

Prosecution Policy

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Owner	Group Manager Legal Services

This policy supersedes all previous versions and is valid until further notice.

Purpose

Land Information New Zealand (“LINZ”) has issued this Prosecution Policy to provide greater public guidance as to the circumstances in which we will initiate a criminal prosecution, and the principles and practices applicable to a criminal prosecution.

The Prosecution Policy is not exhaustive, and is not intended to be legally binding. LINZ may revise the Prosecution Policy from time to time in accordance with our organisational objectives and priorities. The Prosecution Policy is also necessarily general, and for greater specificity readers should refer to the relevant offence statute under which a prosecution may be brought.

Scope

The Prosecution Policy applies to all criminal prosecutions and potential criminal prosecutions arising from investigations by LINZ under the laws we enforce.

The Prosecution Policy applies to LINZ’s decisions to initiate criminal proceedings and LINZ’s decisions whether to appeal (or oppose an appeal) against a Court decision arising from a criminal prosecution. References in the Prosecution Policy to “prosecution” and “prosecution decisions” include appeal decisions.

The Prosecution Policy does not cover civil proceedings that we bring or other enforcement steps we may take.

Prosecution Policy subject to Solicitor-General’s Prosecution Guidelines

The Solicitor-General’s Prosecution Guidelines 2013 apply to all prosecutions undertaken by LINZ. As such, the Prosecution Policy is subject to the Solicitor-General’s Prosecution Guidelines. LINZ adheres to the standards of good criminal prosecution practice expressed in the Solicitor-General’s Prosecution Guidelines, in addition to the principles expressed in the Prosecution Policy.

LINZ’s criminal prosecutions are conducted by Crown Solicitors on our behalf. These lawyers are bound by the Solicitor-General’s Prosecution Guidelines when acting in that capacity, and we also expect them also to adhere to the practices and principles expressed in the Prosecution Policy.

The Solicitor-General’s Prosecution Guidelines are more specific and comprehensive than the Prosecution Policy, and should be read for greater detail on prosecutorial principles. Wherever possible, the Prosecution Policy should be read consistently with the Solicitor-General’s Prosecution Guidelines. In the event of a conflict between the Prosecution Policy and the Solicitor-General’s Prosecution Guidelines, the latter will prevail.

When LINZ may prosecute

Prosecutions under our principal statutes

LINZ is primarily empowered to bring criminal prosecutions under specific sections of the Overseas Investment Act 2005 and the Land Transfer Act 1952, and may also bring criminal prosecutions under other enactments. Other criminal offences may be added to this list by Parliament, from time to time.

In some cases, LINZ has a choice between commencing a criminal prosecution or bringing civil proceedings for a penalty, disposal of property, or other remedy.

Prosecutions under the Crimes Act 1961

LINZ may bring a criminal prosecution under the Crimes Act 1961 where we consider that an offence under the Crimes Act has been committed in relation to one or more of our areas of responsibility. Such a criminal prosecution can be instead of or in addition to a prosecution under one of our principal statutes. Such criminal prosecutions could involve conduct that is in relation to one of LINZ's areas of responsibility and which is so serious it warrants special condemnation under the Crimes Act.

Decisions to prosecute

The applicable test for whether we ought to initiate or continue a criminal prosecution is the Test for Prosecution in the Solicitor-General's Prosecution Guidelines, namely that:

- (a) the evidence which can be adduced in court is sufficient to provide a "reasonable prospect of conviction": the ("Evidential Test"); and
- (b) criminal prosecution is required in the public interest: the ("Public Interest Test").

LINZ must be satisfied that both limbs of the Test for Prosecution are satisfied before making a decision to commence criminal prosecution. In doing so we must first consider whether the Evidential Test is satisfied, before we then consider whether the Public Interest test is satisfied.¹

Evidential Test

If a matter does not pass the Evidential Test it will not proceed to criminal prosecution, no matter how important it may be.

In deciding whether the Evidential Test is met LINZ must analyse and evaluate all of the evidence and information in a thorough, critical and impartial manner. A "reasonable prospect of conviction" exists if:²

...in relation to an identifiable person (whether natural or legal), there is credible evidence which LINZ can adduce before a court and upon which evidence an impartial jury (or Judge), properly directed in accordance with the law, could reasonably be expected to be satisfied beyond a reasonable doubt that the individual who is prosecuted has committed a criminal offence.

¹ These tests apply to criminal prosecutions not to decisions whether to initiate civil proceedings.

² See Solicitor-General's Prosecution Guidelines at 5.3.

When deciding whether there is sufficient evidence, we will consider whether the evidence gathered is admissible and reliable, and will consider factors that we are required or permitted to take into account by the Solicitor-General's Prosecution Guidelines, including the following.³

- (a) Does the evidence support the charges?
- (b) Do the charges reflect the seriousness of the offending?
- (c) Is it likely that the evidence will be excluded at court, for example because of how it was gathered? If so, is there sufficient other evidence for a realistic prospect of conviction?
- (d) Is there evidence which might detract from the reliability of a confession, such as the defendant's age, intelligence or level of understanding?
- (e) What explanations has the defendant given? Is a court likely to find the explanations credible in the light of the evidence as a whole?
- (f) Is the evidence credible (capable of belief)?
- (g) Is there other evidence that we should seek out which may support or detract from the case?

We will continue to monitor whether the Evidential Test is met throughout the course of a criminal prosecution. If, as a result of continued investigation following the laying of charges we consider that:

- (a) another charge is more suitable, we may amend the charge (or seek the leave of the Court to do so); or
- (b) a charge should be withdrawn, withdraw the charge.

Public Interest Test

Once we are satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, we must consider whether the public interest requires a criminal prosecution. We are not required to prosecute all offences for which there is sufficient evidence. We will exercise our prosecutorial discretion in each case as to whether a criminal prosecution is required in the public interest.

