

Prosecution Policy

Version number 1.1 June 2024



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

MBIE guiding principles relevant to this policy

- 1.1 The Prosecution Policy aligns with the following MBIE guiding principles:
- ensuring our core values and diverse and inclusive culture, including partnering with Māori, are at the heart of what we do
 - ensuring we maintain the trust and confidence of the public
 - ensuring the best use of taxpayer funds
 - complying with legislation, regulations and standards.

2 Purpose

- 2.1 The purpose of the Prosecution Policy is to:
- establish the principles to which MBIE must adhere in dealing with potential prosecutions, making prosecution decisions and conducting prosecutions and/or related proceedings.
 - define the expectations and rules governing prosecutions decision making and prosecution proceedings
 - ensure effective internal controls are in place over the prosecution decision making process

3 Scope

- 3.1 This policy applies to all staff, secondees and contractors employed or engaged on any basis by MBIE (our people), whether they are casual, fixed term or permanent, whether full time or part time and whether they are in New Zealand or in any other country who is involved in prosecutions brought by MBIE, including those authorised to make a decision to prosecute.
- 3.2 For avoidance of doubt, the Prosecution Policy does not apply to staff involved in civil enforcement (i.e. non-criminal or offence proceedings) of MBIE legislation (e.g. before occupational licensing boards or the Employment Relations Authority).
- 3.3 This policy does not apply to personal grievances, disputes relating to employment within MBIE or offending by our people outside of their employment with MBIE.

4 Help

- 4.1 For any queries relating to the policy, please contact the Chief Legal Officer or Manager Legal Services (Litigation) in the Legal, Ethics, and Privacy branch.

5 Definition of terms

Term	Definition
Prosecution	a proceeding in <ol style="list-style-type: none">the District or High Court under the Criminal Procedure Act 2011 in respect of an offence;the Employment Court under the Employment Relations Act 2000 in respect of an offence under that Act.
prosecution decision	the decision to prosecute, not to prosecute, to withdraw charges or to otherwise continue/discontinue criminal proceedings once commenced.

prosecution decision maker	manager within an MBIE business unit who has the authority under delegation and the Prosecution Procedure and Guidelines to make a prosecution decision.
prosecutor	<p>MBIE in-house prosecutors, Crown solicitors, or other solicitors or barristers instructed by MBIE as a prosecutor in accordance with the Cabinet Directions on the Conduct of Core Crown Legal Business and Crown Solicitor guidance.</p> <p>For the purposes of issues relating to disclosure, prosecutor has an alternative meaning. With disclosure, the functions of the prosecutor are shared between the investigator and the lawyer responsible for the file.</p>

6 Policy statements

- 6.1 Prosecution action is one of a number of possible responses that may be used by MBIE in respect of criminal conduct within the areas that it regulates. It is a significant enforcement tool that must be used in a deliberate and targeted manner.
- 6.2 MBIE's decisions to prosecute, and whether or not to continue with prosecutions, must be made fairly and consistently. Each prosecution decision must take into account the factors set out in the [Solicitor-General's Prosecution Guidelines](#) (including the facts of each case, the relevant legislation, the evidence and the public interest) and any specific internal enforcement strategies. Guidance on decision making is set out in the [Prosecution Procedure and Guidelines](#). Each prosecution decision must be taken independently by a staff member who is free from conflicts of interest.
- 6.3 Prosecution decision makers must consider each case on its own merits when making the decision to prosecute.
- 6.4 Each prosecution recommendation must be reviewed by a prosecutor to ensure that the Tests for Prosecution (evidential sufficiency and public interest) set out in the [Solicitor-General's Prosecution Guidelines](#) are met.
- 6.5 When making a prosecution decision, decision makers must follow [Prosecution Procedure and Guidelines](#).
- 6.6 All prosecution decisions must be recorded as set out in the [Prosecution Procedure and Guidelines](#).
- 6.7 Managers are required to report any breaches of the policy, any adverse comments by courts, and any costs awarded against MBIE in MBIE prosecutions to the Chief Legal Officer.

