

IN CONFIDENCE

Criminal Procedure Rules 2012

Governor-General

Order in Council

At Wellington this day of 2012

Present:
in Council

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

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Rules

Part 1

Preliminary and general provisions

Subpart 1—Title, commencement, objective, and interpretation

1.1 Title

These rules are the Criminal Procedure Rules 2012

1.2 Commencement

These rules come into force on [tba].

1.3 Objective

The objective of these rules is to—

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

1.4 Interpretation

- (1) In these rules, unless the context otherwise requires, **Act** means the Criminal Procedure Act 2011.
- (2) Unless the context otherwise requires, any term or expression that is defined in the Act and used, but not defined, in these rules has the meaning given by the Act.

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

1.5 Application of these rules

- (1) These rules apply to every proceeding under the Act in a District Court or the High Court.
- (2) If these rules do not make provision or sufficient provision for a matter that arises in a proceeding, the court may give any directions or rulings about the matter that the court considers appropriate in the interests of justice.

1.6 Amendment of errors in reasons for order or judgment

A judicial officer or Registrar may at any time direct that an error in relation to the reasons for an order or judgment made by that person be corrected if satisfied that it was erroneous in any respect.

1.7 Extending and shortening time

- (1) The court may, at any time, extend a time set by or under these rules for doing anything in a proceeding.
- (2) If a time set by or under these rules for doing anything in a proceeding has not ended, the court may shorten the time.

- (3) A Registrar may exercise the power of the court under this rule if both the prosecutor and the defendant consent.

Subpart 3—Exhibits

1.8 Custody, etc of exhibits

- (1) A Registrar is responsible for the custody of any exhibit filed, produced, or transferred for a proceeding in that court.
- (2) An exhibit must be returned to the person or party who filed or produced it after the expiration of any appeal period in relation to the proceeding unless—
 - (a) the court has ordered or directed that the exhibit be released, retained, destroyed, forfeited, or confiscated; or
 - (b) the exhibit is subject to a specific statutory regime that governs the release, retention, destruction, forfeiture, or confiscation of the exhibit.
- (3) An exhibit must be transferred to another court—
 - (a) with the appeal file; or
 - (b) if requested by that other court for the purpose of an appeal; or
 - (c) if required for the purpose of determining any proceeding transferred to that other court.
- (4) Only exhibits expressly authorised for the purpose by a Judge may be examined by a jury.

Subpart 4—Provisions relating to speaking in Māori or using New Zealand Sign Language, translations into Māori, and affidavits in languages other than English

1.9 Speaking in Māori or using New Zealand Sign Language

- (1) Any person entitled to speak Māori under section 4(1) of the Maori Language Act 1987 or to use New Zealand Sign Language under section 7(1) of the New Zealand Sign Language Act 2006 who intends to do so in any proceeding under the Act must file a notice of the person's intention to speak Māori or use New Zealand Sign Language.

- (2) The person intending to speak Māori or use New Zealand Sign Language is responsible for serving a copy of the notice on every party in the proceedings.
- (3) Despite subclause (2), where the person intending to speak Māori or use New Zealand Sign Language is a witness, the party calling the witness is responsible for serving the notice.
- (4) The notice must—
 - (a) state the hearing or hearings at which the person intends to speak Māori or use New Zealand Sign Language; and
 - (b) be served no later than 10 working days before the hearing at which the person intends to speak Māori or use New Zealand Sign Language.
- (5) Failure to serve a notice in accordance with this rule does not prevent a person from speaking Māori or using New Zealand Sign Language in a proceeding, but the proceeding may be adjourned for the purpose of arranging a competent interpreter to be present.

1.10 Translation of documents into Māori

- (1) A party or person on whom a document is served may apply to the court for a translation of the document into Māori.
- (2) An application under subclause (1) must be made not later than 10 working days after the document to which it relates is served on the applicant.
- (3) The court or a Registrar may grant the application if satisfied that the party or person is unable to read the document, but could read it if it were translated into Māori.
- (4) Unless the court orders otherwise, every subsequent document in relation to the proceeding that must be served on that party or person will be translated into Māori after it is filed in court.
- (5) The court may at any time order that the translation of any document into Māori be served on any party or person whether or not an application has been made under subclause (1).
- (6) Any translation to which this rule applies—
 - (a) must be certified correct by a person holding an endorsed certificate of competency under section 18 of the Maori Language Act 1987; and
 - (b) must be served by a Registrar on the applicant.

1.11 Affidavit in language other than English

An affidavit may be filed in a language other than English if it is filed with—

- (a) a translation of the affidavit into English; and
- (b) an affidavit by the translator who prepared the translation.

Part 2**Rules about documents, filing, service,
and applications****Subpart 1—Content of documents and
authentication****2.1 Content of documents**

- (1) Any document that is required by the Act or these rules to be filed, served, or issued must, in addition to the information required by the Act or these rules, include (if known)—
 - (a) the name and place of the court where proceedings to which the document relates are being or to be heard; and
 - (b) the CRI or CRN; and
 - (c) the name of the parties to the proceeding; and
 - (d) the name of the prosecutor and any lawyer or representative conducting the defendant's case; and
 - (e) the section of the Act or provision of the rules to which the document relates.
- (2) The Secretary for Justice may provide forms for use under the Act or these rules.

2.2 Particular requirements for hard-copy documents

- (1) Any hard-copy document must—
 - (a) be in type of not less than 12 point size; and
 - (b) be on A4 paper; and
 - (c) use 1.5 line spacing; and
 - (d) not exceed any page limit specified in these rules or by the court.

- (2) Any document in electronic form must be capable of being printed in a hard copy form that is compatible with the requirements of subclause (1).

2.3 Authentication

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

Subpart 2—Filing

2.4 How to file document

- (1) Any document may be filed in the court—
- (a) by delivering it to the Registry by hand; or
 - (b) by sending it to the Registry—
 - (i) by mail to a postal address published by a Registrar; or
 - (ii) by fax to a fax number published by a Registrar; or
 - (iii) by an electronic means provided by the court for that purpose.
- (2) Despite subclause (1), any charging document must be filed—
- (a) by delivering it to the Registry by hand; or
 - (b) by an electronic means provided by the court for that purpose.
- (3) In any case where any document is filed by sending it by mail to a postal address published by a Registrar, the following provisions apply in the absence of proof to the contrary:
- (a) evidence that the document was sent to that address is proof that the document was filed; and

- (b) the document is treated as having been filed on the earlier of—
 - (i) the third working day after the day on which it is sent by mail; or
 - (ii) the day on which it is received.
- (4) In any case where any document is filed by fax or electronic means at an address published by a Registrar, the following provisions apply in the absence of proof to the contrary:
 - (a) evidence that the document was sent to that address is proof that the document was filed; and
 - (b) evidence that the document was sent to that address is proof that the document was filed on that day and at the time it was sent, but—
 - (i) any document sent on any working day but before ordinary working hours on that day must be treated as having been filed at the start of ordinary working hours on that day; and
 - (ii) any document sent on any working day but after ordinary working hours on that day must be treated as having been filed at the start of ordinary working hours on the next working day.
- (5) A Registrar may require that any document filed by electronic means must also be filed in hard-copy form.
- (6) A Registrar may require that, where a copy of any affidavit or other document that is required to be sworn is filed, the original also be filed.
- (7) If a Registrar has any doubt as to whether any document may be accepted for filing or must be treated as filed, he or she may refer the matter to a Judge who may give a direction disposing of the matter.

