

Police Prosecution Service - Statement of policy and practice

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The Police Prosecution Service

The Police Prosecution Service ([PPS](#)) is an autonomous, national prosecution service within the New Zealand Police (Police). Established in 1999, PPS is the principal prosecuting body within the criminal jurisdiction of New Zealand's District Court, which includes advocacy in the Youth Court. PPS provides a supporting role for coronial inquests and other regulatory oriented hearings. Responsibilities also include managing the Police Adult Diversion Scheme.

[PPS](#) is administratively separate from the criminal investigation and uniform branches of Police and has responsibility for managing all post-charge prosecution processes. This includes:

- objectively assessing the quality of investigations and reviewing charging decisions in terms of the [Solicitor-General's Prosecution Guidelines](#)
- identifying and resolving case deficiencies
- providing guidance and advice to the O/C case throughout the investigative and prosecution processes
- conducting case management discussions with defence counsel
- withdrawing or modifying charges where appropriate
- receiving and modifying statements, liaising with witnesses, advising on court process and procedure
- prosecuting cases in court.

[PPS](#) aims to provide timely and professional case resolution in the public interest. The objective is to ensure justice is done by making principled prosecution decisions and prosecuting cases firmly, fairly and effectively. Through these principles PPS contributes to the strategic vision, mission and values of the Police (refer [New Zealand Police: Strategic Plan 2011 - 2015](#)) and the wider Justice Sector Outcomes (refer [New Zealand Police Statement of Intent 20013/2014 - 2015/2016](#)).

Overview

This section contains these topics:

- Application of this Statement of Policy and Practice
- Executive summary
- Introduction
- Purpose
- Solicitor-General's Prosecution Guidelines

Application of this Statement of Policy and Practice

This Police Prosecution Service (PPS) Statement of Policy and Practice applies to proceedings commenced under the [Criminal Procedure Act 2011](#).

Executive summary

Key things to note in this 'Statement of Policy and Practice' are:

- Operational staff initiate prosecutions by charging suspects with offences and filing charging documents. The Police Prosecution Service is responsible for managing all post-charge prosecution processes, including deciding whether to proceed or continue with a prosecution.
- PPS prosecutors are expected to abide by the rules, principles and policies established by the Crown's Law Officers and those reflected in this statement. However, prosecutors retain individual discretion (in accordance with specific legal tests and principles) in the way individual cases are managed.
- PPS prosecutors must act:
 - with impartiality and objectivity, independent of outside influences and in accordance with the New Zealand Bill of Rights Act 1990, and
 - on behalf of Police, but always serve the interests of justice first and assist the court wherever possible.
- Prosecutors should develop strong working relationships within Police (particularly the O/C case) and with victims, non-government agencies and the wider justice sector.
- Only the PPS Director or Operations Manager may issue a statement to the media giving reasons why a decision to prosecute or not to prosecute was made.

Introduction

The decision to prosecute is a serious step; so too is the decision whether or not to continue a prosecution. Considerable care must always be taken to ensure those decisions are fairly and consistently made because they have serious implications for the victims, witnesses and defendants involved. Prosecutors have a duty to ensure that prosecutions continue only when it is in the public interest to do so.

PPS prosecutors play a crucial role in the administration of criminal justice in New Zealand. This role has significant responsibilities and obligations. Prosecutors' effectiveness lies in combining independence with sound judgment and a principled commitment to consistency, integrity and fairness.

Purpose

The Police Prosecution Service Statement of Policy and Practice is the PPS foundation document. It is designed to ensure the principles applied when carrying out PPS work are transparent to all and help to treat victims, witnesses and defendants fairly, while prosecuting cases effectively.

The statement:

- explains the way PPS operates within the criminal justice system
- provides clear general guidance to prosecutors
- informs all other detailed prosecution policies and guidance
- is designed to create greater understanding between PPS, other Police groups, justice sector agencies and the general public.

Solicitor-General's Prosecution Guidelines

On 1 July 2013, the Crown Law Office (CLO) published the updated [Solicitor-General's Prosecution Guidelines](#) (the "SGPG") to assist government agency prosecutors in exercising their discretion to prosecute criminal cases.

A clear statement is included establishing that there is an expectation of compliance with the Guidelines in respect of all Police prosecutions (see guideline 2). Prosecutors should always serve and protect the public interest according to the SGPG. This statement has been developed to be read consistently with those guidelines.

This statement will be amended to reflect any changes that may be made to the SGPG from time to time, as they relate to prosecutions conducted by the Police.

General principles and practices

Each case forwarded to PPS is unique and should be considered on its own facts and merits. However, general principles, outlined below, apply to the way prosecutors should approach every case.

Prosecution in practice

Prosecutorial independence

The universally central tenet of a prosecution system under the rule of law in a democratic society is the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process (see [guideline 4](#), SGPG).

It is PPS's responsibility, on behalf of the Commissioner of Police, to resolve prosecution cases (including advising whether to prosecute) consistently in accordance with the principles outlined in this statement. The Attorney-General and Solicitor-General (the Crown's Law Officers) are responsible for ensuring that we behave with propriety and according to accepted principles in carrying out our functions.

