CRIMINAL PROCEDURE (SIMPLIFICATION): REGULATORY IMPACT STATEMENT

Contents

AGENCY DISCLOSURE STATEMENT

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice. It provides analysis of options to reform and modernise criminal procedure developed by the Criminal Procedure (Simplification) Project (the 'Project'). The reform is to:

- Reduce unnecessary delay and inefficiency of court processes.
- Eliminate unnecessary complexity of the legislation governing criminal procedure.
- Address further short-comings of the legislative framework arising from piecemeal amendments over many years, and failures to keep up with developments in the law.

The proposals build on:

- Significant work undertaken by the Ministry of Justice and other justice sector agencies to improve criminal procedure, including:
  - The Rostering, Scheduling and Case Management Project (which was established following recommendations in the Ministry of Justice Baseline Review Report, December, 2004).
  - The implementation of the Criminal Procedure Bill that passed in 2008 as 6 new Acts. Among other things, these new Acts partially abolished preliminary hearings, introduced a new disclosure regime, and allowed majority verdicts.
- Major reports from the Law Commission, including:
  - Delivering Justice for All: A vision for New Zealand Courts and Tribunals (NZLC R85, 2004).
  - Criminal Pre-Trial Processes: Justice through efficiency (NZLC R89, 2005).

The proposals also complement and link with other significant initiatives within the justice sector aimed at improving criminal processes. These include:

- The Ministry of Justice Electronic Operating Model Project, which is developing opportunities for implementing electronic filing and management of court information.
- The 2009 review of legal aid led by Dame Margaret Bazley, and consequent implementation of recommendations in the report from the review (CAB Min (09) 45/6B and CAB Min (10) 11/6 refer).
- NZ Police initiatives to improve prosecution processes, including 'Police Alternative Resolutions', 'Rostering to Demand', and 'Neighbourhood Policing', which are all expected to either reduce the number of prosecutions or reduce the seriousness of the charges brought before the Court, were appropriate.

There are some constraints on the analysis in this RIS:

- Complexity – policy analysts have worked jointly with operational staff to develop models to predict outcomes that can be assessed against the objectives of the Project. However, this analysis involves a very large number of variables, and multiple interactions between these variables. It also depends on a number of assumptions made about human behaviour – what choices people will make at

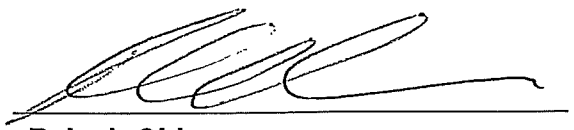
different points within this system. It is not possible to construct models of this complexity that can accurately predict outcomes with a high level of certainty.

- Availability of data – there is insufficient historical fiscal and statistical data across all justice sector agencies to accurately predict with complete certainty the average cost of performing some particular tasks, or to demonstrate all justice sector consequences relating to the quality of work. To gather accurate data, sufficient to enable full confidence in the cost-benefit analysis, would require a historical file review process, and the testing of many of the proposals. This has not been possible within the timeframe that has been allowed for the Project.

- Impacts arising from other significant initiatives – as noted above, various justice sector agencies are also currently engaged in reform with similar objectives to this Project (for example, the proposed reform to the legal aid system). However, other initiatives are also likely to have outcomes that will potentially place additional pressures on the system (for example, the Sentencing and Parole Reform Act 2010 or 'three-strikes legislation', and some of the Government's '100-day initiatives'). This raises two risks:
  - 'Double-counting' benefits (ie, ascribing the same benefits to both this Project and another initiative). Analysts have been mindful of this risk in calculating projected benefits and have taken steps to mitigate against it.
  - Benefits will be obscured following implementation as a result of a changed environment (ie, some benefits may be neutralised by other policy initiatives, not accounted for in the modelling work, which are likely to have impacts such as significantly increasing the court workload).

- Proposed prosecution review – in November 2009, the Government announced its intention to review how the Crown prosecutes crime. This review has not been started. However, it is expected to be undertaken in the near future and has the potential to lead to significant reform in this area. This may impact upon outcomes in ways that cannot be anticipated at this time (although impacts might generally be assumed to be positive or neutral given the intention would be to improve services).

Information in this RIS is aggregated and based on proposals originally presented in a Bill Plan and Commentary released for consultation in December 2009 (refer paragraph 82). The estimated benefits and costs will be spread unevenly across different justice sector agencies, and many of the savings will be in the form of freed capacity for future demands. In addition, the proposals presented in the Bill Plan and Commentary have been revised following consultation with key stakeholders (eg, the judiciary). Further modelling work is therefore underway to update and dis-aggregate benefits and costs for specific agencies. This work is expected to identify additional savings to the system. The revised, disaggregated financial data will be used to inform the September/October budget process for justice sector agencies, and will be presented to Cabinet via the planned November paper to the Cabinet Legislation Committee.



9 August 2010

Rajesh Chhana
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Date

EXECUTIVE SUMMARY

1. The law relating to criminal procedure in New Zealand is out of date, excessively complex and inflexible. This has led to inefficiency, delay and dissatisfaction with current processes.

2. Comprehensive reform is required to ensure criminal processes are: efficient; simple and accessible; able to deliver timely justice; and sufficiently flexible to meet contemporary and future expectations of criminal justice processes. The option of making piecemeal amendments to the law together with further administrative improvements is no longer sufficient to address current problems. The status quo is not an option in the face of forecast increases in the volumes of court business.

3. Modelling indicates that the net present value of the net benefit of the proposed package of comprehensive reform over a 5-year period is $25.7 million (using a discount rate of 8%), and, over a 10-year period, is $94.8 million. In addition, non-fiscal benefits are expected in terms of reduced delay in disposing of cases, a better experience for, and higher levels of satisfaction among court users, and greater confidence in the New Zealand court system.

STATUS QUO AND PROBLEM DEFINITION

Legal Framework

4. The rules governing criminal procedure in New Zealand are currently spread across a number of different statutes and regulations. In addition, criminal procedure is informed by case law, and administrative instruments (such as Practice Notes) that have been put in place by the Courts (which have powers to regulate their own procedure) to assist in managing certain processes.

5. The central legislation governing criminal procedure is contained in the Summary Proceedings Act 1957, and Parts 12 and 13 of the Crimes Act 1961. However, in addition the Juries Act 1981, District Courts Act 1947, Criminal Justice Act 1985, Criminal Disclosure Act 2008, Bail Act 2000, Sentencing Act 2002, Criminal Procedure (Mentally Impaired Persons) Act 2003, and Children, Youth Persons and their Families Act 1989 are, or may (depending on the particular case) be relevant in determining procedure.

The problem with criminal procedure

6. In the past 10 to 20 years, criticism of criminal procedure has been building. This criticism can be summarised under four broad headings:

   6.1. Excessive cost;

   6.2. Excessive delay;

   6.3. Excessive complexity; and

   6.4. Outdated legislative framework.

Excessive cost

7. Criminal courts' have been operating under increasing cost pressure, which is expected to continue, and which includes an element of 'wasted' cost arising from inefficiencies within the system.

8. Court criminal workloads have increased significantly in recent years, and forecasts indicate that the number of cases brought before the Courts will continue to grow. The majority of these cases are in the criminal summary jurisdiction. In the year to 30 June 2009, approximately 207,000 new criminal summary cases[1] came before the District Courts – an increase of 23% since 2005.

9. The volume of indictable cases[2] within the court system is smaller (approximately 4-5% of the total caseload). However, the volume of indictable cases grew by 18% over the period June 2005 to June 2009 (from 8,534 to 10,095 cases).[3]

10. As well as increases in the volume of work, criminal cases have become more complex – for example, involving a greater amount of expert evidence, multiple charges and multiple defendants.

11. Over recent years courts have improved their performance and are generally disposing of greater numbers of cases. However, certain key factors act as constraints, limiting the ability of justice sector agencies to continue to improve disposal rates by identifying administrative efficiencies. These factors include:

    11.1. Criminal procedures that are very prescriptive and require the use of outdated technology and processes;

    11.2. Event-based case management, which (usually) requires the physical presence of all participants in one place (the courtroom) at the same time, with a range of paper-based supporting information at hand;[4] and

    11.3. A high reliance on all parties with input into criminal processes being prepared to progress their cases, and often few incentives for them to do so. (In their 2005 Report 89 *Criminal Pre-Trial Processes: Justice through efficiency*, the Law Commission referred to a "culture of non-compliance" in the courts).

12. Given forecast growth, the operation of the criminal courts is not sustainable at current levels of funding. In addition, further difficulties arise because of:

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[1] 'Summary cases' are those less serious criminal cases not requiring jury trials.
[2] 'Indictable cases' are those, generally more serious criminal cases requiring jury trial.
[3] In the last year, 2009/2010, the volume of indictable cases decreased from 10,095 to 8,397. This drop is against recent trends and it is unclear at this early stage whether it represents a change in the trend or whether it is an anomaly. The biggest decreases have been seen in the Fraud, Other Drug-Dealing and Tax Act offence categories. A similar, although proportionally much smaller, drop has occurred in the summary jurisdiction – again for reasons that are uncertain at this stage.
[4] The recent enactment of the Courts (Remote Participation) Act 2010 will allow parties to appear at court by audio visual link (AVL) in many more circumstances than previously. This initiative was developed as part of the wider Criminal Procedure (Simplification) Project but has been implemented in its own Act because it could be easily separated and progressed on a quicker timeframe.

12.1. Disparities between the relative seriousness and complexity of cases, and the processes by which they are resolved. For example, some relatively minor cases are currently resolved by jury trial. However, jury trials are longer and more expensive than an equivalent defended hearing (ie, hearing before a judge alone). (eg, The offence of injuring with intent in section 189(1) of the Crimes Act 1961 can be laid summarily or indictably. If a case involving this charge proceeds summarily to a defended hearing it currently takes, on average, 7.3 events to disposal, and incurs direct costs of approximately $1,073. If, however, it proceeds indictably to a jury trial, the case takes on average 12.3 events to dispose and incurs direct costs of $19,227.)