Subpart 3—Service of documents

2.5 Documents that must be served

- (1) A party who files any document must serve a copy of it on every other party unless rule 2.15 applies.
- (2) Any summons requiring a person to appear in court under the Act must be served on that person.

2.6 How to serve document

- (1) Any document that is required by these rules to be served may be served by—
 - (a) personal service; or
 - (b) electronic means, if the party to be served has provided a compatible address for service in accordance with rule 2.11; or
 - (c) posting the document to an address for service provided by the party to be served in accordance with rule 2.11 or, if no such address has been nominated, to the person's last known postal address or place of residence or business; or
 - (d) faxing the document to an address for service provided by the party in accordance rule 2.11; or
 - (e) any other method agreed by the parties or approved by the court.
- (2) Any document may be personally served by leaving the document with the person to be served, or, if that person does not accept it, by putting it down and bringing it to the notice of that person.
- (3) This rule is subject to rules 2.7 and 2.8 and to any special provision in any other enactment that relates to the service of any document.

2.7 Documents that must be personally served

- (1) The following documents must be personally served:
 - (a) any summons issued under the Act;
 - (b) any application for a retrial under section 151 or 154;
 - (c) any notice of application for leave to appeal or a notice of appeal.
- (2) The court may direct that any document be served personally even though subclause (1) does not apply to it.

2.8 Service in or on vessels, camps, prisons, Crown organisations, corporate bodies, etc

- (1) If a person on whom any document is required to be served is living or serving on board any vessel (including any vessel under the command of the New Zealand Defence Force), it is sufficient service to deliver the document to the person on

board who at the time of service is apparently in charge of the vessel.

- (2) If a person on whom any document is required to be served is in any barracks, camp, or station while serving as a member of the Armed Forces of New Zealand, it is sufficient service to deliver the document at the barracks, camp, or station to the Adjutant or to the officer for the time being in command of the unit or detachment to which the person to be served belongs.
- (3) If a person on whom any document is required to be served is a prisoner of any prison, it is sufficient service to deliver the document to the manager or other officer apparently in charge of the institution.
- (4) If any document required to be served on a defendant is to be served on a defendant who is a Crown organisation, it is sufficient service to—
 - (a) deliver it personally to an employee of the organisation at its head office or principal place of business; or
 - (b) deliver it at the organisation's head office or principal place of business, including by fax; or
 - (c) deliver it in accordance with a method agreed with the organisation.
- (5) A person serving any document on a corporation must serve it on the corporation at its head office or its principal or registered office by serving an officer of the corporation or a person who appears to be in charge of the office.
- (6) A document may be served on an unincorporated society by serving the president, chairperson, secretary, or any similar officer of the society.

2.9 Service of copies

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

2.10 Who is responsible for serving document

- (1) The person or party who files any document or prepares any summons to be issued is responsible for serving that document.

- (2) Any document may be served on behalf of the person or party responsible for serving that document by—
- (a) any officer or employee of the person or party acting in the course of their official duties;
 - (b) any constable, if the Solicitor-General or a Crown prosecutor is responsible for serving the document;
 - (c) if the court or Registrar is required to serve the document,—
 - (i) any bailiff, officer, or Registrar within the meaning of section 2 of the District Courts Act 1947;
 - (ii) any officer, Registrar, or Sheriff within the meaning of sections 27 to 29 of the Judicature Act 1908;
 - (d) any person or class of persons approved by the Secretary for Justice;
 - (e) any other person approved by the court or a Registrar in a particular case.
- (3) However, in the case of a private prosecution or an unrepresented defendant, the court may make directions specifying who is responsible for serving any documents and those directions must be complied with.

2.11 Parties must provide address for service

- (1) The prosecutor and the defendant must, as soon as practicable after the proceedings are commenced, notify each other and the court of their address for service.
- (2) An address for service must be an address that is compatible with fax, email, or post, or with any electronic means agreed by the court or a Registrar.
- (3) An address for service on a defendant that must be notified may be an address provided by a lawyer representing the defendant.
- (4) Even if a party provides an electronic address for service, the prosecutor or the defendant may require a hard copy of any document to be served and the party responsible for service must do so within a reasonable time.
- (5) The parties must notify each other and the court of any changes to their address for service.

2.12 Proof of service

- (1) The personal service of any document may be proved by the person who served the document—
 - (a) by affidavit showing the fact and the time; or
 - (b) on oath at the hearing; or
 - (c) by providing an authenticated endorsement on a copy of the document served showing the fact and time of service.
- (2) In any case where any document is served by sending it by mail to a postal address, the following provisions apply in the absence of proof to the contrary:
 - (a) evidence that the document was sent to an address provided by the party to be served is proof that service was completed; and
 - (b) the document is treated as having been served on the earlier of—
 - (i) the third working day after the day on which it is sent by mail; or
 - (ii) the day on which it is received.
- (3) In any case where any document is served by fax or electronic means, the following provisions apply in the absence of proof to the contrary:
 - (a) evidence that the document was sent to the address provided by the party to be served is proof that service was completed; and
 - (b) evidence that the document was sent to the address provided by the party to be served is proof that the document was received on day and at the time it was sent, but any document sent outside ordinary working hours must be treated as having been received on the next working day.

Subpart 4—Applications**2.13 Applications: general provisions**

- (1) This subpart must be read subject to any requirements of the Act relating to applications.

- (2) Evidence for the purpose of an application must be given in a manner specified in section 83 of the Evidence Act 2006 or, if section 85 of the Act applies, in the form of a formal statement.
- (3) Subject to subclauses (1) and (2), the court may grant leave for an application to be made otherwise than in accordance with this subpart if it is satisfied that to do would be consistent with the objective in rule 1.3(b).

2.14 How to make application

- (1) An application must be made by filing a notice of application.
- (2) A notice of application must be served on all other parties.
- (3) Despite subclauses (1) and (2), the judicial officer or Registrar to whom the application is made may grant leave for the application to be made orally.

2.15 Applications that are not required to be served

Despite rule 2.14(2), the following applications are not required to be served on all other parties:

- (a) an application for a warrant to arrest the defendant under section 34;
- (b) an application for a witness summons under section 159;
- (c) an application for a warrant to arrest a witness under section 161.

