



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

# Guidance: Expressing concerns about the conduct of Crown prosecutions

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# Scope of our process

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## Introduction

1. The Solicitor-General (who leads the Crown Law Office) is responsible for the general oversight of public prosecutions and has specific responsibilities for the conduct of Crown prosecutions. In practice, that function is exercised day to day by the Deputy Solicitor-General, Criminal. Most Crown prosecutions are conducted on the Solicitor-General's behalf by Crown Solicitors and the Crown prosecutors they employ. In this guidance, the term "Crown prosecutor" includes Crown Solicitors.
2. Crown Solicitors are private legal practitioners appointed on the recommendation of the Attorney-General and by warrant of the Governor-General. They are appointed to a specific district, usually one that has a High Court, and are responsible for running Crown prosecutions in that area. A full list of current Crown Solicitors, and the firms they are part of, is available on the [Crown Law website](#).
3. Crown prosecutors aim to provide high-quality service and to carry out their work properly. However, sometimes things do not go as they should. This guidance explains how you can let us know about a concern you have or make a complaint about a Crown prosecutor's conduct.
  - An **expression of concern** is the step before a complaint and indicates a worry or doubt about a situation; often it's a suggestion there could be a need for Crown Law to become involved in a situation to try and resolve it rather than making a formal complaint. All matters raised with Crown Law will be treated as expressions of concern until Crown Law has undertaken an initial assessment of the matter including (where appropriate) confirming that the person raising the concern has spoken to the relevant Crown Solicitor to attempt to address the concern.
  - A **complaint** is a formal expression of dissatisfaction about an issue that has already occurred which you are asking us to investigate. A matter will be treated as a complaint after the initial assessment by Crown Law has confirmed that there is an issue that needs to be looked into by Crown Law and that the issue falls within the scope of our policy.
4. Our goal is to listen, understand the concern or complaint, work out the best process to resolve the issue, and put things right when that is possible.
5. When we receive an expression of concern, we'll try to resolve it quickly and with as little formal process as we can. If the issue requires a more formal response or a complaint has been accepted by Crown Law for review, the complaints process set out in this document will begin.
6. We can't guarantee the outcome that you want, but your concern or complaint will be thoroughly and fairly considered.

## Who can express a concern or make a complaint?

7. Anyone with a clear personal interest in a prosecution — such as a victim, witness, Police officer, or defendant — can express a concern or make a complaint under this guidance. While anyone with a clear interest in the matter can get in touch with us, we will consider the role of the person raising the concern or making the complaint when deciding whether we proceed to consider the issue or refer you to another agency.
8. You can express a concern or make a complaint yourself, or someone else can do so on your behalf (such as a family member, support group, solicitor, or another professional). If someone acts for you, you will need to give us written permission for them to represent you. We will then deal with them as if they are the person raising the concern or making the complaint.

## How do I express concern or make a complaint?

9. You can get in touch with us in one of the following ways:
  - Email: Send your concern or complaint to [publicprosecutionunit@crownlaw.govt.nz](mailto:publicprosecutionunit@crownlaw.govt.nz)
  - Post: Send a written concern or complaint to PO Box 2858, Wellington 6140
  - Telephone: Call us on +64 4 472 1719. We will try to resolve your concern by phone, but if the concern is complex or unclear, or you are making a complaint we may ask you to put it in writing.
10. If you are unable to use any of these options, please let us know — we can consider alternative ways to hear your concern.

## How long do I have to express concern or make a complaint?

11. You should express your concern or make your complaint as soon as reasonably possible, and no later than 6 months after the issue arose, or all Court processes are completed (whichever happens latest).
12. In exceptional circumstances, we may consider concerns or complaints made more than 6 months after the issue arose if for example, you only found out about the issue later.

## What information should I include when I contact you?

13. To help us respond to your concern or complaint efficiently, please include:
  - your name;
  - your preferred contact details (and if applicable, the details of any representative who you authorise us to talk to on your behalf);

- your role in the prosecution (whether you are a defendant, victim, witness, or another interested person);
- full details of the concern or complaint (including the decision or action you are unhappy about and an explanation of why you think it is problematic, the name of the Crown prosecutor and what you believe they did wrong);
- any response you have already received (if you have raised the issue directly with the Crown prosecutor or their office) including letters, documents or other evidence that shows you've already tried to sort out the issue;
- an explanation of the outcome you want; and
- evidence of consent or power of attorney (if relevant).