12.2. Court events that automatically proceed without actually progressing cases. Analysis indicates that there are at least 14,000 'unnecessary' court events per annum in the criminal jurisdiction. These events all require the presence of a list of participants, all of whom bear costs, including defendants, counsel, prosecution and, in many cases, victims, witnesses and their families, in an expensive court facility for no purpose. For example, in many courts, cases within the summary jurisdiction are automatically scheduled for a 'status hearing'[5] following entry of a not guilty plea. While this hearing requires the presence of all the parties before a judge, and notwithstanding that some status hearings result in the disposal of some cases, many cases are not progressed – they are simply adjourned off to another status hearing or to a defended hearing.

13. While efficiency is not, and should not, be the primary focus of criminal proceedings (the focus should be on society's interest in a fair trial), as the Law Commission has noted, up to a point, efficiency gains will be justice gains as inefficiencies can affect the quality of justice (eg, repeated adjournments put a strain on court resources and, particularly where they lead to delay, can affect the accuracy of evidence as witnesses may become unavailable, begin to 'give up' on the process, or simply forget the details of an incident over time).[6]

Excessive delay

14. The pressure of increasing workloads, increasing complexity of cases and unnecessary events leads, not only to inefficiencies within the criminal justice system, but also to excessive delay.

15. The median time to dispose of a District Court jury trial is one year from first appearance until final disposal.[7] This is an increase of about five-and-a-half

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[5] Status Hearings are a form of pre-trial conference enquiring into the status of a case after a plea of not guilty has been entered. They were instituted in the mid-1990's to address the problem of the very high numbers (around 77%) of summary defended cases that did not proceed on the day of the defended hearing. Currently around 69% of summary defended cases do not proceed on the day of hearing (refer paragraph 21.3).

[6] *Criminal Pre-trial Processes: Justice through Efficiency*, New Zealand Law Commission, Report 89, 2005.

[7] The median time to disposal for a jury trial decreased to 313 days in the year to June 2010. This is a result of recent changes to the committal process introduced by the Criminal Procedure Bill and commenced on 29 June 2009. It is unclear whether this lower average time can be sustained as it is, in part, an artefact of the transition period from the old to new processes.

weeks in the five year period June 2005 to June 2009. The median time to dispose of a High Court jury trial is 16 months from first appearance (in the District Court) to final disposal. This is an increase of approximately five months in the past five years.

16. The median time to dispose of a summary defended hearing is 157 days from first appearance until final disposal in the year ended June 2009, down from 176 days in 2004.[8] This small decrease comes from administrative efforts to improve court efficiency. However, this is still an undesirable length of time to dispose of cases, which are, by definition, relatively minor.

17. In some cases, delays have contributed to a loss of the ability to prosecute. The table below indicates the number of cases stayed under section 25(b) of the New Zealand Bill of Rights Act 1990, which sets out the right to be tried without undue delay.

Table 1: Number of stays under s25(b) New Zealand Bill of Rights Act

Year:	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010
Cases stayed:	2	8	3	8	7	6

18. Delays in proceedings have further implications for time spent on remand (average 58 days at December 2008 compared to 30 days in December 1998), which in turn has had an impact on demand for prison beds for remandees awaiting trial (1,771 December 2008 compared to 534 in December 1998).[9]

19. The adage that "justice delayed is justice denied" applies not only to the right of a defendant to know the outcome of the case against them in a timely manner, but also to victims, witnesses, and to communities affected by offending behaviour. Victims and witnesses should be able to expect that offenders be dealt with speedily to allow them a sense of 'closure' on an event that may have led to considerable upset. For victims of crime, unnecessary delay may lead, at best, to some lack of confidence in 'the system' and, more seriously, it may exacerbate their stress and sense of victimisation.

20. A lack of confidence may not be restricted to those intimately involved in particular cases, either. The confidence of the wider community in 'the system' to adequately address offending behaviour, and to protect them and their families, may also be undermined by unnecessary delay. This confidence is critical to the maintenance of a well-functioning democracy, and therefore a loss of this confidence poses potentially significant risks (refer also to paragraphs 36 and 37, below). However, in 2009, only 22% of respondents surveyed agreed or strongly agreed that "courts provide services without unnecessary delay".[10]

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[8] Over the last year to June 2010 the median age has increased to 166 days

[9] Prisoners on remand are considered innocent until the outcome of their trial, and then they may be found not guilty and released. It is therefore critical, from a human rights perspective, that they be detained for only the minimum time necessary to determine their cases. In addition, remandees are held under higher security conditions than an average prisoner. This makes the provision of facilities for them generally more expensive than for other prisoners.

[10] Public Perceptions of the New Zealand Court System survey, 2009, Nielson Research.

21. As indicated above, reasons for excessive delay are often the same as those that contribute to inefficiencies of court processes, and a result of insufficient incentives to comply with procedural requirements. They include:

21.1. Pressure on resources, such as courtroom or judge availability (eg, because available hearing dates are fully scheduled in some courts, cases are being adjourned to dates on which parties are required to return to court solely for the purpose of scheduling a date for hearing);

21.2. Repeated adjournments and unnecessary court appearances – for example, because one of the participants is not available, or because a particular step (eg, disclosure or legal aid assignment) has not been completed (refer paragraph 12.2);

21.3. Guilty pleas being entered and charges being withdrawn late into the proceedings – sometimes on the morning of a trial (eg, in the 2008 calendar year, summary cases reaching a defended hearing were disposed of at hearing 29% of the time by way of guilty plea; 12% of the time by a combination of guilty plea and withdrawal of charges; and 28% of the time by withdrawal of charges – only 31% were recorded as having been disposed after a judicial hearing).

Excessive complexity

22. Currently, in order to determine progress of a criminal case through the courts it may be necessary to refer to three or more different statutes. Further, those statutes that form the central authorities for criminal procedure (Summary Proceedings Act 1957, and Parts 12 and 13 of the Crimes Act 1961) have been subject to numerous amendments over the 50 years since enacted, often with inadequate consideration of the effects on the overall procedural and legislative framework. Parliamentary Counsel Office advises that the Summary Proceedings Act 1957, in particular, will no longer bear further significant amendment.

23. The Law Commission has reported that submitters on the court system have described it as an "impenetrable maze" for most non-lawyers.[11] While this criticism is not solely the result of a complex legislative framework, the current framework and procedure certainly does not assist understanding of the criminal process. Nor does it promote access to justice through the courts. This has contributed to a growing dissatisfaction among court users with the law and the courts in this area.

24. For example, there are currently seven different categories of offence (including 'minor' offences). These categories are defined principally by cross-reference to the Summary Proceedings Act 1957, and the District Courts Act 1947. How a case proceeds – what process is followed, who the 'fact-finder' is (ie, judge or jury), and which court it is heard in (ie, High Court or District Court), etc. – depends on the category of the lead offence,[12] although there are also

[11] *Delivering Justice for All: A vision for New Zealand Courts and Tribunals*, New Zealand Law Commission, Report 85, 2004

[12] Where a defendant is charged with more than one offence relating to the same incident, the most serious charge is termed the 'lead offence', and it is this offence that determines what process is followed.

provisions to allow certain exceptions to the general rules (eg, an ability for parties to apply for a judge-alone trial in the High Court[13]). This can be confusing to those unfamiliar to the system. This confusion can be further exacerbated by processes that, on the face of it, may not appear to make sense. For example, over 90% of cases in the 'middle-band' category are currently transferred to the High Court only to be transferred back to the District Court for trial under current provisions.

25. It is a fundamental principle that everyone is able to use the courts to assert or defend their rights. However, in order to have access to the courts, people also need a basic understanding of how they work. It follows, therefore, that barriers to this understanding, such as an unnecessarily complex legislative framework, should be removed as far as possible.

Outdated legislative framework

26. Because many of the current provisions relating to criminal procedure have not been altered since they were first drafted over 50 years ago, the language used tends to be relatively archaic. This can further hinder the general public's access to and understanding of the law. However, the legislative framework is also out of date in more fundamental ways:

26.1. It has failed to keep up with developments in the law; and

26.2. It now acts as a barrier to the use of technology solutions.

Developments in the law

27. For example, the Summary Proceedings Act 1957 was enacted prior to the enactment of the New Zealand Bill of Rights Act 1990 (NZBORA). Its provisions were not, therefore, passed through a 'NZBORA lens' and, if introduced today, some aspects of it might not be seen to comply with these requirements. For instance, section 67(8) of the Summary Proceedings Act 1957 imposes a reverse burden of proof[14] on the defence in certain summary cases. However, this general provision may not now be considered desirable in light of the presumption of innocence in section 25(c) of the NZBORA.[15]

28. In addition, our common law system means that the law in New Zealand continues to evolve over time as issues are brought to, and resolved by way of decisions of the Courts. This process too, has meant that it has become desirable to revisit certain provisions to ensure they are consistent with both the way that the law is being interpreted by the Courts, and with the policy intent of Parliament.

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[13] District Courts Act 1947, section 28J

[14] Generally, anyone charged with an offence has the right to be presumed innocent until proven guilty. This means that the prosecution has to collect and present enough evidence to convince the fact finder (judge or jury) that s/he is guilty. That is, the 'burden of proof' is on the prosecution. Where there is a 'reverse burden', it is not necessary for the prosecution to prove an element of an offence. Rather, the onus is on the defendant to present enough evidence to disprove that element.

[15] The Supreme Court decision in *R v Hansen* also suggests that few intrusions on the presumption of innocence will be justified.