2.16 Notice of application

A notice of application must include—

- (a) the particulars of the applicant; and
- (b) the order or direction being sought; and
- (c) the grounds for making the application; and
- (d) the provision authorising the order or direction being sought; and
- (e) any evidence the applicant relies on; and
- (f) whether the application or any document attached to it is the original of that document or is an amended version (in which case, the version must be identified); and
- (g) whether the applicant requests an oral hearing to determine the application.

2.17 How to respond to application

- (1) A notice of response to an application must be filed not later than 10 working days after the date of service of the notice of application.
- (2) A notice of response must state that the party responding—
 - (a) consents to the application; or
 - (b) opposes the application or part of the application.
- (3) A notice of response indicating opposition to an application must include—
 - (a) the grounds for opposing the application; and
 - (b) any evidence the respondent relies on; and
 - (c) whether the respondent requests an oral hearing to determine the application; and
 - (d) whether the response is the original of that document or is an amended version (in which case, the version must be identified).

2.18 Procedure for dealing with application

- (1) If a party files a notice of response stating that the party consents to the application, or no notice of response is filed within the time prescribed by rule 2.17(1), the court may—
 - (a) make the order or give the direction sought in the application or decline to do so;
 - (b) give directions with respect to the determination of the application.
- (2) If a party files a notice of response stating that the party opposes the application and neither party has requested an oral hearing, the court may—
 - (a) make the order or give the direction sought in the application or decline to do so;
 - (b) give directions relating to the determination of the application.
- (3) If a party files a notice of response stating that the party opposes the application and an oral hearing has been requested, the court may give directions for the filing of further evidence and the hearing of the application.
- (4) If an oral hearing is to be held to determine an application, the parties must agree on the witnesses who are to be called.

Part 3
Commencing proceedings and
preliminary steps

Subpart 1—Charging documents

3.1 Charging document

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

- (a) the category of the offence; and
- (b) the maximum penalty for the offence charged; and
- (c) the date on which the defendant has been summonsed under section 28 or 29 of the Act to appear or (if released on police bail) the date on which the defendant is required to attend court; and
- (d) whether the prosecutor is a private prosecutor and, if so, the prosecutor's name; and
- (e) the court in which, in accordance with section 14(1) or (2) of the Act, the charging document is to be filed; and
- (f) whether the charge is to be dealt with by the Youth Court in accordance with the Children Young Persons and their Families Act 1989.

Subpart 2—Summonses, warrants, and
notices

3.2 Summons to defendant

- (1) Every summons to a defendant must include—
 - (a) the particulars of the defendant; and
 - (b) the particulars of each charge and the category of offence of each charge; and
 - (c) the court and date and time at which the defendant is required to appear; and
 - (d) the reason for the summons being issued; and
 - (e) the consequences of failing to appear in answer to the summons; and
 - (f) the name of the person issuing the summons; and
 - (g) the date of issue of the summons.

- (2) In addition to the information required by subclause (1), a summons must be accompanied by the information set out in the Schedule.

3.3 Summons to witness

A summons to a witness must include—

- (a) the particulars of the witness; and
- (b) the particulars of the defendant; and
- (c) the particulars of the charge; and
- (d) the court and date and time at which the witness is required to appear; and
- (e) the section of the Act under which the summons is issued; and
- (f) details of any document or thing that the witness is required to bring with him or her; and
- (g) the consequences of—
 - (i) failing to appear in answer to the summons; or
 - (ii) appearing and failing to give evidence; and
- (h) information about—
 - (i) a witness's right to have 1 or more support persons near him or her when giving evidence; and
 - (ii) any fees, travelling allowances, and expenses payable to persons giving evidence; and
- (i) the name of the person issuing the summons; and
- (j) the date of issue of the summons.

3.4 Warrant to arrest defendant

- (1) A warrant to arrest a defendant must include—
- (a) the section under which the warrant is issued; and
 - (b) the court issuing the warrant; and
 - (c) whether the warrant is directed to every constable, or to a constable, in which case the name of that constable; and
 - (d) the particulars of the defendant; and
 - (e) the reason for the warrant being issued; and
 - (f) details of the offence; and
 - (g) a direction to the constable executing the warrant to bring the defendant before any court; and

- (h) the legal authority for entering premises for the purpose of executing the warrant; and
 - (i) the name and title of the person issuing the warrant; and
 - (j) the date of issue of the warrant.
- (2) In this rule and in rule 3.5, **offence** means, as the case may be, the offence—
- (a) with which the defendant has been charged; or
 - (b) of which the defendant has been convicted.

3.5 Warrant to detain defendant

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

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

3.6 Warrant to arrest witness

- (1) A warrant to arrest a witness under section 161 must include—
- (a) the section under which the warrant is issued; and
 - (b) the court issuing the warrant; and
 - (c) whether the warrant is directed to every constable, or, if the warrant is directed to a constable, the name of that constable; and
 - (d) the full name, address, occupation (if any), and date of birth of the witness; and
 - (e) the reason for the warrant being issued; and
 - (f) details of the proceedings and the offence; and
 - (g) a direction to the constable executing the warrant to bring the witness before any court; and

- (h) the legal authority for entering premises for the purpose of executing the warrant; and
 - (i) the name and title of the person issuing the warrant; and
 - (j) the date of issue of the warrant.
- (2) A warrant to arrest and detain a witness under section 165(3)(b) must include—
- (a) the information required by subclause (1)(a) to (f), (i), and (j); and
 - (b) the particulars of the person who is to detain the witness; and
 - (c) the place and duration of the detention of the witness.

3.7 How to issue warrant

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

3.8 Notices to defendant arrested and brought before court

A Registrar must give a notice containing the information set out in the Schedule to a defendant who is arrested and brought before the court for a first appearance in relation to a proceeding.

Part 4 Procedure before trial

Subpart 1—Time for certain appearances

4.1 Time of second appearance

- (1) If initial disclosure under section 12(1) of the Criminal Disclosure Act 2008 has been made to the defendant before or at the defendant's first appearance, the defendant's second appearance must be not later than 5 working days after the first appearance.

- (2) In all other proceedings, the defendant's second appearance must be not later than 5 working days after the expiry of the applicable date in section 12(4) of the Criminal Disclosure Act 2008.

4.2 Time of case review

A case review hearing must be not later than—

- (a) 45 working days after the entry of a not guilty plea in all proceedings for—
- (i) category 4 offences:
 - (ii) category 3 offences where the defendant has elected jury trial:
 - (iii) any remaining proceedings that the Crown has or is to assume responsibility for prior to the case review hearing:
- (b) 30 working days after the entry of a not guilty plea, in all other proceedings.

