

Classification of In-House Public Prosecutors: Solicitor-General's Guidance (Effective 1 July 2020)

1. This classification framework applies to in-house lawyers who lead public prosecutions in the District Court and are employed by public service departments and Crown entities. It creates a career pathway environment which allows for capacity building, training and supervision of prosecutors. It is designed to assist agencies with allocation of criminal prosecutions to the appropriate level of in-house counsel, thereby enhancing the prosecutorial capability of the public prosecutions network, particularly in relation to advocacy.
2. The requirements ensure each level of prosecutor has the following skills, which can be learned as a prosecutor progresses:
 - 2.1 Level 1: Understands court protocol and etiquette.
 - 2.2 Level 2: In addition to level 1 skills, has a good understanding of criminal procedure, solid ability to lead a prosecution and can appropriately handle witnesses.
 - 2.3 Level 3: In addition to level 2 skills, has comprehensive criminal litigation skills suitable for undertaking prosecutions for more serious offending.
3. Our expectation is that all prosecutors employed by an agency will be classified. A prosecutor who has not yet been classified cannot appear in Court on their own, even if only to deal with an administrative matter.

Key principles

4. **Flexibility and discretion:** This document outlines the ordinary criteria for classification as general guidance against which classification applications will be measured. It is by no means a prescriptive or exclusive code. Departures from the guidance will be considered on a case-by-case basis and accommodated in appropriate cases where the applicant has experience akin to the criteria described below (for example, a prosecutor that has substantial criminal experience may warrant a more flexible approach in relation to time frames).
5. **Experience:** The main focus of the classification assessment for non-Crown prosecutors is their level of experience in criminal litigation and in-court advocacy, in particular judge-alone trials (JATs).¹ Consideration will also be given to other hearings such as pre-trial hearings involving witness work comparable to that of a JAT.

¹ JATs include defended infringement notices, provided that oral evidence is called, before Community Magistrates and Justices of the Peace.

Experience in other areas of litigation (eg civil, administrative or family litigation, clerkship to the judiciary etc) will be taken into consideration and compared, to the extent it is practicable, to the appropriate equivalent level of criminal litigation experience.

6. **Junioring and secondments:** Prosecutors in departments and Crown entities may not be exposed to the same frequency of court appearances as their colleagues from the Crown Solicitor network. This is particularly evident with regards to trial experience. To ensure prosecutors maintain high levels of performance, encouragement is given to junioring and secondment arrangements with other prosecution agencies, as well as Crown Solicitors, with a view to enhancing the variety and intensity of the criminal advocacy experience.

Supervision and peer review

7. Level 1 and 2 prosecutors are required to have certain written work peer reviewed by more experienced prosecutors:
 - 7.1 At level 1, all court documents should be peer reviewed by a level 2 (or higher) prosecutor.
 - 7.2 At level 2, all substantive written submissions (such as submissions on pre-trial applications or sentencing submissions) should be peer reviewed by a more experienced prosecutor (who may also be a level 2 prosecutor).
8. Level 1 and 2 prosecutors are also required to be directly supervised for certain court hearings. Level 1 prosecutors must always be directly supervised when appearing in JATs. In other words, they may only appear as second counsel. We expect that managers will be ensuring that for other court appearances level 1 prosecutors will be appropriately supervised as needed, either directly by having a more senior prosecutor appearing with them or indirectly by observing from the public gallery and providing feedback after the hearing. As Level 1 prosecutors gain more experience managers may consider that they can conduct very straightforward appearances without supervision in court (whether direct or indirect). Level 2 prosecutors may conduct JATs on their own, but must be directly supervised by a more experienced prosecutor (who may also be level 2, or level 3) for their first three JATs. We would expect that a level 2 prosecutor would already have acted as second counsel on JATs prior, but if not then they may need to be supervised for more than three JATs.
9. Direct supervision in the context of a JAT requires the prosecutors to appear together (with the supervisor appearing as either lead counsel or second counsel), so that the supervising prosecutor can offer advice/guidance throughout the JAT.
10. The prosecutors who are peer reviewing submissions and providing in-court supervision need not always be the same prosecutor. Nor do they need to be the prosecutor's manager. The manager's role is to guide and mentor the classified prosecutor and, when appropriate, make recommendations to support applications for re-classification.

Application for classification

11. All prosecutors will be classified by the Solicitor-General. Classification applications should be submitted by the agency's Chief Legal Advisor (CLA), thus reflecting their own professional assessment of the prosecutor and recommendation that the prosecutor be classified or reclassified.