Technology

29. Because the legislation currently anticipates a paper based system for managing information (alternatives were not contemplated when it was first drafted), it also now requires a paper based system. So, for example, even where electronic systems are currently in place in the courts, duplicate paper systems must also be maintained. This places limits on the ability of courts to reduce, automate and simplify workflow, and to meet the expectations of court users in an environment increasingly dominated by electronic information technologies.

30. These issues also need to be addressed if the courts are to remain relevant to all New Zealanders and operate effectively in a modern context.

OBJECTIVES OF REFORM

Key Objectives

31. The Government has four key objectives focussed on improving criminal procedure. These are to establish a system that:

- Is efficient;
- Delivers timely justice;
- Is simple and accessible; and
- Is 'future-proofed'.

Objective 1: An efficient system

32. The court system should be cost-effective. That is, the resources involved in supporting criminal processes must be managed so as to maximise outcomes for parties as well as the taxpayer. This incorporates the idea of proportionality – that is, that the procedures and resources applied to resolve a prosecution should match the seriousness of the (alleged) offending behaviour.

Objective 2: Timely justice

33. Proceedings should be completed without excessive delay. Both the defendant and prosecution require some time to prepare for trial (eg, to instruct a lawyer, provide and consider disclosure, make any necessary pre-trial applications to the Court, etc.). Further, the time required for preparation in more complex cases will be longer than in simpler cases. However, no matter how complex a case, the time taken to resolve it should not be significantly longer than is necessary.

Objective 3: Simple and accessible

34. Barriers to understanding of criminal procedure should be removed as far as possible. There are limits as to how far any legislation can be simplified, or how far access can be guaranteed by simply reforming and re-drafting criminal procedure. However, any measures that can promote greater understanding should also assist in promoting greater public confidence in the courts and criminal justice system.

Objective 4: Future-proofed

35. While certain minimum standards for the conduct of criminal proceedings need to be preserved, the legislation should be sufficiently flexible to take into account:

    35.1. The particular circumstances of a case (eg, differences arising from the nature of different types of offence, offending behaviour, or defendant);

    35.2. Future technology changes (eg, the introduction of new information technologies); and

    35.3. Other developments (eg, changes in case management practice).

Further considerations

36. The *rule of law* is fundamental to the successful operation, and economic and social security of a democratic society. Specifically, the criminal law sets out obligations placed by the State on its citizens. The role of the criminal Courts is to enforce this law and uphold the rights of all citizens.

37. To support this system, it is critical that people have confidence in the Courts. Partly this is achieved by realising the objectives outlined above. However, more fundamentally, it means continuing to ensure that decisions of the Courts are impartial, fair, and decided according to established legal principles. It is also important that they are *seen to be* impartial, fair, and decided according to established legal principles. The Government is therefore concerned to preserve these basic principles in the process of reform.

Consideration 1: Impartiality

38. Courts must be independent and impartial. The independence of judiciary is a critical element ensuring that justice is delivered fairly and equally through the Courts. This constitutional position should not be put at risk by any reform to criminal procedure.

Consideration 2: Right to a fair trial

39. Everyone charged with an offence should expect certain basic 'fair trial' rights including, for example, the right to be presumed innocent until proved guilty, the right to be present at the trial, the right to cross-examine witnesses for the prosecution, and the right to appeal decisions. These rights are set out in section 25 of the NZBORA and need to be preserved in any procedure.

Consideration 3: Fundamental legal principles

40. Decisions of the Court must be lawful, and decided on reasoned and justifiable grounds to ensure they are fair and unbiased. No procedure should undermine these basic principles.

REGULATORY IMPACT ANALYSIS

41. There are three approaches that might be taken in response to the problems with criminal procedure noted above. The recommended approach (Option 1) is

to implement an integrated package of comprehensive reform, using a range of legislative and non-regulatory instruments. However, more limited or 'targeted' legislative change and non-regulatory improvements might be contemplated; and there remains the option to maintain the status quo.

42. The table below sets out the estimated fiscal benefits of these three options, which are discussed further below.

Table 2: Estimated fiscal benefits of proposed reform over five years

Option	Cost	Benefit	NPV(8%)	Description
1	$49.5M	$82.3M	$25.7M	Full package of reform.
2	$0.52M	$17.0M	$11.4M	Existing model continues. Targeted changes. High risks around existing issues, and funding constraints continue.
3	N/A	N/A	N/A	Existing model continues. High risks around existing issues. No capacity to cope with expected growth.

Option 1: Implement an integrated package of comprehensive reform

43. The central element of the option for comprehensive reform is the proposed Criminal Procedure Reform and Modernisation Bill (the Bill). This Bill is being developed as part of an integrated 'package', incorporating a range of operational improvements, and building on links with other initiatives across the justice sector.

44. A key characteristic of this package is the multiple dependencies and expected synergies between its different components. These components include proposals to:

    44.1. Assist with case management by and in the Courts;

    44.2. Provide adequate incentives and sanctions on parties to fulfil their obligations to progress cases (and facilitate the significant change in behaviour that will be necessary to implement the proposed reform);

    44.3. Simplify the way offences are categorised for the purpose of determining how they are to progress, and to ensure procedures are proportional to the nature and seriousness of the alleged offence;

    44.4. Stream-line procedure (eg, remove unnecessary steps);

    44.5. Address specific issues with criminal procedure (eg, that might have arisen due to recent developments in the law and/or practice);

    44.6. Ensure that criminal procedure is accessible and remains flexible to adapt to a changing modern environment.

45. Some further proposals flow from the anticipated change to procedure (ie, consequential amendments that require some consideration of policy), and the

package of reform includes certain administrative improvements to support and complement the new policy framework.

46. In addition, while not strictly part of criminal procedure, it is proposed to respond to the Law Commission's report, *Suppressing Names and Evidence (NZLC R109)*, as part of the package of reform. Specifically, it is proposed that the Report's recommendations be incorporated into the Bill, with some minor modifications. (Refer to Appendix 1 for further information.)

47. A summary of proposals is contained in Appendix 3 and diagrams illustrating the current and proposed processes are contained in Appendix 4. Overall, they are intended to ensure that:

    47.1. Where a defendant intends to plead guilty, the plea is entered as soon as practicable;

    47.2. Hearings are only held when a judicial decision is required;

    47.3. Better information is exchanged between parties and out-of-court discussions become the standard (and expected) way for progressing a case;

    47.4. Incentives and sanctions are in place to promote compliance with procedures by all parties;

    47.5. All pre-trial matters are adequately dealt with before trial;

    47.6. Unnecessary adjournments and the number of cases that fail to proceed on the day of trial (or are resolved late in the process) are minimised;

    47.7. There is proper focus on the issues at trial;

    47.8. Jury trials are reserved for only the most serious cases;

    47.9. Modern technologies are appropriately utilised.

48. The outcome of these changes is therefore expected to be fewer court appearances being required to dispose of cases, shorter trials (hearings), and more proceedings being conducted in alternate, less resource intensive jurisdictions (eg, trials heard before a judge rather than jury).

Costs and Benefits

49. As noted at paragraph 31, there are four objectives identified for improving criminal procedure. These are that the system:

- Is efficient;
- Delivers timely justice;
- Is simple and accessible;
- Is 'future-proofed'.

50. Considered at an individual case level, the efficiency and timeliness of the court process is determined by quantifiable factors including:

50.1. The number of events necessary to progress a case through to disposal;

50.2. The time between those events (which should be sufficient to enable readiness for the next event, but not so lengthy as to cause unnecessary delay); and

50.3. The cost and quality of the resources applied at the various steps of the process.

51. It is more difficult to quantify what constitutes 'simplicity' and 'accessibility', or to measure what is 'future-proof'. However, levels of satisfaction expressed by stakeholders with the proposals (and, later, with the system after it is implemented) serve as a useful proxy.

Estimated benefits

52. Requiring parties to progress case-related discussions outside of formal court events, and limiting hearings to only those occasions where a judicial decision is required, is estimated to result in at least 14,000 fewer court events, a 1.6% reduction in the total number of court events.[16] This equates to approximately 11,000 hours per annum of court capacity freed up (or around 10% of the current total effort in the criminal summary jurisdiction).

53. The range of case management proposals are expected to result in the earlier resolution of 7,500 cases, as a result of the earlier clarification of charges and options by the defendant, leading to earlier guilty pleas and withdrawals. That is, 7,500 cases would be resolved earlier with fewer events.

54. Trials that go ahead are also expected to be shorter. It is estimated, for example, that one of the case management proposals, requiring the defence to identify issues in dispute, is likely to save Crown Solicitors at least 107 days in preparation time and 241 days in trial time per annum (approximately 5% of current total trial time).

55. In addition, it is estimated that the average time to dispose of a case will reduce as set out in the table below:

Table 3: Expected reduction in average time to dispose a case

Case type:	Current*	Expected	Difference
District Court – Summary	26 weeks	20-21 weeks	5-6 weeks
District Court – Jury	52 weeks	39 weeks	13 weeks
High Court – Jury	69 weeks	56 weeks	13 weeks

*2008/09 Financial year

[16] Based on current volumes. There are approximately 850,000 District Court criminal court events per annum.

56. Approximately 3,200 cases are likely to progress through less resource-intensive processes as a result of the proposals to re-categorise offences and raise the jury threshold (ie, to follow a judge-alone rather than jury track), and there are likely to be 300 fewer jury trials.

57. Less delay in disposing of cases is also likely to have direct benefits for the remand population. A scenario developed by the Ministry of Justice for the 2009 Prison Population forecast estimated 300 fewer remand beds required in 2017, assuming implementation of the proposals from mid-2012.

Fiscal benefits

58. Benefits have been classified as:

58.1. Direct costs savings – eg, arising from lower juror fees and expenses, and savings from legal aid defence counsel costs for court attendance;

58.2. Costs avoided – eg, deferring or delaying costs associated with the need to appoint additional judges and/or increasing courtroom capacity;

58.3. Efficiency gains – eg, additional capacity freed to undertake other activity such as expected workload growth;

58.4. Non-agency benefits – eg, estimated costs to victims, witnesses,[17] and self-funding defendants.[18]

59. Estimates of these benefits have been made using an average time and dollar value for each court event for the courts and other participants.

