, otherwise use Police Forms> Prosecutions.

File Order (Top to bottom)	Document	Explanation
1	POL 250 Prosecution File Cover Sheet	Must be the first form on every file
2	Administrative documents	
a	DOC LOC case coversheet	
b	DOC LOC case file statistics	Not required if a part file
3	Reports	
a	POL 258 P Prosecution Report	Updated if file returned. Near the top of the report include defence lawyers details and if prepared by specialist unit, the O/C case's details. The purpose is to provide a synopsis of evidence/ issues/ negotiating position.
b	Response to <u>NIA</u> tasks	If applicable.
c	<u>NIA</u> task to O/C	If applicable.
d	POL 2146 - Action required before CMM form	If applicable.
e	POL 2145 - Pre-CMM file analysis form	
f	Case Memorandum	In chronological order
g	Older reports	
h	Witness Availability Form	One sheet to cover all witnesses, updated as required.

File Order (Top to bottom)	Document	Explanation
4	Disclosure	
a	Correspondence between counsel and police	
b	Up to date Disclosure Index	
c	Copy of Initial Disclosure Record or Letter	
5	Charge documents	
a	Charging document(s)	In CRN numerical order
b	Record of victim contacts printed off <u>NIA</u> (Case Management electronic POL1060 info)	Where necessary
c	Proposed bail conditions printout	Original from first appearance
d	<u>POL</u> 128 Opposition to bail	If bail opposed- Opposition to bail and associated papers are also copied into judge's pack and disclosure pack
e	Notice of bail	If Police bail was granted
f	Summons - proof of service	If summonsed to appear
g	<u>POL</u> 262 Summary of Facts	Three copies plus one in disclosure and one in judges pack
h	<u>POL</u> 395 Reparation Schedule	If applicable. A copy for the judge and prosecutor only (separate from Summary of Facts)
i	<u>POL</u> 392 Victim Impact Statement	If applicable and in compliance with Victim Impact Statement currency requirements (see Victims (Police service to victims)). One copy for each Summary of Facts
j	<u>POL</u> 275 Witness list	
k	CSV1 form	
6	Updated <u>NIA</u> reports	

File Order (Top to bottom)	Document	Explanation
a	Full history, bail history, active charges, warnings history	
b	QP, QVR	When relevant
7	Statements and evidence	
a	Victim statement	In a Crown prosecution for a category 4 offence or a Schedule offence, a transcript of any video interviews with witnesses must be provided to the Crown as soon as practicable and preferably within four weeks after the entry of a not guilty plea, or as otherwise agreed with the Crown Solicitor. This will assist the Crown to determine the appropriate charges within the timeframes required to add, amend, or withdraw charges.
b	Witness statement	As for Victim statements above.
c	Offender statement	
d	Job sheets	
e	Officer's Statements	
f	Synopsis of evidence within the <u>POL 258 P</u>	When an offender statement is recorded, a brief synopsis of the evidence outlining admissions and denials should be contained within the <u>POL 258.P</u>
g	Notebook entries	If applicable.
h	Alcohol & Drug Driving related documents	If applicable.
8	Miscellaneous documents	
a	Notification and Alerts	Include statutory notifications, e.g. pursuit, Search & Surveillance notifications, use of force etc.
b	Investigation documents	Trespass Orders, Protection Orders, video interview, historic documents, computer documents, search warrants, COMMS/ <u>NIA</u> , Pol 1310, Pol 23 Offence Report (O/R), Traffic Crash Report or 101.

Before the case management meeting

This is the process before a case management meeting and case review hearing.

Stage	Description
1	<p>The file is reviewed by a prosecutor with a file analysis completed following the entry of a not guilty plea. The O/C case is informed of the plea and requirement to complete disclosure and any remedial action.</p> <p>In a Crown prosecution for a category 4 offence or a Schedule offence, the Crown must identify any charges to be added, amended, or withdrawn, within the case review stage. A transcript of any video interviews with witnesses must be provided to the Crown as soon as practicable and preferably within four weeks after the entry of a not guilty plea, or as otherwise agreed with the Crown Solicitor. Provision of the transcripts will assist the Crown to determine the appropriate charges prior to any discussions with the defence.</p>
2	<p>If additional information or action was sought, the O/C case must submit the file or further information to their supervisor at least 6 working days before the case management discussion to allow time for the supervisor to direct changes.</p>
3	<p>If additional information or action was sought, the file and/or any further information should be submitted to the <u>PPS</u> Office, or where relevant to the Crown, at least 5 working days before the meeting, unless advised otherwise by the prosecutor, to give the prosecutor time to prepare and advance the case at the case management discussion and any subsequent case review hearing.</p>
4	<p>Discuss any special or complex issues with the prosecutor before the hearing.</p>

Files for Judge-alone trial or filing formal statements

Introduction

At a Judge-alone trial, all the relevant evidence is adduced by both the prosecution and the defence before a Judge. The process and procedures are prescribed by the [Criminal Procedure Act 2011](#) and described in the '[Criminal procedure - Trial stage](#)' chapter. At the conclusion of the hearing, the court will give reasons for reaching its decision.

