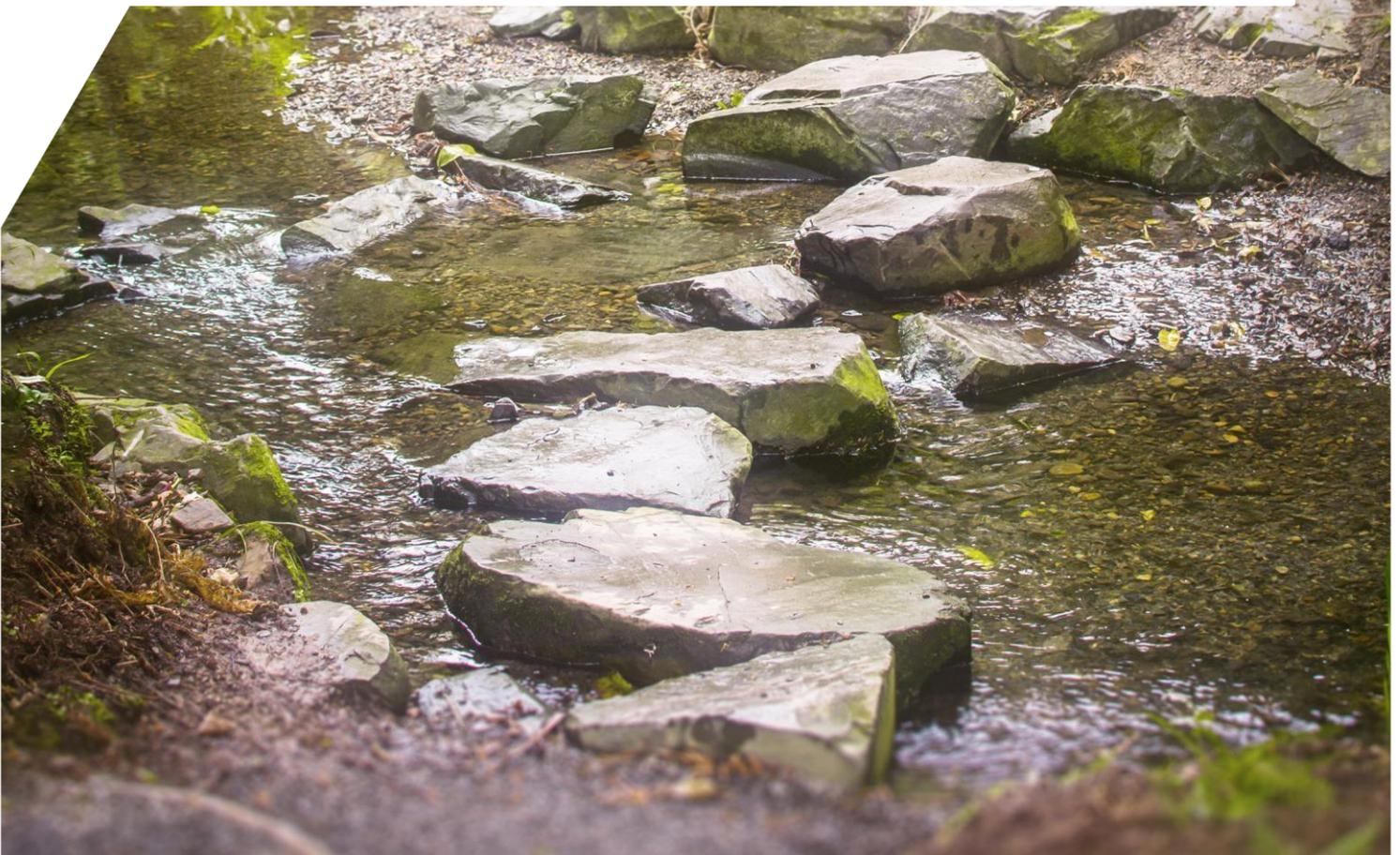




**Te Kāhui
Tātari Ture**
Criminal Cases
Review Commission

Criminal Cases Review Commission | Te Kāhui Tātari Ture: Case Procedures

As at 2 June 2021



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Introduction

Criminal Cases Review Commission | Te Kāhui Tātari Ture

The Criminal Cases Review Commission | Te Kāhui Tātari Ture (**Te Kāhui**) is an independent Crown entity established under the Criminal Cases Review Commission Act 2019 (the **Act**). The primary function of Te Kāhui under section 11 of the Act is to investigate and review convictions and sentences and decide whether to refer them to an appeal court. Te Kāhui may refer a conviction or sentence to an appeal court if it considers that it is in the interests of justice to do so.