4.3 Time of trial callover

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

Subpart 2—Pleas and elections

4.4 Entering plea by notice

- (1) This rule applies to a notice under section 37 or 38 of the Act.
- (2) In addition to the information required by rule 2.1, the notice must include—
- (a) every plea entered and the charge to which it relates (by reference to the CRN); and
 - (b) in the case of a plea entered by notice under section 37(4) of the Act given by the defendant's lawyer, details of the lawyer; and
 - (c) in the case of a guilty plea entered by the defendant under section 38(1) of the Act,—
 - (i) an indication of whether the defendant wishes to appear for sentencing; and

- (ii) any written submissions the defendant wishes to be taken into account in sentencing (regardless of whether the defendant wishes to appear); and
 - (d) in the case of a special plea entered by the defendant, the information required by section 45(3) of the Act.
- (3) If a not guilty plea is entered by notice to a charge for a category 3 offence and the defendant wishes to elect jury trial in relation to that charge, the notice must record that election and the charge to which it relates (by reference to the CRN).
- (4) When a special plea is entered by filing a notice, a Judge may issue directions for the purpose of determining, under section 49 of the Act, whether the plea is available, including directions about whether further evidence, submissions, or an oral hearing is required.

Subpart 3—Case management

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

- (1) An application by the prosecutor or the defendant that the court exercise any powers under section 58(1) of the Act must be made not later than 5 working days after the proceedings are adjourned for case review under section 54 of the Act.
- (2) An application by the prosecutor or the defendant that the court exercise any powers under section 59(1) of the Act must be made not later than 5 working days after the proceedings are adjourned following the entry of a not guilty plea.

4.6 Time for filing case management memorandum

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

4.7 Information about case review: represented defendant

When a proceeding is adjourned for case review under section 54 of the Act and the defendant is represented by a lawyer, a Registrar must notify the defendant's lawyer of the following:

- (a) the date by which the case management memorandum must be filed in accordance with section 55(3); and
- (b) the date of the case review hearing.

4.7A Information about case review: prosecutors

A Registrar must notify the prosecutor of the date by which the case management memorandum must be filed and the date of the case review.

4.8 Notice about case review: unrepresented defendant

When a proceeding is adjourned for case review under section 54 of the Act, a Registrar must serve a notice on an unrepresented defendant stating—

- (a) the matters that the defendant is required by section 57(2) of the Act to address at the case review hearing; and
- (b) the date of the case review hearing.

4.9 Case management memorandum

(1) In addition to the information required by section 56(1) of the Act, every case management memorandum must include,—

- (a) if the defendant intends to change his or her plea,—
 - (i) any agreed list of previous convictions and any agreed summary of facts; and
 - (ii) whether the defendant and the prosecutor agree to sentencing proceeding at the case review hearing; and
 - (iii) if the defendant does not agree to sentencing proceeding at the case review hearing, the dates on which the defendant and prosecutor are available for sentencing or for a disputed facts hearing (if applicable); and
 - (iv) details of any outstanding charges that are not included in the case management memorandum and that the defendant and the prosecutor wish to be added for sentencing purposes, and the next hearing date for those charges; and
- (b) if the defendant requests a sentence indication,—
 - (i) the nature of the sentence indication sought; and

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- (ii) any agreed list of previous convictions and any agreed summary of facts; and
 - (iii) any written submissions the defendant or prosecutor wish to make; and
 - (iv) any relevant additional information that the defendant or prosecutor wish to bring to the court's attention including, but not limited to, that specified in rule 4.10; and
- (c) if the defendant has been remanded in custody until the case review hearing, whether he or she agrees to a further remand in custody or intends to apply for bail; and
 - (d) if the trial procedure is the jury trial procedure, the prosecutor's and the defendant's estimates of the length of trial; and
 - (e) any evidence that the prosecutor or the defendant wish the court to consider in relation to any application to be made or determined at the case review hearing; and
 - (f) dates on which the prosecutor and the defendant's lawyer are available for any further hearings that may be required; and
 - (g) details of any failure to engage in, or complete, case management discussions and the reasons for that failure; and
 - (h) details of any other matter that the prosecutor and defendant wish the court to address at the case review hearing.
- (2) If the trial procedure is the Judge-alone procedure, in addition to the information required by section 56(2) of the Act, a case management memorandum must include—
- (a) details of any special arrangements required for the trial, including interpreters, screens, closed circuit television, and video link, and whether the parties consent to those arrangements being made, and the reasons for any objection; and
 - (b) details of any expert witness that the prosecutor or the defendant wishes to call; and
 - (c) details of any young or vulnerable witness that the prosecutor or the defendant intends to call; and
 - (d) dates on which the prosecutor and the defendant's lawyer are available for the trial.

Subpart 4—Sentence indications

4.10 Sentence indications

In addition to the information specified in section 61(3) of the Act, before giving a sentence indication the court may (without limitation) require that all or any of the following information be provided to the court:

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

Subpart 5—Change in court or venue

4.11 Notice of transfer of proceedings to different court or venue

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

Subpart 6—Crown notices

4.12 Crown prosecution notice

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

4.13 Other Crown notices

- (1) A notice filed under section 190 of the Act to amend any charges must include—
 - (a) a statement to the effect that the Crown is amending the charge specified in the notice; and
 - (b) details of each charge to which the notice relates, including each CRN; and
 - (c) details of the amendment (which must meet any applicable requirements of section 17 of the Act and rule 3.1).
- (2) A notice filed under section 191 of the Act to add any new charges must include—
 - (a) a statement to the effect that the Crown is adding the charges specified in the notice; and

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

Part 5

Procedure for trial

Subpart 1—Judge-alone trials

5.1 Application of this subpart

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

5.2 Application for pre-trial admissibility hearing

An application under section 78(2) of the Act for the purposes of obtaining a pre-trial order to the effect that particular evidence is admissible at trial must be made not later than the case review hearing.

Subpart 2—Jury trials

5.3 Application of this subpart

This subpart applies if the procedure is a jury trial.

5.4 Pre-trial applications

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

5.5 Filing of formal statements

- (1) The prosecutor must file the formal statements required by section 85 of the Act not later than 25 working days before the trial callover date.
- (2) If a video interview is to be filed as or with a formal statement, the prosecutor must file at the same time a transcript of the interview.

5.6 Filing of trial callover memorandum

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

5.7 Information about trial callover: represented defendant

When a proceeding is adjourned for case review under section 57(3)(b) of the Act, if the defendant is represented by a lawyer, a Registrar must notify the defendant's lawyer of the following:

- (a) the date by which the trial callover memorandum must be filed in accordance with section 87(1); and
- (b) the date of the trial callover.

5.8 Information about trial callover: prosecutors

A Registrar must notify the prosecutor of the date that formal statements are due, when the prosecutor's trial callover memorandum is due and the date for the trial callover.

