



# Prosecution in New Zealand

## An overview



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## Introduction

In New Zealand, there are over 40 agencies and organisations with the ability to enforce laws and prosecute people who do not follow them.

Under New Zealand's constitutional arrangements the Attorney-General is responsible through Parliament to the citizens of New Zealand for prosecutions carried out by or on behalf of the Crown. However, as a result of both statute and long-standing practice, the Solicitor-General is responsible day to day for superintending the prosecution process.

The Solicitor-General has a special responsibility for the funding, administration, and conduct of Crown prosecutions (certain prosecutions for serious crime). Under s 9A of the Constitution Act 1986, the Solicitor-General shares all the relevant powers vested in the office of the Attorney-General; in practice the Solicitor-General usually exercises these powers in the criminal process. This ensures that prosecutions are, and are seen to be, apolitical.

Read more about [who can prosecute](#)

Each agency is responsible for identifying its own policies and procedures relating to enforcement and prosecution, having regard to its statutory framework and practical considerations like resources. Prosecution is one path that could be taken. Other responses to offending may include giving a person a warning, some form of alternative resolution, and giving people an opportunity to put things right. The majority of prosecutions are resolved before reaching trial. Read more about the [alternatives to prosecutions](#).

The Prosecution Guidelines, first issued by the Solicitor-General in 1992 and updated from time to time, provide guidance for prosecutors to ensure consistency in prosecution practice and to assist prosecuting agencies in deciding whether and how to prosecute in any particular matter. The guidelines cover other decisions that also arise in prosecutions.

The Guidelines set expectations, not rules. The guidelines do not limit prosecutors' discretion and prosecutors are expected to exercise their judgement. Departure from the guidelines may be appropriate to do justice in the unique circumstances of an individual case.

Read more about the [Prosecution Guidelines](#) or view the current guidelines on [www.crownlaw.govt.nz](http://www.crownlaw.govt.nz)

## Who can bring a prosecution

Police are responsible for the vast majority of prosecutions in New Zealand.

There are many other agencies and organisations with enforcement and prosecution functions, falling into the following categories:

- Other central Government agencies such as:
  - Corrections, who prosecute, for example, breaches of community-based sentences and parole/release conditions);
  - Inland Revenue, who prosecute breaches of tax obligations;

- the Ministry of Social Development who prosecute benefit fraud;
  - the Ministry for Primary Industries, who prosecute a range of offending including animal welfare offending and offences against fisheries rules;
  - the Department of Conservation; and
  - the Serious Fraud Office.
- Independent Crown entities with specialist regulatory and/or enforcement functions such as:
    - the Civil Aviation Authority;
    - Maritime New Zealand;
    - Worksafe New Zealand;
    - the Commerce Commission; and
    - the Financial Markets Authority.
  - Local government bodies who prosecute for a range of offences including offences under the Resource Management Act.
  - Other statutory boards and bodies with specialist functions such as:
    - the Plumbers, Gasfitters and Drainlayers Board; and
    - the Society for the Prevention of Cruelty to Animals.

For a list of prosecuting agencies see page 8 of this document or [www.crownlaw.govt.nz/about-us/prosecutions](http://www.crownlaw.govt.nz/about-us/prosecutions). Please note that this list may be subject to change at any time.

For more about what behaviour might be prosecuted in New Zealand visit: [www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-systems/criminal-law/](http://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-systems/criminal-law/)

## Crown Prosecutions

Crown Law is a Government Department which provides legal services to the Government. The Solicitor-General is the Chief Executive of Crown Law and is also the Junior Law Officer of the Crown and has oversight of all public prosecutions.

For more information about New Zealand's two Law Officer roles, see [www.crownlaw.govt.nz/about-us/law-officers](http://www.crownlaw.govt.nz/about-us/law-officers) and [www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/4-ministers-law-and-inquiries/attorney-general](http://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/4-ministers-law-and-inquiries/attorney-general).