PPS prosecutors are expected to abide by the rules, principles and policies established by the Crown's Law Officers and those reflected in this statement. However, prosecutors retain individual discretion (in accordance with specific legal tests and principles) in the way individual cases are managed.

Prosecutors' operating framework

Prosecutors exercise their discretion within a framework of legislation, policies and guidance ensuring the criminal justice system operates with fairness and efficiency.

Key procedural legislation

There are many Acts that have an impact on how Police prosecutors operate but the following legislation forms the basis of our prosecutors' operating environment:

- [Criminal Procedure Act 2011](#): governs criminal procedure from the commencement of proceedings through to disposition and appeal
- [Criminal Disclosure Act 2008](#): codifies the rules governing the disclosure of information by Police and third parties to defendants
- [Oranga Tamariki Act 1989](#): provides additional prosecution processes applicable in the Youth Court
- [New Zealand Bill of Rights Act 1990](#): codifies procedural rights and requirements for defendants and Police
- [Bail Act 2000](#): determines procedures for the granting and opposing of bail
- [Sentencing Act 2002](#): sets out sentencing options and procedures relevant to sentencing considerations
- [Victims Rights Act 2002](#): sets out government agency interaction requirements with victims including victim impact statements
- [Evidence Act 2006](#): sets out the requirements for the preparation and delivery of evidence at court

Key policy and guidance documents

There are also a variety of policy and guidance documents that impact on prosecutors' operation. The following list includes documents and categories of documents that provide the leading guidance for PPS prosecutors:

- Police policies and practice notes: including the [Police Code of Conduct](#) and PPS practice notes relating to specific legal matters
- Crown Law Office, [Solicitor-General's Prosecution Guidelines](#) (SGPG), Solicitor-General's Guidelines for Prosecuting Sexual Violence
- Practice notes from Chief Justices and Judges: clear guidance from the judiciary on requirements of the court in relation to specific legal matters
- Cabinet Manual, [Appendix C: Cabinet directions for conduct of Crown legal business](#), Cabinet Office: advice on engaging Crown prosecutors

Protecting a defendant's right to a fair trial

Prosecutors must always act in a manner consistent with a defendant's right to fair proceedings, including:

- complying with all relevant legal obligations and principles
- ensuring all relevant evidence (including evidence favourable to the defendant) is disclosed, presented (if appropriate) and tested according to law.

Prosecutions are adversarial and it is appropriate for prosecutors to be robust and resistant to pressure. However, they should not strive to obtain a conviction at all costs, allow prejudice to sway their judgement or turn a blind eye to serious deficiencies in a prosecution case. This would be inconsistent with the obligation to prosecute in the public interest fairly and dispassionately.

Achieving a fair trial includes ensuring flawed prosecutions are not commenced or pursued, for example where a prosecutor, considering the prosecution of a case, concludes that the SGPG Test for Prosecution (the Evidential Test and the Public Interest test) is not met.

Ethical considerations

Prosecution decisions

A prosecution should only be brought or continued for good cause. Fair and effective prosecution is essential to the maintenance of law and order.

An inappropriate decision has the potential to undermine public confidence in the prosecution service and the criminal justice system more generally. Accordingly great care should be taken in each case to ensure that sound, justifiable decisions are made.

Prosecutorial ethics

PPS prosecutors must act:

- with impartiality and objectivity, independent of outside influences and in accordance with the [New Zealand Bill of Rights Act 1990](#) (i.e. not let any personal views about ethnic or national origin, disability, sex, religion, political views or sexual orientation of the suspect, victim or witness influence their decisions)

- on behalf of Police, but should always serve the interests of justice first and assist the court wherever possible.

Prosecutors admitted to the bar

PPS prosecutors may be:

- qualified lawyers (admitted to the bar) who may or may not be police officers
- police officers with law degrees (not admitted to the bar)
- police officers without formal legal qualifications but with specialist training.

Those who are qualified lawyers have dual responsibilities. While acting for Police they are also bound by the [Lawyers and Conveyancers Act \(Conveyancing Practitioners: Conduct and Client Care\) Rules 2008](#), in particular Rule 13.12:

A prosecuting lawyer must act fairly and impartially at all times and in doing this must:

- comply with all obligations concerning disclosure to the defence of evidence material to the prosecution and the defence; and
- present the prosecution case fully and fairly with professional detachment; and
- avoid unduly emotive language and inflaming bias or prejudice against an accused person; and
- act in accordance with any ethical obligations that apply specifically to prosecutors acting for the Crown.

While the Rules only apply to qualified lawyers, they serve as a useful guide as to the ethical standards required of prosecutors generally.

Prosecutors who are qualified lawyers must also be careful to avoid any potential conflict of interest arising from prosecuting a former client. The conflict of interest only becomes a breach of professional obligation when a prosecutor uses prior knowledge (gained as former counsel for the defendant) during a prosecution. However, in practice, the perception of a conflict of interest will be hard to refute even if the prosecutor studiously refrains from using prior knowledge. This means prosecutors should avoid prosecuting former clients.