60. Over a 10-year period, benefits have been quantified at between $213 million and $320 million, and over a five year period at between $65 million and $98 million.[19] Most lie within the category of efficiency gains, as set out below.

Table 4: Estimated fiscal benefits of proposed reform[20]

Cumulative Benefit:	5 year	10 year
Direct savings	$7.400M	$24.623M
Cost avoidance	$10.573M	$42.682M
Efficiency gains	$61.306M	$190.243M
Other benefits: non-agency	$3.089M	$10.026M
TOTAL	**$82.369M**	**$267.574M**

61. Not all possible fiscal savings have been able to be calculated, mainly because it has been too difficult to do so in the time allowed. This includes potentially significant savings such as:

[17] Using juror fees as a proxy for the cost of attending court.
[18] Assuming that self-funded defendants instruct counsel and therefore incur legal fees.
[19] Using a range of +/-20%.
[20] Figures reflect the range assumption.

61.1. Savings as a result of the introduction of technology – while a primary objective of the proposed change is to facilitate the introduction of information technologies, benefits arising from this have not been accounted for in this Project. These improvements are being pursued through a separate project.[21]

61.2. Costs associated with improvements to the average time on remand;

61.3. Opportunity costs for parties and others required to attend court (eg, witnesses and victims).

Other benefits

62. As noted above, it is difficult to calculate how well the proposed reform will achieve the objectives of making criminal procedure more simple, accessible, and future-proof. However, it can be assumed that levels of satisfaction will rise if parties involved in criminal proceedings need to attend court less frequently, and if cases are more quickly resolved. It is also instructive to note that, while a number of individuals and organisations making submissions on various proposals have raised concern with specific elements of these proposals (see paragraph 85), none indicated that fundamental reform of criminal procedure is not required. As noted at paragraph 85 below, all have been generally in favour of the broad thrust of the proposed reform. This level of general support for the proposed reform provides a relatively high level of confidence that it will, as intended, create a better (simpler and more accessible) framework that will last into the future.

Costs and risks

63. As well as the benefits anticipated to arise from the proposals, there are also certain costs and risks associated with them, particularly in relation to:

63.1. Implementation; and

63.2. Shifts in the workload within the system.

64. To ensure the policy intent of the Project is met when the new Act is passed, investment will be required across the justice sector. The costs of this investment will fall predominantly within the Votes administered by the Ministry of Justice, Police, Crown Law and the Department of Corrections. However, there could also be impacts for other prosecuting agencies (such as Inland Revenue, Customs, and Department of Labour), which lay a relatively small number of charges[22]; and for other agencies with a role in prosecutions (such as the Ministry of Social Development, which has a role in the Youth Court). The Ministry of Justice will engage with these agencies to identify impacts for them, as well as to consult in the development of the implementation design and timing.

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[21] The Ministry of Justice Electronic Operating Model Project has developed high level requirements and options for increasing the use of electronic information in courts.

[22] Around 85% of all charges are laid by the NZ Police. The remaining 15% of charges are laid by all other prosecuting agencies, including local authorities, Crown agencies and a small number or private prosecutors.

Implementation

65. There will be both direct and indirect costs associated with implementation of the proposed reform.

66. Direct fiscal costs will be attached to:

    66.1. Making IT systems changes – most significantly, for 'CMS', the Ministry of Justice's on-line Case Management System, and for 'NIA', the Police's National Intelligence Application.

    66.2. Changing organisational and business models (eg, revision of roles and re-design of business processes).

    66.3. Training – judges, court staff, Police staff, departmental prosecutors, Crown prosecutors, the defence bar, and others with a particular role in criminal procedure will all need to be adequately informed for when the new procedures come into force.

    66.4. Amending information resources (eg, re-printing forms and pamphlets, and updating websites).

67. Indirect costs will be attached to certain short-term inefficiencies that can be expected to arise from the inevitable disruption to business processes within justice sector agencies, and any resistance to (or uncertainty of) new processes early on.

Shifts in workload

68. In addition to eliminating and streamlining certain procedural steps, the proposals include changing some steps so that they occur earlier in the criminal process, and requiring new steps, in some cases. Specifically this will mean additional costs to:

    68.1. The defence and prosecution (Crown, Police and departmental prosecutors), arising out of the proposed requirement for them to enter into case management discussions and complete a case management memorandum near the beginning of the process;

    68.2. The Crown, arising out of the proposal for Crown Solicitors to become involved earlier in the process than now.

    68.3. Police and departmental prosecutors, arising out of the proposal to re-categorise offences so that some offences currently prosecuted by the Crown will be prosecuted by Police and departments.

    68.4. Courts, the prosecution and the defence associated with some pre-trial applications that are unavailable under current procedures.

    68.5. Courts and the prosecution, associated with the new process for identifying and considering cases for transfer to the High Court for trial.

68.6. Corrections, courts and prosecution, associated with providing information to the Court to enable it to provide sentence indications in more cases than now.

69. Further, efficiency savings for one agency may lead to additional pressures on another. (eg, Freed-up court time is likely to be re-used, resulting in additional work for Police as backlogs are cleared – possibly cancelling out savings made in this area).

High level costs

70. The initial justice sector estimates of high level total costs are $35.769M operating and $11.035M capital, over five years. The costs for implementing the Project are as set out below:

Table 5: Summary of costs broken down by agency & year[23]

	$M increase/(decrease) *excluding capital charge*				
	2010/11	2011/12	2012/13	2013/14	2014/15
Capital	1.233	7.158	1.378	0.633	0.633
Operating	1.078	4.296	8.095	11.479	10.822

High level cost-benefit analysis

71. Over a 5-year period the net present value is $25.7 million (using a discount rate of 8%), and over a 10-year period, is $94.8 million.

72. These estimates are based on modelling of the high level impact of proposals presented in the Bill Plan and Commentary released for consultation in December 2009 (refer paragraph 82). Further modelling is underway to update and dis-aggregate benefits and costs at an agency level. This is expected to indicate additional savings to the system. The revised, disaggregated financial data will be used to inform the September/October budget process for justice sector agencies, and will be presented to Cabinet via the planned November paper to the Cabinet Legislation Committee

Funding for implementation

73. The budget package put forward by the Justice Sector for the Baseline Alignment Proposal for Budget 2010 incorporated partial funding (operating and capital) from within the sector. Further operating funding will be required from sector baselines in outyears to fully fund this model. Capital costs have been absorbed within Justice Sector agencies' baselines. Some operating funding has also been absorbed through sector savings and set aside in contingency. A table summarising these costs is contained in Appendix 2.

74. Partially funding the implementation within the justice sector has some risk for the level of benefits expected:

[23] The Legal Services Agency will not exist after late 2010/early 2011, and those costs will be borne through either Vote Courts or Vote Justice.

74.1. Capacity to be funded across the sector – while capacity may be resourced through benefit savings in the future, there will a lag between when benefits are realised, and when resources could possibly be redirected to other sector initiatives or pressures. If capacity resources are not available for certain parts of the process, delays may occur, and benefits would be diminished.

74.2. Capital funding to be absorbed within agencies – the ability of agencies to absorb capital funding may be dependent on them re-prioritising other capital projects or initiatives. While manual workarounds for some system changes could be developed, these would reduce the overall effectiveness of the new procedures.

75. Robust sector governance of the Project is expected to mitigate these risks to a large extent.

Summary of costs and benefits

76. The table below sets out a summary of costs and benefits over the first five years.

Table 6: Summary of costs (excl. capital charge and depreciation) and benefits

Year:	2010/11 Year 1	2011/12 Year 2	2012/13 Year 3	2013/14 Year 4	2014/15 Year 5
Cost	-$2.16M	-$10.30M	-$8.01M	-$10.54M	-$9.85M
Benefit	0	0	$13.93M	$34.10M	$34.33M
Net benefit	-$2.16M	-$10.30M	$5.92M	$23.57M	$24.48M

Option 2: Implement limited legislative and administrative reform

77. A second option to improve criminal procedure is to make more 'targeted' legislative change and non-regulatory improvements. These changes would necessarily be limited to 'stand-alone' proposals – that is, to changes that do not have significant flow-on impacts to parts of system not directly targeted, and that do not rely on changes in other parts of the system in order to be effective. A list of proposals that might form part of a more targeted package of reform is contained in Appendix 5.

Benefits and Risks

78. Over a five year period the net present value of fully implementing the proposals in Appendix 3 is likely to be between $10M and $12M (using a discount rate of 8%), based on high level estimates. However, considerably more work would be required to develop this option, including determining the feasibility of making some of the suggested changes on their own. Further, it carries with it a number of significant risks. These include:

78.1. The benefits of each proposal will be significantly less realisable outside of a supporting (synergistic) framework of complementary proposals.

78.2. Experience has demonstrated that piecemeal changes to the process can have unexpected (and sometimes negative) impacts on different parts not specifically targeted by the change.

78.3. Making the required legislative amendments will exacerbate current problems relating to the complexity of the current legislative framework, and may not actually be possible given advice from Parliamentary Counsel Office that the Summary Proceedings Act 1957 will no longer bear significant amendment (refer paragraph 22).

78.4. Problems arising from the outdated nature of the legislative framework will continue:

78.4.1. Certain elements of the criminal process will remain inconsistent with other areas of the law;

78.4.2. Opportunities to improve efficiency and service through the use of information technologies will be limited. Courts will be required to maintain an essentially paper-based system for managing information.

78.5. Administrative attempts to introduce reform are likely to be only partially successful as the appropriate incentives and sanctions, and supporting resources may not exist. (eg, The proposed Case Management Memorandum was tested at two District Courts.[24] However, without a supporting legislative framework and appropriate resources, it was difficult to get full compliance with the new processes.)

