



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

Statutory consents to prosecutions

Ngā whakaaetanga ā ture ki ngā arumanga

As at 1 January 2025

All guidelines should be read alongside the Principal guideline | te Aratohu mātāmua

Introduction | Ngā kupu whakataki

1. Some offences can only be prosecuted with the consent of the Attorney-General. In practice, the Solicitor-General, who has the powers and duties of the Attorney-General, generally provides this consent.

Scope | Te korahi

2. This guideline sets out the matters prosecutors should consider, and the process to follow, when seeking consent from the Solicitor-General to prosecute an offence for which a statutory consent is required. It does not address the process for seeking the consent of the High Court to file a charge where that is required.

Guideline | Te aratohu

Offences requiring the Attorney-General's consent

3. The Attorney-General's consent is required before filing charges under a number of Acts and regulations. It is common for consent to be required when there is an international or national security element to the offence or the offending; when bribery or corruption is alleged; or when the offending engages protected rights under the New Zealand Bill of Rights Act 1990 (for example, the offence of inciting racial disharmony, and some offences involving objectionable and restricted publications). In some cases, the relevant statute permits New Zealand Police to arrest a person prior to obtaining consent.
4. Prosecutors should satisfy themselves that consent is not required before filing any charge.
5. Prosecutors should consider *why* consent is required in relation to a particular offence, and satisfy themselves that prosecution is appropriate, before referring the matter to Crown Law for consent. The request for consent should address that issue specifically.

Commentary

If, for example, consent is required because the offence engages protected rights, prosecutors should not seek consent unless they are satisfied that prosecution is a proportionate response.

Solicitor-General's consent required to file charges out of time

6. Charges in respect of some offences must be filed within five years of the date on which the offence was committed, unless the prior consent of the Solicitor-General is obtained to file a charging document after that date.¹ Prosecutors should consider whether it is appropriate to extend the time for filing a charging document, in all the circumstances of the case. The considerations may be different in a case where an extension of time will determine whether any prosecution is brought at all, as opposed to where there will be a prosecution on other charges in any event. The request should address these issues and explain why charges should be brought despite the expiry of the limitation period.

Process | Te tukanga

7. Requests for consent should be sent to criminal@crownlaw.govt.nz. Requests should annex a draft copy of the charging document(s), along with material to allow the Solicitor-General to be satisfied there is sufficient admissible evidence to support the charge and that the public interest favours charging the alleged offence in the circumstances. The Solicitor-General requires an accurate and thorough analysis of the evidence available to establish each element of the charge for which consent is sought. In most cases a summary will suffice but in some cases the prosecuting agency should provide copies of the evidence itself.
8. If the Solicitor-General consents to the prosecution, prosecutors should file the notice of consent together with the charging document(s).
9. If a prosecutor realises they have filed a charge requiring consent without having first obtained that consent, they should immediately contact criminal@crownlaw.govt.nz. In general, the charge will be a nullity and will have to be re-filed (if consent is subsequently sought and given, and subject to any limitation periods).

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru

¹ Criminal Procedure Act 2011, s 25.