Common instances where we may exercise our discretion not to take a criminal prosecution are where the case is not serious, or where a lesser enforcement response is appropriate.

Conversely, we may be influenced towards bringing a Crimes Act prosecution as opposed to a criminal prosecution under other legislation where a criminal conviction would provide the Court with a broader range of penalties or sentencing options, or where the conduct is deserving of special condemnation by way of a Crimes Act prosecution.

A non-exhaustive list of public interest considerations that may be relevant is provided in the Solicitor-General's Prosecution Guidelines,⁴ and includes matters such as the following.

- (a) How serious is the offending?
- (b) Is it likely to be continued or repeated?
- (c) Does the defendant have relevant previous warnings or convictions?
- (d) Has the offence resulted in serious financial loss to an individual, company or section of society?
- (e) What penalty is the Court likely to impose?

³ See Solicitor-General's Prosecution Guidelines at 5.4.

⁴ See Solicitor-General's Prosecution Guidelines at 5.8-5.11.

- (f) Do we accept that the defendant has rectified the loss or harm caused (although defendants should not be able to avoid prosecution simply through paying compensation or rectifying loss)?
- (g) Are any proper alternatives to prosecution available?

Cost (including our resources and funding) weighed against the seriousness of the offending and any likely penalty or sentence is a relevant factor we will consider when making an overall assessment of the public interest⁵.

Other considerations

In taking a decision whether to prosecute, we will also consider:

- (a) the purposes of the laws that we are seeking to enforce by a proposed criminal prosecution;
- (b) our stated objectives and any enforcement priorities; and
- (c) whether another prosecuting agency has or may bring criminal proceedings in relation to the same subject-matter as our proposed prosecution.

If we decide that there is insufficient evidence, or that it is not in the public interest to prosecute or to continue with a criminal prosecution, we may take a lower-level enforcement response; this can include taking no prosecution.

A decision not to prosecute does not preclude us from further considering the case if new and additional evidence becomes available, or if a review of the original decision is required (provided always that we are within the applicable limitation period for bringing a prosecution). Additional decisions to prosecute will be conducted in accordance with the Prosecution Policy.

Decision procedure

The decision whether to prosecute will normally be made by the relevant statutory officer or the head of the business unit responsible for administering the legislation in question. The decision maker will document the decision whether to prosecute and his or her reasons for the decision.

Choice of charges

The nature and number of charges brought should adequately reflect the criminality of the defendant's conduct, as disclosed by the facts to be alleged at trial. The charges may be representative of the offending, when the criteria under section 20 of the Criminal Procedure Act 2011 are made out.

Under the laws that we enforce, we may bring a criminal prosecution against individuals, companies, and other kinds of legal 'person'.

We may choose to charge someone as a principal party, as a secondary party (someone who assisted in or facilitated another party to commit the offence) or, as the evidence allows, both.⁶

Appeals from a prosecution

Any proposed appeal must be referred by our instructed Crown Solicitor to the Solicitor-General for consideration and approval, in accordance with the Criminal Procedure Act 2011.

⁵ See Solicitor-General's Prosecution Guidelines at 5.11 and 8.6

⁶ Crimes Act 1961, s66

Impartiality of the decision-maker

LINZ staff with duties or accountabilities under the Prosecution Policy will act fairly, promptly, in accordance with the law, and without any actual or potential conflict of interest. In addition, LINZ staff who are admitted lawyers have additional responsibilities under the Lawyers and Conveyances Act (Lawyers: Conduct and Client Care) Rules 2008.

Disclosure under the Criminal Disclosure Act 2008

Disclosure of evidence in a criminal prosecution is governed by the Criminal Disclosure Act 2008. Under the Act, the person in charge of the file is responsible for disclosure within the statutory timeframes.

Investigations involving other agencies

It is not uncommon for more than one prosecution agency to investigate a particular matter where prosecution by any of those agencies could result.

Wherever possible, we will work collaboratively with those other agencies to ensure that investigations and criminal prosecutions are conducted effectively and efficiently. For example, in some cases it may be possible for agencies to share information, such as witness statements, to ensure that witnesses are not subjected to multiple interviews by different agencies.

Where reasonably practicable, we will consult with other relevant agencies before commencing a criminal prosecution, to satisfy ourselves that criminal prosecution by us is in the public interest.

Amendments

We may amend the Prosecution Policy from time to time.

Responsibilities

This policy relates to LINZ's roles as regulator and monitoring/enforcing compliance by the public with the legislation we administer.

Statutory Officer:

- The relevant statutory officer or head of the business unit who has delegation for administering the legislation in question has primary responsibility for complying with this policy, making prosecution decisions and instructing the conduct of prosecutions. For example: the Registrar-General of Land under the Land Transfer Act 1952, the Deputy Chief Executive Policy and Overseas Investment under the Overseas Investment Act 2005, the Commissioner of Crown Lands under the Land Act 1948.

Group Manager Legal Services:

- The Group Manager Legal Services is responsible for assisting the above persons with their duties under this policy and liaising with Crown solicitors or Crown Law as required.

LINZ references

There are not any other LINZ documents or policies that relate to prosecutions.

External references

The following external references have assisted the development of this Policy.

Legislation

There is a multitude of legislation that involves offences and prosecutions, or governs the conduct of prosecutions. LINZ will obtain legal advice (either internal or external) on a case-by-case basis as to what legislative provisions will apply and how to proceed under them.

Policy frameworks, strategy and guidelines

"The Solicitor-General's Prosecution Guidelines 2013", which are available on Crown Law's web site at <http://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/prosecution-guidelines-2013.pdf>

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Approved as a LINZ Administrative Policy

Andrew Crisp
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