78.6. Costs associated with making improvements administratively would need to be found internally. This raises the significant risk that this funding would not be available.

Option 3: Status Quo

79. The status quo is not sustainable. Without any change, increased costs would almost certainly be incurred (eg, for the additional judicial appointments that would be required to meet growing workload demands, and for extra courthouse capacity such as additional jury capable courtrooms).

80. In addition to this added cost, the problems discussed in this paper would continue to be features of the court system including:

80.1. Inefficiencies;

80.2. Excessive (and potentially increasing) delay in resolving cases;

80.3. Excessive complexity; and

80.4. An out-dated legislative framework that:

80.4.1. Is out of step with other areas of the law; and

[24] Some new procedures were tested at Manukau and Tauranga District Courts to inform the development of the proposals for reform.

80.4.2. Limits the ability of the courts to implement technology solutions.

CONSULTATION

81. The Steering Committee for the Project comprises an interagency group including representatives of the Ministry of Justice (policy and courts operations staff), NZ Law Commission, NZ Police, Crown Law Office and Legal Services Agency.[25] Representatives from the Parliamentary Counsel Office also attend in an advisory capacity.

82. A series of consultation papers relating to specific issues were released from late 2008 through 2009. An exposure draft Bill (the 'Bill Plan') and associated discussion paper (the 'commentary'), incorporating feedback on the earlier proposals, were also released for consultation in December 2009.[26] Further discussion papers on specific topics were released to facilitate more targeted consultation early 2010. Consultation papers have been made available to the general public via the Ministry of Justice website[27] and the Minister of Justice has made several press releases on related topics.

83. The Project also tested the use of case management memoranda at two courts (Tauranga and Manukau District Courts). The initial test ran for 6 months, followed by a comprehensive review, including interviews with stakeholders and test participants. This review resulted in the process and memorandum being revised. (The new process has been retained at both sites.)

84. In addition, the Project has maintained regular dialogue with key stakeholders and stakeholder groups through regular meetings and the direct release of papers and status reports to them. These include:

    84.1. Judges;

    84.2. Members of the legal profession and defence bar;

    84.3. Prosecuting agencies ; and

    84.4. Justice sector agencies and Government Departments with a particular role in relation to criminal procedure.

85. There is generally a high degree of support for reform of criminal procedure among stakeholders. However, a number of the specific proposals have attracted significant criticism from some quarters. In particular:

    85.1. requiring the defence to identify issues in dispute pre-trial and providing an ability to draw an adverse inference from a failure to do so;

    85.2. providing an ability for the Court to impose certain sanctions on parties for non-compliance with criminal procedure; and

    85.3. enabling the court to proceed with a trial in the absence of a defendant.

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[25] The Legal Services Agency joined the Steering Group in 2010.

[26] Over 30 submissions in response to the Bill Plan and commentary were received from individuals and agencies with a direct involvement in the courts.

[27] http://www.justice.govt.nz/policy-and-consultation/crime/criminal-procedure-simplification-project

86. This paper has been circulated, in draft, to New Zealand Police, Crown Law Office, Legal Services Agency, Department of Building & Housing, Department of Conservation, Department of Corrections, Department of Internal Affairs, Department of Labour, Government Communications Security Bureau, Inland Revenue Department, Land Information New Zealand, Ministry for the Environment, Ministry of Agriculture & Forestry, Ministry for Culture & Heritage, Ministry of Defence, Ministry of Economic Development, Ministry of Education, Ministry of Fisheries, Ministry of Foreign Affairs & Trade, Ministry of Health, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Defence Force, New Zealand Food Safety Authority, Serious Fraud Office, State Services Commission, The Treasury, Statistics New Zealand, Ministry of Women's Affairs, Te Puni Kōkiri, and Ministry of Pacific Island Affairs.

CONCLUSIONS AND RECOMMENDATIONS

87. In the face of forecast increases in the volumes of courts' criminal business, and the problems identified with criminal procedure, it is not possible to maintain the status quo. While piecemeal changes have been made to the current legislative framework to address issues over many years, this approach is no longer sufficient to address current problems, and raises its own set of risks.

88. There is general acceptance that comprehensive reform is required to ensure criminal processes meet contemporary and future expectations that they are not only fair, but also efficient, accessible and flexible. It is therefore recommended that the integrated package of change proposed be implemented by the Criminal Procedure Reform and Modernisation Bill.

IMPLEMENTATION

89. The proposed reform will require a significant change in the behaviour of many currently involved in the criminal process and a high level of cross-sector cooperation and coordination. This level of change will carry with it its own risks, including:

    89.1. A level of resistance to the proposed change that could frustrate efforts to realise the anticipated benefits; and

    89.2. The emergence of consequences, which were both unintended and unseen.

90. The proposals to provide a robust 'tool-kit' of incentives and sanctions (refer sub-paragraph 44.2) together with training will greatly assist in promoting the culture change that will be necessary to successfully implement the proposals. Further, if details of the proposed procedural reform needs to be 'fine-tuned' in light of experience, this is likely to be accomplished relatively straightforwardly by amending secondary legislation, compared to introducing a new Bill to Parliament as is often currently necessary (refer sub-paragraph 44.6).

91. In addition, officials and the Law Commission have actively and regularly consulted with key stakeholders in developing the proposals. The support of these stakeholders will be important in championing the change when it is implemented (refer paragraphs 81 to 85).

92. Subject to further analysis of implementation issues with sector agencies, it is proposed that the Bill's provisions be commenced in stages. Whether provisions are commenced in earlier or later stages will depend on the effort required to operationalise them, the costs and systems impacts associated with implementation, and to what extent they can be implemented independently of other provisions.

93. Orders in Council would be used to bring provisions into force; however, there would also be a specified date by which time all remaining provisions must come into force, if they have not yet been brought into force by Order in Council. The stages and the specified end date will be determined as part of the drafting of the Bill, so that Cabinet Legislation Committee can consider these issues at the same time as the Bill.

94. No other options for implementing the proposals are considered viable (eg, implement on a regional basis).

MONITORING, EVALUATION AND REVIEW

95. A full benefits realisation and review plan will be developed as part of detailed planning for implementation of the proposals. However, at this early stage it is possible to say that the success of the proposals will be monitored and reviewed by the Ministry of Justice as part of its usual business processes.

96. The Ministry and Police will both establish Implementation Steering Groups, to plan for and monitor implementation specific to each agency. These Steering Groups will consider the monitoring requirements, including what should be monitored, how it will be monitored, how often, and by whom. Police will be reliant on Ministry data to inform the majority of its monitoring activity, supported by any data able to be collected internally.

97. As noted at paragraph 50, the success of the proposals can be measured in terms of the following benefits:

- Costs avoided;
- Delay avoided; and
- User satisfaction with process.

98. In addition, it will be important to assess:

- Levels of compliance with the new procedures; and
- The effectiveness of the proposals (ie, if they have the expected effect).

99. Appendix 6 provides an initial outline of how the proposals will be assessed.

Appendix 1: Suppression of Names and Evidence

Introduction

1. The Minister of Justice tabled the Law Commission report, *Suppressing Names and Evidence (NZLC R109)* (the Report) in November 2009. The Report highlighted problems with the current suppression framework, and the risk that these may threaten public confidence in the courts, including:

    - Inconsistencies in the application of the current law; and

    - Uncertainty in relation to the statutory provisions covering suppression that may jeopardise certain fundamental principles, such as the right to freedom of expression.

2. The Law Commission concluded that a number of changes are required to place greater emphasis on the principle of open justice, and to ensure that departures from this principle are based on transparent, explicit and consistent grounds.

Proposed Reform

3. Under the proposals from the Report, the starting point for considering publication of evidence and names will be a presumption of open justice. Further, it proposed that the grounds on which names or evidence can be suppressed should be clearly specified.

Name Suppression

4. It is proposed that name suppression will be available to:

    - Defendants – to protect the right to a fair trial and the safety of any person, or to prevent extreme hardship to the defendant. (To address concerns about well-known people being given preferential treatment by the Courts, it is proposed, in addition to the Law Commission's test, that the legislation provide that there will be no presumption of extreme hardship solely on the ground that a person is well-known.)

    - Victims, witnesses and others – if, for example, publication would result in undue hardship.

5. As well as these general rules it is proposed that there be specific protections for certain groups within these categories, including:

    - Victims of specified sexual offences; and

    - Child witnesses and victims. (Nb. The Law Commission recommended removing the automatic protection for child witnesses; however, this recommendation has been revised and it is proposed that protections for child witnesses be maintained and extended to child victims.)

Suppression of Evidence

6. It is proposed that evidence may be suppressed in situations where, for example:

- There is a real risk of prejudice to a fair trial;
- The safety of any person may be endangered; or
- It is necessary to prevent undue hardship to victims.

Closed Court

7. As well as suppression orders, it is proposed that the Court may be closed to the public (except for 'legitimate media') in certain circumstances. This power is intended to be used as a last resort to maintain the law or security or defence of New Zealand, and a suppression order is not sufficient to offset the risk.

Interim Suppression Orders

8. The Law Commission proposed that the current ability for registrars to make interim name suppression be removed. However, this power is not often used and is an important tool to keep cases moving through the system. It is therefore proposed that it be retained with the existing safeguards.

Suppression Register

9. The Law Commission recommended that the development of a national register of suppression orders be advanced as a matter of high priority. A register would enable the media and others to check the terms and status of suppression orders made by the Court. It is proposed that the Ministry of Justice continue to consider ways of assisting the media to have the information necessary to comply with suppression orders, including the development of a suppression register. This does not require legislative change to implement.

Offence provisions

10. It is proposed to adopt the Law Commission's recommendation to create an offence where an onshore internet service provider or content host becomes aware that they are hosting information that they know is in breach of a suppression order and they fail to block access or remove it as soon as is reasonably practicable.

