



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

Prosecution policies

Ngā kaupapa here mō te aru

As at 1 January 2025

Introduction | Ngā kupu whakataki

1. Prosecution is a serious step with significant consequences for a defendant, any victim(s) and their whānau. It also involves using court resources and potentially the resources of other agencies, as well as the prosecuting agency. For these reasons, it should not be the default option for all offences and other enforcement options should be carefully considered where available. If there is another way of dealing with a particular case that is likely to be effective, and is appropriate in the circumstances, it should be used.
2. All public prosecuting agencies have been required by Cabinet, since 1 July 2013, to have a publicly available prosecution policy which sets out, among other things, the process for making prosecution decisions and the circumstances in which alternative methods of resolving a matter may be used.¹ This ensures that prosecutions, which are a significant step, are only brought in appropriate cases.
3. This guideline sets out the matters which should be covered in a prosecution policy in order to meet Cabinet’s requirements.
4. Prosecuting agencies may choose to seek advice from Crown Law as to the consistency of their prosecution policy with these guidelines but that is not required.

Guideline | Te aratohu

5. A prosecution policy must, at least:²
 - 5.1 identify the objectives of the agency’s prosecution activity;
 - 5.2 determine the circumstances in which a prosecution is appropriate rather than some less punitive action; and
 - 5.3 ensure that prosecution decisions are cost-effective and in the public interest.
6. Prosecution policies should clearly set out the individual agency’s enforcement objectives and priorities to give context to the rest of the policy. In order to comply with Cabinet’s direction, they should clearly identify the purpose for which prosecutions are brought as opposed to other types of enforcement action.
7. To do this effectively, a prosecuting agency’s prosecution policy should set out all the different types of enforcement action which are available to it, and the sorts of circumstances in which they would be used. In addition to prosecution, enforcement actions will include, at a minimum:
 - 7.1 Taking no action.
 - 7.2 Taking an educative approach: providing the person under investigation with information to ensure they are aware of their obligations and the consequences of non-compliance.

¹ CAB Min (12) 26/6.

² These are the requirements set by Cabinet.

7.3 Issuing a warning (whether formal or informal).

8. Some prosecuting agencies will have a suite of other enforcement tools available, such as infringement notice regimes, restorative justice practices (including local community or iwi-led initiatives) and civil enforcement or forfeiture proceedings. However, there is no expectation that any agency will have such tools available to them, and many do not. It is for each prosecuting agency to determine what alternative tools they will develop and use, and in what circumstances, in order to fulfil their statutory functions and meet their enforcement objectives within the available resources.

Commentary

Some prosecuting agencies also operate diversion schemes, which provide opportunities for defendants who have already been charged to be dealt with outside of the court process. Diversion operates within the court process, after charges have been filed. Agencies who implement diversion schemes should do so in accordance with the guideline on Diversion | Te autaki.

9. The main risks with the use of alternatives to prosecution are:
 - 9.1 A person may be incentivised to submit to the alternative process, in order to avoid the risks inherent in prosecution, when they have not in fact committed an offence.
 - 9.2 Agencies may proceed with alternative action in circumstances where, if alternatives were not available, no action would be taken at all because the offending was not sufficiently serious. This is sometimes called “net-widening”.
10. Prosecuting agencies should have practices in place to guard against these risks, in accordance with this guideline. Prosecutors should only consider the use of an alternative to prosecution if they have already determined that it would be insufficient to take no action at all. In particular, prosecution policies should clearly set out the criteria for the use of each enforcement tool, based on a clear understanding of the tool’s purpose. Prosecution agencies may find it useful to consider the guideline on Making unbiased decisions | Te whakatau rītaha-kore when considering criteria and processes for each tool, to support equitable access to those tools. The purposes of each tool should align with the prosecuting agency’s statutory functions and enforcement priorities, as well as the purposes of the legislation containing the offences being prosecuted.
11. The following eligibility criteria should be considered, where applicable, for each tool other than prosecution (the Test for Prosecution is set out in the guideline on Decisions to prosecute | Te whakatau ki te aru):
 - 11.1 An evidential sufficiency threshold. That threshold need not be the same standard which is required before a prosecution can be commenced: a prosecuting agency may elect to adopt the threshold in the Evidential Test, a lesser standard (such as having reasonable grounds to believe an offence has

been committed), or a higher standard (such as requiring an admission of guilt).

Commentary

The appropriate standard will depend on the nature of the tool in question – for example, some methods of disposition will only be effective where there is an admission of guilt (such as restorative justice practices). For others, such as an informal warning that does not have further repercussions for the person, a lower threshold may be appropriate.

- 11.2 A description of the types of offending which are suitable for that particular tool (for example, by reference to the seriousness of the offending).
 - 11.3 Reference to the victim(s) of the offending (if any) and an assessment as to whether that particular tool supports victims' needs (as to which, see the guideline on Victims | Ngā pāturenga for further information).
 - 11.4 Reference to any particular circumstances of the suspect which may either qualify or disqualify them for the use of that tool. For example, some tools may have a disproportionate impact for an individual offender due to their personal characteristics (such as young people or those with disabilities).
 - 11.5 A requirement to assess how effectively the tool:
 - 11.5.1 addresses the suspect's conduct;
 - 11.5.2 restores the parties;
 - 11.5.3 holds the suspect accountable; and
 - 11.5.4 meets the prosecuting agency's enforcement objectives.
 - 11.6 Any other criteria the prosecuting agency considers necessary to ensure a particular tool is used only in appropriate cases, and within the available resources.
12. Prosecution policies should also identify who the decision-maker is at each step.
 13. Prosecution policies should set out a clear decision-making process in which the available enforcement tools are considered in a logical way, and the tools which are less severe than prosecution are considered first. Agencies may require prosecutors to consider alternatives to prosecution sequentially, from least severe to most, before applying the Test for Prosecution. If a particular enforcement tool is not appropriate in a particular case (either because the criteria for entry are not met or the offending is simply too serious to be dealt with in that way) the next least severe option is considered, and so on. This allows agencies to satisfy themselves that prosecution is the most appropriate method of resolving the matter.
 14. There are circumstances in which agencies may determine it is not appropriate to consider alternatives to prosecution. For instance, prosecution should generally be considered for offending of at least moderate seriousness. Prosecuting agencies should always assess the risk of further harm to the victim (if any), their whānau and the wider public when considering whether alternatives to prosecution should be used.

15. Other circumstances where prosecuting agencies may decide alternative action does not need to be considered include:
 - 15.1 The need to access other remedies which are contingent on convictions being entered. These circumstances should be identified in an agency's prosecution policy.
 - 15.2 Cases where the conduct has been persistent or repeated, particularly where alternative action has previously been used in respect of an individual (whether that was successful or not).
 - 15.3 The prosecuting agency's operating environment is such that prosecution of particular conduct is an enforcement priority.
16. Prosecution policies may also incorporate other policies that are required by the guidelines. For example, prosecuting agencies should have policies in place to deal with complaints or requests to review prosecution decisions; and other policies recommended by these guidelines (such as the guideline on Making unbiased decisions | Te whakatau rītaha-kore). Those policies may form part of an overall prosecution policy, or they may be separate.

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru

Making unbiased decisions | Te whakatau rītaha-kore

Diversion | Te autaki

Warnings | Ngā whakatūpatō

Avoiding unlawful bargains | Te kaupare i te tauhokanga takahi ture