

## Introductory words from the Law Officers

### Ngā kupu whakataki a Ngā Rōia Mātāmua o Te Karauna

#### Foreword from the Attorney-General

New Zealand's prosecution system is founded on the fundamental values of transparency and equality before the law, and the legitimate public interest in prosecuting criminal offending.

New Zealand is different from other jurisdictions because we do not have a centralised agency that conducts prosecutions or makes prosecution decisions. Numerous prosecuting agencies and Crown Solicitors – private lawyers appointed by the Governor-General – conduct prosecutions and make such decisions.

This means close oversight of prosecution decisions in New Zealand is particularly important. The *Solicitor-General's Prosecution Guidelines* are a key part of this oversight. They provide guidance on how prosecutions should reflect core prosecution principles and promote consistent decision-making. The Solicitor-General's longstanding responsibility for general oversight over public prosecutions, and to issue and maintain prosecution guidelines, was codified in the Criminal Procedure Act 2011.

The guidelines set general expectations for prosecutors and identify the internal guidance that prosecuting agencies should have in place. As the guidelines say, they are not rules that provide an instruction manual to prosecutors on how every prosecution decision must be made or what the outcome should be. This reflects the diverse range of cases in which public prosecutors make decisions that general guidance cannot provide for or anticipate.

These guidelines support agencies to have better prosecuting processes, and therefore, make better decisions. I am especially pleased these guidelines provide more and enhanced guidance about how the interests of victims are relevant to prosecution decisions. The guidelines also include practical actions that prosecutors can take to improve the experience for victims, particularly where they have suffered from trauma.



Hon Judith Collins KC  
Attorney-General

## Introduction from the Solicitor-General

The Solicitor-General has issued Prosecution Guidelines since 1992. Since then, the guidelines have supported prosecutors to make decisions which are fair, detached and objective, while taking into account all the relevant circumstances of each case.

The law requires a range of factors to be considered when making different types of prosecution decisions, including matters such as the decision to prosecute; decisions about bail and sentencing; and decisions about the involvement of victims.<sup>1</sup> These guidelines assist prosecutors by identifying the factors which may be relevant to different types of decisions. This promotes equality before the law by ensuring that all relevant factors are taken into account in every case.

It is essential that the guidelines are reviewed from time to time to ensure they remain fit for purpose. It is important to see whether the guidelines can be improved to better support prosecution decision-making.

The latest review reflects the modern context in which prosecutions are conducted. There are now many more agencies who bring prosecutions than there were when the guidelines were first published.<sup>2</sup> Some prosecuting agencies did not find the previous guidelines to be relevant to the offending they prosecute because the guidelines were largely focused on serious offending prosecuted by the Police. Another part of the context was that Māori are among those groups that are disproportionately represented in the criminal justice system, as both defendants and victims. Victims' groups and advocates also considered the guidelines could better reflect victims' interests and experiences in prosecution decisions.

The goals of the review were:

- To ensure the guidelines reflect current law and practice.
- To improve the usability of the guidelines for all prosecutors.
- To support prosecuting agencies to design processes that facilitate unbiased decisions.

We sought a diverse range of views when we undertook this review. We heard from prosecutors and defence lawyers; the wider legal profession; the New Zealand Police and other enforcement agencies; and a wide group of experts in the criminal justice system, including those who support victims and defendants. This process was designed to identify all the factors relevant to prosecutorial decision-making.

The revised guidelines are presented as a suite of individual guidelines on specific topics, with the Principal Guideline as the foundational document. The revised guidelines:

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<sup>1</sup> Both in statute and at common law. See for example the Bail Act 2000, the Sentencing Act 2002, the Victims' Rights Act 2002 and the Supreme Court's decision in *Berkland v R* [2022] 1 NZLR 509.

<sup>2</sup> At the time of publication there are more than 40 different prosecuting agencies.

- Have been comprehensively reviewed and updated to reflect current law and practice, including the creation of guidelines on new topics.
- Apply to different kinds of offending, ranging from serious crime to minor regulatory offending, so it is easier for prosecutors from all enforcement agencies to use them. The guidelines are written in plain language, including commentary to assist with interpretation. For the first time, the guidelines are fully digital. All these measures make the guidelines more usable and easier to update in future.
- Include guidance on processes which facilitate unbiased decision-making.

Because the guidelines will be applied to a wide range of offending, not all of the guidance will be relevant to every agency. The intention is to support agencies to develop their own specific policies within the parameters set by the guidelines.

The 2024 edition of the guidelines is the result of the most comprehensive review we have conducted since 1992. The guidelines replace previous guidelines issued by the Solicitor-General. They will be reviewed and updated from time to time, and new guidelines may be added.

A handwritten signature in black ink, reading 'Una Jagose'.

Una Jagose KC  
Solicitor-General