5.9 Notice about trial callover: unrepresented defendant

When a proceeding is adjourned for trial callover under section 57(3)(b) of the Act, a Registrar must, as soon as practicable after case review, serve a notice on an unrepresented defendant stating—

- (a) the matters that the defendant is required by section 89 of the Act to address at the trial callover; and
- (b) the date of the trial callover.

5.10 Information that must be contained in trial callover memorandum

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

- (a) details of any applications that have been made, and whether any matter relating to such an application can be determined at the trial callover hearing; and

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

5.11 Commencing trial

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

- (6) The defendant must be put in charge of the jury after the jurors have each received a charge list.
- (7) After the defendant has been put in charge of the jury and an address by the Judge (if any), the trial must proceed in accordance with the requirements of section 107 of the Act.

Part 6

Access to court documents

6.1 Interpretation

In this subpart, unless the context otherwise requires,—

access means to search, inspect, or copy under the supervision of an officer of a court

court file means a collection of documents in the custody or control of the court that relate to a criminal proceeding

criminal proceeding—

- (a) means a proceeding under the Criminal Procedure Act 2011; and
- (b) includes—
 - (i) all steps in a proceeding within the meaning of paragraph (a); and
 - (ii) the sentencing of a defendant under the Sentencing Act 2002; and
 - (iii) any proceedings under the Bail Act 2000; and
- (c) includes any proceeding under the following enactments:
 - (i) Criminal Investigations (Bodily Samples) Act 1995;
 - (ii) Criminal Procedure (Mentally Impaired Persons) Act 2003;
 - (iii) Extradition Act 1999;
 - (iv) Parts 4 to 6 of the International Crimes and International Criminal Court Act 2000;
 - (v) Mutual Assistance in Criminal Matters Act 1992;
 - (vi) Parole Act 2002;
 - (vii) any other enactment that provides for orders by a court (not being orders made in the course of a criminal proceeding within the meaning of paragraph (a)) in respect of a criminal investigation

of an offence that has been, or is believed to have been, committed (whether or not any person has been charged with, convicted of, or acquitted of that offence); and

- (d) includes any appeal or originating application to any court under the Criminal Procedure Act 2011 or the Bail Act 2000

document does not include—

- (a) notes by or for a judicial officer for his or her personal use; or
(b) any material that relates to the administration of the court

interlocutory application has the same meaning as in the High Court Rules or, as the case requires, the District Courts Rules 2009

originating application has the same meaning as in the High Court Rules or, as the case requires, the District Courts Rules 2009.

6.2 Application

- (1) This subpart applies to documents while they are in the custody or control of the court and until they are transferred to Archives New Zealand.
- (2) This subpart does not require any person to prepare any document that is not in existence at the time the document is sought.

6.3 Decisions under these rules made as part of civil jurisdiction

A decision made by a Judge under this subpart is, for the purposes of this subpart and any appeal against the decision, made in the exercise of the civil jurisdiction of the relevant court.

6.4 General right of access to permanent court record

- (1) Subject to rule 6.9, every person has the right to access—
- (a) the permanent court record under Part 7; and
(b) any published list providing notice of a hearing; and

- (c) any judgment, order, or minute of the court given in a criminal proceeding, including any record of the reasons given by the Judge; and
 - (d) any judicial officer's sentencing notes.
- (2) Despite subclause (1), a Judge of the court may direct that judgments, orders, or sentencing notes not be accessed without the permission of the court.

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

- (1) The prosecutor and the defendant in a criminal proceeding, and their lawyers or representatives, may access the court file during or after the completion of the criminal proceeding.
- (2) Despite subclause (1), a Judge may direct that the court file or any document relating to the criminal proceeding not be accessed by the prosecutor and the defendant or their counsel without the permission of the court.
- (3) Despite subclause (1), if there is more than 1 defendant in the criminal proceeding, a defendant or the defendant's counsel may access the court file or any document relating to the criminal proceeding only with the permission of the court.
- (4) Permission under subclause (2) or (3) may be sought by an informal request rather than an application under rule 6.8, and the court or a Registrar may grant permission on any conditions the court or the Registrar thinks fit.

6.6 Access to documents during proceedings

- (1) This rule applies in relation to a criminal proceeding under the Act from the commencement of the proceeding by the filing of a charging document until all applicable appeal periods for that proceeding have expired.
- (2) During the period to which this rule applies, any person other than a party may access any document only by making a request for access.
- (3) The court may, on its own initiative or on request, direct that any document, or part of any document, relating to the proceedings not be accessed without the permission of a Judge.

- (4) A request for access to any document under this rule is made informally to a Registrar by letter that—
- (a) identifies the requested document; and
 - (b) gives the reasons for the request.
- (5) The following provisions apply when a request for access to any document is made under subclause (4):
- (a) a Registrar must promptly serve on the parties or their lawyers or representatives a copy of the request;
 - (b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 6.7), give written notice of the objection to a Registrar, to the person who made the request, and to the other parties or their counsel;
 - (c) on receipt of an objection, a Registrar must promptly refer the objection and the request to a Judge;
 - (d) unless the document is subject to a direction stated in subclause (3) or a restriction stated in rule 6.9, a Registrar must promptly give the person who made the request access to the document—
 - (i) if a Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 6.7); or
 - (ii) if the parties or their counsel earlier agree that the person be given access to the document;
 - (e) every request that relates to any document that is subject to a restriction stated in subclause (3) or in rule 6.9 must be promptly referred to a Judge by a Registrar.
- (6) When a request is referred to a Judge, the matter is to be dealt with in accordance with rule 6.10.

6.7 Meaning of relevant deadline in rule 6.6

For the purposes of rule 6.6, where a party or counsel receives a copy of a request given to the party or counsel under either of those rules, **relevant deadline** means whichever of the following times is applicable:

- (a) if the copy of the request is received on a day on which a pre-trial hearing or the trial is proceeding, 3 pm on the first working day after the day on which the copy is received;

- (b) if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.

6.8 Access to documents, court file, or permanent court record in other cases

- (1) Any person may file a request in accordance with this rule to—
 - (a) access any document related to a criminal proceeding (except where any of rules 6.4 to 6.6 apply); or
 - (b) access a court file; or
 - (c) access any document that a Judge has directed under rule 6.4(2) is not to be accessed without permission; or
 - (d) access any document to which rule 6.9(3) applies.
- (2) An application under this rule is made informally to a Registrar by a letter that—
 - (a) identifies the document or court file that the applicant seeks to access; and
 - (b) gives the reasons for the application.
- (3) When an application is received, a Registrar must refer it to a Judge and the Judge may direct that a person file an interlocutory or originating application or may deal with the matter in accordance with rule 6.10.
- (4) The applicant must serve notice of the application on any person who, in the opinion of the Judge, is adversely affected by the application.
- (5) The Judge may dispense with service of notice under sub-clause (4) if it would be impracticable to require notice to be served.