11. It is also proposed to update and increase the offences for breaching suppression orders. These currently range from a fine not exceeding $1,000 or imprisonment not exceeding 3 months for an individual and a fine not exceeding $5,000 for a body corporate. It is proposed that these be increased to a maximum of 6 months imprisonment for an individual or a maximum $100,000 fine for a body corporate.

Impact of proposed reform

12. The proposed reform of the law on suppression is generally likely to have benefits consistent with the key objective of the Criminal Procedure (Simplification) Project to establish a system that is simple and accessible. Clearer rules in relation to this area of the law should promote greater confidence in the courts and criminal justice system, and are likely to be reflected in higher satisfaction levels of those who have an interest in knowing the business of the courts – ie, the general public.

13. Apart from costs associated with establishing a suppression register at some time in the future, the proposals will have no fiscal impact.

Appendix 2: Costs of implementation

The table below shows implementation costs, as agreed for Budget 2010, including costs that will be funded from an external contingency fund (funded externally) and costs that will be absorbed within agencies' baselines (funded internally).

Table A: Indicative implementation costs broken down by agency & year (including capital charge)[28]

Year:		2010/11 – Costs ($M)			2011/12 – Costs ($M)			2012/13 – Costs ($M)			2013/14 – Costs ($M)		
VOTE:	Source of funding:	Funded externally	Funded internally	Total Costs	Funded externally	Funded internally	Total Costs	Funded externally	Funded internally	Total Costs	Funded externally	Funded internally	Total Costs
Votes Courts/Justice	Capex	0.0	0.883	0.883	0.0	4.697	4.697	0.0	0.803	0.803	0.0	0.633	0.633
	Opex	0.374	0.260	0.634	1.563	0.613	2.176	1.282	0.961	2.243	1.127	0.490	1.617
Vote Police	Capex	0.150	0.0	0.150	0.710	0.0	0.710	0.175	0.0	0.175	0.0	0.0	0.0
	Opex	0.492	0.0	0.492	1.548	0.470	2.018	2.264	1.302	3.566	2.208	1.302	3.510
Vote Crown Law	Capex	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Opex	0.0	0.0	0.0	0.0	0.0	0.0	0.457*	1.525	1.982	0.0	6.100	6.100
Vote Legal Services Agency	Capex	0.0	0.0	0.0	0.0	0.051	0.051	0.0	0.0	0.0	0.0	0.0	0.0
	Opex	0.0	0.025	0.025	0.042	0.079	0.121	0.018	0.079	0.097	0.010	0.079	0.089
Vote Corrections	Capex	0.0	0.200	0.200	0.0	1.700	1.700	0.0	0.400	0.400	0.0	0.0	0.0
	Opex	0.0	0.0	0.0	0.335	0.219	0.554	0.330	0.547	0.877	0.330	0.547	0.877
TOTAL CAPEX		**0.150**	**1.083**	**1.233**	**0.710**	**6.448**	**7.158**	**0.175**	**1.203**	**1.378**	**0.000**	**0.633**	**0.633**
TOTAL OPEX		**0.866**	**0.285**	**1.151**	**3.488**	**1.381**	**4.869**	**4.351**	**4.414**	**8.765**	**3.675**	**8.518**	**12.193**

**Already appropriated in Budget 2010 Vote Attorney-General the 2012/13 year*

[28] The Legal Services Agency will not exist after late 2010/early 2011, and those costs will be borne through either Vote Courts or Vote Justice.

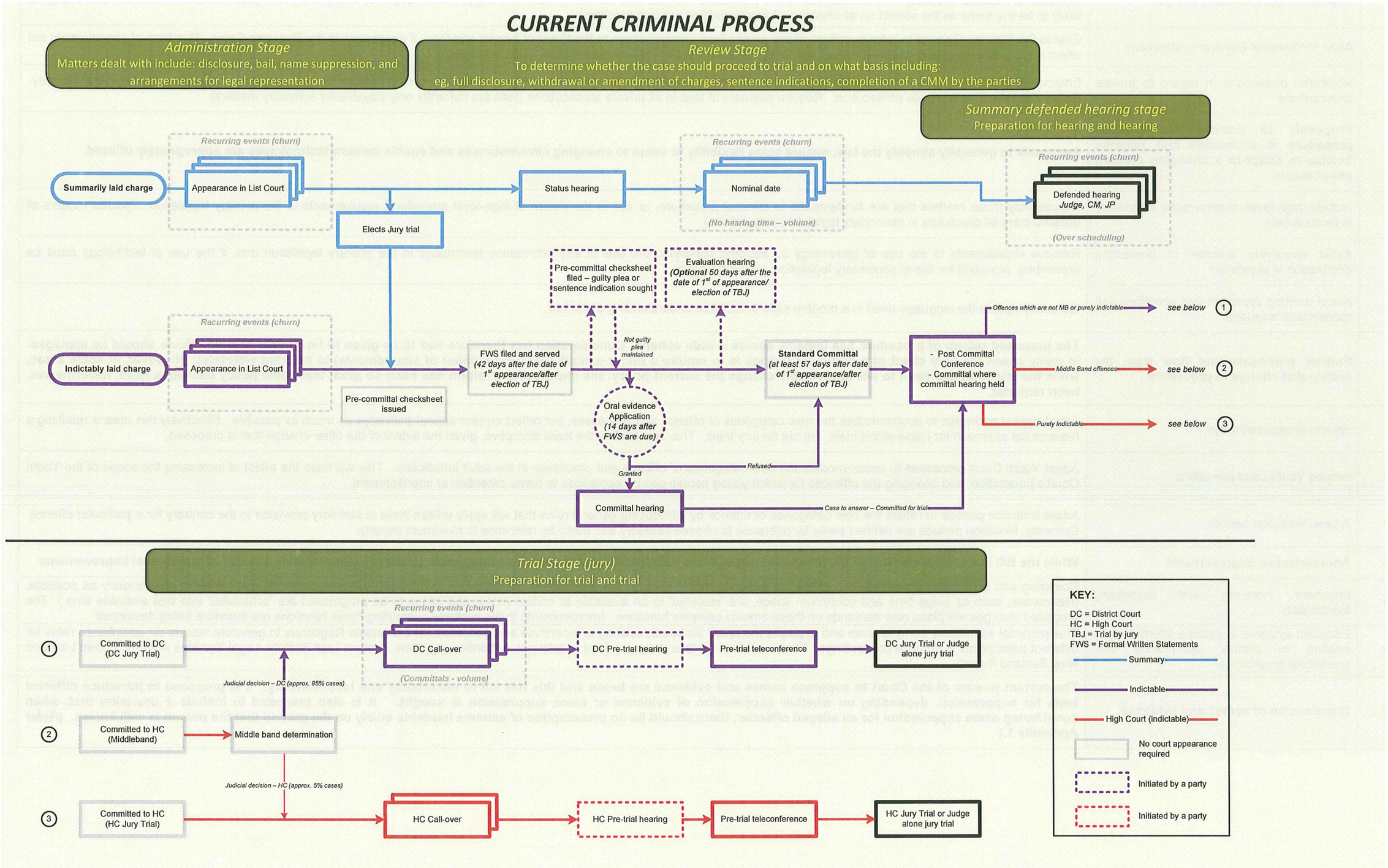
Appendix 3: Summary of Proposed Reform

#	POLICY PROPOSAL	BRIEF DESCRIPTION
1.0	**Proposals to assist with case management**	**Case management (sometimes called caseflow management) is an underlying philosophy that has informed the development of the proposed reform and is essential to achieving their aims. This philosophy:** • **involves the Court taking greater control of the progress of cases; and** • **requires a high level of cooperation between all the participants in the court process in order to move cases from filing to disposition in a timely, efficient and appropriate way.** **Many case management strategies and techniques do not require legislative authority to implement, and have already been adopted by courts. Further, legislative provisions that are necessary can largely be left to regulations rather than primary legislation. The Bill will include provisions that require prosecution and defence to manage their cases in accordance with prescribed procedures and will provide a regulation-making power for this purpose. It will also contain some provisions to underpin (and in some cases clarify) the authority of the Court and reinforce expectations on parties.**
1.1	Make case management memoranda mandatory	Require parties to jointly complete a case management memorandum (CMM) to facilitate discussions between the prosecution and defence with the aim of resolving issues between themselves sooner, and if possible, prior to any subsequent court event.
1.2	Require defence to identify issues in dispute pre-trial	Require the defence to give notice of issues in dispute as part of the prescribed case management process and, at the start of a jury trial, give an opening address that also identifies these issues. The prosecutor and/or judge may invite the fact finder to draw an inference about the defendant's guilt from a failure to identify issues. Aim for trials to be more focussed, shorter, and less inconvenient to witnesses (who may not need to appear if their evidence is not disputed).
1.3	Provide for sentence indications by judges	Give legislative authority to allow sentence indications. Sentence indications can lead to earlier guilty pleas and, while common in some District Courts, the High Court has been reluctant to give them without statutory authority.
1.4	Extend Registrars' powers to withdraw warrants to arrest where a defendant makes a voluntary appearance at court	Empower Registrars to withdraw warrants to arrest where defendants indicate they wish to make a voluntary appearance at court having previously failed to attend court. This will enable appropriate cases to be re-scheduled cases efficiently and mitigates certain risks associated with having an active arrest warrant where a defendant has attempted to appear at court.
2.0	**Proposals to provide adequate incentives and sanctions on parties to fulfil their obligations to progress cases**	**Adequate incentives and sanctions on parties will provide mechanisms to ensure compliance with procedural obligations and will assist in effecting the cultural change that will be required to implement the proposed reform. However, not all possible incentives and sanctions need be provided in the legislation (for example making a complaint to a professional body is also a sanction, which requires no legislative authority). Legislated mechanisms should therefore be considered part of a wider 'tool-box' of options, and would generally be considered to be 'last resort' options, not used frequently.**
2.1	Provide an ability for the Court to impose cost orders	Empower the Court to impose a cost order against defence counsel or prosecution if satisfied that either party has failed without reasonable excuse to comply with a requirement imposed by the new criminal procedure legislation.
2.2	Provide ability for the Court to consider compliance as a factor at sentencing	Empower Court to take into account at sentencing the failure of the prosecution or the offender to comply with a requirement imposed on them under the new criminal procedure legislation; or steps taken by the offender to expedite proceedings.
2.3	Allowing the Court to proceed in the absence of the defendant	Introduce clearer rules for proceeding in the absence of the defendant to reduce delay where the defendant fails to appear without good reason.
2.4	Allowing bail conditions to be imposed for the purpose of expediting case progression	Enable a wider range of bail conditions to be imposed to facilitate activity that assists case progression. For example, applying for legal aid, engaging or instructing counsel, attending for the preparation of Probation reports and or other reports such as Alcohol and other Drug Assessments.
3.0	**Proposals to simplify the way offences are categorised for the purpose of determining how they are to progress, and ensuring procedures are proportional to the nature and seriousness of the alleged offence**	**Reduce the current 7 categories of offence to 4, and allocate offences to categories on a principled and rational basis. The proposed new categories are:** • **Category 1: Offences not punishable by a term of imprisonment;** • **Category 2: Offences punishable by a term of imprisonment not exceeding 3 years;** • **Category 3: Offences punishable by a term of imprisonment exceeding 3 years that do not fall into category 4;** • **Category 4: Offences punishable by a term of imprisonment exceeding 3 years that must be heard in the High Court.**
3.1	Remove the minor offence category	Abolish the category of minor offences, which have fallen into disuse. Those offences that are currently in this category will become either an infringement offence or (if they contain a *mens rea* element) a category 1 offence.
3.2	Remove the prosecution choice of forum	Abolish the category of indictable offences that may be laid summarily by the prosecution (listed in Schedule 1 of the Summary Proceedings Act 1957). Choice of forum (jury or judge alone trial) will be left to the defendant to decide. This is expected to result in fewer jury trials (and more judge alone trials).
3.3	Remove District Court only category of indictable offences	Abolish the category of indictable offences that can only be heard by jury and only in the District Court.