Crown prosecutions are for serious offences<sup>1</sup>, such as murder and manslaughter; and serious sexual, violent, drug and dishonesty offending as well as all prosecutions in the High Court, and all jury trials. Crown prosecutions represent about 5% of all prosecutions, and are prosecuted by **Crown Solicitors** on behalf of the Crown. [View a full list of current Crown Solicitors](#) on the Crown Law website.

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<sup>1</sup> These offences are punishable by imprisonment for life or by imprisonment for 2 years or more, or offences listed in Schedule 1 to the Criminal Procedure Act 2011, such as murder and manslaughter. They are classified as category 3 and 4 (of 4) offences.

Crown Solicitors are private legal practitioners appointed on the recommendation of the Attorney-General and by warrant of the Governor-General. The Crown Solicitors are appointed for a particular district, usually in a High Court centre, and are responsible for the conduct of all Crown prosecutions in the High Court and District Court in their geographic region.

Crown Law is not a prosecuting agency itself, nor are Crown Solicitors. Neither Crown Law nor Crown Solicitors conduct investigations or commence prosecutions. If a prosecuting agency commences a prosecution which meets the criteria for becoming a Crown prosecution, the local Crown Solicitor will take over the file and conduct it independently.

This will include a review of the file and a fresh, independent, decision whether or not to continue with the prosecution (and, if continued, on what charges). The original prosecuting agency is not the “client” and no longer has a decision-making role, although obviously they will be consulted on significant decisions (along with the victim(s) of the offence, if there are any).

Crown prosecutions are funded by Crown Law by way of a fixed appropriation from the Government; Crown Solicitors are paid an annual fee for the provision of their services in respect of Crown prosecutions.

## Types of prosecutors

There are different types of prosecutors. Where the prosecution is not a Crown prosecution, the prosecuting agency can use its own staff as prosecutors. Staff need not be lawyers (although they may be). For example, probation officers prosecute on behalf of Corrections, and many Police prosecutors are not legally qualified.

- **Crown Solicitor:** The individuals who currently hold a warrant to be a Crown Solicitor, in relation to one or more of the 17 High Court districts.
- **Crown prosecutor:** A lawyer employed by a Crown Solicitor to conduct the prosecutions in their region.
- **Police prosecutor:** A prosecutor employed in the Police Prosecution Service (PPS) by the New Zealand Police.
- **Departmental prosecutor:** A prosecutor employed by a Government agency.
- **In-house prosecutor:** A prosecutor employed by an enforcement agency. This includes Police prosecutors.

Sometimes a prosecuting agency may instruct a Crown Solicitor’s law firm to conduct a non-Crown prosecution, either because the agency does not have the resources to conduct it or because it requires specialist expertise. In this situation the prosecution does not become a Crown prosecution, the original prosecuting agency remains responsible for the prosecution

and any significant decisions, and they instruct and pay the Crown Solicitor as with any other lawyer-client relationship.

Some prosecuting agencies use other private law firms to represent them in conducting prosecutions; only Government Departments are required to use Crown Solicitors if not conducting the prosecution themselves.

### **Prosecution Guidelines**

Since 1992, the Solicitor-General has issued Prosecution Guidelines to assist prosecuting agencies in deciding whether to prosecute in any particular matter. The guidelines also set out how certain issues in prosecutions should be dealt with.

The guidelines cover the full range of offending, including all four categories of offence under the Criminal Procedure Act 2011, prosecuted by the full spectrum of public prosecuting agencies (not just the Police and Crown Solicitors), so they are necessarily high level in nature.

The guidelines are issued by the Solicitor-General, in her capacity as an independent Law Officer, under section 185 of the Criminal Procedure Act 2011. They are legal guidelines for prosecutors. This helps to ensure that prosecution decisions are free from political influence, which is fundamental to our democracy.

It is essential that the guidelines are reviewed from time to time to ensure they remain fit for purpose. It is important to see whether the guidelines can be improved to better support prosecution decision-making.