6.9 Restrictions on access

- (1) Any right or permission conferred or given by these rules to access any document, court file, or any part of the permanent court record relating to a criminal proceeding is subject to—
 - (a) any enactment, court order, or direction limiting or prohibiting access or publication; and
 - (b) the payment of any prescribed fees for access.

- (2) Without limiting the generality of subclause (1), a person may access any document of the kind described in subclause (3) only if a Judge permits the person to do so.
- (3) The documents are—
 - (a) any document containing evidence of a complainant or of a person who gives or intends to give propensity evidence:
 - (b) electronically recorded documents of interviews with a defendant:
 - (c) any document that identifies, or enables the identification of, a person if the publication of any matter relating to the person's identity (such as the person's name) is forbidden by an enactment or by an order of the court or a Registrar:
 - (d) any document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of the court:
 - (e) any document containing evidence provisionally admitted into evidence and any document containing evidence that has been ruled inadmissible by the court.

6.10 Matters to be taken into account

- (1) A Judge may deal with any request or application under rule 6.6 or 6.8 on the papers or at an oral hearing, and may grant access in whole or in part and subject to any conditions the Judge thinks appropriate.
- (2) In determining a request or application under rule 6.6 or 6.8, the Judge must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:
 - (a) the right of the defendant to a fair hearing:
 - (b) the orderly and fair administration of justice:
 - (c) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:

- (d) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, trials and decisions:
- (e) the freedom to seek, receive, and impart information:
- (f) whether any document to which the application or request relates is subject to any restriction under rule 6.9:
- (g) any other matter that the Judge thinks just.

Part 7

Permanent court record

7.1 Permanent court record to be kept for each court

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

7.2 Details of permanent court record

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

- (1) the name and place of the court:
- (2) the judicial officer or Registrar who presided over each hearing:
- (3) the jurisdiction exercised:
- (4) the particulars provided under section 16(2)(e) of the Act:
- (5) the name and address of any private prosecutor who commences a proceeding:
- (6) the particulars of the defendant provided under section 16(2)(a) of the Act:
- (7) a description of the charge, including—
 - (a) the enactment creating the offence; and
 - (b) the date on which the offence was alleged to have been committed; and
 - (c) the date of the charge; and
 - (d) the date and other details of any appeal relating to the charge:
- (8) the Attorney-General's consent to the charge being filed:
- (9) in the case of a private prosecution, the directions and orders by a Judge relating to the filing of a charge:
- (10) hearing dates:
- (11) remand dates:
- (12) pleas entered and changes of plea:
- (13) form of trial (Judge-alone or jury trial):
- (14) place of trial:
- (15) any summonses and warrants issued (including any issued to a witness):
- (16) the outcome of any application for bail:
- (17) dismissal of a charge:
- (18) order for a retrial:
- (19) transfer to a different court or venue:
- (20) determination of charge, including—
 - (a) verdict (guilty or not guilty); and
 - (b) acquittal on ground of insanity; and

- (c) substitution of one offence for another offence; and
- (d) outcome of special pleas; and
- (e) leave decision for any appeal; and
- (f) stay of prosecution; and
- (g) jury verdict, and whether unanimous or by majority:
 - (i) deemed conviction under section 376:
- (21) orders made on appeal:
- (22) warnings given under any enactment:
- (23) suppression orders:
- (24) costs orders:
- (25) orders for bond to keep the peace:
- (26) orders made under section 375 of the Act for payment of fine or costs in infringement offence case:
- (27) any other judgment or order (other than the reasons for the judgment or order).

Part 8

Appeals to District Court or High Court

8.1 Application of this Part

This Part applies in relation to—

- (a) every application to a District Court or the High Court for leave to appeal under the Act; and
- (b) every appeal under the Act to a District Court or the High Court.

8.2 How to apply for leave to appeal or give notice of appeal

- (1) A party applies for leave to appeal by filing a notice of application for leave to appeal.
- (2) A party appeals by filing a notice of appeal.
- (3) A notice under subclause (1) or (2) must include—
 - (a) particulars of the appellant; and
 - (b) particulars of the decision for which leave is being sought to appeal or which is being appealed, including date and place at which it was made; and
 - (c) a copy of the decision against which the appeal is sought to be made (if available); and

- (d) the grounds of the appeal; and
 - (e) the section of the Act relied on for appeal or to be relied on if leave granted.
- (4) In addition to the information required under subclause (3), a notice under subclause (1) or (2) must also include particulars of such of the following as are applicable:
- (a) lawyer's contact details:
 - (b) legal aid status:
 - (c) the prison at which appellant is located:
 - (d) if there is to be an oral hearing, whether the appellant seeks leave to be present under section 326 of the Act and, if so, why:
 - (e) whether the application is out of time and, if so, the reasons for seeking an extension of time:
 - (f) if the proposed appeal relates to the admissibility of evidence at trial, the disputed evidence in question and its relevance to the trial:
 - (g) if the proposed appeal challenges the exercise of a judicial discretion, why the challenge meets the criteria for reversing the exercise of a discretion:
 - (h) if the proposed appeal challenges a factual finding in the decision to be appealed, the evidence to be relied on:
 - (i) any exhibits required for the appeal:
 - (j) in relation to a pre-trial determination, when the trial is likely to be:
 - (k) in the case of an application for leave to appeal to which section 328 of the Act applies, whether the appellant seeks the application for leave to be considered at an oral hearing and any arguments in support:
 - (l) in the case of an application for leave to appeal, any other information relevant to whether the whether the application should be considered at an oral hearing or on the papers.

8.3 Form must be treated as application for extension of time if notice given out of time

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

8.4 Reply memorandum

- (1) An intended respondent (the **respondent**) who is served with a notice of application for leave to appeal must, not later than 5 working days after service of that notice, file and serve on the applicant a reply memorandum.
- (2) The respondent's reply memorandum must state—
 - (a) whether the respondent consents to, opposes, or does not oppose the application, and (if applicable) the reasons for opposing it; and
 - (b) by reference to the specific questions and answers in the application, which answers the respondent does not accept and why; and
 - (c) whether the respondent considers that the application should be considered at an oral hearing; and
 - (d) whether, if the respondent opposes the application, the respondent considers the application should be heard separately from, or simultaneously with, the proposed appeal and the reasons for that view.

