

Criminal Procedure Act 2011

Overview of the new process

THIS INFORMATION SHEET PROVIDES AN OVERVIEW OF THE NEW PROCESS FOLLOWING COMMENCEMENT OF THE CRIMINAL PROCEDURE ACT 2011.

The [Criminal Procedure Act 2011](#) (“the Act”), which fully commences on 1 July 2013, introduces a new process for criminal procedure.

The new process includes five stages. The main actions to be undertaken in each stage, and the relevant legislation, are set out below. Note there are general provisions in [Part 5](#) of the Act which may be relevant at more than one stage of proceedings, for example, [section 146](#) (withdrawing charges).

Admin

The main components of this stage are:

- proceedings commence with the filing of a charging document
- the defendant makes his or her first appearances
- proceedings for category 4 offences transfer to the High Court
- pleas and elections are entered.

[Part 2](#) of the Act sets out the commencement of proceedings and preliminary steps. Part 2 is divided into two subparts:

1. [filing a charging document](#)
2. [notifying defendant of court appearance](#).

[Part 3](#) of the Act sets out the procedure before trial.

This includes eight subparts, two of which are particularly relevant to the admin stage:

1. [Pleas](#)
2. [Decision regarding trial by jury for category 3 offences](#) (elections)

The [Criminal Procedure Rules 2012](#) (“the Rules”) includes rules covering content of ([rule 3.1](#)), and how to file ([rule 2.3\(2\)](#)), a charging document and how to authenticate a charging document ([rule 2.2](#)). The

Rules also include requirements for parties to provide addresses for service ([rule 2.9](#)), for entering a plea by notice ([rule 4.4](#)) and the timeframe between first and second appearance ([rule 4.1](#)).

Review

This stage begins following a not guilty plea. Proceedings for category 2, 3 and 4 offences will have case review unless a Judge sets aside the requirement. Proceedings for category 1 offences are not required to have case review and will generally skip this stage and go straight to the trial stage. The stage ends with adjournment for trial (Judge-alone) or trial callover (jury).

[Part 3](#) of the Act includes the procedure that may occur during the review stage. This includes the following subparts:

1. [Case management](#)
2. [Sentence indications](#)
3. [Determination of level of trial court for category 2 and 3 offences](#)
4. [Trial court, place of trial, transfer of proceedings to trial court, and procedure for trial](#)

The Rules includes rules relating to the content ([rule 4.8](#)) and filing ([rule 4.6](#)) of the case management memorandum (CMM), the information that must be given to an unrepresented defendant instead of a CMM ([rule 4.7](#)), and the timeframe between entering a not guilty plea and the case review hearing ([rule 4.2](#)).

Trial

The trial stage for a Judge-alone trial allows for parties to apply for a pre-trial admissibility hearing. For a jury trial, trial callover memoranda (TCMs), trial callover and pre-trial applications are all covered.

[Part 3](#) of the Act includes the following subparts are relevant to the trial stage:

1. [Provisions applying only to Judge-alone procedure](#)
2. [Provisions applying only to jury trial procedure](#)

[Part 4](#) of the Act sets out the procedure for the trial. This includes three subparts:

1. [Provisions applying to Judge-alone trials](#)
2. [Provisions applying to jury trials](#)
3. [Provisions applying to both Judge-alone and jury trials](#)

The Rules includes rules relating to the timeframe for making pre-trial applications ([rules 5.2](#) and [5.4](#)), for filing formal statements ([rule 5.5](#)) and TCMs ([rule 5.6](#)), and for between the case review hearing and the trial callover (in jury trial cases).

The Rules also set out additional information that must be included in TCMs ([rule 5.8](#)) and the information that must be given to an unrepresented defendant instead of a TCM ([rule 5.7](#)). [Rule 5.9](#) sets out the procedure for commencing a jury trial.

Sentencing

The Act does not specify the procedure for sentencing hearings although it does prohibit sentencing of category 2, 3 and 4 offences taking place in the absence of the defendant (see [section 123](#)).

Appeal (including retrials and rehearings)

The appeal stage includes retrials, rehearings, correction of erroneous sentences and appeals.

[Part 5](#) of the Act sets out the provisions for retrials and rehearings, and provisions relating to the correction of erroneous sentences.

[Part 6](#) of the Act sets out the subparts relating to appeals, which are:

1. [General matters](#)
2. [Appeals against pre-trial decisions](#)
3. [Appeals against conviction](#)
4. [Appeals against sentence](#)
5. [Appeals against finding of or sentence for contempt of court](#)
6. [Appeals against decisions on costs orders](#)
7. [Appeals against suppression orders](#)
8. [Appeals on question of law](#)

9. [Appeals against order under section 106\(3\) of Sentencing Act 2002](#)
10. [Appeals relating to peace bond decisions](#)
11. [Solicitor-General's references](#)
12. [Further provisions](#)

[Part 8](#) of the Criminal Procedure Rules 2012 includes rules for appeals to a District Court and to the High Court.