



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

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## **Plea arrangements in murder cases**

### **Ngā whakaritenga tauākī i ngā kēhi kōhuru**

*As at 1 January 2025*

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## Introduction | Ngā kupu whakataki

1. This guideline supplements the section on plea arrangements in the guideline on Decisions to prosecute | Te whakatau ki te aru, but applies specifically to proposals to reduce a charge of murder to manslaughter on the basis the defendant will plead guilty to the reduced charge. Such arrangements require the Solicitor-General's approval.

## Scope | Te korahi

2. This guideline applies where the Crown Solicitor is considering reducing a charge of murder to manslaughter in exchange for a guilty plea.
3. Not all proposals concerning possible manslaughter charges need to be referred to the Solicitor-General. If a defendant indicates they will plead guilty to manslaughter, but the Crown Solicitor does **not** consider manslaughter is appropriate, there is no need to refer the defence proposal to the Solicitor-General; the Crown Solicitor may simply reject it.
4. Where there has been no offer to plead guilty, but the Crown Solicitor considers, applying the Test for Prosecution, a murder charge is no longer appropriate (for example where further evidence has been obtained) and manslaughter should be substituted, the Crown Solicitor does not need the Solicitor-General's approval.

## Roles | Ngā tūnga

### The Crown Solicitor

5. The Crown Solicitor's role is to:
  - 5.1 Make the charging decision when the matter becomes a Crown prosecution and keep the charge under review.
  - 5.2 Form their own view as to whether murder or manslaughter or some other charge is the most appropriate charge consistent with the guideline on Decisions to prosecute | Te whakatau ki te aru.
  - 5.3 Seek the Solicitor-General's approval to substitute a charge of manslaughter, where required.

### The Solicitor-General

6. The Solicitor-General's role is to review and approve requests to change murder charges to manslaughter. In practical terms, the Solicitor-General:
  - 6.1 Ensures there has not been under-charging to secure a plea.
  - 6.2 Ensures that plea discussions are not taking place where murder was not the appropriate charge in the first place.

- 6.3 Strengthens public confidence in the criminal process through independent review of the proposed charge and by testing the Crown's approach in the most serious cases, including cases where there will often be strong incentives for both parties to avoid a trial.

## Guideline | Te aratohu

7. In accordance with the guideline on Decisions to prosecute | Te whakatau ki te aru, the Crown Solicitor should keep a murder charge under review to ensure it continues to be justified in accordance with the Test for Prosecution.
8. The exercise of prosecutorial discretion lies with the Crown Solicitor, who has the detailed knowledge of the evidence and is responsible for the conduct of the prosecution. In the exercise of that discretion the Crown Solicitor should consider whether, on the available evidence and having regard to the public interest, the entry of a guilty plea to manslaughter would sufficiently capture the defendant's culpability.
9. It is not uncommon for the assessment of the Test for Prosecution to change throughout the life of a murder prosecution so that manslaughter is later assessed as being the correct charge. That may be the result of new evidence (particularly expert evidence), or subtle shifts in the existing evidence as assessments of likely witness performance and the articulation of the defence case evolve. If, as a result of such changes, manslaughter appears to be the more appropriate charge, the Crown Solicitor may amend the charge and proceed in respect of manslaughter only (manslaughter always being available in the alternative where a murder charge has been filed).
10. The more difficult cases are those in which it is finely balanced whether murder or manslaughter is the more appropriate charge on the evidence. In such cases it may be appropriate to accept a defence proposal to resolve the matter by way of a guilty plea to manslaughter. This will usually be because of particular public interest factors that sway the balance (such as the victim's whānau interests in achieving certainty of outcome without a trial; and/or matters personal to the defendant such as youth, mental health or reduced moral culpability), or because of significant procedural challenges (for example where the prosecutor anticipates key witnesses will be uncooperative or fail to come up to brief).
11. Otherwise, in cases where there is sufficient evidence to prove murder beyond reasonable doubt, even though there is some risk of a guilty verdict in respect of manslaughter, it will generally be best to leave the issue of the correct verdict to the jury to decide. This is particularly so if the defendant's culpability is high, such as where they have been involved in deliberate and extreme violence. The fact a jury might return a verdict of guilty on the lesser charge is not, in itself, a reason to accept a guilty plea to manslaughter.

