



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

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## **Self-represented defendants**

### **Te kaiwawao ka whakakanohi i a ia anō**

*As at 1 January 2025*

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## Introduction | Ngā kupu whakataki

1. Some defendants choose to represent themselves in criminal proceedings, rather than being represented by a lawyer. Prosecutors need to take particular care when prosecuting self-represented defendants so that the trial remains fair and self-represented defendants are not unfairly pressured.

## Scope | Te korahi

2. This guideline sets out prosecutor responsibilities that apply specifically where a defendant is self-represented. The Principal guideline | Te Aratohu mātāmua and other guidelines continue to apply.

## Guideline | Te aratohu

3. Prosecutors should take particular care in relation to self-represented defendants. Prosecutors should document all direct contact with self-represented defendants and consider whether any communication should be conducted through the court. Prosecutors should take care not to communicate with the court without the self-represented defendant being present or copied into written communications, unless the communication is of a purely administrative nature that would not involve opposing counsel in any event.

### *Commentary*

Examples of purely administrative communications are seeking clarification on the timing of a hearing, or confirmation that the court has received documents.

4. Prosecutors should not provide legal advice to a self-represented defendant. If necessary, prosecutors should make clear to the defendant that they do not represent them and cannot provide them with legal advice, other than to advise them to retain a lawyer.
5. Prosecutors should try to avoid overly technical or legal language that a self-represented defendant may have difficulty understanding.
6. Prosecutors should be aware of their duty to assist the court and to put before the court all information they hold that is admissible and relevant to issues before the court. This includes any information the prosecutor considers the court should be made aware of for the purpose of ensuring the defendant's trial is fair (for example, information relevant to whether the court should consider appointing counsel to assist the court or examine the defendant's fitness to stand trial).

### *Commentary*

This is consistent with the prosecutor's role as an officer of the court and an advocate within an adversarial system. Prosecutors do not have to seek out information that may be useful to the defence.

7. If there is a trial with a self-represented defendant:
  - 7.1 The prosecutor should inform prosecution witnesses that the defendant is representing themselves.
  - 7.2 The prosecutor should inform the court if a self-represented defendant is restricted from personally cross-examining a complainant or a witness under s 95 of the Evidence Act 2006. Counsel to assist the court will need to be appointed.
  - 7.3 If a prosecutor intends to lead evidence that is arguably inadmissible, they should raise this with the trial judge before the evidence is called, to explain why they consider the evidence is admissible.
  - 7.4 If a prosecutor does not intend to lead evidence that is arguably relevant and admissible, they should make the trial judge aware of this evidence and set out why they do not intend to lead it. The prosecutor may have to address whether the failure to adduce the evidence may make the prosecution unfair.

### **Plea discussions**

8. Prosecutors should not initiate any plea discussions with a self-represented defendant. If the defendant seeks to initiate plea discussions with the prosecutor, the prosecutor should:
  - 8.1 say that the issue of appropriate charges should be discussed in front of the judge at the next opportunity (such as a case review hearing);
  - 8.2 ensure there are contemporaneous records of any oral communication; and
  - 8.3 notify the court (care should be taken not to disclose the content of the discussion in breach of the privilege in s 57 of the Evidence Act).

#### *Commentary*

To avoid breaching privilege, prosecutors may inform the court that a self-represented defendant has sought to initiate plea discussions, but not disclose anything further that was said.

### **Sentencing**

9. If a defendant faces charges that are punishable by imprisonment, prosecutors should be aware of, and draw the court's attention to, s 30 of the Sentencing Act 2002, before a plea is entered.
10. Prosecutors should inform the court of any known mitigating factors at sentencing.

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

Decisions to prosecute | Te whakatau ki te aru

Sentencing | Te whiu

Case management | Te whakahaere kēhi