Professional conduct

Prosecutors should ensure they:

- represent the Police in court professionally and strictly apply the sub judice rule in criminal cases (which restricts what a prosecutor can say publicly about a prosecution in process) - see note, below
- have a competent working knowledge of existing and new legislation and common law relevant to their area of operation
- work to maintain public trust and contribute to an efficient criminal justice system
- are open, honest, courteous and helpful when explaining our role and decisions to victims, defendants, investigators and counsel
- respond positively to criticism
- consider victims' views and concerns when their personal interests are affected and ensure they are

informed of their rights.

Note: In accordance with guideline 6, [SGPG](#) only the [PPS](#) Director or Operations Manager may issue a statement to the media giving reasons why a decision to prosecute or not to prosecute was made.

Ethnic and cultural factors

The principles above outline requirements for the prosecution process to be fair and to provide offenders with the opportunity to be equal before the law when their guilt is being determined.

Once guilt has been determined or admitted by the offender, ethnic and cultural factors can be considered as part of the sentencing, reparative and rehabilitative aspects of case resolution.

Victims and witnesses of crime can often be confused or intimidated by prosecution and court processes. This may be exacerbated for victims and witnesses from Maori, Pacific or ethnic communities where English may not be their first language or they find it difficult to express their culture within the court's processes. The nature and extent of any [PPS](#) liaison with victims and witnesses must be assessed in relation to each victim's and witness's needs, taking into account their ethnicity and cultural requirements.

This table outlines some opportunities for recognising ethnic and cultural factors.

| Process stage | Opportunities |
|-----------------------------------|---|
| Alternatives to prosecution | Consider culturally relevant conditions for the offender during diversion, for example: <ul style="list-style-type: none"> - restorative justice processes - involving the offender's extended family in setting and/or administering conditions. |
| Sentencing | Under section 10 Sentencing Act, an offender's attendance at or agreement to attend a culturally relevant restorative justice process can be considered as a mitigating factor at sentencing. |
| Assistance during court processes | Prosecutors working with district staff (O/C case and Iwi, Pacific or Ethnic Liaison Officers) to appropriately manage ethnic and/or cultural requirements when dealing with a victim and/or witness. |

PPS function

Police role

The Police contribution to the justice sector outcome of a safe and just society is achieved most directly through these outcome areas:

- impact of crime and crashes reduced
- offenders held to account
- crime and road trauma reduced
- a trusted justice system
- accessible justice services.

The basic formula for achieving these outcomes lies in the proper function of the preventative, investigative and prosecutorial arms of the Police.

PPS role

Operational staff initiate prosecutions by charging suspects with offences and filing charging documents. PPS provides a specialist prosecution focus within Police. Separated from operational governance at district level, PPS is responsible to the Commissioner but acts independently when discharging prosecutorial discretion, i.e. PPS decides how to deal with cases once a prosecution has been commenced.

PPS prosecutors should:

- review, advise on and prosecute cases, liaising appropriately with defence counsel
- ensure the law is properly applied and all relevant evidence is put before the court
- comply with obligations of disclosure according to legislation and the principles set out in this statement
- be proactive in identifying evidential deficiencies and, where possible, ensuring they are rectified in cases they prosecute
- appropriately conclude cases that cannot be strengthened by further investigation.

Key responsibilities

Court based prosecution and advocacy services

This table outlines the services PPS provides.

| In these situations... | PPS... |
|--|--|
| Judge-alone prosecutions (except Crown prosecutions) | Undertakes all Police prosecutions (including traffic cases) in the Judge-alone jurisdiction of the District Court (i.e. offence categories 1 to 3) except where the Crown assumes responsibility. |
| Crown prosecutions before the Crown assumes responsibility (see reg 4 of the Crown Prosecution Regulations 2013 for the list of proceedings that are Crown prosecutions) | Prosecutes most Crown prosecutions before the Crown assumes responsibility (see reg 5 of the Crown Prosecution Regulations 2013 for when the Crown must assume responsibility). |
| Externally generated prosecutions | Continues prosecutions investigated and/or commenced by other government agencies, e.g. offensive publications offences investigated by Department of Internal Affairs. |
| Youth Court | Prosecutes preliminary and defended hearings, and makes submissions regarding jurisdiction issues in the Youth Court. |
| Inquests | Provides advocacy (on a case-by-case basis) supporting Police at coroners inquests - e.g. where the matter is difficult or complex. |
| Miscellaneous | Provides advocacy (on a case-by-case basis) supporting Police responsibilities at various hearings, including: <ul style="list-style-type: none"> - liquor and other licensing cases - Arms Act appeals - appeals against impoundment of vehicles |

Other responsibilities

PPS also administers services to improve the smooth running of the criminal justice system including:

- Police [Adult Diversion Scheme](#) - an alternative to full court prosecution for defendants who have committed less serious offences
- Prosecutions advice to districts - timely and objective advice to district staff about laying correct charges, briefing files, evidential sufficiency and disclosure
- Supporting the flow of information between courts and districts - e.g. making the appropriate representations from districts on court administrative decisions and procedures and ensuring the outcomes and court responses are communicated back to districts.