## The Solicitor-General's approach to considering requests

12. The Solicitor-General will consider a request by reviewing whether the Crown Solicitor's prosecutorial discretion is being exercised properly: that is, that the Crown Solicitor is taking into account relevant considerations, not taking into account irrelevant ones and is exercising the discretion for a proper purpose. If the Crown Solicitor considers a plea to manslaughter is most appropriate in the circumstances, the Solicitor-General will not demur from that assessment as long as the reasoning is transparent, principled and sound. The Solicitor-General's role is to approve the plea arrangement, not to impose their own view.
13. The most common reasons that the Solicitor-General refuses requests to approve plea arrangements in murder cases are because the proposed factual basis for the plea (and therefore sentencing) does not adequately reflect the defendant's culpability or is inconsistent with manslaughter (for example, where the defendant acted with murderous intent (murder), or with unreasonable force in self-defence); or where the distinction between murder and manslaughter turns on factual disputes which are best left to a jury. In cases with those features Crown Solicitors should consider carefully whether to seek approval for the proposed plea arrangement and consult Crown Law if in doubt.

## Process | Te tukanga

14. It is important that requests are sent to the right place, and contain the necessary information, in sufficient time for them to be considered prior to trial.
15. The Crown Solicitor, or a partner in the Crown Solicitor firm, must personally endorse and convey a request to the Solicitor-General to approve a plea arrangement in a murder case.
16. On rare occasions, the Crown Solicitor may receive a plea proposal and seek Crown Law's endorsement or input even if they are **not** recommending manslaughter. It is important that Crown Solicitors are clear about that when contacting Crown Law, either in the request or in a separate communication.
17. All requests should be sent electronically to [criminal@crownlaw.govt.nz](mailto:criminal@crownlaw.govt.nz). Requests sent to individual staff members may not be considered.

## Timing

18. The time required to consider a request depends on how complex the matter is. Complexity arises from the particular mix of law involved, the quality of the available evidence and the public interest factors. These are different in every case.
19. Prosecutors should assume it will take up to four weeks to receive a response to the request. If the timing of the referral is wholly within the Crown Solicitor's control, at least six weeks should be allowed.
20. There will be cases where an offer to plead guilty to manslaughter arises suddenly; sometimes just before or even during trial. Urgent requests can be accommodated; it is best to contact one of the Criminal Team Managers immediately after the proposal has been received to discuss the way forward.

## Information to be provided

21. The request should include the following:
  - 21.1 The trial date (if there is one) and any other key dates such as the next callover.
  - 21.2 A clear and succinct summary of the Crown's case in respect of the existing murder charge. If there are particular witness statements or expert reports that are relevant to the proposed reduction in charge these should be included in full. There is no need to send the totality of the evidence intended to be called at trial.
  - 21.3 A statement as to the basis on which the Crown Solicitor considers a manslaughter charge would be appropriate.
  - 21.4 Confirmation that the defendant has confirmed they will actually plead guilty to manslaughter (hypothetical requests will not be considered).
  - 21.5 A draft summary of facts for manslaughter which has been agreed with the defendant. This is very important: the Solicitor-General will only consider plea arrangements if it is known what the factual basis for the guilty plea (and therefore sentencing) would be. This may be set out in a letter from defence counsel if there is one, although an agreed summary is preferable.
  - 21.6 If there are co-offenders, a summary of their position (in particular, whether they are likely to seek a similar agreement, whether there is any distinction between them in terms of culpability, and so on).
  - 21.7 A summary of the position of Police and the victim's whānau as to whether they support the request. If the whānau has not yet been contacted about the possibility of a manslaughter charge, that should be made clear.

## The decision

22. The outcome will be communicated to the Crown Solicitor as soon as possible once the Solicitor-General has made a decision. It will then be for the Crown Solicitor to communicate the decision to defence counsel and the court.

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

Decisions to prosecute | Te whakatau ki te aru