As a guide to the way in which Te Kāhui will apply the statutory test of “interests of justice”, Te Kāhui (while having regard to the matters it must consider under section 17(2) of the Act) will identify cases where the potential for an unsafe conviction or sentence is so apparent to Te Kāhui that those cases, on analysis, represent a possible miscarriage of justice which ought to be considered by an appeal court.

These procedures

In this document, you will find information about our case handling procedures. Under section 15 of the Act, Te Kāhui must make its procedures publicly available in the manner it considers appropriate.

The procedures are organised under the following headings:

1. Application Process;
2. Initial Assessment;
3. Section 25 Investigations;
4. Referral; and
5. General Matters

These procedures were developed in consideration of the statutory obligations of Te Kāhui including the requirement in the Act for the procedures to be consistent with the principles of the Treaty of Waitangi (tino rangatiratanga, active protection, equity and partnership). Te Kāhui acknowledges the different cultural backgrounds of applicants and their whānau and wider family groups and will adjust its application of these procedures to take account of those differences where it considers it appropriate in the circumstances.

These procedures will be reviewed at least every 12 months.

Glossary

Act – Criminal Cases Review Commission Act 2019. Sections 17 and 24 of the Act are included as appendices to these procedures.

Applicant – a person convicted of a criminal offence in New Zealand who is the subject of an application.

Case Review Panel – the Commissioners assigned to a case, with responsibility for overseeing and directing it.

Commission – the Commissioners in their decision-making capacity in respect of an application for review of a conviction, sentence or both, or in their capacity to initiate and conduct inquiries into general matter provided under section 12 of the Criminal Cases Review Commission Act.

Days – Calendar days, unless otherwise stated.

Final Statement of Reasons – the final version of the Provisional Statement of Reasons once it has gone through the further submissions process outlined in these procedures.

Initial Assessment – an assessment of the Application once it has been accepted, the purpose of which is to determine whether the Application should proceed to a Section 25 Investigation or not.

Initial Assessment Report – a report prepared by the Investigation Team which records the findings of the Initial Assessment of an application and recommends whether to progress the application to a Section 25 Investigation.

Investigation Report – a report prepared by the Investigation Team which records the findings of a Section 25 Investigation and recommends whether to refer or not to refer a case to an appeal court.

Investigation Team – Te Kāhui staff and/or outside contractors who are responsible for undertaking the initial assessment and investigation of a case.

Investigation Workplan – a document which outlines key aspects of an investigation, tasks, roles in the Investigation Team, engagements of external providers and a timeline. The Investigation Workplan will be a document which is developed and built on as an investigation proceeds.

Legal Aid – government funding to help pay for legal assistance for people who cannot afford a lawyer.

Provisional Statement of Reasons – the reasons or summary of reasons provided to the Applicant which sets out the Commission’s reasons for its decision to either refer an

application to the appeal court, or take no further action on an application after an Initial Assessment or Section 25 Investigation.

Representative – a person authorised by the Applicant to act on their behalf.

Section 25 Investigation – section 25 of the Act permits Te Kāhui to investigate a conviction or sentence. This occurs after an application has undergone an initial assessment, when the Commission is satisfied that there is a reasonable possibility that the test for referral in section 17 of the Act may be met.

Supplementary Statement of Reasons – an additional statement prepared in cases where the Commission has received further submissions from an Applicant after being sent the Provisional Statement of Reasons, which sets out the Commission’s reasons or a summary of reasons for its decision, based on the further submissions received.

Te Kāhui – New Zealand Criminal Cases Review Commission. **Victim** – As defined at section 4 of the Victims’ Rights Act 2002.

Waiver – A notice signed by the Applicant authorising Te Kāhui staff to obtain confidential information in relation to the application from third parties and including an authority to uplift the Applicant’s files from the Applicant’s previous lawyers.

