



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

Making unbiased decisions

Te whakatau rītaha kore

As at 1 January 2025

Introduction | Ngā kupu whakataki

1. Prosecutorial decisions should be made with a view to fairness and equitable criminal justice outcomes for all. Prosecutors should be aware of biases that affect prosecutorial decision-making and put processes in place to mitigate adverse effects. In this guideline, “equitable outcomes” means the absence, in prosecution decisions, of avoidable or remediable differences in treatment or approach that have or may have an unfair effect on particular groups of people, however these groups are defined.
2. Cognitive bias is a systematic thought process that involves simplifying and filtering information; and includes assumptions, stereotypes, personal preferences, and mental shortcuts. Biases can help us make decisions efficiently, rather than reasoning from first principles in every case. Bias can be either conscious (explicit) or unconscious (implicit). Unconscious biases are harder to identify.
3. Bias can contribute to unfair decision-making, erroneous judgements and inappropriate organisational practices. Biases can therefore undermine the administration of justice by entrenching or exacerbating social and systemic prejudice, discrimination and privilege. Bias can impact all population groups but the overrepresentation of Māori in the criminal justice system as both victims and defendants suggests Māori may be more likely to be harmed by adverse biases.

Scope | Te korahi

4. This guideline supports prosecutors to follow fair processes and achieve equitable outcomes in their decision-making.

Guideline | Te aratohu

5. Prosecuting agencies should have processes and policies to mitigate against conscious and unconscious bias in prosecutorial decision-making. These processes and policies may help prosecuting agencies to meet their obligations under the New Zealand Bill of Rights Act 1990, including those relating to freedom from discrimination.¹
6. These processes and policies may form part of the public prosecution policies that prosecuting agencies are required to maintain or be contained in a separate policy document. If they are contained in a separate policy document, prosecuting agencies should consider making that document publicly available.

¹ New Zealand Bill of Rights Act 1990, s 19.

7. The following are examples of some processes and policies that prosecuting agencies may consider:
 - 7.1 Prosecuting agencies could give guidance to prosecutors about:
 - 7.1.1 relevant background and systemic factors;
 - 7.1.2 how to identify whether these factors are present and how they relate to the offending; and
 - 7.1.3 how the prosecutor should take these factors into account in prosecution decisions.
 - 7.2 Developing internal organisational decision-making processes and best practice. This could include:
 - 7.2.1 Requiring blind peer review of some files. This could involve a peer reviewer reviewing a decision to prosecute with identifying particulars redacted. This may reduce the risk of unconscious bias related to particulars (such as ethnicity, gender, disability, age or other prohibited grounds of discrimination²) influencing decisions. Sometimes, seemingly neutral factors (such as a person’s address) may act as proxies for other factors and should also be considered for redaction.
 - 7.2.2 Requiring written documentation of certain decisions to support considered, logical and transparent decision-making.
 - 7.2.3 Identifying cases that might benefit from a “devil’s advocate” approach, or review by someone with a different perspective.
 - 7.3 Unconscious bias training. We are not conscious of many of our biases and how they influence our decision-making. Prosecuting agencies could provide unconscious bias training for prosecutors to help increase awareness and provide mitigation techniques.
 - 7.4 Forums for prosecutors to safely discuss bias. Prosecuting agencies could facilitate an organisational culture of self-reflection and open dialogue to support prosecutors to identify and discuss problematic bias in prosecution or other decision-making. This can build institutional knowledge by providing opportunity for prosecutors to share strategies for challenging or mitigating biases and highlight organisational policies and processes that are working well.

² Human Rights Act 1993, s 21.

- 7.5 Developing measures and maintaining data. Systematically collecting and analysing data on prosecution decisions and outcomes could help prosecuting agencies identify areas for further research into whether conscious or unconscious bias may be undermining fair processes and equitable outcomes in prosecutorial decision-making. It could also help assess the effectiveness of bias-related policies and procedures.
- 7.6 Recruitment, retention, promotion and other organisational policies that improve and support diversity. This may include policies that enable diverse voices to be heard and valued. A more diverse workforce can improve prosecuting agencies' understanding and identification of the biases present in decision-making.

Commentary

For this to be effective, responsibility for understanding, identifying and addressing biases rests with all prosecutors working in the prosecuting agency, not only those from a particular background or minority group.

8. Prosecution decisions should be made independently from the investigator to minimise the impact of inappropriate conscious and unconscious bias in driving inequitable prosecution outcomes. This is set out in the guideline on The relationship between prosecutors and investigators | Te hononga i waenga i te kaiaru me te kaitūhura.

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru

Prosecution policies | Ngā kaupapa here mō te aru

Sentencing | Te whiu

Bail | Peira

Diversion | Te autaki

Warnings | Ngā whakatūpato

Avoiding unlawful bargains | Te kaupare i te tauhokanga takahi ture

Appeals | Ngā pīra