

Solicitor-General's Prosecution Guidelines

1 October 2024

Headline: Solicitor-General publishes updated Prosecution Guidelines

Body text:

The Solicitor-General's Prosecution Guidelines set core and unifying standards for the conduct of all public prosecutions across Aotearoa. On 1 October 2024 the Solicitor-General published 27 updating Guidelines covering a range of topics from the test for prosecution to diversion schemes. The revised Guidelines will continue to apply to all prosecuting agencies. They provide more detail than the previous guidelines and will be easier to apply to the full spectrum of offending from serious violent crime to minor offences, as well as the full range of regulatory offending.

New Zealanders can be confident that the Prosecution Guidelines continue to uphold the importance of criminal behaviour being prosecuted appropriately, and ensuring equitable outcomes for all across our criminal justice system.

The revised Guidelines are the product of a comprehensive review of the existing Guidelines including extensive consultation with users of the Guidelines and others with relevant expertise, including the legal profession and people who work as advocates for both victims and defendants.

"The current version of the guidelines were issued in 2013, to align with the Criminal Procedure Act 2011 coming into force. However, that revision did not include a substantive review of core matters such as the test for prosecution. There was a need to consider whether the guidelines remained fit for purpose and adequately reflected changes in legislation and case law. I also wished to consider whether there were any opportunities within the scope of the guidelines to address the disproportionate impact of the criminal justice system on Māori, who are overrepresented as both victims and defendants.

The project team worked with a diverse range of views and experiences in developing the new guidelines. We conducted the review with Ināia Tonu Nei, Māori thought leaders focused on the criminal justice system. Ināia Tonu Nei played a pivotal role as advocates for consideration of Māori experiences. We also consulted with a broad range of stakeholders, including Police, Crown Solicitors, prosecuting agencies, justice sector agencies, defence counsel, others from the legal profession, the Chief Victims Adviser and victim groups, academics, community representatives and NGOs. I thank all who took part in the review for their contributions and for trusting us with their insights," says the Solicitor-General, Una Jagose KC.

"Research over many years has consistently found that Māori are significantly overrepresented in the criminal justice system at every stage, including as victims, and we recognised at the start of the project that the discretion to prosecute may contribute to that. The Guidelines expressly reference these disproportionate impacts and assist prosecutors by providing guidance about the matters to factor into their decisions. I am grateful to the kaitiaki and kaimahi of Ināia Tonu Nei for their wisdom, generosity and commitment. These Guidelines are much better for their input" says Ms Jagose.

In addition to the substantive changes, a more uniform approach was required across the Guidelines, as multiple guideline documents had been released at different times with different styles. Crown Law has applied a consistent style across all the revised Guidelines and have ensured that versions published online meet the NZ Government Web Accessibility Standard 1.1.

Foundational elements are concisely set out in a “Principal Guideline” with additional guidelines on discrete topics. The new format of the Guidelines will make it easier to update them as needed in future, to reflect changes in law and practice.

Crown Law, and Crown Solicitors, will be applying the revised Guidelines from 1 January 2025. “My expectation is that prosecuting agencies will operationalise the revised Guidelines in accordance with a timeframe that is appropriate for them. The Guidelines require prosecuting agencies to update the prosecution policies they are already required to maintain. We expect those policies to be in place by 1 January 2026. I appreciate that agencies will require differing periods of time to train staff and update policies, depending on their size and the volume of prosecutions they undertake. I expect agencies to make clear to the public, for example by way of a statement on websites where their prosecution policies are located, the date from which their new prosecution policies will apply.”

The staggered implementation will not give rise to inconsistent decisions to prosecute. While the revised Guidelines provide more guidance about the factors relevant to the assessment of both the Evidential and Public Interest Tests, all of those factors should also be considered under the 2013 edition, if they are relevant, as neither edition purports to set out an exhaustive list of factors relevant to the decision to prosecute.

Notes for media

The Guidelines are available on the Crown Law Office website: www.crownlaw.govt.nz

To learn more about Ināia Tonu Nei, visit their website: www.inaiatonunei.nz

For more information about the Guidelines, please contact media@crownlaw.govt.nz