



**Te Tari Ture  
o te Karauna**  
Crown Law

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## Jury selection

# Te whiriwhiri i te hunga whakawā

*As at 1 January 2025*

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The Solicitor-General's Prosecution Guidelines  
Te Aratohu Aru a te Rōia Mātāmua o te Karauna

## Introduction | Ngā kupu whakataki

1. The Juries Act 1981 identifies persons who are disqualified from or ineligible to serve on a jury.<sup>1</sup> Outside of these disqualification and ineligibility provisions, prosecutors should use selection processes to obtain a fair and impartial jury that is representative of the community. This recognises juries' important role in maintaining public confidence in the criminal justice system.

## Scope | Te korahi

2. This guideline applies to all jury trials. It outlines high-level principles, including when and how a prosecutor should challenge a potential juror for cause or without cause.

## Glossary | Kuputaka

3. In this guideline:
  - 3.1 A *challenge for cause* is the ability for a party to challenge a potential juror on specified grounds under s 25 of the Juries Act.
  - 3.2 A *challenge without cause* is the ability for a party to challenge a potential juror under s 24 of the Juries Act.

## Guideline | Te aratohu

4. Prosecutors who conduct jury trials are expected to be familiar with the Juries Act.

### When should a prosecutor challenge for cause?

5. The Juries Act allows parties to challenge a juror for cause on defined grounds. The Act does not limit the number of challenges for cause.
6. A prosecutor should only challenge for cause if they reasonably believe that one or more grounds for a challenge for cause is met.

### When should a prosecutor challenge without cause?

7. Prosecutors' challenges without cause should focus on potential jurors whose inclusion could undermine the integrity of the jury. This may be on the same grounds as a challenge for cause, but where the conditions for such a challenge are not met. Examples include:
  - 7.1 The potential juror is known or related to a participant in the trial, such as the complainant, counsel, the defendant or any of the witnesses.
  - 7.2 There is a reasonable basis for believing the potential juror may be biased.

#### *Commentary*

An example might be that the potential juror has made a remark that is biased against one of the parties.

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<sup>1</sup> Juries Act 1981, ss 6-8.

- 7.3 The potential juror has demonstrated that they may not wish to participate in the proceedings.

*Commentary*

An example might be where the potential juror has made hostile remarks about the court process.

- 7.4 The potential juror has acted in some way, or there is some other indication, that they will be unable to perform the role.

*Commentary*

An example might be where the potential juror has shown they are not able to understand instructions.

8. A prosecutor should never challenge without cause based on any of the prohibited grounds of discrimination in the Human Rights Act 1993.<sup>2</sup>

**Jury vetting**

9. Sometimes, prosecutors may seek information from the New Zealand Police about individuals on the jury panel list.
10. This can be information about previous criminal convictions or other information such as the fact that a potential juror has been a victim of an offence. This information helps prosecutors decide whether to challenge potential jurors.
11. The Supreme Court has confirmed that obtaining previous conviction histories for jury vetting purposes is lawful. The Court did not have to directly consider the status of information that is wider than just previous criminal convictions such as material from Police databases such as the National Intelligence Application (NIA). However, the Court observed that it is not immediately apparent why such information should be treated any differently from information about previous convictions.

***When do prosecutors need to disclose information obtained from jury vetting?***

12. A prosecutor should disclose information about previous convictions or other information about potential jurors to the defence if it gives rise to a real risk that the juror might be prejudiced against the defendant or in favour of the Crown. Disclosure of information that does not meet this test is not required.
13. This test strikes the balance between fair trial considerations and the privacy interests of jurors and potential jurors. It requires a prosecutor to assess whether there is a real risk of prejudice such that the previous conviction history or other information should be disclosed despite the sensitive and private nature of the information. Prosecutors should consider a range of factors, including the number and nature of the previous convictions, how recently the offending or alleged conduct occurred, and the type of offending being considered in the current prosecution.

*Commentary*

An example where criminal histories might be disclosed are a potential juror's previous drug dealing convictions in a trial involving drug offending. Examples of situations

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<sup>2</sup> Human Rights Act 1993, s 21.

where other information might be disclosed are a potential juror’s status as a victim of violence in an assault trial; or gang associations in a trial with gang member defendants.

14. The privacy and security of jurors should be protected to the greatest extent that is consistent with fairness to the defence.
15. Jury vetting does not apply to persons whose criminal convictions are covered by the Criminal Records (Clean Slate) Act 2004.
16. No disclosure is necessary if the prosecutor does not undertake a jury vetting process.

#### ***Blind vetting***

17. Prosecutors should not use the process of “blind vetting”, in which Police strike out the names of potential jurors on a jury panel after considering criminal convictions and material from databases such as NIA. Blind vetting is not appropriate because the prosecutor is not provided with any information as to why the names have been struck out and so is unable to determine whether the test for disclosure has been met.

## **Other relevant guidelines | Ētahi atu aratohu e whai pānga ana**

Disclosure | Te tūhura