Application Process

1. Introduction

- 1.1. This section describes the procedure when a person wishes to make an application to have their conviction or sentence reviewed. It describes how an application is made, received, and processed by Te Kāhui.

2. Initiating the application process

- 2.1 If a potential applicant or representative is thinking of making an application to Te Kāhui, they can contact Te Kāhui for an initial discussion:

phone - 0800 33 77 88 (this is a freephone call, please call Monday to Friday, 9am-5pm)

e-mail - info@ccrc.nz

letter - New Zealand Criminal Cases Review Commission, PO Box 9168, Hamilton 3240

website - send us a message through the Contact us page on the Te Kāhui website

- 2.2 Te Kāhui staff will answer any questions about how Te Kāhui works and the process that it follows once an application is made.

Who can make an application?

- 2.3 An application may be made to Te Kāhui by a person convicted of a criminal offence in New Zealand (the Applicant), or through a Representative selected by the Applicant, such as a whānau/family member, friend, supporter, advocate or lawyer.
- 2.4 The Applicant must be alive at the time the application is lodged.

Making an application in a representative capacity

- 2.5 Te Kāhui may accept an application made by a person in a representative capacity if Te Kāhui staff are satisfied that the person is authorised to act as the Applicant's Representative.

What information is required?

- 2.6 An Applicant should complete the Te Kāhui application form and submit it by post or email to:

New Zealand Criminal Cases Review Commission
PO Box 9168
Hamilton 3240

info@ccrc.nz

- 2.7 The application form contains a waiver, that provides consent for Te Kāhui to request and receive information about an applicant and their criminal case from third parties. This waiver must be signed by the Applicant for an application to be considered.

Assistance to complete the application form

- 2.8 If an applicant and/or representative would like assistance completing the application form, or have any questions, Te Kāhui staff are available to help.
- 2.9 The Applicant and/or Representative can contact Te Kāhui by:
- calling 0800 33 77 88 (this is a freephone call, please call Monday to Friday, 9am-5pm)
 - e-mail – info@ccrc.nz
 - letter – PO Box 9168, Hamilton 3240
 - website – send us a message through the [Contact us](#) page on the Te Kāhui website
- 2.10 If English or te reo Māori is not the applicant's preferred language, Te Kāhui staff can assist the applicant with finding a translator to assist with completing an application.
- 2.11 The application form is available on the Te Kāhui website in English, te reo Māori, Samoan and Tongan.
- 2.12 Application forms can be posted or emailed on request.
- 2.13 An Applicant can apply for Legal Aid for assistance in applying to Te Kāhui. For more information, see the "General matters" chapter at [24].

3. Review an application

- 3.1 Te Kāhui staff will promptly acknowledge receipt of all applications by post or email.
- 3.2 The application will then be reviewed. In some cases, Te Kāhui may seek further information from an Applicant or their Representative.¹
- 3.3 An application may not be accepted:
- a. if it is not made by or on behalf of an eligible person;
 - b. if, in the Commission's opinion, the application is frivolous, vexatious, or otherwise not made in good faith;
 - c. in accordance with any position paper prepared on certain types of application. Position papers are published on the Te Kāhui website; or
 - d. if, for any other reason, Te Kāhui believes the application should be declined without further assessment.

¹ Applicants should be aware that Te Kāhui will not seek further information in all cases.

- 3.4 The Commission will decide whether each application should be accepted to proceed to an initial assessment, taking into account any recommendation from staff based on the above criteria.
- 3.5 Te Kāhui will write to the Applicant and any Representative as soon as practicable to advise whether the application will be accepted and either:
 - a. how it will engage with the Applicant and any Representative if the application has been accepted; or
 - b. the reasons for not accepting the application.

Initial Assessment

4. Introduction

- 4.1. This section sets out the procedure once an Application is accepted for initial assessment.

5. Assignment of case

- 5.1. Once accepted for initial assessment an Application will be assigned to an Investigator, who will take responsibility for the initial assessment of the application.
- 5.2. The investigator will regularly report to a panel of Commissioners, referred to as a Case Review Panel. Case Review Panels consist of a minimum of two Commissioners.
- 5.3. The Commissioners on the Case Review Panel will oversee the initial assessment and provide guidance and direction to the assigned investigator.
- 5.4. Te Kāhui will prioritise applications taking into account a number of factors. Applications may progress at different rates, not necessarily in the order in which they are received.

