

## **Prosecutor classification of in-house lawyers**

Frequently Asked Questions (a companion guide to the Solicitor-General's framework for the classification of in-house prosecutors, available on POP).

Email [publicprosecutionunit@crownlaw.govt.nz](mailto:publicprosecutionunit@crownlaw.govt.nz) with your FAQs (and any questions about the below).

### **My agency is exempt from the classification framework, can I still apply for classification?**

Yes. While classification is not necessary for the work you do, we are happy to support all prosecutors who want to receive a classification. This facilitates secondments across agencies, the use of Rule 15.2.4 and means you can join the Prosecutors Online Platform (POP).

### **When can I apply for reclassification?**

Reclassification applications can be made at any time, unless:

1. Your classification letter stipulated a time period, training requirement or other condition that must first be met. To avoid disappointment, please do not apply for reclassification until that condition has been satisfied.

### **We are recruiting new staff, how can I ensure they are ready to do prosecution work as soon as they start?**

The sooner you let PPU know you are recruiting, the easier it will be for us to work with you to determine the process and timetable for their classification applications. You are welcome to send in classification applications before they start with you, so long as the application is complete. Please remember it may not always be possible to have that decision finalised by the time they start work, and you can always classify your Level 1 prosecutors internally to get them started.

### **I have a staff member going on secondment, what does this mean for classification?**

Noting changes, but you may want to think about the type of agency they're going to (does classification apply?), and to check in with them to see if they've gained enough experience on secondment to change levels. You may also want to connect with the People Plan Project on secondments ([here](#) on the GLN page).

### **I haven't done the Ethics course but it's a requirement for classification.**

The "Ethics for prosecutors" course included in the classification requirements has not yet been developed by Crown Law. Until it is developed, PPU will not be applying this criterion to classification applications.

### **I've attended an Ethics course – why can't I get credited for it?**

The "Ethics for prosecutors" course included in the classification requirements has not yet been developed by Crown Law. Until it is developed, PPU will not be applying this criterion to classification applications.

The NZLS Advocacy Ethics Update seminar (held in 2018) is useful to have attended, but does not address some of the situations in-house government prosecutors may find themselves in.

### **It's performance development/appraisal time, how do I get the next level of classification?**

The prosecutor classification system is intended to operate independently of performance development systems within organisations. For information on how to progress to the next level, see the classification framework, any guidance in your classification letter, and speak to your people leader at your organisation.

### **A team member has done some work outside their classification level – what should we do?**

If a staff member does work outside their level, ask that agencies let us know from a monitoring perspective, but any consequences are for agency to determine. For example, whether a Code of Conduct and therefore employment issue, plus did it cause any problems in Court/media such that the Solicitor-General needs to know (via PPU)?

### **How do we complete the MPR for external counsel?**

To help ensure you get the information you need to complete the MPR accurately, we suggest asking the external providers to ensure the invoices specify what level of classification the prosecutor is.

It may be a little harder to get this information here you have a fixed fee arrangement in place, but talk to your legal service provider as it is likely they have an internal time recording system even if it is not invoiced.

#### Crown Solicitors

The Solicitor-General has a classification system in place for Crown prosecutors. This means any invoice currently you receive from Crown Solicitors should state the classification of the prosecutor(s) for whose time and effort you are being billed. If this information isn't on the invoice, a request to the Crown Solicitor should address that. Please do let me know any issues that arise.

#### Non-Crown Solicitors

We suggest you ask the legal service provider to specify on the invoice the level of prosecutor for whom they are billing you (to self-classify, as you say). The levels are junior, intermediate, senior, principal.

The appropriate level is a matter for the provider to determine – at this stage PPU does not intend to apply an equivalency system, and anticipate the categorisation decisions will be made consistently within each firm. It will be for each agency to review the invoices to determine if, based on what they know of the matter and the prosecutor, the classification seems appropriate. For MPR purposes, please treat QCs as Principals, but you will need to make a case-by-case determination of the appropriate classification for barristers. We are happy to accept, for the MPR, the classification made by your legal service provider, if you are happy with it.

### **What is meant by supervision and mentoring in the Framework?**

The level of supervision expected at each level is task, and individual, dependent. The supervision undertaken needs to reflect PPU's expectation that, for example, court documents are not filed by a Level 1 prosecutor (or, depending on the matters, Level 2 or 3 prosecutors) without a second pair of (experienced) eyes being involved; and ensuring the relative experience of the individual and their need for additional mentoring and oversight is taken into account when determining the extent of supervision.

This can range from appearing in court with staff (lead and junior counsel) to attending court to support them (supervision) to peer review and supervision of case work.

We also recommend the scheme's authorisation to obtain supervision from appropriately classified prosecutors in other prosecution agencies or Crown Solicitor offices.

To clarify some of the more fundamental aspects:

- Prosecutors can undertake tasks outside their category level under the supervision of a more senior level prosecutor. If the task involves appearing in court, then they must appear as a junior (with the supervisor appearing as lead counsel). Junioring is the only way they can get the court experience to progress to the next level.
- Level 3+ classification only authorises a person to do the mentoring and supervision of a Level 4 prosecutor; not the appearances.

When putting supervision and mentoring in place, think about how you would satisfy the Solicitor-General's oversight function - what assurance can be provided that staff are being supported where it's needed, and know who/how to get help.

Your colleagues in the Departmental Prosecutors' Forum can also be a good source of ideas – contact PPU if you need help getting in touch with the DPF.