

Prosecution

Note This policy was developed as part of the implementation of the Fire and Emergency New Zealand Act 2017.

Introduction

When to use	This policy sets out Fire and Emergency New Zealand’s approach to making decisions to prosecute offences against legislation and/or regulations by laying charges in a court.
Purpose	<p>The aim of this policy is to:</p> <ul style="list-style-type: none"> • encourage persons who are required to comply with relevant fire and emergency levy legislation, fire safety legislation and regulations to comply • ensure that Fire and Emergency New Zealand’s approach to prosecution is lawful, credible, and proportionate to the situation and other actions taken • ensure the organisation makes prosecution decisions which are consistent with the Solicitor-General’s Prosecution Guidelines.
Who it applies to	<p>This policy applies to all Fire and Emergency New Zealand personnel involved in prosecutions for offences under fire and emergency levy legislation, fire safety legislation and regulations.</p> <p>This policy should be read in conjunction with:</p> <ul style="list-style-type: none"> • the Compliance and enforcement policy, which describes Fire and Emergency New Zealand’s approach to enforcement and the use of available enforcement tools. It guides personnel on the use of the appropriate enforcement tool for the circumstances. • The <i>Legal proceedings involving Fire and Emergency New Zealand and its personnel</i> policy. This policy guides personnel through the requirements and expectations of them should they be required to appear as a witness in court as a result of commencing a prosecution. <p>Prosecution action is one of the enforcement tools which may be used by Fire and Emergency and, where it is used, it must be used in accordance with this policy.</p>
Purpose of prosecution	Fire and Emergency New Zealand’s purpose in prosecuting is to deter non-compliance with the legislation it is responsible for enforcing, and to hold persons who breach those laws to account.
Contents	<p>This policy contains the following content:</p> <ul style="list-style-type: none"> • Solicitor-General’s Prosecution Guidelines • Deciding to prosecute • Definitions • Related information

Solicitor-General’s Prosecution Guidelines

<p>Introduction</p>	<p>Decisions to prosecute, and whether to continue with prosecutions as they proceed, should:</p> <ul style="list-style-type: none"> • be made fairly and consistently • be proportionate to the seriousness of the behaviour and the alleged offence. <p>Prosecutions have serious implications for alleged offenders, victims and witnesses. They should not be commenced lightly or without due regard for the impact they can have on all the people involved, along with the organisational impact. The public should have confidence in the way Fire and Emergency New Zealand conducts its prosecutions.</p> <p>All Fire and Emergency New Zealand prosecution decisions must be made in accordance with the Solicitor-General’s Prosecution Guidelines. The guidelines require the evaluation of the following two tests:</p> <ul style="list-style-type: none"> • evidential test • public interest test.
<p>Evidential test</p>	<p>To meet the evidential test, the organisation must be satisfied that the evidence of the alleged offence to be given in court is sufficient to provide a reasonable prospect of conviction.</p> <p>Specific elements that must be considered and satisfied are set out in the Solicitor-General’s Prosecution Guidelines.</p> <p>If the available evidence is insufficient to provide a reasonable prospect of conviction, then no prosecution action will be taken.</p>
<p>Public interest test</p>	<p>The organisation must also determine that it is in the public’s interest to prosecute. In some cases, there may be a decision not to prosecute even though there is sufficient evidence to do so.</p> <p>The main considerations relevant to Fire and Emergency New Zealand’s assessment of public interest in a prosecution will usually be:</p> <ul style="list-style-type: none"> • the seriousness of the offence • whether there are grounds for believing that the offence is likely to be continued or repeated • the defendant’s previous relevant convictions, diversions and cautions • whether the offence was deliberate or premeditated • whether the offender has created a serious risk or harm • the impact on victims of the offence or their families. <p>Other considerations included in the Solicitor-General’s Prosecution Guidelines will also be considered where appropriate, on the facts of each situation.</p>