6. Initial Assessment process

- 6.1. The initial assessment involves the collection and collation of material relevant to the application, taking account of issues previously dealt with by the relevant appeal court(s), and any fresh evidence or other material provided by the applicant.
- 6.2. Te Kāhui staff will also assess the application against any miscarriage of justice risk factors that it identifies and deems relevant.

7. Initial Assessment Report

- 7.1. At the conclusion of the Initial Assessment, the assigned investigator will prepare an initial assessment report, for consideration by the relevant Case Review Panel.
- 7.2. The report will either recommend either no further action in accordance with section 24 of the Act, or that the application progresses to a Section 25 Investigation.
- 7.3. For an application to progress to a Section 25 Investigation, Te Kāhui must be satisfied the test for referral in section 17 of the Act may be met.
- 7.4. If it is recommended that Te Kāhui should not take any further action (that is not move to a Section 25 Investigation), then Te Kāhui staff will include, with the Initial Assessment Report, a Provisional Statement of Reasons, setting out the grounds for the recommended decision.
- 7.5. Once satisfied with the Initial Assessment Report, the Case Review Panel will endorse the report for submission to the Commission. This may include directing staff to first

undertake further work on the Initial Assessment Report or Provisional Statement of Reasons.

- 7.6. At the next available Commission meeting, the Commission will make a decision on the next steps for the application. For example, the Commission may decide to accept the recommendation, or require further information or additional work on the Initial Assessment.
- 7.7. Notwithstanding any recommendations of the Investigation Team or Case Review Panel, it is the Commission's decision whether to move an application to a Section 25 Investigation.
- 7.8. If the case is accepted for a Section 25 Investigation, Te Kāhui staff will contact the Applicant and any Representative to inform them of the decision.

8. Decision to take no further action

- 8.1. Where the Commission decides not to proceed to a Section 25 Investigation, Te Kāhui staff contact the Applicant and any Representative to inform them of the decision.
- 8.2. The Applicant and any Representative will be provided with the Provisional Statement of Reasons as soon as practicable after being informed of the decision.
- 8.3. The Applicant is permitted a period of 28 days in which to consider the Provisional Statement of Reasons and to make any further submissions or provide any further material that they believe is appropriate.
- 8.4. The Applicant may seek to have the 28-day period extended, if they can satisfy Te Kāhui that it is appropriate.
- 8.5. If Te Kāhui does not receive any further submissions in that 28-day period, or any agreed extended period, the Provisional Statement of Reasons will become a Final Statement of Reasons, and Te Kāhui will send a letter confirming its decision not to proceed further with the application.
- 8.6. When Te Kāhui issues the decision letter referred to at 8.5 above, its review of the case is completed.

9. Further submissions

- 9.1. Where Te Kāhui receives further submissions and/or materials in that 28-day or extended period, Te Kāhui staff contact the Applicant and/or their Representatives to acknowledge the receipt of the further submissions and/or materials.
- 9.2. The further submissions and/or materials are assessed by the Investigation Team who determine if there are any further inquiries required.

Where further inquiries are required

- 9.3. Where the Investigation Team considers that further lines of inquiry are required, the Investigation Team advises the Case Review Panel and carries out those inquiries.
- 9.4. Following any further inquiries being conducted (if required), the Investigation Team drafts an addendum to the Initial Assessment Report and, if required, prepares a draft Supplementary Statement of Reasons.

Where no further inquiries are required

- 9.5. Where the Investigation Team considers that no further lines of inquiry are required, then it will advise the Case Review Panel. It also drafts an addendum to the Initial Assessment Report and, if required, prepares a draft Supplementary Statement of Reasons.