### **Making prosecution decisions**

Most Commonwealth countries, including New Zealand, adopt a similar approach to the decision to prosecute, by way of a two-step test that must be satisfied which addresses evidential sufficiency and the public interest.

1. The evidential sufficiency test must be considered first. Essentially, the prosecutor must assess whether there is sufficient evidence to prove the case beyond reasonable doubt. If there is not, then a prosecution cannot be commenced.
2. If there is sufficient evidence, the prosecutor should then assess whether a prosecution is required in the public interest. This will involve consideration of a range of factors specific to the particular case, including:
  - i. the nature and seriousness of the offence;
  - ii. the personal circumstances of the alleged offender (for example, their age and health, and other matters such as whether they have committed similar offending before);
  - iii. the views of any victim(s) of the offence; and
  - iv. whether there are any alternatives to prosecution.

A prosecution should only be commenced if both tests are met. If there is not sufficient evidence, a prosecution should never be commenced no matter how great the public interest

may be. Conversely, even where there is incontrovertible evidence to prove the offence, a prosecution should not be brought unless the public interest requires it. The relative seriousness of the alleged offence will be an important factor in that consideration.

The Court always has the power to dismiss charges which lack evidential sufficiency or it considers to be an abuse of the Court's process.

The guidelines promote equal justice before the law by assisting prosecutors to identify all the relevant factors that should be taken into account under both the evidential and public interest tests. The law requires that the individual circumstances of a case are taken into account. That means that two people who commit the same offence may be treated quite differently depending on their own personal circumstances.

For example, we do not treat children the same as adults; we do not treat those who suffer from severe mental illness the same as those who do not; and we take account of whether someone is a repeat offender compared to someone offending for the first time.

### **Alternatives to prosecution**

In circumstances where there is a suitable alternative mechanism to meet the public interest in responding to crime, prosecution may not be appropriate or necessary.

Examples of alternatives to prosecutions include:

- Warnings (whether formal or informal)
- Restorative justice processes
- Community-based justice processes such as the Police [Te Pae Oranga](#) programme (formerly known as Community Justice Panels or Iwi Justice Panels)
- Civil enforcement action such as the payment of fines or forfeiture of money or property
- Civil proceedings to recover the proceeds of crime
- Infringement notices

Some agencies, including Police, also operate a diversion scheme in which a defendant is charged, but charges are subsequently withdrawn if the defendant takes certain steps (such as undertaking community service or donating money to a charity). This is not truly an alternative to prosecution because a prosecution must first be commenced.

## Prosecuting agencies

as at 10 December 2024 (may be subject to change)

Accident Compensation Corporation  
Civil Aviation Authority of New Zealand  
Commerce Commission  
Department of Corrections  
New Zealand Customs Service  
Department of Internal Affairs  
Department of Conservation  
Electricity Authority  
Energy Efficiency and Conservation Authority  
Environmental Protection Authority  
Earthquake Commission  
Fire and Emergency New Zealand  
Financial Markets Authority  
Ministry of Health  
Heritage New Zealand  
Health Quality and Safety Commission  
Human Rights Commission  
Inland Revenue Department  
Homes and Communities  
Land Information New Zealand  
Maritime New Zealand  
Ministry of Business, Innovation and Employment  
Ministry for Culture and Heritage  
Ministry for the Environment  
Ministry of Education  
Ministry for Primary Industries  
Ministry of Social Development  
New Zealand Defence Force  
New Zealand Qualifications Authority  
New Zealand Transport Agency  
Office of the Privacy Commissioner  
The Outdoor Access Commission  
New Zealand Police  
Real Estate Agents Authority  
Serious Fraud Office  
Statistics New Zealand  
Takeovers Panel  
Water Services Regulator  
Health NZ  
Tertiary Education Commission  
Ministry of Transport  
Worksafe New Zealand

Every local, city and regional council is also able to prosecute. In addition, there may be organisations, such as the SPCA, whose inspectors are appointed under the Animal Welfare Act 1999.