14. If your concern or complaint relates to a Crown prosecution, please also include:

- the name(s) of the defendant(s);
- the criminal reference number (CRI), if known;
- the nature and date(s) of any offence(s); and
- the court(s) involved.

15. Be clear and concise. Stick to the main facts and don't add detail which is not relevant.

## **What type of issues will we look at?**

16. Under the supervision of the Deputy Solicitor-General, Criminal, we will consider concerns and complaints about:

- An allegation of improper behaviour or misconduct by a Crown prosecutor in the course of their role.
- A clearly stated issue about how a Crown prosecutor has handled a Crown prosecution.
- An allegation of a breach of the [Crown Solicitors: Terms of Office](#).

17. Examples of the kinds of concerns or complaints that may fall within this guidance include:

- Unreasonable delay.
- Rude or unprofessional behaviour.
- A conflict of interest or bias.
- A failure to follow up or to do something that was promised.

## What is not covered by this process?

18. A complaint should involve more than a disagreement. For the purposes of this guidance, a complaint does not include a disagreement about matters of professional legal judgement, such as:
- An assessment of facts.
  - The evaluation of evidence.
  - Submissions made on the law.
  - Reasonably available decisions made by the prosecutor during a hearing.
  - Legal advice given to government agencies.
19. Concerns regarding issues that have already been considered by the Courts will not be reviewed under the Crown Law complaints process. The appropriate method for raising these concerns is to appeal the Court's decision. If you are still not satisfied we will recommend you contact the Law Society.

## Review requests in sexual violation prosecutions

20. If a person (usually the victim) seeks a review of a decision not to prosecute a complaint of sexual violation, that request will not be dealt with under this guidance. A separate process covering sexual violation cases applies which is set out in the Prosecuting sexual violence guideline of the Solicitor-General's Prosecution Guidelines.

## Concerns raised by victims

21. Victims occupy a unique place in the prosecution process. Depending on the type of case, they may be required to play a significant role in the prosecution (such as being a witness for the prosecution). Sometimes victims may feel uncertain or let down by the criminal justice process including when a defendant is acquitted of charges relating to alleged offending.
22. Crown prosecutors are required to consult with victims on key decisions made during a prosecution (for example name suppression applications, bail applications, charging decisions and resolution decisions) and there are obligations on Crown prosecutors under the Victims' Rights Act 2002; however, a victim's views are not determinative of the decisions made by prosecutors or the outcome reached in Court.
23. In both these situations, the Victims guideline in the Solicitor-General's Prosecution Guidelines will be used to guide the most appropriate response to a victim's concerns including whether or not to initiate the complaints process set out in this guidance.

## Defence applications or appeals

24. Our complaints process is not a way for defendants in ongoing cases to try to have the charges against them dropped, or for people who have been convicted to try to overturn their convictions. We will not consider concerns or complaints of this kind. Our role does not extend to overriding available and independently made prosecution decisions.
25. Defendants and convicted people in these situations should get independent legal advice regarding their options. Organisations that may be able to help and give free advice are listed in the Annex 1 at the end of this guidance.

## Complaints about intended legal proceedings

26. If a complaint relates to current or planned legal proceedings, we will not accept the concern as a complaint because doing so could affect the proceedings and independent decision-making processes. In this situation we encourage you to talk through issues in the first instance with the police officer in charge of the case, the Crown prosecutor managing the proceeding or the relevant Crown Solicitor.

## Complaints about non-Crown prosecutions

27. Sometimes a prosecuting agency asks a Crown Solicitor's law firm to advise on a criminal investigation prior to a charge, or to manage a prosecution that is not a Crown prosecution — for example, if the agency does not have enough resources or the case needs specialist expertise. In these cases, the matter remains the responsibility of the original investigating and prosecuting agency. The agency makes the key decisions and pays for the legal service.
28. If a concern or complaint relates to the conduct of a prosecutor in a non-Crown prosecution (even if they are from a Crown Solicitor's office), it should be directed to the prosecuting agency, not Crown Law.
29. In rare situations, Crown Law may consider a complaint about a Crown prosecutor's conduct in a non-Crown prosecution. Crown Law has complete discretion whether to accept and/or investigate the complaint. It will usually only consider such complaints where:
  - the complaint has already been raised with the prosecuting agency responsible for the case;
  - that agency has provided a response; and
  - the complaint raises valid and serious concerns with how the prosecutor behaved during the prosecution.