For jury trial matters, the Crown must file formal statements that form all or part of the case against the defendant. The defendant then proceeds to callover followed by a jury trial unless an application is made to hear oral evidence following the filing of the formal statements.

File order for Judge-alone trial or filing formal statements

Follow this order for files submitted for Judge-alone trials or for filing formal statements. Files, including transcripts, must be at the [PPS](#) office at least five days before the Judge-alone trial or, if the file is a Crown matter provided to the Crown, no later than five working days after the Crown assumed responsibility for the file, unless requested earlier. Formal statements must be provided to the Crown no later than five working days after the proceeding has been adjourned for trial callover, unless requested earlier.

Note that all [POL](#) forms (except the POL 1310) listed in this table are in Police Forms> Prosecutions. The POL 1310 and associated family violence forms are accessed from Police Forms> Family violence.

File Order (Top to bottom)	Document	Explanation
1	POL 250 Prosecution File Cover Sheet	Must be the first form on every file.
2	Administrative documents	
a	DOC LOC case coversheet	
b	DOC LOC case file statistics	Not required if a part file.
3	Reports	
a	POL 258 P Prosecutors Report	<ul style="list-style-type: none"> - Near the top of the report include defence lawyers details. - Detail when and where disclosure was provided. - The purpose is to provide a synopsis of the evidence, any issues and whether any case resolution has been discussed. Include your views on any offers that are on the table. - Detail any Evidence Act issues or application to be made, e.g. hearsay applications, propensity evidence to be admitted or alternative ways for witnesses to give evidence. - For jury files, additional information if required to brief the Crown Solicitor.
b	POL 2147 - Action required before Judge-alone Trial	
c	Older POL 258 reports and PPS review documents	In date order.
d	Witness Availability Form	One sheet to cover all witnesses.
4	Disclosure	

File Order (Top to bottom)	Document	Explanation
a	Correspondence between counsel and police	
b	Copy of Initial Disclosure Receipt or Letter	
c	Updated Disclosure Index	One must have been created by this time.
5	Charge documents	
a	Charging document(s)	In CRN numerical order.
b	Record of victim contacts printed off NIA (Case Management electronic POL 1060 information)	Where necessary.
c	POL 128 Opposition to bail/ notice of bail/ summons	
d	POL 262 Summary of Facts	Three copies.
e	Reparation schedule	If applicable. A copy for the judge and prosecutor only.
f	POL 392 Victim Impact Statement	If applicable and in compliance with Victim Impact Statement currency requirements (see Victims (Police service to victims)). One copy for each Summary of Facts.
g	CSV1 form	
6	Updated NIA reports	
a	Full history, bail history, active charges, warnings history	Bail history only relevant if bail is being opposed.
b	QP , QVR	When relevant.
7	Statements and evidence	
a	POL 275 Witness/exhibit list	An aid for the Prosecutor.
b	Police witness expense form	POL 925
c	Witness one	Brief of evidence (if required), unsigned/signed formal statement, original statement, notebook entries, exhibits (with copy).
d	Witness two	Brief of evidence (if required), unsigned/signed formal statement, original statement, notebook entries, exhibits (with copy).
e	Repeat for each witness who will give evidence including Police witnesses	<ul style="list-style-type: none"> - For the officer who interviewed the offender the transcript of any interview should go with the brief. - Offender statement, job sheets, officer's statements & notebook should follow each officer's brief. - These documents will remain on the file after the originals are filed in Court.

File Order (Top to bottom)	Document	Explanation
f	Copy of Formal Statements	Jury trial files only. Not required for Judge-alone trial file.
g	Remaining statements, notebooks, etc.	Following the last witness should be all remaining information relating to people that Police do not intend to be called to give evidence
8	Miscellaneous documents	
a	Notification and Alerts	Include statutory notifications, e.g. pursuit, search and surveillance notifications, use of force etc.
b	Investigation documents	Trespass Orders, Protection Orders, video interview, historic documents, computer documents, search warrants, COMMS/ <u>NIA</u> , POL1310, Pol 23 Offence Report (O/R), Traffic Crash Report or 101

Additional requirements for jury trial files

For jury trial files pre-callover, the POL 258 P report should include:

- exhibits that will be filed and advice regarding when and by whom exhibits will be filed
- any additional enquiries still being conducted
- any items that have gone to the ESR for analysis, together with anticipated timing of results
- other potential witnesses
- co-offenders: who they are, their status - have they entered guilty pleas, what stage of the process are they at? What date are they to be sentenced? What sentence was imposed?
- witness availability for the next six months
- details of any witnesses under 18, and any adults who need to give evidence via an alternative mode, what mode and why?

This may be documented as a separate report to the Crown Solicitor.

Formal statements

What are formal statements?

The [Criminal Procedure Act 2011](#) uses the term 'formal statement' to describe a statement of a potential witness in any medium filed as evidence before the trial callover.

Although formal statements are filed by the Crown Prosecutor, the O/C or specialist unit prepares the statements.

Types of statements

This table differentiates the types of statements that may constitute a formal statement if the criteria in section [82](#) CPA is met.