Obtaining external help

At times PPS will need to seek outside help with prosecutions. Under the [Cabinet Directions for the Conduct of Crown Legal Business](#) PPS may:

- instruct a Crown solicitor in a Judge-alone prosecution without reference to the CLO
- in other cases, approach the CLO for assistance (CLO may deal with the case itself or direct it to lawyers outside).

Reasons for external advice and help

PPS is never precluded from asking for prosecution assistance from the CLO or Crown Solicitors. The nature and circumstances of requests will differ from case to case. This table outlines some situations when prosecution assistance may be appropriate.

| Reason | Examples |
|--|--|
| To support <u>PPS</u> capacity to provide services | Insufficient staff within a <u>PPS</u> district to meet the needs of local court(s) - e.g. resulting from a sudden and fleeting upsurge in the number of cases or because PPS district prosecutors are temporarily off work. |
| Complex legal issues | Prosecutions requiring specialist advocacy with national implications or the Crown is required to appear in High Court pre-trial applications. |
| High profile | Case is high profile with considerable media interest. This may be because of the defendant's identity, international aspects, circumstances surrounding the case, or the victim's identity. |
| Independence from Police | The case calls for independent advice or advocacy, e.g. when the defendant is a Police employee. |

PPS working relationships

Prosecutors should develop strong working relationships within Police (particularly the O/C case) and with victims, non-government agencies and the wider justice sector. These relationships are an essential part of the way prosecutors gain support for the key tasks they undertake in discharging their duties.

Relationship between prosecutor and O/C case

PPS prosecutors will work collaboratively with O/C cases, respecting their separate responsibilities thereby ensuring the right mix of checks and balances exist in bringing a criminal case to justice. **Note:** Due to the development of new approaches to case management, "**O/C case**" can include the arresting officer, another investigating officer appointed as O/C case or an officer from a dedicated case management unit).

This table details the key separate functions and responsibilities of O/C cases and prosecutors.

| O/C case responsibilities | Prosecutor responsibilities |
|---|--|
| <ul style="list-style-type: none"> - Gathering information and evidence required to make prosecution decisions. - Initiating prosecution process by deciding which and how many charges to file (in consultation with a supervisor and, possibly, a prosecutor). - Preparing prosecution file contents to the required standard. - Preparing: <ul style="list-style-type: none"> - initial disclosure for delivery to defence counsel by prosecutors and - delivering ongoing full disclosure to defence counsel. - Submitting prosecution file to the prosecutor in a timely manner allowing for case review and delivery of initial disclosure. - Controlling post-charge investigations subject to the prosecutor's directions regarding procedure and evidence. - Maintaining victim liaison and a close relationship with other witnesses. | <ul style="list-style-type: none"> - Making decisions affecting the resolution of the case (once the charging document has been filed). - Assessing whether charges are appropriate and there is sufficient evidence and public interest to continue the prosecution. - Advising investigators throughout the investigation - Conducting case management discussions with defence counsel including charge negotiation. - Amending, adding, withdrawing charges or agreeing to diversion. - Dealing with any court bail matters. - Providing initial disclosure to the defence counsel and ensuring ongoing full disclosure is completed by the O/C case. - Receiving statements and requesting further enquiries be made (where required). - Advising on court process and procedure and presenting the case in court. - Providing sentencing submissions when requested by the court or as required. |

Consultation with O/C case on changes to charges or diversion

Where the prosecutor is considering modifying, adding, withdrawing charges or agreeing to diversion they should (whenever practicable) consult with the O/C case or that person's supervisor. If the prosecutor

makes any of these decisions without consulting with the O/C case or their supervisor, they should note the background to and reasons for the decision on the file and (where appropriate) discuss it with the O/C case at the next opportunity.

Differences of opinion

From time to time there may be fundamental differences of opinion between a prosecutor and an O/C case in respect of a prosecution matter. The PPS will manage disagreements professionally and where appropriate, seek direction from supervisors (PPS and operational).

The level to which a matter is escalated within the PPS will depend on the nature and circumstances of the individual case. However, typically issues will initially be directed to the relevant District Prosecution Manager. If that process does not resolve the matter, liaison with the PPS can be escalated to the appropriate Regional Prosecution Manager. Should the matter still be unresolved it can be escalated to the PPS National Operations Manager and ultimately the PPS Director.

These dispute resolution mechanisms reflect the need for prosecuting and district staff to work together collaboratively, so that the Police organisation can function effectively. However, these solutions do not supplant the final responsibility of prosecutors in making decisions on whether or how a case should proceed.

Providing pre-charge advice

Police Legal Services has the role of providing pre-charge advice to the O/C case. It may be appropriate for PPS to provide pre-charge advice in cases where there is an existing related prosecution and the prosecutor is already familiar with the facts of the offending, and/or where the advice relates directly to the prosecution of the matter, and it is impractical for Legal Services to provide that advice.

Where PPS prosecutors are asked to provide pre-charge advice relevant to particular investigations, they must give advice consistent with the principled approach (refer [General Principles](#) section) described in this document. This advice may include-

- what criminal charges are appropriate, including:
 - whether there is sufficient evidence to support a charge
 - the admissibility of evidence
 - the most appropriate charge in the circumstances
- the present state of the law
- the institution of appeals or reviews of sentence
- the disclosure of evidence.

