



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

Immunities

Te kahu ārai

As at 1 January 2025

Introduction | Ngā kupu whakataki

1. People who commit serious offences will almost always be prosecuted when the Test for Prosecution is met. In exceptional cases, however, the Solicitor-General may grant an accomplice immunity from prosecution in exchange for evidence against a more culpable co-offender. Immunities are rarely granted. They are reserved for the most serious cases.

Scope | Te korahi

2. This guideline sets out the circumstances in which the Solicitor-General may grant immunity from prosecution or permit a prosecuting agency to advertise the possibility of immunity together with a reward for information that assists in solving a case or bringing a prosecution. It sets out the process for prosecutors to seek a grant of immunity. It does not address immunities in cartel cases, which are covered by a separate guideline.

Roles | Ngā tūnga

3. Prosecutors may ask the Solicitor-General to grant an accomplice immunity from prosecution. The Solicitor-General may provide a written undertaking providing an accomplice with immunity from prosecution in exchange for giving evidence.

Guideline | Te aratohu

4. Sometimes a prosecution will need the evidence of an accomplice, either to respond to a weakness in the case, or to prove the true nature and extent of a defendant's offending. Unless the accomplice has already been dealt with (usually charged and sentenced or acquitted), they will have the right to avoid self-incrimination by declining to give evidence. Prosecutors may wish to consider, in such cases, whether to ask the Solicitor-General to grant the accomplice immunity from prosecution in exchange for giving evidence for the prosecution.
5. An immunity is a written undertaking from the Solicitor-General to stay any charge against an accomplice for specified offences. It protects the accomplice from both public and private prosecutions. The only purpose of the undertaking is to make available evidence that would otherwise be unavailable.

The test

6. In general, the Solicitor-General will only consider granting an immunity if:
 - 6.1. the accomplice's proposed evidence is:
 - 6.1.1. necessary to respond to a significant weakness in the prosecution case;
 - or

- 6.1.2. essential to prove the true nature and extent of a defendant's offending (and such proof is not otherwise available); and
- 6.2. the accomplice has themselves committed a criminal offence but is less culpable than the defendant(s). Generally, they will present a lower risk to public safety.

Commentary

The weakness in the prosecution case, sought to be addressed by the grant of immunity, may be such that there is insufficient evidence to charge the principal(s), or that while there is sufficient evidence to charge, the prosecution case will be significantly strengthened by the evidence to be given under immunity. The stronger the prosecution case without the accomplice's proposed evidence, the less likely it is that immunity will be granted.

7. The ultimate question is whether it is in the interests of justice to secure the accomplice's evidence against the defendant(s) instead of prosecuting the accomplice. The Solicitor-General will almost invariably need to be satisfied of (at least) the following matters before coming to that conclusion:
 - 7.1. the offending the accomplice can give evidence about is serious;
 - 7.2. there are no other reasonably available ways of addressing the weakness in the prosecution case, or proving the true nature and extent of the offending (without relying upon the evidence to be given under immunity);
 - 7.3. the evidence to be given under immunity is admissible, relevant and significantly strengthens the prosecution case, or proves the true nature and extent of the offending;
 - 7.4. the accomplice, while having committed some identifiable offence(s) for which they could be charged, is less culpable, and less of a risk to public safety, than the person to be tried;
 - 7.5. the evidence to be given under immunity appears reliable and, preferably, is supported by other admissible evidence;
 - 7.6. no inducement, other than the possibility of an immunity, has been suggested to the accomplice (other than a reward where the Solicitor-General approved the advertisement of the possibility of immunity together with a reward); and
 - 7.7. there is sufficient admissible evidence to charge the accomplice with the offence(s) he or she is believed to have committed.

Commentary

In considering the credibility/reliability of the evidence to be given under immunity, prosecutors should consider whether the accomplice has a motivation to lie, in addition to the inducement of immunity or reward outlined in paragraph 7.6 above. Factors outlined in the guideline on Inmate admissions | Ngā whāki ā-mauhere may

be relevant to this assessment. Such factors should be identified in the request to the Solicitor-General.