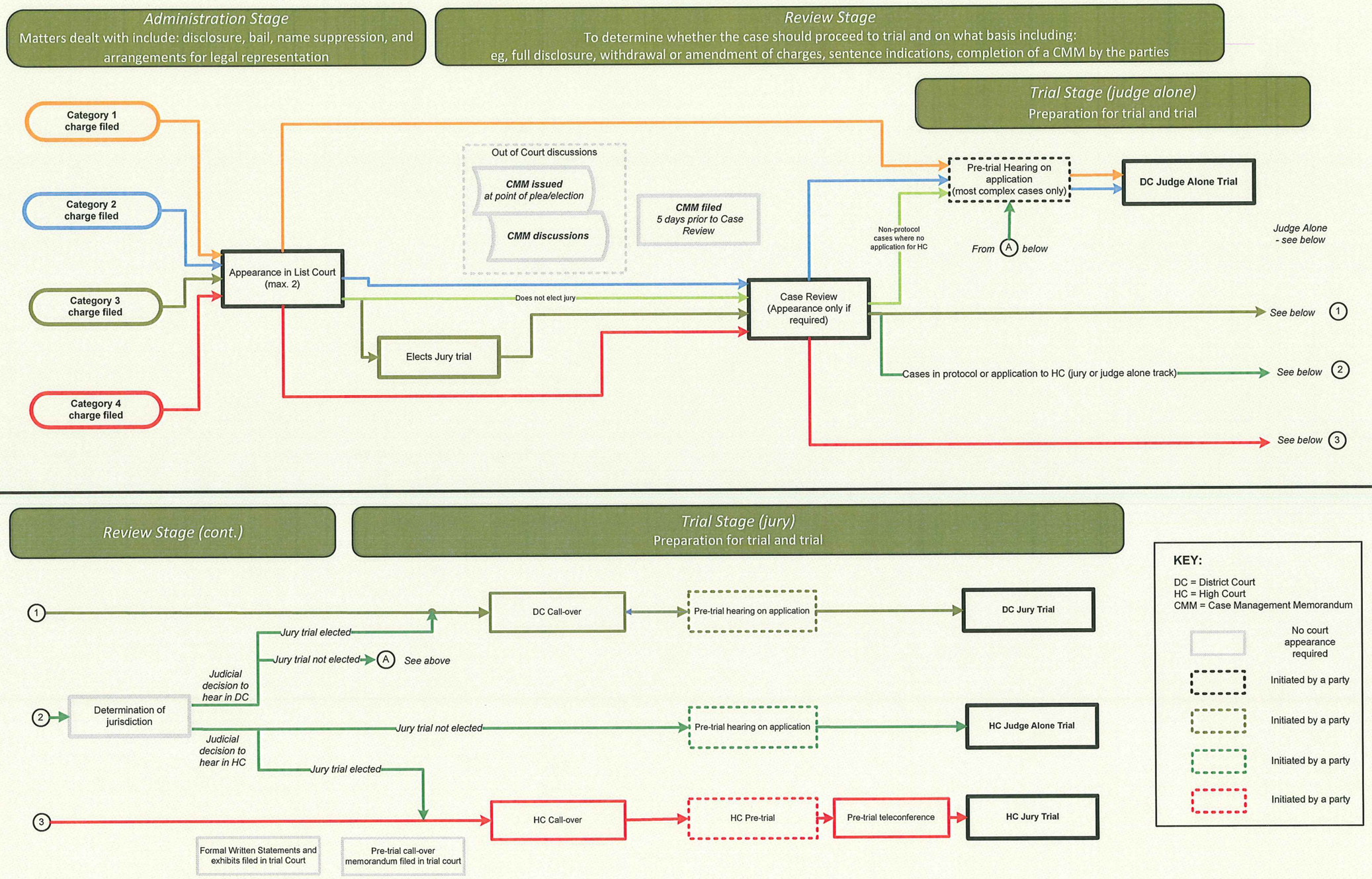
3.4	Remove the 'middle band' category and replace with a 'protocol' and application mechanism	Abolish the list of offences (in Schedule 1A, District Courts Act 1947) that can be heard in either the High or District Court. Establish a 'protocol' between the High Court (HC) and District Court (DC) to identify cases (by reference to offence type and other factors, eg complexity) that should be reviewed to decide which court they should be tried in (HC or DC), together with an mechanism to enable the prosecution and/or defence to apply for trial in the HC. (See also, proposal #4.3.) Allows better targeting of cases suitable for HC.
3.5	Reduce the number of High Court only offences	Limit the number of offences that can only be heard in the High Court (currently listed in Schedule 1A of the District Courts Act 1947) to those that are most serious and for which there is a public interest in hearing them in the High Court by a jury.
3.6	De-couple link between fact-finder and jurisdiction	Separate the decision about who should determine a case (judge or jury) from the decision about where the case should be heard (High Court or District Court). Except for the small number of category 4 offences, potentially any category 3 offence may be heard by jury or judge in either the High Court or District Court.
3.7	Raise the jury threshold	Increase the threshold at which jury trial might be elected by the defendant from where the maximum penalty for an offence is generally more than 3 months imprisonment (some offences with a penalty greater than 3 months are currently also excluded by statute) to where it is more than 3 years unless exceptional circumstances apply, in which case a jury trial may be elected where the penalty is 3 years imprisonment or less.
4.0	**Proposals to stream-line procedure.**	**The key procedural distinction will become:** • **Judge-alone track – a simple and quick procedural path for hearing a case before a judge sitting alone in the District Court and High Court, if the case is transferred, with limited ability for parties to make pre-trial applications to accommodate more complex judge-alone cases.** • **Jury track – a more complex procedure where jury trial is elected (category 3) or required (category 4). This procedural path would usually result in a case being heard before a jury (with some exceptions, for example, if juror intimidation becomes an issue). The more complex nature of the track generally reflects the particular requirements of juries.**
4.1	Provide a single charging 'document' and replace need to 'swear' an information with an offence provision	Replace the two forms of 'information' (document that commences proceedings in the District Court) and 'indictments' (the formal written statements of a charge(s) presented at trial) with a requirement to file a 'charge' (the form of which will be prescribed in regulations). The need to swear an information (ie, to take an oath or affirm that it is true before it is filed) will be replaced by a new offence of 'knowingly or recklessly filing a charge containing false or misleading information'.
4.2	Require early entry of plea and election	Require the defendant to elect jury trial at the same time as a plea is entered (while this generally happens now, there is no statutory provision to this effect). In addition, the defendant's ability to change their election will be restricted (currently they are able to change their election multiple times throughout a proceedings).
4.3	Remove the 'committal' step and change requirements for formal written statements	Remove committal as a formal step, which is currently generally automatic on the basis of certain papers being filed. The critical steps associated with committal (eg, formal written statements and taking of oral evidence, where appropriate) would remain as part of pre-trial processes.
4.4	Establish a collaborative transfer process for determining which cases are heard in the High/District Court	Establishing a process where cases identified by reference to the protocol (refer process #3.3) or application for transfer to the High Court are considered by both a District Court judge and a High Court judge against a set of statutory criteria to ensure that the High Court receives an appropriate diet (including cases that are complex or would be difficult for the District Court to hear), and the respective capacity of both courts is also taken into account.
4.5	Involve Crown earlier in proceedings	Move the point at which the Crown becomes involved in proceedings from just after committal (or before callover following abolition of committal, proposal # 4.3) to the review stage (refer process map, Appendix 4).
4.6	Remove sentencing limits on District Court Judges	As a general rule, providing that sentencing jurisdiction follows trial jurisdiction (so that cases do not need to be transferred to another Court for sentencing following a determination of guilt).
4.9	Remove complaints procedure	Abolish the complaints procedure, which is mechanism in the Summary Proceedings Act for commencing non-offence proceedings and is seldom used. Replace with a simple application process. This procedure has fallen into dis-use.
5.0	**Proposals to address specific issues with criminal procedure**	**Various proposals to improve criminal procedure, many of a relatively technical legal nature.**
5.1	Changing law regarding suppression.	Changes to the existing suppression framework to place greater emphasis on the principle of open justice and to ensure that departures from this principle are based on transparent, explicit and consistent grounds. (Including provision that there should be no presumption in favour of suppressing the name of an alleged offender solely on the ground that the person is well known.) The changes form the Government response to the Law Commission report, *Suppressing Names and Evidence* (NZLC R109), November 2009.
5.2	Provide flexibility to continue where jury numbers fall.	Allow greater flexibility for the Court to continue with a jury trial when jury numbers fall to 10 during the course of a trial to avoid the need for a re-trial in these circumstances.
5.3	Repeal s 68(7) Summary Proceedings Act	Remove the reverse onus currently applicable to summary cases and apply the evidential rules currently applicable to indictable cases to all cases. (Note that where a case can be made to warrant a reverse onus, provision will be made for this.)
5.4	Repeal s 366(2) Crimes Act and s 67(5) Summary Proceedings Act.	Allow an adverse inference to be made from the failure of a defendant's spouse to give evidence. (There is no justification for according a spouse any special status over other relationships for criminal and evidence law purposes.)