Deciding to prosecute

<p>Investigation and legal review</p>	<p>Prosecution will be considered if an investigation carried out by Fire and Emergency New Zealand personnel identifies that prosecution may be an appropriate response.</p> <p>Prosecution recommendations must be sponsored by a member of the Fire and Emergency New Zealand Executive Leadership Team (ELT member).</p> <p>Fire and Emergency New Zealand’s Legal Counsel will consider each proposed prosecution to determine whether both the evidential and public interest test requirements are met, and whether there are any other barriers to a successful prosecution:</p> <table border="1" data-bbox="414 638 1423 1108"> <thead> <tr> <th data-bbox="414 638 794 734">If Fire and Emergency’s Legal Counsel considers that...</th> <th data-bbox="794 638 1423 734">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="414 734 794 831">either or both tests are not met</td> <td data-bbox="794 734 1423 831">a ‘no prosecution’ recommendation will be made to the decision-maker.</td> </tr> <tr> <td data-bbox="414 831 794 1108">both the evidential and public interest tests are met</td> <td data-bbox="794 831 1423 1108"> Legal Counsel may: <ul style="list-style-type: none"> • advise that both tests are met and explain the reasons for that advice, or • refer the proposed prosecution to a Crown solicitor for further review to ensure that the tests for prosecution set out in the Solicitor-General’s Prosecution Guidelines are met. </td> </tr> </tbody> </table> <p>‘No prosecution’ recommendations by Legal Counsel or a Crown Solicitor will include, as a minimum:</p> <ul style="list-style-type: none"> • an outline of the material facts of the case • the evidence considered • any possible issues of admissibility that have been identified • any other legal barriers that may impede a successful prosecution • the advice on whether the evidential and public interest tests have been met • the reasons for that advice. 	If Fire and Emergency’s Legal Counsel considers that...	then...	either or both tests are not met	a ‘no prosecution’ recommendation will be made to the decision-maker.	both the evidential and public interest tests are met	Legal Counsel may: <ul style="list-style-type: none"> • advise that both tests are met and explain the reasons for that advice, or • refer the proposed prosecution to a Crown solicitor for further review to ensure that the tests for prosecution set out in the Solicitor-General’s Prosecution Guidelines are met.
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<p>Decision-maker</p>	<p>The Chief Executive will make the decision whether to prosecute, after considering advice from the sponsoring ELT member and the recommendations from Fire and Emergency New Zealand’s Legal Counsel and the Crown solicitor (as the case may be).</p> <p>The Chief Executive may convene an internal panel to discuss the prosecution decision, though the prosecution decision ultimately remains that of the Chief Executive.</p> <p>A decision of ‘no prosecution’ does not prevent any further consideration of a case by the Chief Executive if new and additional information becomes available, or if a review of the original decision is deemed appropriate.</p>						

<p>Choice of charges</p>	<p>If a person has committed more than one offence and a decision to prosecute is made, consideration will be given to the charges that are most appropriate.</p> <p>Charge selection will be consistent with requirements set out in sections 17 to 20 of the Criminal Procedure Act 2011, which prescribe the requirements for charges and allow for representative charges or charges worded in the alternative.</p> <p>Some offences require the consent of the Attorney-General or the Solicitor-General before a charge can be filed. Where these charges are considered by Fire and Emergency New Zealand it will obtain consent before filing charges.</p>
<p>Crown prosecutions</p>	<p>Under the Criminal Procedure Act 2011 and its regulations, the Solicitor-General is required to assume responsibility for the prosecution of some offences. Fire and Emergency New Zealand will liaise with the Solicitor-General, or the relevant Crown solicitor, before charges for these types of offences are filed in court. See Crown Prosecution Regulations 2013 for a list of offences deemed to be Crown prosecutions.</p>
<p>Victims and witnesses</p>	<p>Fire and Emergency New Zealand will ensure that that victims of offending are treated at all times with courtesy and compassion, and with respect for their dignity and privacy.</p> <p>Fire and Emergency New Zealand personnel who act as expert witnesses in any prosecution must comply with the required standards of conduct applicable to expert witnesses, including:</p> <ul style="list-style-type: none"> • the relevant Code of Conduct for Expert Witnesses • the Appearing as a witness section within the <i>Legal proceedings involving Fire and Emergency New Zealand and its personnel</i> policy.
<p>Media and publicity</p>	<p>Public awareness of enforcement actions draws attention to the consequences of breaking the law. It is a valuable tool to encourage others to comply with the law.</p> <p>Fire and Emergency New Zealand will decide on a case-by-case basis whether to publish information about prosecution actions after they have concluded.</p> <p>In communicating with the public through the media in relation to a prosecution, Fire and Emergency New Zealand will act in accordance with the Crown Law Media Protocol for Prosecutors, and will act in a way that:</p> <ul style="list-style-type: none"> • does not prejudice the right to a fair trial or the perceived objectivity of the judge • supports the administration of justice and the integrity of the criminal justice system • respects the principle of open justice • recognises the public interest in receiving accurate information about the criminal justice system and criminal prosecutions • treats victims of crime with courtesy and compassion, and respects their dignity and privacy.

