



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

Stays of proceedings

Te whakamoe kōtitanga

As at 1 January 2025

Introduction | Ngā kupu whakataki

1. The Attorney-General may direct that a criminal proceeding be stayed. This long-standing prerogative power is reflected in s 176 of the Criminal Procedure Act 2011. The effect of a stay is that no further steps can be taken in the criminal proceeding (unless the Attorney-General lifts the stay, which is exceedingly rare).

Scope | Te korahi

2. This guideline provides prosecutors with a framework for deciding when to request a stay from the Attorney-General.¹ It also provides a high-level guide to the process for staying a prosecution, and for requesting that the Attorney-General lift a stay.

Roles | Ngā tūnga

3. In principle anyone can request a stay of proceedings: prosecutors, defendants, other interested parties (such as victims, or defendants' whānau) and members of the public. In most cases it is the prosecutor who seeks a stay.
4. In practice, the Solicitor-General, who has the powers and duties of the Attorney-General, exercises the power to stay proceedings.

Glossary | Kuputaka

5. In this guideline:
 - 5.1. A *hung jury* is a jury that was discharged because it was unable to reach a verdict.
 - 5.2. A *retrial* is a second or subsequent trial of a defendant.

Te aratohu | Guideline

6. The Solicitor-General's overriding consideration when deciding whether to direct a stay under s 176 of the Criminal Procedure Act will be the public interest. The full range of factors that might be relevant to a decision to prosecute may also be relevant to a stay decision.
7. In practice, the Solicitor-General will generally direct a stay in four situations:
 - 7.1. where the jury has been unable to agree on a verdict after two or more trials;
 - 7.2. where continuation of the prosecution would be oppressive or unjust (including because the prosecution was wrongly commenced, or because the circumstances have changed and the Test for Prosecution is no longer met);
 - 7.3. where stale or outstanding charges should be cleared; and
 - 7.4. where the defendant has died.

¹ A court may also order that proceedings be stayed; this guideline is not relevant to those types of stays.

Hung juries

8. The Solicitor-General will normally stay a prosecution after two hung juries, unless:
 - 8.1. they are satisfied that some event, not related to the strength of the prosecution case, brought about one or both of the disagreements;
 - 8.2. new and persuasive evidence would be available on a third trial; or
 - 8.3. there is some other exceptional circumstance meaning the public interest requires a third trial.
9. Prosecutors should refer the prosecution to criminal@crownlaw.govt.nz as soon as possible after a second hung jury.

Prosecutions that should be brought to an end

10. Prosecutors should monitor the continued appropriateness of prosecutions. Prosecutors may form the opinion that:
 - 10.1. the prosecution was wrongly commenced;
 - 10.2. the circumstances have changed so that the Test for Prosecution is no longer met; or
 - 10.3. for some other reason, continuation of the prosecution would be oppressive or unjust, or otherwise not in the public interest.
11. A more appropriate response will often be to withdraw charges or invite the court to dismiss charges. However, there may be situations where this is not an appropriate or available course. In those situations, prosecutors should draw the prosecution to the Solicitor-General's attention for consideration of a stay of proceedings.

Stale charges

12. The Solicitor-General will generally direct a stay to clear outstanding, unresolved or stale charges. This may be the case where an offender has been convicted on serious charges but the jury has disagreed on other less serious charges, or when a convicted person is serving a substantial sentence and continuing with further charges would serve no worthwhile purpose.

The defendant has died

13. A prosecutor has two options for bringing a prosecution to an end following a defendant's death:
 - 13.1. The prosecutor may seek the court's leave to withdraw all outstanding charges. This option will be most appropriate in cases where there is no victim and the offending is at the lower end of the scale.
 - 13.2. The prosecutor may seek a stay from the Solicitor-General. A notice that the Solicitor-General has stayed proceedings completes the court record and provides finality. It accurately reflects the reason the prosecution cannot continue and it preserves the prosecution's position.

Lifting a stay

14. A stay will only be lifted in exceptional circumstances. If prosecutors consider a stay should be lifted, they should write to criminal@crownlaw.govt.nz outlining the reasons why this should occur.

Process | Te tukanga

15. Requests for stays should be sent to criminal@crownlaw.govt.nz together with the charging document, summary of facts, death certificate or other official record of death (if relevant) and a description as to why the person considers the stay should be issued.
16. Victims should be advised when, and why, a stay is to be sought, unless that is not practicable.² Other than where the defendant has died, the victim's views as to whether a stay should be issued should be sought and conveyed to the Solicitor-General as part of the request.

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru
Retrials | Te whakahaere anō i te whakamātau
Victims | Ngā pāturenga

² If it is not practicable to advise a victim before a stay is sought, they must be advised subsequently of the outcome of the proceeding: Victims' Rights Act 2002, s 12.