Statement type	Description
Typed formal statement	A typed written statement, signed by the person who made it, containing the required s82 declaration, which is filed in court as evidence.
Original statement	<p>The product of an interview, and may be handwritten, typed or recorded electronically and transcribed. If the original statement is handwritten or typed, it is signed by the witness.</p> <p>If the original statement contains or is accompanied by a signed s82 declaration, it may constitute a formal statement; however, it may need to be accompanied by a typed summary. Refer to 'Using original statements' below.</p>
Brief of evidence	<p>A document that details the evidence the prosecution proposes to lead from a witness at trial succinctly and generally in chronological order. The brief of evidence should be in the witness's own words but should not include any inadmissible or irrelevant material. A brief of evidence is a refinement of a witness's original statement obtained through the PEACE interviewing technique (see 'Interviewing principles and framework' in the Investigative interviewing witness guide) - commonly a cut and paste from the original statement. A brief of evidence is not signed.</p> <p>If a brief of evidence is later signed and otherwise meets the criteria of s82 CPA, it can be used as a formal statement.</p>

Evidence to be covered in formal statements

The evidence filed in formal statements should be sufficient to:

- ensure there is enough evidence to establish the charges
- eliminate any grounds for oral evidence orders based on insufficient evidence.

Supporting charges

Every charging document must be founded on evidence adduced through the formal statements.

You must therefore ensure that as much evidence as possible is presented through the statements.

Determining what to prepare for filing

Statements which comply with the requirements of section [82](#) can be used as formal statements, even if they include a small amount of inadmissible material. A template is provided in Police Forms> Prosecutions for the formal statement ([POL 2150](#)).

Where the statement contains inadmissible material, the Crown can file a summary of the parts of it that the prosecutor intends to rely on as evidence at the trial (s82(4)). In this situation an unsigned summary must be prepared as below.

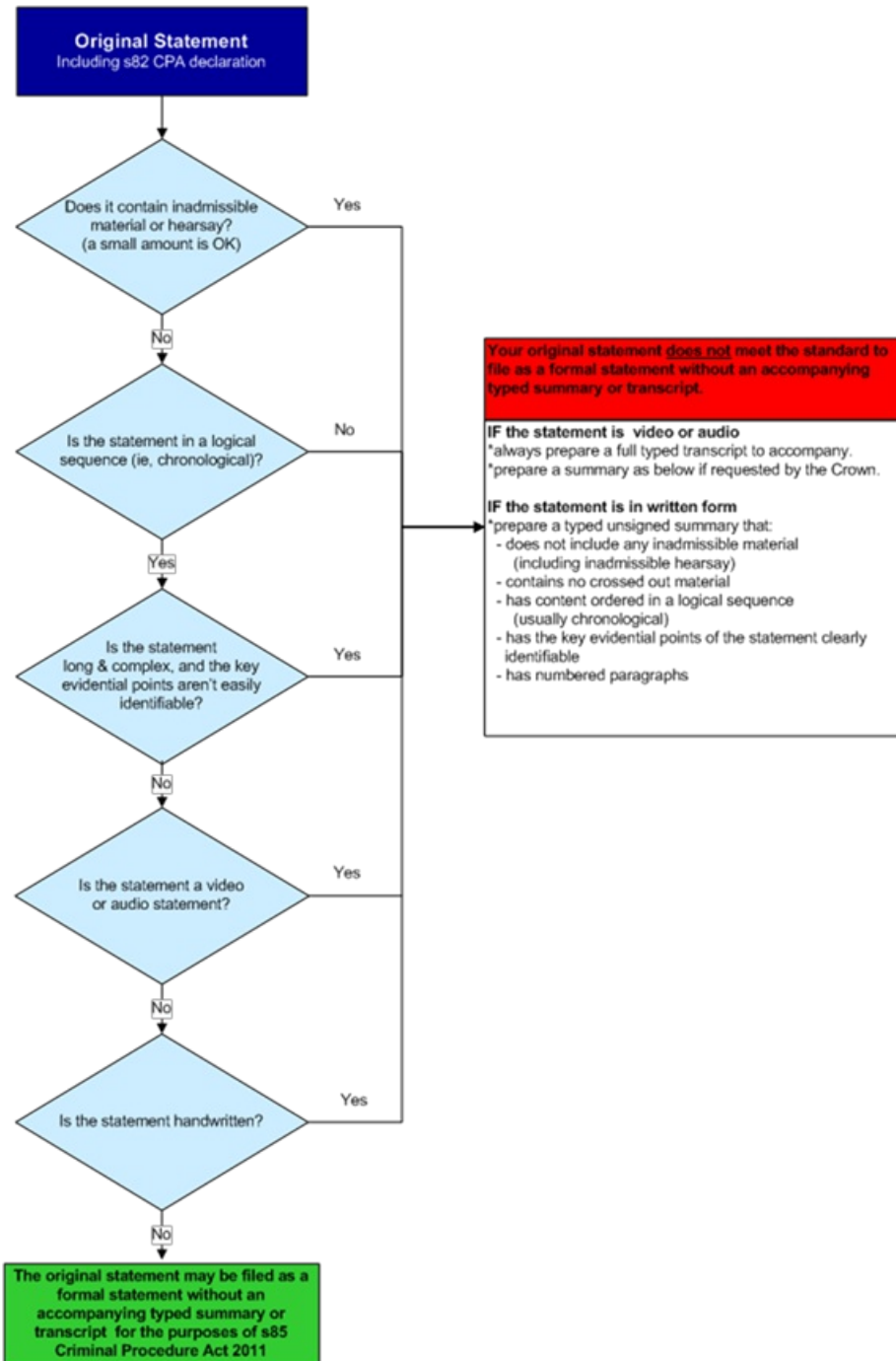
Using original statements

Discuss with the Crown prosecutor whether the original statement should be used as the formal statement and the content of any accompanying summary, if required.