Addendum and Supplementary Statement of Reasons

- 9.6. The Addendum and Supplementary Statement of Reasons are provided to the Case Review Panel which determines whether the draft Supplementary Statement of Reasons is suitable to be put to the Commission for its consideration.
- 9.7. If the Supplementary Statement of Reasons results in an altered recommendation, i.e. to move the case to a section 25 investigation and the Commission agrees, Te Kāhui staff contact the Applicant and/or Representative to inform them of the decision to move the case to a s 25 investigation.
- 9.8. If the Supplementary Statement of Reasons results in an unchanged recommendation, i.e. not to refer the case and the Commission decides not to so proceed, Te Kāhui staff contact the Applicant and/or Representative to inform them of that decision and they are provided with the Supplementary Statement of Reasons as soon as practicable after being informed of the decision. The review of the application is then completed.
- 9.9. If Te Kāhui intends to rely on new information gathered at this stage against the Applicant's interests, and the Applicant and/or Representative has not previously had a reasonable opportunity to comment on the relevant matter, Te Kāhui may permit the Applicant and/or Representative a further period of 14 days to consider the Supplementary Statement of Reasons and to make any further submissions and/or provide any further materials that they believe are appropriate for responding to the treatment of the new material in the Supplementary Statement of Reasons. However, the Applicant and/or Representative may, on cause shown, have the 14-day period extended.
- 9.10. If this further period is granted, the process will mirror that at [9.2]–[9.8] above.

Section 25 Investigation

10. Introduction

10.1. This process sets out the procedure for a Section 25 Investigation.

11. Establish and brief Investigation Team

11.1. An investigation team is appointed by the Chief Executive in-line with the Commission's decision on the case.

11.2. The Investigation Team may be supplemented from time to time by other appropriate persons where necessary, and whether such persons are staff and/or specialist experts (contractors).

11.3. The Section 25 Investigation begins with a full briefing on the initial assessment already undertaken and a setting of the estimated timeframe for the investigation. If it is anticipated that external advice or expert reports will be required, the required reports should be identified at the first briefing.

12. The Investigation Workplan

12.1. Every investigation will be different.

12.2. The Investigation Team will begin by preparing an Investigation Workplan outlining the scope and key aspects of the investigation, task, roles in the team, engagements of external providers and a timeline. The Case Review Panel will be consulted on the Investigation Workplan. Substantive work will commence once the Case Review Panel has approved the Investigation Workplan.

12.3. The Investigation Workplan will be considered as a "living" document at all times, being capable of alteration and amendment – the Investigation Workplan will be expected to be developed and built on as the investigation proceeds.

12.4. The Investigation Team will carry out the Section 25 Investigation in accordance with the Investigation Workplan.

12.5. In most aspects of the Section 25 Investigation the Investigation Team is afforded discretion in the conduct of their investigations to account for the individual circumstances of each case.

13. Case Review Panel updates

- 13.1. The Case Review Panel will meet regularly with the respective Investigation Team (or team representative/s) to be kept informed and to discuss the progress of the case. The Case Review Panel will provide guidance and direction as required.
- 13.2. The Investigation Team will update the Case Review Panel at each meeting on the progress of the investigation. The Case Review Panel will give direction and advise the Investigation Team on strategic matters (including whether expert witnesses need to be instructed), as well as suggesting further lines of inquiry.
- 13.3. Should the Investigation Team identify a difficult or complex issue, the Investigation Team may consult with the Case Review Panel who may request the assistance of a particular Commissioner or a specialist adviser (under section 10 of the Act).
- 13.4. Procedural, advisory and directional decisions of the Case Review Panel are to be documented.

14. Investigation Report and Statement of Reasons

- 14.1. At the end of the investigation process, the Investigation Team prepares an Investigation Report. The Investigation Report will outline:
 - 14.1.1. the history of the case;
 - 14.1.2. the scope and course of the Section 25 investigation;
 - 14.1.3. key inquiries made during the Section 25 investigation;
 - 14.1.4. the findings of the Section 25 investigation; and
 - 14.1.5. any other matters the Investigation Team considers relevant.
- 14.2. The Investigation Report will contain a draft recommendation of the Investigation Team. There are two possible recommendations arising from a Section 25 investigation – to refer the case to an appeal court, or not to refer.
- 14.3. For Te Kāhui to decide to refer a case, it must be satisfied that the test for referral in section 17 of the Act is met.
- 14.4. Together with the Investigation Report, a Provisional Statement of Reasons is prepared by the Investigation Team for the Case Review Panel to consider. The Provisional Statement of Reasons will set out the grounds for referral (if applicable) together with the reasons, or a summary of the reasons, why the Investigation Team recommends referring, or not referring, the case to an appeal court.
- 14.5. The Investigation Report and Provisional Statement of Reasons are provided to the Case Review Panel for consideration and, if there is agreement, for the Panel's endorsement.