12. Where a prosecutor can satisfy the criteria set out in this framework, it will still be for their manager/supervisor to decide whether they are suitable for a particular level of classification and progress applications only where appropriate. The quality of a prosecutor's work should be considered before an application is made.
13. Applications to the Solicitor-General for classification or reclassification may be filed at any time with the Public Prosecutions Unit by emailing ppu@crownlaw.govt.nz.
14. All classification applications to the Solicitor-General should include professional evaluation of the prosecutor's skills by their manager, other appropriately qualified prosecutor or a senior Crown prosecutor. Applications for classification as level 3 must be supported by a recommendation from a level 3 prosecutor within the agency (if the CLA is not a level 3 prosecutor themselves), or a senior Crown prosecutor. In either case the prosecutor making the recommendation must have direct knowledge of the applicant's abilities
15. Applications should identify how the classification criteria are met. If relevant, the application should identify where one or more of the criteria are not met, and how the prosecutor demonstrates an equivalent level of experience or training.
16. Applications for level 3 classification should include lists of JATs and other significant litigation conducted by the prosecutor, with a brief description of what those matters entailed in terms of prosecutorial experience. In particular:
 - 16.1 The type of charges (including which legislation).
 - 16.2 The role played by the prosecutor (eg sole, lead/ or second counsel). If not sole counsel, the role played in Court should be clearly set out (for example, made opening submissions, made closing submissions, led prosecution witnesses, cross examined defence witnesses etc).
 - 16.3 Any significant features of the case (eg number of witnesses, length of the trial, any particular complexities).
17. Where two prosecutors have conducted a JAT together, they may both be able to count that JAT against their JAT experience, depending on the roles they each played. This will be a subjective assessment that is undertaken on a case by case basis; the application will need to be clear as to exactly what role the applicant played in the JAT compared with the other prosecutor. The focus will be on the amount of witness work that each prosecutor has undertaken (that being the distinguishing feature of a JAT compared to other types of hearings which all involve oral submissions).

General

18. Where more than one prosecutor is appearing at a hearing, only lead counsel is required to have the necessary classification for that hearing. Lead counsel will be responsible for the case and for the conduct of second counsel. It will be for lead counsel to decide what role second counsel plays in the hearing (for example whether they are merely observing or will take a more active role such as making oral submissions, leading evidence or cross-examining).
19. Where granted, classification decisions will be valid for three years, after which time an application for reclassification will be required.

20. Where a prosecutor does not meet the criteria to be reclassified at the same level, a decision may be made to classify the prosecutor at a lower level where appropriate.
21. Prosecution agencies may apply to the Solicitor-General for general or specific approval to appear in Court as an exception to this framework.
22. Agencies may choose to voluntarily apply stricter classification criteria. Where practicable, and if considered desirable, agencies may also choose to adjust and extend this framework to non-criminal areas of litigation or to non-lawyers who appear in Court for the agency.

Counsel Classification - Non-Crown Prosecutions

Level 1 Prosecutor	Level 2 Prosecutor	Level 3 Prosecutor
Entry requirements²		
Standard of previous experience <ul style="list-style-type: none"> • Law degree; and • New Zealand practising certificate. 	New Level 2 prosecutor: <ul style="list-style-type: none"> • At least one year of recent³ criminal litigation experience; and • Led at least five court appearances before a Judge⁴, including one sentencing hearing. Existing Level 2 prosecutor: <ul style="list-style-type: none"> • At least three court appearances each year, including one sentencing hearing. 	New Level 3 prosecutor: <ul style="list-style-type: none"> • At least two years of recent⁵ experience as a Level 2 prosecutor, or three years of recent⁶ criminal litigation experience; and • Conducted at least five JATs (can be with supervision). Existing Level 3 prosecutor: <ul style="list-style-type: none"> • Conducted at least two JATs since last being classified as level 3, and within the last five years.
Standard of previous training	Relevant in-house training regarding the agency's prosecutions; and Registered for or completed at least one of the following: <ul style="list-style-type: none"> • Police Prosecution Service (PPS) Intro to Prosecutions Course; • Equivalent in-house or external training. 	At least one of the following: <ul style="list-style-type: none"> • PPS Basic Advocacy course; • New Zealand Law Society (NZLS) Introduction to Criminal Law Practice course; • Departmental Prosecutors Forum Bootcamp; • Equivalent in-house or external training.
Operation of a classified prosecutor		
Restrictions on work <ul style="list-style-type: none"> • All court documents should be peer reviewed by a level 2 (or higher) prosecutor. • Should be directly supervised for court appearances at the discretion of the prosecutor's manager. • Cannot lead JATs, but may appear as second counsel. 	<ul style="list-style-type: none"> • Substantive written submissions⁷ should be peer reviewed by a more experienced prosecutor (who may be a level 2 or level 3 prosecutor). • First 3 JATs must be conducted under direct supervision from a more experienced prosecutor (who may be a level 2 or level 3 prosecutor). • Cannot lead category 3 JATs, but may appear as second counsel. 	None (however peer reviews are encouraged).

² This is a summary document of experience which will guarantee classification at each level. As set out at paras 4-5, the criteria are flexible and comparable experience may be taken into account.

³ Within the three years immediately prior to the application.

⁴ These may include, for example, Case Review Hearings; pre-trial hearings other than first or second appearances (eg name suppression, bail, disclosure, admissibility of evidence) or sentencing hearings.

⁵ Within the five years immediately prior to the application.

⁶ Within the five years immediately prior to the application.

⁷ Such as submissions on pre-trial applications, written opening/closing submissions, and sentencing submissions.