Prosecutions requiring the Attorney-General's Consent

Certain offences require the consent of the Attorney-General before a charging document may be filed (see, generally, s24 Criminal Procedure Act 2011 and guideline 11 of the [SGPG](#) for procedural guidance). In practice the consent function is almost always undertaken by the Solicitor-General.

It is the O/C case's responsibility to obtain the Attorney-General's consent prior to filing the charging document and they should liaise with Police Legal Services to do so. The O/C should provide Legal Services with a draft copy of the charging document/s and sufficient material to allow the Attorney-General to properly consider the evidence and relevant circumstances of the alleged offence.

A complete list of the offences requiring consent of the Attorney-General can be found [here](#).

Relationship with victims

The strength of the relationship between the prosecutor, the O/C case and victims of crime significantly impacts on the case's outcome. Victims are often the primary witness to the offence and provide much of the evidence or the leads for collecting evidence supporting successful case resolution. Prosecutors will acknowledge the victim's key role by:

- treating them with courtesy and compassion
- respecting their dignity and privacy
- working cooperatively with the O/C case to ensure they are appropriately involved in the prosecution process.

The prosecutor does not act for victims in the same way as solicitors act for their clients. Prosecutors should consider the views of the victim when discharging their duty, balancing those views with their obligation to act in the public interest.

Responsibility to victims

Under the [Victims' Rights Act 2002](#) and the [Victims Code](#) (both aimed at improving the treatment and rights of victims) Police must:

- determine who should be treated as a victim for the purposes of the Act
- provide the victim with information about programmes, remedies and/or services available to the victim through the Police
- inform the victim of the charges laid or the reasons for not laying charges
- keep victims informed of progress with the case and advise on proceedings and any changes to charges
- advise victims of bail conditions or issues surrounding bail
- ensure victims appear at court for hearings and that there are emergency contact details available for the victim
- make all reasonable efforts to encourage a victim to complete a victim impact statement and ensure the statement is no older than 28 days at the time of sentencing.
- provide the victim with information as to the victim's role as a witness
- advise the victim of the date and place of all court appearances
- inform the victim of the final disposition of every charge (including on appeal, if any)

Most of these obligations are managed by the O/C case on behalf of Police.

Prosecutor's obligations to victims

Prosecutors should:

- check the O/C case has followed correct procedure
- liaise with the O/C case and advise of any changes to charges or other aspects relevant to the case's progress, including any changes to the defendant's bail
- if the offence is one of sexual violation, serious assault (that resulted in serious injury or death), or of another kind that has led the victim to have ongoing fears for their physical safety or the physical safety of a member of their family, ensure that all reasonable efforts to ensure that the victim's views concerning the defendant's release on bail are ascertained and must inform the court of those views and comply with the notice requirements in [Part 3](#) of the Act.
- ensure that any plea discussions are communicated to the victim with sufficient time to allow them to respond with their views
- ensure key documents required to be disclosed to the defence do not contain the victim's address and contact details (unless that information is necessary to ensure the defendant is fully and fairly informed of the nature of the charge)
- make all reasonable efforts to inform the victim of their rights and obligations in respect of making a victim impact statement
- make all reasonable efforts to ensure that a victim impact statement is submitted to the court at sentencing
- show a copy of the victim impact statement to the offender (i.e. a defendant who has pleaded or been found guilty) unless a judicial officer orders the document withheld, but must not let the offender keep a copy
- make all reasonable efforts to ascertain the victim's views in respect of a defendant's application for name suppression and inform the court of those views
- manage the victim's expectations, consistent with the principle that while victims' rights are an integral part of the criminal justice system, ultimately the prosecutor must make decisions based on the public interest and interests of justice.

These obligations are managed by the prosecutor but may be met through the O/C case.

Relationship with courts

Maintaining an effective relationship between [PPS](#) and the courts is important for the efficient operation of the criminal justice system. PPS will work actively with the Chief District Court Judge on:

- relevant policy, procedures, planning and resourcing at the national level
- court rostering and scheduling to match judicial and prosecution resources with PPS's overall business demands at the local level.

Police prosecution process

PPS prosecutors are responsible for deciding whether to proceed with a prosecution. Their decision is made in accordance with this statement (and any other related PPS policy or practice note) and the [SGPG](#). These are the necessary decision making steps.

Case review

Each case received from an O/C case will be reviewed by a prosecutor to make sure it meets the 'test for prosecution'. This case review is an integral independent check conducted within the Police prosecution process. It is significant not only in respect of reviewing the technical aspects of individual cases but also in terms of ensuring the efficient, effective and timely management of cases generally.

Review is a continuing process and PPS prosecutors should take account of any change in circumstances. Accordingly there must be effective liaison between prosecutors and O/C cases. Prosecutors should work closely with O/C cases to reach the right decisions in managing prosecutions, particularly when considering whether to amend charges or discontinue a case. This gives an O/C case the opportunity to be involved in the process including providing more information that may affect the decision.

Prosecution cases (while with the PPS) will generally be dealt with by more than one prosecutor during the prosecution process. It is therefore crucial that those conducting case review appreciate that their decisions will have an impact on how cases will be managed in the future whether by them or their colleagues.