8.5 Complaint against trial counsel

- (1) If a ground of appeal is that there was a miscarriage of justice because of the conduct of the appellant's counsel at the trial or sentencing (**trial counsel**), particulars of the conduct concerned must be given in—
 - (a) the notice of appeal; or
 - (b) a memorandum to be filed and served by the appellant not later than 30 working days after filing the notice of appeal.
- (2) The appellant must, not later than 30 working days after filing the notice of appeal, file and serve on the prosecutor any affidavits that relate to the ground of appeal.
- (3) The respondent must file and serve any affidavit in reply not later than 20 working days after the service of the appellant's affidavit.
- (4) With the leave of the appeal court, a party who wishes to cross-examine a deponent who has sworn an affidavit on behalf of the other party must, not later than 15 working days after service of the affidavit, file and serve on the other party a

notice of cross-examination specifying the deponent the party wishes to cross-examine.

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

8.6 Fresh evidence

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

8.7 Deponent may be required to give evidence orally

- (1) This rule applies if, in an appeal based on a ground described in rule 8.5 or 8.6, an affidavit is filed on behalf of a party (**party A**) and served on the other party (**party B**).
- (2) If party B requires the deponent who has sworn the affidavit to give his or her evidence orally, party B must, not later than 15 working days of service of the affidavit, file and serve on party A a notice (an **oral evidence notice**) stating that requirement.
- (3) If party B consents to the deponent giving his or her evidence in chief by the affidavit but requires the deponent to be cross-examined, party B must, not later than 15 working days of service of the affidavit, file and serve on party A a notice (a **cross-examination notice**) stating that requirement.
- (4) If party A is served with an oral evidence notice or a cross-examination notice, party A must—
 - (a) immediately advise the deponent that he or she is required to give his or her evidence orally or be available for cross-examination (as the case may be); and
 - (b) advise the deponent of the hearing date of the appeal as soon as it is known; and
 - (c) ensure that the deponent is present at the hearing.
- (5) If party B does not serve an oral evidence notice with respect to the affidavit, party A may assume that party B consents to the deponent giving his or her evidence by the affidavit.

8.8 Submissions

- (1) Any submissions filed under this Part must—
 - (a) be in type of not less than 12 point size; and
 - (b) be on A4 paper; and
 - (c) use 1.5 line spacing; and
 - (d) not exceed any page limit specified in these rules or by the court.
- (2) Any document in electronic form must be capable of being printed in a hard copy form that is compatible with the requirements of subclause (1).

8.9 Procedure where leave to appeal is to be heard orally, separately from proposed appeal

- (1) This rule applies where an application for leave to appeal is to be heard orally and separately from the proposed appeal.
- (2) Each party's written submissions must not exceed 5 pages, unless the court permits longer submissions.
- (3) The applicant must provide his or her written submissions to the court and to the respondent not later than 10 working days before the hearing date.
- (4) The respondent must provide his or her written submissions to the court and to the applicant not later than 5 working days before the hearing date.
- (5) Oral submissions made at the hearing of an application for leave to appeal may not exceed—
 - (a) 15 minutes, in the case of the applicant's opening submission:
 - (b) 15 minutes, in the case of the respondent's submission:
 - (c) 5 minutes, in the case of the applicant's submission in reply.
- (6) Subclause (5) is subject to any contrary direction given in a particular case by the court.

Hearing of application for leave to appeal on papers

8.10 Application for hearing on papers

Rules 8.11 to 8.12 apply if the court decides to determine an application on the papers.

8.11 Period allowed for making written submissions on merits

- (1) This rule applies if an application for leave to appeal is to be determined on the papers.
- (2) In this rule, **appointed period** means a period appointed under subclause (4).
- (3) For the purposes of this rule,—
 - (a) the time allowed for making submissions begins to run on the date on which the appellant or respondent receives the relevant notice or material:

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- (b) if sent by mail or fax, the notice or material must be treated as having been received 3 working days after the date on which it is sent to that party's last known postal address or fax address.
 - (4) The Registrar must appoint a period of no less than 20 working days within which submissions may be made—
 - (a) by the appellant in support of the application (including further written submissions about the court's decision on the mode of hearing); and
 - (b) in the case of an extended supervision order appeal, by the victim.
 - (5) Notice of the appointed period must be given by a Registrar to—
 - (a) the appellant; and
 - (b) the respondent.
 - (6) The Registrar must send to the respondent a copy of all written submissions received by the court from the appellant and, if applicable, from the victim, within the appointed period, and the respondent may make written submissions within—
 - (a) 10 working days if the respondent is the Solicitor-General or the chief executive of the Department of Corrections; or
 - (b) 20 working days in the case of any other respondent.
 - (7) Subclause (6) is subject to section 107W of the Parole Act 2002 in so far as it relates to written submissions from the victim and, accordingly, a Registrar must delete any information that discloses the current address or contact details of the victim from the copy of those submissions to be served on the respondent under that subclause if the respondent is the offender.
 - (8) A copy of all written submissions received by the court from the respondent within the applicable period stated in subclause (6) must be sent by a Registrar to the appellant, and—
 - (a) the appellant may make written submissions in reply within a period of not later than 10 working days appointed by a Registrar; and
 - (b) a Registrar must send the respondent a copy of the appellant's submissions in reply.

- (9) Each party must file in the court—
- (a) 4 copies of that party's submissions for court use; and
 - (b) sufficient additional copies so that a Registrar can provide 1 copy for each other party.

8.12 Timing of application on papers

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

8.13 Change of mode of hearing

- (1) If the court decides to change the mode of hearing and orders a hearing involving oral submissions,—
- (a) a Registrar must allocate a fixture; and
 - (b) notice of the time and place fixed for the hearing of the appeal or application must be given in accordance with rule 8.14(3).
- (2) The submissions already filed constitute the written submissions for the hearing unless the court otherwise directs.
- (3) If the court decides not to change the mode of hearing, it may give its decision on that matter at the same time as it gives its decision on the merits of the appeal or application.

Oral hearings

8.14 Notice of fixture for oral appeals

- (1) This rule applies to an oral hearing for an appeal or if an oral hearing is to be held for an application for leave to appeal.
- (2) A Registrar must allocate a fixture.
- (3) Notice of the time and place fixed for the hearing must be given by a Registrar to—
- (a) the prosecutor; and
 - (b) the accused person or convicted person; and
 - (c) if the appellant is in custody and the court has granted the appellant leave to be present at the hearing, the chief executive of the Department of Corrections.
- (4) Rules 8.15 applies in relation to the application or appeal.

8.15 Timing of submissions on merits

- (1) The appellant must provide full written submissions on the application or appeal.
- (2) The appellant must provide his or her written submissions to the court and to the respondent not later than 15 working days before the hearing date.
- (3) The respondent must provide his or her written submissions to the court and to the appellant not later than 10 working days before the hearing date.

8.16 Copies of submissions

Parties must provide 2 copies of their submissions for court use.

Part 9 Miscellaneous provision

9.1 Revocation

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

Schedule

r 3.2

Information to accompany summonses

Availability of legal advice*Duty lawyers*

If you do not have your own lawyer, duty lawyers are available at the courts to give free legal help to people who have been charged with an offence on any day you have to appear in court.