If an original statement is hand written, long and complex, or the key evidential points are not readily identifiable, an accompanying

typed, clear version of the document that removes any inadmissible evidence must be completed in the same format as a brief of evidence. Any video statement must be accompanied by a full unsigned transcript of the contents.

The following diagram will assist in determining if an original statement is likely to be accepted for filing and whether any statement or transcript is required to accompany it.



Preparing and filing formal statements

Follow these steps when preparing and filing formal statements.

Step	Action
1	<p>The O/C case must prepare the formal statements and any accompanying summary or transcript necessary to establish evidential sufficiency in respect of all offences charged for the Crown prosecutor's review before filing with the court (see steps 8 & 9 below).</p> <p>Given the timeframes required for filing after the case review hearing, preparation of formal statements should commence as soon as possible following the entry of a not guilty plea, if not completed prior.</p>
2	<p>All formal statements must contain, or be accompanied by, the following declaration (to comply with ss 82 & 83 CPA):</p> <p>"I confirm the truth and accuracy of this statement. I make the statement with the knowledge that it is to be used in court proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to mislead."</p> <p>Note: This declaration reflects that a formal statement filed as evidence under s85 of the CPA is to be treated as evidence on oath given in a judicial proceeding for the purposes of s108 of the Crimes Act 1961.</p>
3	<p>All formal statements must be authenticated by the person responsible for the content of the statement by:</p> <ul style="list-style-type: none"> - signing and dating the document; or - in the case of any document in an electronic form, any electronic means that adequately identifies that person and the date of authentication. (Rule 2.2 Criminal Procedure Rules 2012 (CPR))
4	<p>Formal statements made by a persons aged under 18 years, must specify their age (s82(2) CPA).</p>
5	<p>If a formal statement is written and made by a person who cannot read it:</p> <ul style="list-style-type: none"> - the statement must be read to them before they sign it - the reader must attach a signed statement to the effect that they read the statement to the person who made it and that the person appeared to understand its contents (s82(3) CPA).
6	<p>When a video interview is to be filed as or with a formal statement, 3 copies of the transcript of the interview must be provided for filing with the statement, unless advised that the transcripts will be filed electronically. Refer also to Files for case management meeting and case review regarding the early provision of witness transcripts and the Criminal disclosure chapter for the disclosure requirements for video interviews and transcripts (Rule 5.5 CPR).</p>
7	<p>The O/C case prepares any exhibits referred to in the statements to a 'trial ready' stage. Each exhibit must be labelled for easy identification (include Police file number, case name, exhibit number/reference, District Court name, date of filing, O/C case name). Number the exhibits so they are referenced in numerical order in the formal statements.</p>
8	<p>The O/C case must provide the formal statements and transcripts of any audio or video recorded formal statement to the Crown Solicitor's office as soon as possible and in any event no later than five working days after the proceeding has been adjourned for trial callover. Unless the Crown prosecutor advises that the statements and/or transcripts will be filed electronically, a minimum of three copies of the statements and transcripts must be provided for filing.</p>
9	<p>The Crown prosecutor reviews the file, to ensure the evidence being filed meets all legal and evidential requirements.</p>
10	<p>The Crown prosecutor must file the formal statement(s) that form all or part of the prosecution's evidence with the court no later than 25 working days before the trial callover.</p>
11	<p>The O/C case must arrange with the prosecutor and O/C exhibits where appropriate, for the exhibits to be filed at the court, and copies of any exhibits that are documents served on the defendant (or their counsel).</p>
12	<p>The Crown prosecutor must ensure that a full set of the statements (and accompanying Notice of Filing) is provided to the defendant (or their counsel) as soon as practicable after they are filed in court.</p>

Using specialist interviewers

Where the statement is recorded electronically by a specialist interviewer, a formal statement of the interviewer should also be prepared.

Prepare a formal statement for the interviewer which states:

- the interviewer's qualification, e.g. Accredited Level 3: Specialist Adult Witness
- the time, date and location of the interview
- the witness's name
- that they informed the witness the video record may be used as evidence in later proceedings
- that they interviewed the witness and it was recorded on video
- the procedures used to ensure integrity of the video record
- that the interview was conducted in compliance with Part 1 of the Evidence Regulations 2007.

Extensions to the filing timeline

Formal statements may only be filed after the filing deadline with leave of the court.