The first test for prosecution is consideration of the evidence. If the case does not pass the [evidential sufficiency test](#) it will not proceed no matter how important or serious it may be. If the case does pass the evidential sufficiency test, the prosecutor should proceed to the second test and decide whether a prosecution is required in the [public interest](#).

Is there sufficient evidence to prosecute?

PPS prosecutors should first be satisfied that there is enough relevant and admissible evidence to establish that an offence has been committed by a specific person.

When deciding whether there is enough evidence, prosecutors should consider whether the evidence is admissible and reliable. In many cases the evidence will cause no concern, but in others the evidence may not be as strong as it first appears. Prosecutors should ask these questions:

- Does the evidence support the charge(s)? Do the charge(s) reflect the seriousness of the offending?
- Is it likely the evidence will be excluded at court? For example, could evidence be inadmissible because of the way it was gathered? If so, is there enough other evidence for a realistic prospect of conviction?
- Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?
- What explanation has the defendant given? Is a court likely to find the positive defence credible in the light of the evidence as a whole? Does it support the innocent explanation?

- If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
- Is the evidence creditable (capable of belief?)
- Are there concerns over the accuracy or credibility (veracity) of a prosecution witness? Is there further evidence which the O/C case should be asked to seek out which may support or detract from the witness's credibility.
- If the current evidence is not adequate, is further admissible, more compelling evidence likely to be available at the next court appearance?

After reviewing the quality of the evidence a prosecutor must decide whether a reasonable prospect of conviction exists. A reasonable prospect of conviction exists where there is sufficient credible evidence upon which an impartial jury (or Judge), properly directed in accordance with the law, could reasonably be expected to be satisfied, beyond reasonable doubt, that the individual who is prosecuted has committed a criminal offence. This is a high standard and requires prosecutors to analyse and evaluate all of the evidence and information thoroughly and critically before proceeding with prosecution. Prosecutors have the ability to amend a charge if they consider (based on the evidence) that another charge is more suitable.

Is prosecution in the public interest?

After determining that there is sufficient evidence to support a prosecution, the prosecutor should then consider whether the public interest requires the prosecution to proceed. It is not the rule that all offences for which there is sufficient evidence must be prosecuted - prosecutors must exercise their discretion as to whether a prosecution is in the public interest. This principle was most notably expressed in 1951 by the United Kingdom Attorney-General, Sir Hartley Shawcross QC MP, who stated in relation to prosecutorial discretion:

It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution.

Prosecutors should balance all factors relevant to the individual case when making their decision. While these factors can be infinitely variable, the primary consideration is the seriousness of the offence - generally, the more serious the charge the more likely a prosecution. Other factors which may also be considered (not an exhaustive list) are:

| Type | Considerations |
|--------------------|---|
| About the offender | <ul style="list-style-type: none"> - the offender's youth, age, physical or mental health - whether the offender was in a position of authority or trust - whether the offender was a ringleader/organiser of the offence - the difference between the actual or mental ages of the offender and the victim (where the offender took advantage of this) - the offender's relevant previous convictions, diversions or cautions - whether the offender committed the offence whilst on bail/probation/parole/subject to a suspended sentence/subject to an order to keep the peace or other Court order - the likelihood of the offender continuing or repeating the offence |
| The offence | <ul style="list-style-type: none"> - whether the offence was premeditated - whether the offence was carried out by a group - whether the offence was carried out in pursuit of organised crime - whether the offence involved serious or significant violence - whether the offence was motivated by hostility against a person because of their race, ethnicity, sexual orientation, disability, religion, political beliefs, age, the office they hold, or similar factors - whether the offence was committed against a person serving the public (e.g. doctor, nurse, member of the ambulance service, fire service or police) - whether there is any element of corruption - the likely sentence having regard to the court's sentencing options (including whether any confiscation order or disqualification is likely to be made) - the availability of any proper alternatives to prosecution |
| Social factors | <ul style="list-style-type: none"> - whether the offence is prevalent - the passage of time between an offence taking place and the likely date of trial - whether the prosecution is likely to have a detrimental effect on the physical/mental health of a victim/witness - whether information may be made public that could disproportionately harm sources of information, international relations or national security - whether the recovery of the proceeds of crime may be more effectively pursued by civil action |
| Victims | <ul style="list-style-type: none"> - whether the offence resulted in serious financial loss - whether the victim (or their family) has been put in fear, or suffered personal attack, damage or disturbance - whether the victim accepts that the defendant has made restitution for the loss or harm caused (although defendants must not be able to avoid prosecution simply because they pay compensation) |

Cost is also a relevant factor when making an overall assessment of the public interest. In each case where

the evidential test has been met, the prosecutor must weigh the relevant public interest factors that are applicable. The prosecutor will then determine whether or not the public interest requires prosecution.

Factors which must NOT be considered in the public interest test

A decision whether or not to prosecute must not be influenced by the:

- colour, race, ethnic or national origins, sex, marital status or religious, ethical or political beliefs of the defendant, complainant or any victim
- prosecutor's personal views about the defendant, complainant or any victim
- possible political advantage or disadvantage to the government or any political organisation
- possible effect on the personal or professional reputation or prospects of those responsible for the prosecution decision
- a person's social standing or status in any organisation or sphere.