- 14.6. If the Case Review Panel endorses the Investigation Report and Provisional Statement of Reasons, the Case Review Panel will agree to refer the Provisional Statement of Reasons and the Investigation Report to the Commission for a decision.
- 14.7. Notwithstanding any recommendations of the Investigation Team, or Case Review Panel, it is the Commission's decision whether to refer, or not refer, a case to an appeal court.

15. Decision

- 15.1. The Investigation Report and the Provisional Statement of Reasons are then sent to the full Commission for consideration and approval in accordance with the Commission's normal meeting procedures.
- 15.2. Notwithstanding any recommendations of the Investigation Team, or Case Review Panel, it is the Commission's decision whether to refer, or not refer, a case to an appeal court.

Decision to refer

- 15.3. The procedures for when the Commission decides to refer the case to an appeal court are dealt with in the operating procedures for [Referral Process](#).

Decision not to refer

- 15.4. Where the Commission provisionally decides not to refer the case, Te Kāhui staff will contact the Applicant and any Representative to inform them of the decision.
- 15.5. The Applicant and any Representative are provided with the Provisional Statement of Reasons as soon as practicable after being informed of the decision.
- 15.6. After the Provisional Statement of Reasons is issued, the Applicant is permitted a period of 28 days in which to consider the Provisional Statement of Reasons and to make any further submissions and/or provide any further materials that they believe are appropriate. However, the Applicant may, on cause shown, have the 28-day period extended.
- 15.7. Where the Commission does not receive any further submissions in that 28-day period, or within the extended period, the Provisional Statement of Reasons becomes the Final Statement of Reasons, and the Investigation Team prepares a letter for the Chief Commissioner to sign informing the Applicant and any Representative of the Commission's decision not to refer.
- 15.8. Once signed, the letter and Final Statement of Reasons are sent to the Applicant and any Representative.
- 15.9. When Te Kāhui issues the letter, its review of the case is completed.

16. Further Submissions

- 16.1. Where Te Kāhui receives further submissions and/or materials in that 28-day or extended period, Te Kāhui staff contact the Applicant and/or their Representatives to acknowledge the receipt of the further submissions and/or materials.
- 16.2. The further submissions and/or materials are assessed by the Investigation Team who determine if there are any further inquiries required.

Where further inquiries are required

- 16.3. Where the Investigation Team considers that further lines of inquiry are required, the Investigation Team advises the Case Review Panel and carries out those inquiries.
- 16.4. Following any further inquiries being conducted, the Investigation Team drafts an addendum to the Investigation Report and, if required, prepares a draft Supplementary Statement of Reasons.

Where no further inquiries are required

- 16.5. Where the Investigation Team considers that no further lines of inquiry are required, then it will advise the Case Review Panel. It also drafts an addendum to the Investigation Report and, if required, prepares a draft Supplementary Statement of Reasons.

Addendum and Supplementary Statement of Reasons

- 16.6. The Addendum and Supplementary Statement of Reasons are provided to the Case Review Panel which determines whether the draft Supplementary Statement of Reasons is suitable to be put to the Commission for its consideration.
- 16.7. If the Supplementary Statement of Reasons results in an altered recommendation, i.e. to refer the case and the Commission decides for such a referral to proceed, Te Kāhui staff contact the Applicant and/or Representative to inform them of the decision to refer the case to an appeal court.
- 16.8. If the Supplementary Statement of Reasons results in an unchanged recommendation, i.e. not to refer the case and the Commission decides not to so proceed, Te Kāhui staff contact the Applicant and/or Representative to inform them of that decision and they are provided with the Supplementary Statement of Reasons as soon as practicable after being informed of the decision. The review of the application is then completed.
- 16.9. If Te Kāhui intends to rely on new information gathered at this stage against the Applicant's interests, and the Applicant and/or Representative has not previously had a reasonable opportunity to comment on the relevant matter, Te Kāhui may permit the Applicant and/or Representative a further period of 14 days to consider the Supplementary Statement of Reasons and to make any further submissions and/or provide any further materials that they believe are appropriate for responding to the treatment of the new material in the Supplementary Statement of Reasons. However,

the Applicant and/or Representative may, on cause shown, have the 14-day period extended.