Where a formal statement is required to establish evidence of the charges but will not be available prior to the 25 working days before callover, an application must be made to the court for an extension of time for filing the statements. Identify any extension that may be required in the POL 258 P. Consult the Crown prosecutor about any necessary application for an extension as early as possible and request the local Crown Solicitor's office to file the application.

Good reasons must be provided for seeking extensions. ESR analysis or specialist reports (e.g. pathologists) are examples of evidence that have a tendency to require more time and may require an application for an extension of time.

Preparing for the Judge-alone trial

Introduction

This section focuses on the responsibilities of the O/C case when preparing for hearings. Other information about preparing for Judge-alone trials, with a greater focus on the prosecutor's responsibilities is located in the 'Criminal procedure - [Trial stage](#)' chapter.

Before court

Before going to court, the O/C case must:

- contact the witnesses once notified of a Judge-alone trial date
- depending on the witnesses, the O/C case may need to contact them a number of times before the hearing to put them at ease (note that the prosecutor will contact s29 victims etc)
- close to the hearing, ascertain whether the witnesses will require transport and if so, arrange when and where to meet them (witnesses should be at court by 0930 hrs). Obtain their cell phone contact details
- request witnesses to dress appropriately for a court appearance
- ensure all witnesses are provided with copies of any document they have signed that might help them remember the incident. Do this well before the hearing date. It may put witnesses at ease to be advised that they may be able to refer to their signed statements when under cross-examination, or to refresh their memory at any stage, if they cannot recall their evidence on a given point
- advise each witness not to discuss their evidence with any other witnesses in the case
- contact the prosecutor to discuss case **at least three** days before
- prepare exhibits for production in court. - Ensure they are presented in the most effective way and consider health and safety issues. Uplift the master copy of the DVD/video
- determine if you need a private witness room at court. Contact the Court Victim Advisor.

Trial day

On the day of the Judge-alone trial, the O/C case must:

- arrive at 0930 hrs and locate the witnesses. Take them to the witness room (if required and available)
- inform the prosecutor when you and your witnesses are ready to proceed
- move your witnesses to a location where they are not sitting with the defendant or their supporters
- brief your witnesses again and, if they do not have one, provide them with a copy of their previously signed documents. Take them through their original statement, tell them what to expect in court (e.g. what type of things the defendant's lawyer will ask them, and the nature of closed questioning). Show them any photographs or exhibits they will be asked to refer to. Remind them not to discuss their evidence with any other witnesses in the case as they wait to give evidence. **Note:** Do not coach them or suggest what they should say!
- show the witness the court room. Explain the layout, where to stand and who is likely to be present. It will assist witnesses to be advised that regardless of who is asking them questions, the best person to put their responses to is the Judge.

The Judge-alone trial

The Judge will indicate at the beginning of the day when and what cases will be heard. If the case is adjourned for any reason, such as insufficient court time available that day, inform your witnesses and confirm their availability.

At the beginning of the hearing the prosecutor may seek that all witnesses be excluded from the courtroom with the exception of the O/C case and the defendant. The O/C case may only remain if they are excluded from the order. Ensure your witnesses understand the requirements of the order, and the reason for it.

As each witness completes their evidence thank them and advise them you will contact them with the result of the hearing if they wish. They are entitled to stay and watch the remaining evidence if they wish but this is not encouraged.

Giving evidence

If asked to give evidence, you must:

- always present yourself in a professional manner. Refer to the Police Manual chapter '[Uniform, dress standards and appearance](#)'

- remove sunglasses before entering the courtroom and switch off cell phones and Police radios. Do not eat or drink in the courtroom
- address judges as "Your Honour" or "Sir/Ma'am" and Justices of the Peace and Community Magistrates as "Your Worship(s)"
- speak slowly and clearly
- if you don't remember or can't understand a question say so - don't 'fill in the gaps'.

Giving evidence is not a memory test. You are entitled to refer to your notebook or EBA check sheet, however you must first seek leave of the court to do so. Do this by simply asking the Judge if you can refer to your notes made at the time of the incident. This will almost always be approved.

Youth prosecutions

Refer to the '[Youth justice](#)' chapter in the Police Manual.

Preparing for Crown trials (Judge-alone or jury)

Before court

Before going to court, the O/C case must:

- ensure all witnesses have been summonsed to attend the trial and advise the Crown Prosecutor once this is done. If it is a standby trial, witnesses must be summonsed to attend the whole week but remain on call
- establish who the assigned Crown Prosecutor is for your trial. You can contact the Crown Trial Administrator
- advise the Crown Prosecutor, well in advance of the trial, of any issues including:
 - propensity evidence, co-offenders, disclosure
 - witness problems or special requirements, unavailable dates and requirements resulting from the memorandum
- ensure the Crown Prosecutor has copies of all exhibits and sufficient copies of photographs have been prepared (normally 10 copies for jury trials)
- liaise with the Crown Prosecutor the week before the trial and be prepared to carry out any further enquiries that might be requested. Confirm that the court has been made aware of any special technical requirements, e.g. DVD/video equipment/screens for witnesses
- always consider bringing the victim in to meet the Crown Prosecutor and see the court setting (essential for sexual offence trials)
- once the file is with the Crown, direct all defence enquiries to the assigned Crown Prosecutor
- arrange a witness room at the court.