5.5	Provide for representative charges	Provide for representative charges where there has been repeated conduct over a period of time but it is not possible to fully particularise the individual charges; and where there is repetitive or multiple offending in circumstances where particulars are available but the number of charges makes separate charges unmanageable and the verdict on one charge is likely to be the same as the verdict on all charges. (Largely codifies existing practice.)
5.6	Allow for Solicitor-General's references	Enable the Solicitor-General to refer questions of law arising from criminal cases to the Court of Appeal and then, if necessary, to the Supreme Court. This form of appeal would not affect an acquittal but would enable errors of law, of significance beyond the immediate case, to be addressed.
5.7	Additional protections in regard to private prosecutions	Empower District Court Judges to require a private prosecutor to establish a prima facie case prior to issuing a summons or warrant for arrest. Explicitly authorise the Attorney-General to take over a private prosecution. Require payment of fees in all private prosecutions (fees are currently only payable for summary matters).
6	**Proposals to ensure that criminal procedure is accessible and remains flexible to adapt to a changing modern environment**	**Proposals to generally simplify the law, ensure some flexibility to adapt to changing circumstances and enable modern technologies are appropriately utilised.**
6.1	Include high-level requirements in primary legislation only.	Include only those matters that are fundamental to criminal procedure, or are in the nature of high-level procedural requirements in the primary legislation. Include matters of detailed criminal procedure in secondary legislation (regulations).
6.2	Avoid specifying manner of presenting information in legislation	Remove impediments to the use of technology by avoiding specifying the use of any information technology in the primary legislation and, if the use of technology must be prescribed, providing for this in secondary legislation, where possible.
6.3	Adopt drafting approach that simplifies and modernises language.	Generally update the language used in a modern style to facilitate understanding of the law.
7.0	**Further proposals that flow from the anticipated change to procedure**	**The proposed reform of procedure has impacts across a wide sphere. Consideration has therefore had to be given to how these flow-on effects should be managed. In many cases the only effect of a particular change is to require a minor amendment (or a number of amendments) to relevant statute(s). However, in some areas, while the intention has been to not appreciably change the current policy, the impact of the reform has been so great that some policy decisions have, nevertheless, been required.**
7.1	Amend appeal pathways	Adapt appeal pathways to accommodate the new categories of offence and processes, but reflect current appeal pathways as much as possible. Effectively this means retaining a hierarchical approach for judge-alone trials, but not for jury trials. This approach is the least disruptive, given the extent of the other change that is proposed.
7.2	Amend Youth court provisions	Adapt Youth Court processes to accommodate the new categories of offence and processes in the adult jurisdiction. This will have the effect of increasing the scope of the Youth Court's jurisdiction, and changing the offences for which young people can be sentenced to home detention or imprisonment.
7.3	Amend limitation periods	Adapt limitation periods to reflect the new categories of offence by introducing general rules that will apply unless there is statutory provision to the contrary for a particular offence. Currently, limitation periods are defined partly by reference to offence category and partly by reference to maximum penalty.
8.0	**Administrative improvements**	**While the Bill is a central element of the planned change, it has been developed as part of an integrated 'package', incorporating a range of operational improvements**
8.1	Improved rostering and scheduling functionality	Rostering and scheduling processes are critical for ensuring that resources are allocated in the right mix to progress cases through the court system as efficiently as possible. (Resources, such as judge time and courtroom space, are 'rostered' to be available at certain times; and cases to be progressed are 'scheduled' into that available time.) The proposed changes will place new demands on these already complex functions. Improvements to the systems supporting these functions are therefore being developed.
8.2	Establish systems to capture information in relation to parties' compliance with procedural timeframes	This proposal specifically complements and supports the set of proposals relating to incentives and sanctions. It will enable Registrars to generate reports on compliance rates for different participants in criminal proceedings. These will then be able to be provided to relevant authorities (eg, New Zealand Law Society, Legal Services Agency, Crown Law and New Zealand Police).
9.0	**Suppression of names and evidence**	**The current powers of the Court to suppress names and evidence are broad and this has led to uncertainty and inconsistency. It is proposed to introduce different tests for suppression, depending on whether suppression of evidence or name suppression is sought. It is also proposed to include a provision that, when considering name suppression for an alleged offender, there should be no presumption of extreme hardship solely on the ground that the person is well known. (Refer Appendix 1.)**

Appendix 4: Process Maps (assumes not guilty plea maintained throughout process)



PROPOSED CRIMINAL PROCESS



Appendix 5: Summary of proposals for targeted reform

The following legislative changes might be implemented as 'stand-alone' proposals (Option 2):

- Provide for sentence indications by judges;
- Extend Registrars' powers to enable them to withdraw warrants to arrest in cases where a defendant makes a voluntary appearance at court;
- Provide an ability for the Court to impose cost orders on non-compliant parties (defence and prosecution);
- Provide an ability for the Court to consider a defendant's compliance with procedure into account at sentencing;
- Allow for the Court to proceed in the absence of the defendant where he/she fails to appear without good reason;
- Raise the jury threshold;
- Remove sentencing limits on District Court Judges;
- Change the law regarding suppression of names and evidence;
- Provide greater flexibility to continue a trial where the jury number falls during the course of the trial;
- Remove the reverse onus provision in section 67(8) of the Summary Proceedings Act;
- Remove provisions that no adverse comment can be made if a defendant fails to call his/her spouse;
- Provide for representative charges;
- Allow Registrars greater powers to withdraw warrants to arrest where defendants make a voluntary appearance at court;
- Allow for Solicitor-General's references to the Court of Appeal (and Supreme Court, if necessary);
- Place some additional requirements on private prosecutors to help prevent vexatious prosecutions from proceeding.

In addition, certain other changes may be introduced administratively, including:

- Introduce case management memoranda; and
- Improve rostering and scheduling functionality within the courts.

Appendix 6: Indicative outline of how proposals will be monitored by Ministry of Justice

Factor to be monitored	Performance indication sought	Data source/Measure	Who
Costs avoided	Reduction in juror fees and expenses.	FMIS[29]	MoJ Project Manager/ Business Information/ Performance & Improvement Teams.
Costs avoided	Reduction in average cost of a case.	Analytical datasets established for Project.	MoJ Project Manager/ Business Information/ Performance & Improvement Teams.
Costs avoided/ Effectiveness	Reduction in the number of jury trials held.	Monthly business performance data (against baseline performance data).	MoJ Project Manager/ Business Information/ Performance & Improvement Teams.
Cost avoided/ Delay Avoided/ Effectiveness	Reduction in the average number of events per disposed case.	Monthly business performance data (against baseline performance data). Analytical datasets established for Project.	MoJ by Project Manager/ MoJ Business Information/ Performance & Improvement Teams
Costs avoided/ Delay avoided/ Effectiveness	Reduction in the average hearing time for each trial.	Monthly business performance data against baseline performance data.	MoJ Project Manager/ Business Information/ Performance & Improvement Teams.
Delay avoided/ Effectiveness	Cases resolving at earlier steps in the process.	Monthly business performance data against baseline performance data Analytical datasets established for Project.	MoJ Project Manager/ Business Information/ Performance & Improvement Teams
Delay avoided	Reduction in the average time to disposal per disposed case.	Monthly business performance data against baseline performance data. Analytical datasets established for Project.	MoJ Project Manager/ Business Information/ Performance & Improvement Teams

[29] FMIS is the Government's Financial Information System.

Factor to be monitored	Performance indication sought	Data source/Measure	Who
Satisfaction/ Effectiveness	Increased credibility of court services through improved public perception, both general and specific (eg, victims and witnesses).	Current "Public Perceptions" survey. Possible addition of questions for new court user survey.	Existing AC Neilsen Public Perceptions survey question "Courts provided services without unnecessary delay." Next survey 2011.
Compliance	Number of CMMs filed. Reduction in the average number of events per case.	Monthly business performance data against baseline performance data.	MoJ Project Manager/ Business Information/ Performance & Improvement Teams
Compliance	Reduction in the number of Warrants to Arrests needing to be issued.	Via specific query from CMS.[30]	MoJ Project Manager/ Business Information/ Performance & Improvement Teams

Key:

MoJ = Ministry of Justice

CMMs = Case Management Memorandum

[30] CMS is the Ministry of Justice on-line Case Management System.