16.10. If this further period is granted, the process will mirror that at [16.2]–[16.8] above.

Referral Process

17. Introduction

17.1. This section sets out the procedure during the referral process and how an Applicant's case is referred by Te Kāhui to an appeal court.

18. Referral documentation

18.1. Following a decision by Te Kāhui to refer a case to the relevant appeal court, staff will finalise the following documents to reflect the decision of Te Kāhui:

- Investigation Report
- Statement of Reasons

18.2. The documents at 18.1 above will then be approved by the Chief Commissioner to ensure the decision of Te Kāhui has been accurately reflected in the final versions.

18.3. Staff will then prepare, for the Chief Commissioner's signature, a formal notice to the Head of Bench of the relevant appeal court and a covering letter. The formal notice to the Head of Bench will contain the Statement of Reasons. Together, these documents make up the Referral Documents.

19. Informing the Applicant of decision to refer

19.1. As soon as practicable after Te Kāhui decides to refer, Te Kāhui staff provide the Applicant and any Representative with written notice of the Decision together with the Statement of Reasons and Investigation Report (which may be subject to any redactions Te Kāhui considers appropriate).

20. Informing other parties of decision to refer

20.1. As soon as practicable after Te Kāhui makes a decision to refer and the Applicant and any Representative has been notified, Te Kāhui staff will inform any affected parties of the decision Te Kāhui has made. This includes any Victim(s). This may also include other criminal justice sector stakeholders who could be affected by the decision, such as Police or lawyers involved in the Applicant's case.

20.2. The affected parties may be provided with the reasons for the decision in whatever form Te Kāhui deems appropriate in the circumstances.

21. Notice to the relevant appeal court and the Crown

- 21.1. Once the Applicant and any other parties have been informed, the Chief Commissioner will send the Referral Documents to the Head of Bench of the relevant appeal court to advise them that Te Kāhui has made a decision to refer a case to it under section 17 of the Act.
- 21.2. The Referral Documents will be copied to the Solicitor-General, as the Crown will be defending the appeal. The Solicitor-General will also be sent a copy of the Investigation Report.
- 21.3. The appeal court will then hear the matter as if it were a first appeal.

General matters

22. Introduction

- 22.1. This section sets out general matters relating to the conduct of work undertaken by Te Kāhui.

23. Prioritisation of cases

- 23.1. Te Kāhui will use its discretion to prioritise the consideration and passage of applications that are made to it in the manner it considers appropriate, i.e. not necessarily in the order in which they are received.

24. Lawyers and legal aid

- 24.1. An Applicant does not need a lawyer to apply to Te Kāhui. However, an Applicant may wish to engage a lawyer to assist them with their application.
- 24.2. Legal Aid may be available to an Applicant who wishes to engage a lawyer. Applicants should call the Ministry of Justice on 0800 2 LEGAL AID (253 425) for assistance with making an application for Legal Aid.

25. Contact with the Applicant and Victims and other parties

Contact with an Applicant

- 25.1. The effects of an event can have far-reaching, intergenerational impacts for the Applicant's whānau or family. Te Kāhui recognises this and allows for the Applicant to involve their support networks during all engagement, should they wish. This means that at the request of an Applicant, updates on the progress on an application can be provided to a Representative – for example, whānau or a family member, friend, supporter, advocate or lawyer.
- 25.2. Once an application is accepted, an Applicant will be assigned a Te Kāhui staff member who will agree a preferred method of communication with the Applicant, explain the review process to the Applicant and act as their primary contact. That Te Kāhui staff member will not be part of the team reviewing the merits of the application.

Contact with victims

- 25.3. Te Kāhui is required, under section 12(2)(f) of the Victims' Rights Act 2002, to notify a victim when it decides to refer a case back to the appeal court. However, Te Kāhui may consider it appropriate to engage with victims at an earlier stage in the process.