7 Key accountabilities and responsibilities

Role	Responsibility
<i>Governance and oversight</i>	
Secretary for Business Innovation and Employment & Chief Executive (The Secretary)	<ul style="list-style-type: none"> Has overall responsibility for ensuring MBIE meets its obligations under the Prosecution Policy
Assurance Risk and Accountability Committee (ARA)	<ul style="list-style-type: none"> Maintains overall oversight of the status of the Prosecution Policy Approves new and major amendments to this policy

Business group management: Identify and manage risks in day-to-day operations (1 st Line)	
Deputy Secretaries (Dep Secs)	<ul style="list-style-type: none"> • Embedding this policy in their business groups. • Ensuring their business groups are compliant with this policy and associated procedure
Managers and People Leaders	<ul style="list-style-type: none"> • Making employees aware of this policy and the procedure and guidelines that support compliance with it • Ensuring employees are given appropriate information and training to assist them to comply with their obligations under this policy • Having systems in place to enable timely and effective monitoring and auditing of prosecution decision-making (including relating to infringements) • Reporting on prosecutions outcomes in accordance with the Prosecution Procedure and Guidelines • Responsible for embedding the policy into operational activities within their business area • Ensure new and existing staff in their teams are made aware of and comply with the policy • Reviewing prosecution files and making prosecution decisions in accordance with the Solicitor-General's Prosecution Guidelines, • this Policy, and the Prosecution Procedure and Guidelines
Our People	<ul style="list-style-type: none"> • Comply with this policy and associated procedure applicable to their role
Prosecutors	<ul style="list-style-type: none"> • Reviewing prosecution files and recommendations • Advising on whether tests for prosecution in the Solicitor-General's Prosecution Guidelines, are met • Conducting prosecutions
Specialist functions: Set MBIE-wide expectations, policies and procedures (2 nd Line)	
Chief Legal Officer (Policy Owner)	<ul style="list-style-type: none"> • Has overall responsibility for the system for the management of MBIE's legal risk, and the provision and procurement of legal services • Provides advice and support to business groups relating to the provision and procurement of legal services in accordance with the Legal Services Policy

Manager Legal Services (Litigation)	<ul style="list-style-type: none"> • Assists business groups with any breach management / mitigation activities as required • Monitors compliance with the policy on a regular basis • Ensures the policy is reviewed and updated by the agreed review date • Provides quarterly reporting on policy compliance to the Compliance Centre of Excellence • Establishes and maintains the Litigation Register
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8 Procedures

- a. [Prosecution Procedure and Guidelines](#)

9 Related MBIE policies and documents

- a. [Declarations of Interest policy](#)
- b. [Legal services policy](#)
- c. [News Media policy](#)

10 Relevant legislation, regulations and standards

- d. [Crimes Act 1961](#)
- e. [Criminal Disclosure Act 2008](#)
- f. [Criminal Procedure Act 2011 and Criminal Procedure Rules 2012](#)
- g. [Evidence Act 2006](#)
- h. [Search and Surveillance Act 2012](#)
- i. [Sentencing Act 2002](#)
- j. [Summary Proceedings Act 1957](#)
- k. [Employment Relations Act 2000](#)
- l. [Employment Court Regulations 2000](#)
- m. [Solicitor-General's Prosecution Guidelines](#)
- n. [Crown Law Media Protocols for Prosecutors](#)

11 Measures of success and compliance management

- 11.1 The Manager Legal Services (Litigation) will assess the effectiveness of this policy based on the following measures of success:
 - a. All prosecution decisions comply with the [Solicitor General's Prosecution Guidelines](#), this policy, and the [Prosecution Procedure and Guidelines](#)
 - b. the outcomes of prosecution decisions (as reported annually by the Public Prosecutions Unit of the Crown Law Office) reflect MBIE prosecutions are well managed
 - c. continuous improvement to [Prosecution Procedure and Guidelines](#) to incorporate the comments and expectations of the court
- 11.2 The Manager Legal Services (Litigation) will monitor compliance with this policy as follows:
 - a. Embedding procedures requiring two or more people input before prosecution decisions are made

- b. Deploying tools such as checklists or other education to help inform staff and managers of their relevant obligations
- 11.3 Compliance information regarding the performance of this policy will be provided to the relevant business group and the Compliance Centre of Excellence on a quarterly basis.

12 Non-compliance

- 12.1 Failure to comply with this policy may be considered a breach of the Code of Conduct.
- 12.2 Any action taken as a result of a breach of any of the obligations set out in this policy will be conducted in good faith, a fair process will be followed, and the person involved will have a full opportunity to respond to the concerns or allegations and have access to appropriate support, advice or representation.