Trial day

On the trial day, the O/C case must:

- arrive at the Crown room (if available) in the court building at least 30 minutes before court begins - earlier if bringing victims or crucial witnesses. Liaise with the Crown on their preferences as there are regional differences
- ensure the Crown Prosecutor has Judge, witness, counsel, and "jury copies" (as advised by the Crown) of any of any photographs and other exhibits **before** the jury is empanelled for jury trials, and at least four copies of each before the prosecutor enters the court room for Judge-alone trials
- arrange access to a prosecution witness room (if necessary and available). This should be near the trial courtroom (particularly appropriate in the High Court)
- ensure witnesses are segregated while waiting, and try to time their appearances to avoid unnecessary waiting
- **brief** the witnesses again. This means giving them their original statements and/or any formal statements and brief, where applicable, to read. Take them through all of the statement(s). Confirm dates and other important matters. Remind them of the importance to tell the truth and to state if they can't remember or don't understand the question.
Note - You **must** allow sufficient time for this to occur.
- take care that witnesses do not discuss their evidence with each other prior to going into court and do not allow them to have access to members of the jury. Advise them that jurors may be out and about during breaks and the case ought not to be discussed during break times.
- ensure witnesses, after they have given evidence, complete the necessary documentation to receive payment for attending. Advise them that they are entitled to stay and hear the remaining evidence but this is not recommended, especially in sexual abuse cases
- remain throughout the trial and where possible have an assistant to brief the witnesses. Be available to liaise with the Crown Prosecutor during adjournments and follow up on any unexpected enquiries after court has finished for the day. This includes following up on rebuttal evidence that may have arisen from the defence case.

It is expected that the O/C case should remain throughout closing speeches, summing up and jury retirement. This is particularly important for security reasons leading up to and after a verdict has been read.

After the trial

After the Crown trial, the O/C case must advise witnesses of the result of the trial and thank them for their time. Complete a Court Witness Expense form ([POL925](#)) and hand it in to the Criminal Registry. This is particularly important in relation to professional witnesses. Obtain or update any Victim Impact Statements, as required, for sentencing.

Youth prosecutions

Refer to the '[Youth justice](#)' chapter in the Police Manual.

Completing key forms and documents for files

NIA Prosecution form set

You should, if possible, produce the following forms (where available) through the NIA Prosecution formset as they are self-populating and will provide accurate information. Go to [Prosecution Forms](#) section of the NIA Manual on the intranet for guidance.

Prosecution Cover Sheet (POL 250)

Function

Prosecution cover sheets (available in the [NIA Prosecution formset](#) and in Police Forms) must be prepared for every prosecution file, and are used to:

- provide key information about the offender to the prosecutor
- record appearances, sentencing outcomes and bail conditions
- guide file completion.

What to include in the cover sheet

The cover sheet format is clear and precise and designed both to inform and record. All hand written recorded information must be accurate, clear and understandable.

If you are completing the forms manually, remember it is easy to forget details. If the case file passes to other prosecuting staff, the cover sheet might be the only document listing key information relating to the progression of the prosecution. Accurate information saves time and potential embarrassment in court.

What to include in the Prosecutor Notes section

This section is for prosecutors only. Prosecutors must ensure entries are accurate and that they are clear and understandable.

Prosecutor notes should be detailed, but relevant

Do not be too brief in compiling Prosecutor Notes. It is easy to forget details. If the case file passes to other prosecuting staff, the Prosecutor Notes might be the only document listing key information relating to the progression of the prosecution.

Never enter frivolous, personal or emotive comments or character judgements. In particular, avoid comments about a person's attributes, criminal inclination or veracity, unless it is:

- relevant, and
- can be substantiated or supported by evidence.

Disclosing the coversheet

The cover sheet is generally not disclosable. It can be withheld as it is used to assist the prosecutor to conduct the hearing ([s16\(1\)\(c\)\(i\)](#) of the Criminal Disclosure Act 2006). Where the cover sheet contains reference to facts and evidence this should be existing facts and evidence contained in other documents previously considered for disclosure.

Prosecution Report (POL 258 P)

A guided template is provided in the NIA Prosecution formset, or in the Prosecution section of Police Forms. It is important to follow the guidelines provided in the (purple) hidden text, and ensure 'view hidden text' is enabled in the document option settings and 'printing of hidden text' is not enabled.

The POL 258 P provides the prosecutor with much of the information required to make initial decisions on the file. Where an offence may become a Crown prosecution due to additional criteria, or where an extension of time may be required, it is important for this information to be clearly highlighted in the POL 258 P. Examples would include evidence of commercial drug dealing beyond the quantity seized, [ESR](#) analysis and expected timeframes, or the existence of evidence derived from an interception warrant.

Summary of Facts (POL 262)

A Summary of Facts is a document that includes the prosecution position on the salient facts of the offending. A guided template is

provided in the NIA Prosecution formset, or in the Prosecution section of Police Forms.