Additional considerations

8. Prosecutors should advise the Solicitor-General of any other matters that may reasonably have a bearing on whether immunity is in the interests of justice. Those matters may include, for example, the character, criminal record and credibility of the accomplice and whether, if the accomplice were to be prosecuted and then testify, there is a real basis for believing that his or her personal safety would be at risk while serving any term of imprisonment.

Offers of reward

9. Occasionally New Zealand Police wish to advertise the possibility of immunity together with a reward notice. Police should seek the Solicitor-General's prior approval for the terms of such an advertisement, as immunity will not normally be granted where there has been any inducement offered to the witness and only the Solicitor-General can offer immunity.

Process | Te tukanga

Initial consultation between the investigator and prosecutor

10. Investigators should consult promptly with the local Crown Solicitor after identifying that an accomplice may be required as a witness rather than a defendant. The investigator and the Crown Solicitor should discuss whether, and how, the possibility of immunity from prosecution should be explored. It is important to keep accurate records about how possible immunity is raised with the witness. The investigator and Crown Solicitor should also discuss whether it would be appropriate to proceed with the investigation on the basis that the accomplice will be available as a witness.
11. In Crown prosecutions, the Crown Solicitor should personally decide whether to request the Solicitor-General to grant immunity to an accomplice. Because immunities are reserved for the most serious cases, they should only be sought in exceptional circumstances in connection with non-Crown prosecutions. In such a case the prosecuting agency should seek advice from the local Crown Solicitor as to whether immunity should be sought.

The request for immunity

12. The Crown Solicitor should send a formal opinion on the merits of any proposed immunity to criminal@crownlaw.govt.nz. The opinion should annex the accomplice's statements and provide sufficient detail for the Solicitor-General to be satisfied of the matters in paragraphs 7.1-7.7 above, and include information about how possible immunity was raised with the witness.
13. In all cases, the Solicitor-General's expectation is that the Crown Solicitor will have personally approved any request for immunity that is sent to Crown Law.

Briefing the accomplice

14. The accomplice who is to testify under immunity should provide a brief of the evidence they will give. They should be advised to seek independent legal advice, the reasonable cost of which may, if necessary, be met by the prosecuting agency. The accomplice should be advised that if immunity is declined, the brief of evidence and any other information obtained from the accomplice in connection with a promise to request immunity cannot be used against that person by the prosecution. The brief of evidence will be subject to the ordinary rules of disclosure concerning other defendants. The accomplice should also be advised that, if granted, immunity may be revoked on the grounds set out below.

Disclosure

15. Responsibilities for disclosure are set out in the guideline on Disclosure | Te tūhura. Evidence from a witness who has been given immunity from prosecution will almost certainly be contentious and there may be personal safety implications. If the prosecution is a Crown prosecution, such evidence, including disclosure requirements, should be discussed between the Crown prosecutor and the person managing disclosure at an early stage, including what information provided to support the request for immunity should be disclosed.

Revocation

16. The Solicitor-General approaches the grant of immunity on the assumption it is final in terms of the individual's legal jeopardy. However, the Solicitor-General may revoke a grant of immunity at any time if:
 - 16.1. the Solicitor-General becomes aware of information which suggests immunity should not have been granted; or
 - 16.2. the Solicitor-General is satisfied that:
 - 16.2.1. the recipient of the immunity has provided information to the Solicitor-General or relevant prosecuting agency that is false or misleading in a material respect; or
 - 16.2.2. the recipient of the immunity has not fulfilled the conditions of the immunity.
17. The Solicitor-General will notify the recipient in writing of the intention to revoke the grant of immunity and the reason for that, and give them a reasonable opportunity to respond before doing so.
18. If immunity is revoked, any information provided to the Solicitor-General in connection with the application for immunity may be used against the recipient in a prosecution.

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Inmate admissions | Ngā whāki ā-mauhere

Disclosure | Te tūhura

Immunities in cartel cases | Te kahu ārai ngā hara ā-rāngai kamupene

Decisions to prosecute | Te whakatau ki te aru