## Complaints about other organisations

30. This guidance does not cover complaints about other organisations, such as the New Zealand Police, the Courts, the judiciary or other government agencies.



31. Complaints about services provided by other organisations should be directed to them. Contact details for key criminal justice organisations are included in the Annex 1 at the end of this guidance.

## Complaints alleging professional misconduct

32. All lawyers in Aotearoa New Zealand must meet professional standards, which are set out in the Rules of Conduct and Client Care (Rules). The Rules also recognise lawyers' overriding duties to the courts and the justice system. The Rules provide for complaints about "unsatisfactory conduct" and "misconduct"<sup>1</sup>.
33. The New Zealand Law Society (Te Kāhui Ture o Aotearoa) runs the Lawyers Complaints Service (LCS), which deals with complaints that a lawyer has breached the Rules. If your concern or complaint is about a Crown prosecutor breaching the Rules, you may choose to refer the matter to the LCS instead of to us. Even if a complaint is made to us, we may in our complete discretion, decline to investigate on the basis the LCS process is better suited to that type of concern or complaint. Crown Law may also occasionally be obliged to refer matters to the LCS if we consider that step is consistent with our own professional obligations.
34. Crown Law will generally not consider a complaint that is currently being dealt with by the LCS but may at its complete discretion consider the concern or complaint once the LCS process is complete.

## Concerns or complaints alleging criminal offending

35. Our process is not suitable for concerns or complaints alleging criminal offending. Crown Law and Crown prosecutors are not prosecuting agencies — we do not investigate offences or start prosecutions. If you believe a criminal offence has been committed, you should contact the [New Zealand Police](#) (Ngā Pirihimana o Aotearoa).
36. Contact details for the LCS and the Police are provided in Annex 1 at the end of this guidance.

## Complaints about Crown Solicitor recruitment or employment practices

37. This guidance does not cover complaints about recruitment outcomes at individual Crown Solicitor offices. Generally, employment and internal management practices within a Crown Solicitor's office are also not suitable for our process, and we are likely to recommend such matters are referred to the LCS.

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<sup>1</sup> "Misconduct" and "Unsatisfactory conduct" are defined in [section 6](#) of the Lawyers and Conveyancers Act 2006.

## Abusive or persistent complaints

38. Crown Law may refuse to deal with complaints that are abusive, unreasonably persistent, relate to matters that would be minor departures from good practice if proven, or where our complaints process has already been completed.

## Self-initiation of a review

39. Where a concern or complaint falls outside the scope of this guidance, the Solicitor-General can at their complete discretion, initiate a review into any Crown prosecutor.

# The complaints process

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## How does the complaints process work?

40. We consider and respond to each expression of concern individually. Our process is flexible so we can adapt it to the circumstances.
41. Generally, our process has three stages. We aim to meet certain timeframes, but they are not guaranteed — we may need to shorten or extend them depending on the situation. If that happens, we will let you know.
42. To begin with, we encourage you to raise your concern with the relevant Crown Solicitor's office, so they have the opportunity to manage the situation and respond directly to you. We can support you to do this if necessary. Contact details for all Crown Solicitor offices are available on the [Crown Law website](#).
43. If you are not willing to discuss the concern directly with the Crown Solicitor or you are not satisfied with their response, you can raise your concern with us and we will decide if the complaints process should be started.

## The process we follow to investigate your concerns and complaints

### Stage 1: Receipt of concern or complaint and collation of information

44. In the first stage, we work to make sure we understand your concern or complaint properly and have all the information we need to consider. This usually involves:
- acknowledging we have received your concern and letting you know if it falls outside our process, including providing advice on other agencies which are more suitable to consider your concern (if needed);
  - confirming we understand your concern correctly; and
  - inviting you to send us any more information you would like us to consider.
45. If the *concern* is accepted we will aim to help you to resolve it – see the next paragraph. If it is accepted as a *complaint*, we will explain the next steps in the

process. If the matter is trivial, vexatious, abusive or otherwise lacking in merit and no further action is warranted – we will let you know and there will be no further acknowledgement of any future correspondence which deals with the same issues.