In *R v McGaw* (2000) 18 CRNZ 236, at paragraphs 3-6, the High Court provided some comments on the contents of the Summary of Facts, and offered some guidance on their preparation:

- 1. The summary must clearly state the position of the prosecution as to the facts.** The court, and the defendant, will be left "up in the air" if there are gaps or it recites conflicting sources of evidence and then moves on without attempting to resolve them. The prosecution's position on the salient facts must be clear. If the defendant contests any of those facts, and the contest cannot be resolved by agreement, the court may need to hear evidence and reach its own conclusion.
- 2. The courts only want to know the ultimate facts, not the process by which they were ascertained.** The ultimate facts are what the defendant actually did, the consequences of their actions, and explanation given, and any other facts which bear upon the seriousness of the offending. The result should be a concise account of the defendant's alleged course of conduct expressed as a chronological sequence. The essential point is that some summaries contain much unnecessary information.
- 3. It may be appropriate to file an amended summary, as a result of continuing investigations and negotiations with the defence.** Amended or otherwise, the summary must be available to the court before the sentencing date, as all the research and preparation by the court is based upon the summary.
- 4. For drug cases:** sentencing turns largely upon the types, quantities, and values of the drugs concerned, the specific occasions upon which offences were committed, the overall periods of dealing or offending, the role played by the defendant, the profit made, and the defendant's relationship to any others in the drug hierarchy.

Frequently, Judges are left to ascertain some of the above by questioning Counsel during the sentencing hearing. The prosecution is entitled to draw inferences from the evidence, (both expert and lay witnesses) available. The defendant may challenge the prosecution propositions set out in the summary.

Schedule of Offences

Consider using a Schedule of Offences as part of the Summary of Facts when an offender is charged with multiple similar offences. Schedules can be used for any type of offence and are helpful for offending over a period of time or if the offences are numerous.

These are commonly used for fraud, burglary, tagging and unlawful taking vehicles. If you prepare a brief Summary of Facts and include all the offences on a schedule, the details of each offence will not have to be read out in court. This will be used as a quick reference guide by all the parties.

Reparation Schedule (POL 395)

The Reparation Schedule assists the Ministry of Justice in locating victims after a person has been sentenced to pay reparation to them. Full victim information must be included in this form. This form is not disclosable as it contains victim's contact details.

Refer to the Prosecution section of Police Forms.

Opposition to Bail (POL 128)

Refer to the Prosecution section of Police Forms. This form has built-in guidance for its completion.

Victim Impact Statement (POL 392)

Victim impact statements are required, if possible, at first appearance and must be on file for second appearance. The prosecutor must task the O/C to check if the statement needs updating before each of the key stages in the court process.

Victim impact statements are used to inform the sentencing judge of the effects the offence has had on the victim. They are completed wherever there is an identifiable victim, including, in certain circumstances, corporate victims or others disadvantaged by an offence.

Statements

Information and guidance about statements for suspects and witnesses are covered in the '[Interviewing](#)' chapters of the Police

Manual. As mentioned in [Files for case management meeting and case review](#), in a Crown prosecution for a category 4 offence or a Schedule offence, a transcript of any video interviews with witnesses must be provided to the Crown as soon as practicable and preferably within four weeks after the entry of a not guilty plea, or as otherwise agreed with the Crown Solicitor. When the Crown assumes responsibility for a non-schedule offence where jury trial is elected, transcripts of any witness interviews to be filed as formal statements must be provided to the Crown within five working days of the adjournment to trial callover.

Synopsis of suspect interviews

A full synopsis of recorded evidence is not required. In every case where you have a recorded statement from a suspect there should be a brief synopsis of that interview in the POL 258 P on the prosecution file. The POL 258 P should record all admissions, denials, possible defences raised and provable lies.

Suspect transcripts

A transcript of a suspect's interview to be played at a Judge-alone or jury trial is always required. The transcript must be made available before the callover for jury trials wherever possible and as soon as possible once a Judge-alone trial is confirmed.

Information and guidance about transcripts are covered in the '[Interviewing](#)' chapters of the Police Manual and the '[Criminal disclosure](#)' chapter.

Briefs of evidence

A brief of evidence is a written summary of the evidence each witness will give in court. It is prepared by the O/C case or a specialist unit from information supplied by witnesses, usually from statements, job sheets, notebooks, etc. A template can be found in Police Forms > Prosecutions.

Police employees and some specialist witnesses, such as police photographers or ESR members, prepare their own briefs. The O/C case or specialist unit assigned this task must ensure that this is done.

In limited situations, a formal statement may be all that is required for a brief of evidence if that statement is the sole source of verbal evidence for a witness and fulfils the requirements and functions of a brief. A brief must be completed unless the prosecutor advises that the existing statement is sufficient.

Function of a brief

A brief of evidence must:

- clearly set out the evidence that is both admissible and relevant in support of the charge, and
- establish all the elements of the offence that witness can attest to, and if they are able to identify the defendant.

They are used to:

- enable supervisors to assess whether there is evidential sufficiency, and
- guide the prosecutor when conducting evidence in chief, i.e. they act as an aide memoir.