There may be notices, posters or pamphlets at the court telling you where to find the duty lawyer. If not, ask the court staff or a court volunteer. If you are in Police custody, the duty lawyer will see you in the cells.

The duty lawyer can—

- explain to you what offence you are charged with and how serious it is:

- tell you about the usual range of sentences the Courts give for the charge:
- tell you if you might have a defence to the charge:
- explain what happens after you plead guilty or not guilty:
- apply for bail for you in some cases:
- ask for your case to be adjourned so that you can get more advice or information:
- explain about Police diversion:
- help you apply for legal aid if you have to come back to court for trial or sentencing. For information about legal aid, see below:
- if you are pleading guilty to a minor charge, tell the Judge about your personal situation and your point of view about the offence (a plea in mitigation).

Legal aid

You can apply for criminal legal aid as soon as you are charged with an offence or receive a summons to appear in court. Ask the court staff or a court volunteer about how to apply for legal aid.

Community law centres

Your local community law centre will provide initial advice free of charge. A list of community law centres is available from www.communitylaw.org.nz.

Diversion

The prosecutor who filed charges against you may operate what is called a diversion scheme. Diversion involves you completing certain conditions agreed with the prosecutor. If you complete the conditions, the prosecutor may withdraw the charges in court, meaning you do not receive a criminal conviction. Conditions can include making an apology or reparation (or both) to the victim, undertaking counselling or programmes to deal with the causes of your offending, and undertaking a specified number of hours work for the community.

Diversion may generally be considered if—

- it is your first offence; and

- the offence is not serious; and
- you have accepted full responsibility for the offence.

You should contact the prosecutor to find out whether they operate a diversion scheme and whether you will be considered for diversion.

Prosecution disclosure duties

The prosecution has an obligation under the Criminal Disclosure Act 2008 to disclose the following information to you:

- a copy of the charging document; and
- a summary of the facts of the case; and
- a summary of your right to apply for further information under that Act; and
- the maximum penalty (and minimum penalty, if applicable) for the offence; and
- a list of any previous convictions you may have that are known to the prosecution.

If you plead not guilty, the prosecution must then disclose any further relevant information, including witness statements and briefs of evidence and a list of all relevant exhibits, as soon as reasonably practicable after your plea is entered.

Section 16 of the Criminal Disclosure Act 2008 sets out some grounds on which the prosecutor may refuse to disclose information to you. If the prosecutor withholds any information, under section 13(2)(b) of the Act they must provide you with a list of the information being withheld and the reasons for doing so.

Bail

If your case is not resolved at your first court appearance, the court will have to decide whether to hold you in custody or release you on bail or at large until your next court appearance.

The starting point in making this decision under the Bail Act 2000 is that a defendant should be released on bail or at large unless there is a good reason to detain him or her in custody.

If the court grants you bail, you will be released on the condition that you return on the date of your next court appearance. You may also be subject to other conditions, such as—

- having to live at a particular place:

- non-association conditions:
- having no contact with the victim:
- a curfew:
- having to report to the Police while on bail.

You may also be subject to a condition requiring electronic monitoring.

If you are granted bail, you will have to sign a bail bond, which sets out the conditions of your bail. You will then be released.

If you do not comply with your bail conditions you may be arrested and your bail could be at risk. It is a criminal offence to fail to turn up at court at the time and place stated in your bail bond. The maximum penalty is 1 year imprisonment or a fine of \$2,000.

If you are at large you are released on the condition that you return on the date of your next court appearance. You do not have to sign anything but a warrant for your arrest could be issued if you fail to turn up.

If you are not granted bail or released at large, you will be remanded in custody (in a prison) and kept there until your next court appearance.

Name suppression

Under section 200 of the Criminal Procedure Act 2011, the court may make an order forbidding the publication of your name, address or occupation.

The court will only do so if satisfied that publication would be likely to—

- cause extreme hardship to you or anyone connected to you; or
- cast suspicion on another person that may cause hardship to them; or
- cause undue hardship to any victim of the offence; or
- create a real risk that you may not receive a fair trial; or
- endanger the safety of any person; or
- lead to the identification of another person whose name is suppressed; or
- have a negative effect on the maintenance of the law or the security or defence of New Zealand.

Entering a plea

You may plead guilty or not guilty, or enter a special plea, in relation to the offence(s) with which you have been charged. If you have not entered a plea before you appear in court for a second time, you may be required to do so at that appearance.

If you are represented by a lawyer, under section 37(4) of the Criminal Procedure Act 2011 you may plead not guilty or enter a special plea by filing a notice in court.

If you have been charged with a category 1 offence, under section 38 of the Act you may plead not guilty, guilty, or enter a special plea by filing a notice in court (whether you are represented by a lawyer or not). If you plead guilty, you may provide submissions to be taken into account at sentencing in the notice and indicate whether you intend to appear at a sentencing hearing.

Right to elect a jury trial

If you have been charged with a category 3 offence and you plead not guilty to that offence, under section 50 of the Criminal Procedure Act 2011 you may elect to be tried by a jury.

Under section 51 of the Criminal Procedure Act 2011, you must elect to be tried by a jury at the time your plea of not guilty is entered, unless the Judge is satisfied that there has been a change of circumstances that might affect your decision whether to elect a trial by jury.

Proceeding in your absence

The Criminal Procedure Act 2011 gives courts the power to proceed with your pre-trial hearings, trial, and sentencing if you fail to appear, in certain circumstances. The court may proceed in your absence if you have no reasonable excuse for failing to appear.

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on [tba], regulate the practice and procedure of District Courts and the High Court in the exercise of their jurisdiction under the Criminal Procedure Act 2011.

Part 1 relates to preliminary and general provisions. This Part includes provisions relating to the application of these rules, correcting errors, extending and shortening time, exhibits, speaking in and translating Māori, the use of New Zealand sign language, and affidavits in a language other than English.

Part 2 sets out rules about the content of documents, the filing of documents, the service of documents, and applications.

Part 3 sets out rules about the content of charging documents, summonses, warrants, and certain notices.

Part 4 sets out rules about the procedure before trial, including the timing of appearances, entering pleas, case management, sentence indications, changes in venue, and Crown notices.

Part 5 sets out rules about the procedure for trial. Subpart 1 provides for Judge-alone trials. Subpart 2 provides for jury trials and includes rules about commencing a jury trial.

Part 6 sets out rules about access to court documents and is based on and will replace the Criminal Proceedings (Access to Court Documents) Rules 2009.

Part 7 provides for the permanent court record.

Part 8 provides for criminal appeals to a District Court or the High Court, and is based on the Court of Appeal (Criminal) Rules 2001.

Part 9 revokes the Criminal Proceedings (Access to Court Documents) Rules 2009.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

These rules are administered by the Ministry of Justice.