Contact with other parties

- 25.4. The law requires Te Kāhui to keep details about an Application confidential unless good reasons exist for disclosing information.
- 25.5. Te Kāhui may need to disclose details of an Applicant's case to a third party in connection with the performance or exercise of its functions, duties and powers, such as for the purposes of investigating an Applicant's conviction. The law allows Te Kāhui to do this, and Applicants are required to sign a waiver as part of the application process to facilitate contact with third parties who may have knowledge of the case.
- 25.6. In rare circumstances, Te Kāhui may disclose information relating to an Applicant's case to a third party where Te Kāhui is satisfied that the disclosure is reasonably necessary to achieve one of the lawful purposes set out at section 36 of the Criminal Cases Review Commission Act 2019. For example, a disclosure may be made in order to prevent or lessen a serious threat to the life or health of any individual – including the Applicant.

26. Procedures and decision-making

Application and scope of procedures

- 26.1. Not all the procedures in this document are prescriptive. In most areas a level of discretion is afforded to Te Kāhui staff and the Commission in their assessment of applications to account for the individual circumstances of each case.
- 26.2. These procedures set out the general approach Te Kāhui will take to its case review work and are not intended to cover every situation that may arise. Where the procedures are silent on a matter, Te Kāhui will use its discretion to determine what appropriate steps to take on an application.
- 26.3. Te Kāhui may also develop specific policies or procedures to guide its work.

Decision-making

- 26.4. While Te Kāhui staff provide advice to the Commission on applications, the final decisions are made by the Commission.

Conflicts of interest

- 26.5. An important part of the decision-making process is making sure that staff and Commissioners do not have a conflict of interest in relation to an application.
- 26.6. Any conflicts are recorded in the conflicts of interest register and are managed in the manner deemed appropriate by Te Kāhui. Any Commissioner who has a conflict of interest with respect to an application will not take any part in the decision-making Te Kāhui undertakes in relation to that application.
- 26.7. If a Commissioner does not become aware that they have a conflict of interest with respect to an application until a later date, they must notify Te Kāhui staff immediately,

and that Commissioner will have no further involvement in decision-making in relation to that Application.

Natural justice

- 26.8. When undertaking its work, Te Kāhui will comply with the principles of natural justice (parties will have the right to be heard, and Te Kāhui as the decision-maker will be unbiased).

27. Publication of decisions

Unsuccessful Applications

- 27.1. Where Te Kāhui decides to take no action or no further action on an Application, then as soon as practicable after notifying the Applicant and any Representative of its decision, Te Kāhui will make its decision and a summary of the reasons publicly available in the manner Te Kāhui considers appropriate.
- 27.2. The Applicant will be advised of the manner of publication prior to the decision being published.

Cases referred to the appeal court

- 27.3. As part of their decision to refer, the Commission will discuss how it wishes to manage public notification of its decision, as is required by section 26 of the Act.
- 27.4. Each case will be considered individually, and the nature of the public release will depend on the circumstances of the case. For example, where deemed appropriate, written notice of the decision will be made publicly available on the Te Kāhui website. A media announcement may also be made.

Appendix

17 Ground for referring conviction or sentence to appeal court

- (1) The Commission may refer a conviction or sentence to the appeal court if the Commission, after reviewing the conviction or sentence, considers that it is in the interests of justice to do so.
- (2) In deciding whether to refer a conviction or sentence, the Commission must have regard to—
 - (a) whether the eligible person has exercised their rights of appeal against the conviction or sentence; and
 - (b) the extent to which the application relates to argument, evidence, information, or a question of law raised or dealt with in proceedings relating to the conviction or sentence; and
 - (c) the prospects of the court allowing the appeal; and
 - (d) any other matter that the Commission considers relevant.

24 Commission may decide to take no action in relation to application

The Commission may decide to take no action, or take no further action, in relation to an application if—

- (a) the eligible person no longer wishes the application to proceed; or
- (b) the eligible person dies; or
- (c) in the Commission's opinion, the application is frivolous, vexatious, or otherwise not made in good faith; or
- (d) for any other reason, the Commission believes that it is unnecessary or inappropriate for it to take any action or further action.