A brief of evidence is not simply a routine transcription of facts. Each brief should be written in such a way that it can be easily followed in a logical and chronological manner so that no evidence is missed. In court, witnesses will expand on different points contained in a brief, but there must be points in the brief that can trigger their memories.

The prosecutor, who will guide the witnesses, may have no prior knowledge of the case and relies on the content of the briefs. Therefore, everything that needs to be given in evidence must be contained in the brief, so that it is not missed.

Briefing a file

Before writing briefs:

- ensure that the investigation is complete if possible and that all available evidence has been obtained
- ensure that all information from witnesses is accurate
- know the file thoroughly
- know the elements that must be proved

- be aware of possible defences
- plan the briefs to ensure that:
 - witnesses are called in the correct order
 - the evidence each witness can give is noted
 - where a witness is to present or refer to exhibits this is clearly noted (see '[The format](#)' below)
- ensure that:
 - the combined briefs and evidence to be produced prove the charge
 - all the evidence in the briefs is both relevant and admissible
 - the facts referred to are accurate and within the witnesses' own first hand knowledge.

If in doubt about admissibility, contact you local legal adviser or PPS office.

The format

The brief must:

- be headed up with the witness' full name. The name is followed by the words "to prove" if the brief is not going to be signed by the witness. A formal statement signed by the witness is to be headed up with the witness's full name followed by the word "states"; for example, "William Henry Jones to prove" or "I, William Henry Jones, state". Subsequent pages must be headed "... further to prove" in an unsigned brief, or in a formal statement "... further states"
- be written in the first person; e.g. "I did, saw, went"
- be typed using 1.5 line spacing
- have a 50 mm left margin
- contain one point per paragraph
- be in chronological order
- clearly identify the defendant when referring to identification evidence
- clearly indicate where any exhibits will be produced or referred to and have "PRO EXH" or "REFER EXH" written clearly in the left margin.

Points to note

Ensure that:

- the facts are accurately and fairly stated so as not to "colour" the evidence, i.e. to support the prosecution
- the caution and rights are outlined in full (See Chief Justices' [Practice Note PN13 Practice Note on Police Questioning \(s 30\(6\) Evidence Act 2006\)](#) 16 July 2007). Follow the wording of the caution for adults and children and young people on the Police notebook caution card.
- all questions and answers from interviews are written in full on the brief
- the times that events took place are entered, if known
- expert witnesses qualify themselves at the beginning of their brief.

Presenting identification evidence in a brief of evidence

When presenting identification evidence as part of a brief of evidence ensure it complies with section 45 of the Evidence Act 2006, unless identification of the defendant is accepted by the defence. The identification evidence should be presented in the following sequence (in accordance with the Court of Appeals decision in [R v Peato \(2009\) 24 CRNZ 260](#)):

- The witness should first give a description of the offender as best they can from memory.
- They should say if they took part in a visual identification exercise (e.g. viewed photo montages).
- They should **not** give the result of the visual identification exercise.
- The Police officer who conducted the formal visual identification procedure under section 45 should describe the results of the procedure.
- The witness should **not** conduct a dock identification.

Also see the synopsis of the *Peato* decision in Legal News (see PDF below) on the Police intranet:

Witness Expenses Form (POL 925)

Use the Witness Expense Form (POL 925) (available in Police Forms> Prosecutions) to submit witness expense details to the District Accounts Section for payment.

The form contains details of the witnesses and their travel, accommodation, meal and court attendance expenses. The attendance fee is based on a half-day or full-day presence and is at a fixed rate.

The O/C case must establish details of any expenses in addition to the attendance fee and obtain verification where possible. The form is signed by the prosecutor or O/C case and submitted to business services.

Witness lists for files (POL 275)

For Judge-alone trials, attach a list of witnesses, with their addresses, occupations and contact numbers, to the Summary of Facts. Where there are a large number of witnesses, it is an advantage to have all of their details collated for contact purposes. Because the list presents the witnesses in the order they are to appear, the O/C case and prosecutor can use it as a ready reference for the presentation of the case. Ensure the prosecutor is aware of any confidential information in the witness list as the defence counsel might ask for it to be disclosed. The witness list will be used by the prosecutor in the review stage of prosecutions to seek the witness summonses.

File exhibit lists

A list of exhibits to be produced is also prepared for Judge-alone trials, often done in conjunction with the witness list. It contains details of each exhibit and the name of the witness producing it. These details form a checklist for the O/C case and prosecutor to ensure that the tie-up of witnesses and exhibits has occurred. Quote the Police exhibit number if necessary.

Exhibits

Whether for a Judge-alone trial or not you must ensure your exhibits are presented in a professional manner.

Do not present large sums of cash or drugs as exhibits. Photographs should be taken and used, and with large sums of money carefully note serial numbers on the file.

CSV1 forms

Where there is a victim and the matter is referred to court, complete a Court Services For Victims form (CSV1) and email it to the Victim Adviser, Court Services for Victims before the first court appearance. Send using secure email [SEEMail] - refer to '[Secure Electronic Environment Mail \(SEEMail\)](#)' in the 'Operation security' chapter.

The email's addresses are available at the CSV 1 email address list.

Update the NIA Victim Contact node to demonstrate this action has been undertaken.