Determining charges

Where the decision is made to proceed with a prosecution, prosecutors should ensure the charge(s):

- reflect the seriousness and extent of the offending
- give the court adequate powers to sentence and impose appropriate post-conviction orders
- enable the case to be presented in a clear and simple way.

PPS prosecutors can continue with the original charges or change or withdraw the charges. This means they may not always choose to continue with the most serious charge where there is a more appropriate choice.

Prosecutors should never go ahead with:

- more charges than are necessary just to encourage a defendant to plead guilty to some
- a more serious charge than can be justified on the available evidence, just to encourage a defendant to plead guilty to a less serious one
- filing multiple charges in respect of a single incident, which does not significantly add to either the culpability or the expected sentence of the defendant.

Diversion for adults

Where it has been determined that there is evidential sufficiency, prosecutors should consider the alternatives to prosecution when deciding whether a case should be prosecuted in the courts. Diversion can be considered for adult defendants who have committed less serious offences (refer to the [Adult Diversion Scheme Policy](#) for further information).

Disclosure

Police must disclose certain information to the defence (initial disclosure) within 15 working days of the commencement of proceedings. The remaining information (full disclosure) must be disclosed as soon as is reasonably practicable after the entry of a not guilty plea. Disclosure requirements arise particularly from the Criminal Disclosure Act 2008, while the [Official Information Act 1982](#), the [Privacy Act 2020](#), and the [New Zealand Bill of Rights Act 1990](#) are also relevant.

Disclosure allows the defendant to review all relevant evidence relating to the prosecution, subject to information which can be withheld from them. The grounds for withholding information are contained in section 16 of the Criminal Disclosure Act 2008.

The officer in charge is responsible for disclosure. Prosecutors are responsible for:

- ensuring the O/C case actions disclosure requests within the statutory timeframes
- providing notice of delays and estimates of time for disclosure delivery to the defence when necessary
- checking whether previously withheld information has become disclosable after any change in circumstances
- appealing court decisions re disclosure

For more detailed information see the '[Criminal disclosure](#)' Police Manual chapter.

Case management discussions

Case management discussions are held between prosecutors and defence counsel prior to the case review hearing. If timely, these discussions can:

- improve the judicial effectiveness of case review hearings
- reduce the number of trials
- provide more efficient case management for prosecutors and other PPS staff
- offer victims the opportunity for more timely justice.

Prosecutors may indicate to defence counsel a willingness to consult concerning disposition of charges by plea. Prosecutors must never agree to support a specific sentence as part of discussions. Discussions about charges, pleas and sentences should not be held between a prosecutor and an unrepresented defendant. Where the defendant is unrepresented by counsel, these issues should be dealt with in court, preferably by way of a case review or sentence indication hearing.

While these discussions aim to promote efficiency, they should not be conducted in a way, and decisions should not be made, that minimise the seriousness of the offending or the defendant's culpability.

These discussions should conclude with an agreement on the next stage for proceedings (i.e. negotiated outcome, trial or withdrawal of charges). The outcome of these discussions must be recorded in the Case Management Memorandum and must also be recorded on the prosecution file. The decisions recorded in the Case Management Memorandum are binding on the PPS unless there are exceptional circumstances. Deviation from any agreement must be approved by the relevant PPS District Manager.

For more information see [Criminal procedure - Review stage \(CMM process\)](#)

Prosecutor's role in sentencing

At sentencing, PPS prosecutors should be prepared to assist the court to the extent required by law or to the extent the judge indicates. This includes ensuring compliance with the obligations for sentencing submissions outlined in the Sentencing Practice Note 2014 (see PDF below) and [Part 5A](#) Criminal Procedure

Rules 2012.

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 [Sentencing_Practice_Note_2014.pdf](#)

144.85 KB

PPS prosecutors have a duty to assist the sentencing court in setting the appropriate sentence and to avoid mistakes of principle or sentence which are inconsistent with prevailing levels of comparable offences and defendants.

While prosecutors should not press for a particular term of imprisonment or any other sentence, the prosecutor should ensure through submissions that the sentencing court is aware of:

- any applicable principles from the courts
- all proven aggravating factors including the convicted person's criminal record, and
- the impact on any victims of the offending.

Appeals

The Police may not initiate any appeal from the decision of a court or tribunal, or an application for judicial review, without the approval of the Solicitor-General. That approval may be general or specific. See the [Cabinet Manual, Appendix C](#).

No appeal shall be commenced on behalf of the Police, whether by a Police prosecutor or by external Crown counsel, unless the guidelines outlined below have been complied with and the written approval of the Solicitor-General or his delegate has been obtained accordingly.

Any Police employee may initiate a request for approval to appeal. Prosecutors should clear a request with their District Manager before initiating. The initiator of the request is responsible for forwarding urgently to the PPS Legal Advisor or Police Legal Services the following material:

- The decision to be appealed (or, in the case of an oral decision that has not been transcribed, the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible).
- A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment.
- Any written submissions filed by the Police or the defendant.
- Copies of any other information that was before the Court (e.g. pre-sentence reports, victim impact statements, letters of support, etc)
- An outline of the importance to the Police of conducting an appeal and any risks in doing so.