Definitions

Crown Law Media Protocol for Prosecutors	Guidance issued by the Crown Law Office to assist prosecutors to take a common approach to public statements about cases pending or before the courts.
Crown Law Office	Headed by the Solicitor-General, the public service department of New Zealand charged with advising the government on legal affairs, representing the government in appellate cases, and overseeing the prosecution of criminal offences before the courts.
Crown prosecution	Proceedings specified in the Crown Prosecution Regulations 2013 or any successors to those regulations, including proceedings that the Solicitor-General directs to be conducted as a Crown prosecution.
Crown solicitor	A lawyer holding a warrant of appointment as a Crown solicitor from the Governor-General, including any partner or employee of the Crown solicitor's firm.
Fire and Emergency New Zealand personnel	Includes employees, volunteers and contractors of Fire and Emergency New Zealand.
Investigation	A formal inquiry or systematic study to identify and confirm the facts of a matter (not necessarily a fire investigation).
Offence	Any action or omission specified as an 'offence' in legislation, sometimes with reference to a required state of mind or intent.
Prosecution	A proceeding against a defendant to determine whether they are guilty of an alleged offence. A prosecution is commenced by filing a charging document in the District Court.
Relevant Fire Safety Legislation	<ul style="list-style-type: none"> • The Fire and Emergency New Zealand Act 2017 and its regulations, and any former enactments they replace. • Any provision of the following Acts (or regulations made under those Acts) under which Fire and Emergency New Zealand has functions: <ul style="list-style-type: none"> ○ Building Act 2004 ○ Local Government Act 2002 ○ Local Government Act 1974 ○ Hazardous Substances and New Organisms Act 1996 ○ Radiation Safety Act 2016 ○ Sale and Supply of Alcohol Act 2012 ○ any former enactments replaced by any of the Acts referred to above.

Solicitor-General's Prosecution Guidelines	Guidelines issued by the Solicitor-General to ensure that the principles and practices as to prosecutions in New Zealand are underpinned by common values and considerations.
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Related information

Policies	<p>Related policies:</p> <ul style="list-style-type: none"> • Compliance and enforcement • Legal proceedings involving Fire and Emergency New Zealand and its personnel (Internal policy)
Legislation	<p>We must comply with legislation, including the following:</p> <ul style="list-style-type: none"> • Fire and Emergency New Zealand Act 2017 • Local Government Act 2002 • Local Government Act 1974 • Hazardous Substances and New Organisms Act 1996 • Radiation Safety Act 2016 • Sale and Supply of Alcohol Act 2012

Document information

Owner	Deputy Chief Executive Office of the Chief Executive
Last reviewed	1 July 2017
Review period	Yearly

Record of amendment

Date	Brief description of amendment
1 July 2017	<p>This policy was developed as part of the implementation of the Fire and Emergency New Zealand Act 2017.</p> <p>Future revisions will consider whether the policy needs to be refined to allow for prosecution in respect of infringement offences, if appropriate.</p> <p>Note: The policy should be reviewed in due course to cover challenges to infringement notices (i.e. requests for hearings). This will need to be consistent with the Compliance and enforcement policy.</p>
July 2019	Outdated organisational leadership team job titles and branch names updated.