46. Sometimes, we can resolve a concern at this early stage, for example by:
- providing an explanation or apology;
  - organising a meeting between you and the prosecutor;
  - helping you to express your concern and put it in writing for the prosecutor; or
  - identifying another appropriate response.
47. We aim to complete stage one within **25 working days** of receiving your concern.

## Stage 2: Getting a response to a complaint

48. If the matter needs to be treated as a complaint we will gather all the information. We will send your complaint (and any supporting material) to the Crown prosecutor involved and ask them to respond.
49. In some cases, we may be able to tell you the general nature of the response we receive. However, we will generally not share the full response from the Crown prosecutor with you.
50. We ask the Crown prosecutor to respond within **20 working days**. However, this timeframe may be extended if the Crown prosecutor has a reasonable reason for not being able to respond in time. This could include if they are currently involved in another trial or if the issue is complex and will require extensive work to review the files. Some complaints may take several months to respond to. We will keep you updated regarding the progress of your complaint.

## Stage 3: Reviewing all material and resolving a complaint

51. We review all the documents and supporting material we have received about the complaint and decide what should happen next.
52. In most cases, Crown Law will review the complaint internally. In some cases, we may ask an independent party to carry out a review under a terms of reference, leading to a report. The Deputy Solicitor-General, Criminal, under delegated authority from the Solicitor-General decides if this is needed and how it will be carried out.
53. We deal with all complaints sensitively, fairly, and confidentially. We will let you know whether we agree with your complaint (in full or in part) or not.
54. How long this takes depends on how complex the complaint is and how quickly we receive all the necessary information. However, we aim to complete our review within **20 working days** of receiving a response from the Crown Solicitor's office.

## **What outcome can I expect if you agree with my complaint?**

55. Deciding how to respond to a complaint is at the Solicitor-General's discretion, as part of their oversight responsibilities under the Criminal Procedure Act 2011.
56. If your complaint is upheld, we or the Crown prosecutor will usually apologise, try to put things right where possible, and take steps to prevent a similar issue(s) in the future.
57. However, even if your complaint is upheld, we cannot:
  - order the Police to investigate or file criminal charges;
  - direct the Crown Solicitor to pursue or not pursue a charge;
  - overturn convictions;
  - require a retrial; or
  - order costs to be paid.

## **Can I appeal the decision made by Crown Law regarding my complaint?**

58. There is no appeal process following our decision. Once we decide the outcome of your complaint, our process is concluded. Our process does not stop you using the Law Society's Lawyers Complaints Process.

## Annex 1:

# Other places to go for help

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## Organisations you may be able to get free help or advice about your concern

- Citizens Advice Bureau: Offers free, confidential, and independent information and advice. They can help you understand your rights and find services that might assist you.
- Community Law: Provides free, confidential legal help to people who cannot afford a lawyer. There are Community Law Centres across the country.

## Other organisations who you can complain to

- New Zealand Law Society | Te Kāhui Ture o Aotearoa: The NZLS Lawyers Complaints Service helps with complaints about the conduct and service of lawyers. They also regulate the legal profession in New Zealand.
- Department of Corrections | Ara Poutama Aotearoa: You can complain about the behaviour of Corrections staff if you are in prison, on a community sentence or order, or if you are a family member, advocate, or member of the public.
- Independent Police Conduct Authority of New Zealand | Mana Whanonga Pirihihana Motuhake: Looks into complaints about Police misconduct, neglect of duty, or concerns about Police practices, policies, or procedures.
- New Zealand Police | Nga Pirihihana o Aotearoa: Investigate reports of crime.
- Ministry of Justice | Court staff: If your complaint is about the conduct of Court staff you can complain to the Ministry of Justice.
- Ministry of Justice | Legal Aid lawyers and the Public Defence Service: The Ministry of Justice also administers a complaints process for concerns about the public defence service and legal aid matters.
- Office of the Judicial Conduct Commissioner: You can complain about a Judge's behaviour (either in or outside of court). This process is only for concerns about conduct — it cannot be used to challenge a Judge's decision.
- Ombudsman New Zealand | Tari o te Kaitiaki Mana Tangata: Handles complaints about government agencies. The Ombudsman can look into complaints, carry out investigations and inspections, and encourage good public service practices.



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