The above information must be submitted to the PPS Legal Advisor or Legal Services in an email.

The PPS Legal Advisor or Legal Services may be approached informally to assess the prospects of a potential appeal in the first instance if it is not possible to immediately obtain the information. In such a case, the Legal Advisor may seek the Solicitor-General's provisional consent on the basis of the prosecutor's instructions, pending the delivery of the relevant information.

The decision on requests for the Solicitor-General's consent to appeal will be made by the PPS Legal Advisor or Legal Services in consultation with the prosecutor who appeared on the prosecution.

Where the PPS Legal Advisor or Legal Services lawyer agree an appeal is appropriate, they prepare the request and email it for approval to the Solicitor-General, with the assistance of the prosecutor who appeared on the prosecution

The material sent to the Solicitor General must contain at least:

- the decision to be appealed (if it is available) or a summary of the decision
- a statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment, and
- an outline of the importance to the Police of conducting an appeal.

The same process applies to requests to appeal decisions by Justices of the Peace and Community Magistrates where the appeal is to be heard before a Judge in the District Court.

Any Police prosecutor receiving a notice of appeal filed by a defendant in a case where the PPS could appear on the appeal (i.e. appeals to the District Court from decisions of Community Magistrates and Justices of the Peace) must immediately inform the PPS Legal Advisor. The PPS Legal Advisor must advise the prosecutor, as soon as practicable after receiving notice of the appeal, whether or not the Police wish to oppose the appeal. The PPS Legal Advisor will discuss the appeal with the prosecutor who appeared on the prosecution. If the PPS Legal Advisor considers that the opposition is likely to succeed, they will approve the opposition and decide who should appear on the appeal in consultation with the PPS Operations Manager.

Glossary of Terms

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| A Attorney General | The Attorney-General is the senior Law Officer of the Crown with principal responsibility for the Government's administration of the law. This function is exercised in conjunction with the Solicitor-General, who is the junior Law Officer. The Attorney-General is also a Minister of the Crown with ministerial responsibility for the Crown Law Office, the Serious Fraud Office and the Parliamentary Counsel Office. |
| B Brief of evidence | A document prepared by Police which contains the evidence a witness is going to give at court. The use of briefs of evidence has been largely superseded by the use of Formal Statements. |
| C Case resolution | Refers to the way a case is resolved and may include full prosecution or an alternative to prosecution such as diversion. |
| Charge(s) | The formal allegation of an offence for which a person is arrested or summonsed to appear before a court, and on which he or she may be tried in court. |
| Common Law | Law contained in cases as opposed to statutes. |
| Coronial or Coroner's inquest | This is a judicial hearing convened by a Coroner into a sudden and unexplained death, or a death in special circumstances. It can be more informal than some court hearings. It is an inquisitorial process to discover what happened rather than to assign criminal responsibility. |
| Crown Law Office or "CLO" | The Crown Law Office provides legal advice and representation services to the government in matters affecting the executive government, particularly in the areas of criminal, public and administrative law. The CLO also has responsibility for the operational oversight of Crown Prosecutors. |
| Crown Solicitor | Crown Solicitors are private legal practitioners appointed on the recommendation of the Attorney-General and by warrant of the Governor-General. Crown Solicitors are appointed for a particular district, usually in a High Court centre, and are responsible for the conduct of jury trials in the High Court and District Court on behalf of the Crown. |
| D "Diversion" or "Police Adult Diversion Scheme" | A process which allows a criminal case to be concluded without a conviction being entered on a person's record. |

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| F | Formal Statement | The usual format in which a statement, setting out a potential witness' evidence, is recorded on a file, and which forms the basis of disclosure of that evidence. |
| I | Iwi, Pacific or Ethnic Liaison Officers | These are police officers located in Police districts who have the responsibility for liaising with specific population groups. |
| N | New Zealand Law Society | This is the national professional body for lawyers. This society sets general conduct and client rules for lawyers practising in New Zealand. |
| | Non-custodial sentence | A punishment determined by the court that does not involve the defendant serving a term of imprisonment. Intensive supervision, community detention and home detention are all considered to be non-custodial sentences. |
| | Non-government organisation or "NGO" | A non-public sector organisation established for the purposes of furthering a public goal. Examples of some organisations Police engage with include Victim Support and the National Collective of Independent Women's Refuges. |
| P | Proceedings | A general term used to describe the processes involved to preparing and resolving a case including bringing a case to court. |
| S | Solicitor-General | The Solicitor-General is an official of government and is also the Chief Executive of the Crown Law Office. Subject only to the Attorney-General, the Solicitor-General is the government's chief legal advisor and advocate in the courts. The Solicitor-General also has overall responsibility for the supervision of Crown Solicitors. |
| | Sentencing court | A specific court session dedicated to determining sentences (punishments) for defendants that have already admitted guilt or had their guilt established in court. |
| | Sub judice | A rule limiting comment and disclosure relating to judicial proceedings, in order not to prejudge the issue or influence the jury. |

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