

# Prosecution Policy 2022

## About this document

Disclaimer	This document has been written for Department of Conservation (DOC) staff. As a result, it includes DOC-specific terms and refers to internal documents that are only accessible to DOC staff. It is being made available to external groups and organisations to demonstrate departmental best practice. As these procedures have been prepared for the use of DOC staff other users may require authorisation or caveats may apply. Any use by members of the public is at their own risk and DOC disclaims all liability for any risk.
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# 1. Background

## 1.1 Purpose

The purpose of this policy is to set out principles and guidelines which relevant DOC managers and staff will follow when considering, advising, or deciding whether or not to initiate criminal proceedings (including in relation to infringement offences), and when considering appeals against Court decisions arising from DOC's prosecutions.

## 1.2 Scope

This policy applies to all work associated with prosecutions and arising from an investigation by DOC under:

- Any legislation, regulations, or bylaws administered by DOC;
- Any other legislation or regulations relevant to DOC's role.<sup>1</sup>

This policy does not apply to enforcement actions which are not recommendations or decisions to prosecute. DOC's Enforcement Policy applies to decisions to issue Warning Letters and Infringement Notices. The Enforcement Policy also applies to the process of reaching a recommendation to prosecute offending. How recommendations to prosecute are treated, and any decision taken to prosecute, are made in accordance with this policy.

## 1.3 Audience

This policy must be adhered to by all DOC staff involved in prosecution matters. This includes decisions about whether or not to commence a prosecution as well as the preparation and conduct of all prosecutions undertaken by DOC.

## 1.4 Objectives

Implementing this policy will mean that all relevant staff:

- Understand how DOC makes decisions to prosecute, or not prosecute, alleged offenders in response to non-compliant activity; and
- Understand their role in that process, and in any subsequent prosecution.

## 1.5 Mandate

The mandate for this policy originates from the legislation, regulations and bylaws governing the protection of conservation resources.

These include:

- [Conservation Act 1987](#)
- [Freedom Camping Act 2011](#)

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<sup>1</sup> For example, DOC takes prosecutions from time to time under the Dog Control Act 1996, Animal Welfare Act 1999, Crimes Act 1961, Resource Management Act 1991. (Note: as at March 2022, a separate policy for RMA Enforcement is under development.)

- [Marine Mammals Protection Act 1978](#)
- [Marine Reserves Act 1971](#)
- [National Parks Act 1980](#)
- [Reserves Act 1977](#)
- [Taupō Fishery Regulations 2004](#)
- [Trade in Endangered Species Act 1989](#)
- [Whitebait Fishing Regulations 2021](#)
- [Wildlife Act 1955](#)
- [Wild Animal Control Act 1977](#)

All prosecuting government agencies are required to have a prosecution policy in accordance with the [Solicitor-General's Prosecution Guidelines](#).

## 1.6 Terms and definitions

Term	Definition
Warranted Officer	<p>Appointed under s 59 of the Conservation Act 1987 and the Public Service Act 2020 for the purposes of the Conservation Act and authorised to issue Infringement Notices.</p> <p>They include Warranted Rangers, Principal Compliance Officers and Compliance Officers.</p>
Manager	<p>In respect of decisions whether to prosecute, means:</p> <ul style="list-style-type: none"> <li>• Any Regional Operations Director</li> <li>• The National Compliance Manager (Operations Group)</li> <li>• Any Operations Manager delegated jointly by a Regional Operations Director, and the National Compliance Manager, to make prosecution decisions under this policy.</li> </ul>

## 2. Conflicts of interest

All staff with duties or accountability under this policy must act fairly, promptly, without any actual, potential or perceived conflict of interest, and in accordance with the law. This is in recognition of the significant impact prosecution-related decisions may have on members of the community.

Any person involved in the investigation, preparation, or conduct of a prosecution who may have any actual, potential or perceived conflict of interest whatsoever must disclose that conflict immediately to the Chief Legal Adviser.

Where a person has disclosed a conflict of interest (including disclosing a prior relationship with a person or an organisation that is the subject of an investigation or possible prosecution-related decision), that person must, unless approved by the Chief Legal Adviser, cease further involvement in the process.

### 3. Prosecution decision-making factors

The decision to prosecute (or not to prosecute) will be based on the following factors:

- The Solicitor-General's Prosecution Guidelines<sup>2</sup> This policy adopts the Solicitor-General's Prosecution Guidelines and must be read in conjunction with those Guidelines;
- The purposes of the legislation which DOC is seeking to enforce by a proposed prosecution;
- The principles of the Treaty of Waitangi<sup>3</sup>;
- The resources available to DOC relative to the public interest in a prosecution proceeding;
- Whether another prosecuting agency has or will bring criminal proceedings in relation to the same subject matter as DOC's potential prosecution.

### 4. Test for prosecution

Prosecution will be initiated only if:

- The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction; and
- Prosecution is required in the public interest.

All staff with accountabilities under this policy must separately consider and be satisfied that each aspect of the above test is met before a decision to prosecute is made. The evidential sufficiency of a proposed prosecution must first be satisfied before the public interest is considered.

### 5. Roles and responsibilities

#### **Operations Directors and delegated Managers**

Must be familiar with this policy, including the related Conflicts of Interest Policy, and apply them when exercising their prosecution decision-making responsibilities.

#### **Business owners – Chief Legal Adviser and National Compliance Manager**

- Responsible for the coordination and strategy of prosecution policy within DOC
- Responsible for the implementation of prosecution practices including the oversight of appropriate documentation, training, monitoring and review
- Must ensure their staff apply this policy, including the related Conflicts of Interest Policy, and provide support and guidance to enable this.

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<sup>2</sup> [Solicitor-General's Prosecution Guidelines](#) (published by the Crown Law Office)

<sup>3</sup> Refer s 4 Conservation Act 1987

## **Deputy Director-Generals, Operations and Corporate Services**

- Accountable for the coordination and strategy of prosecution policy within DOC
- Promote compliance with this policy and related policies, SOPs and guidelines
- Have final approval and policy sign-off.

## **6. Decision-making procedures**

In accordance with the Solicitor-General's Prosecution Guidelines, a Warranted Officer's recommendation to commence a prosecution must be independently reviewed by an experienced Solicitor, before a decision is taken by a Regional Operations Director, the National Compliance Manager, or their jointly authorised delegate. To achieve this, DOC's decision-making procedures are as follows.

### **6.1 Recommendation to prosecute / not prosecute**

When Warranted Officers investigate a suspected breach of any Act, regulation, bylaw, or other legal instrument, they must produce a file containing all relevant evidence.<sup>4</sup>

Warranted Officers are authorised to then take the following enforcement actions, in accordance with the Enforcement Policy:

- Issue a warning letter; or
- Issue or cause to be issued an infringement notice; or
- Recommend that the matter be infringed or prosecuted; or
- Recommend that the matter be prosecuted.

If a Warranted Officer recommends that the matter be considered for prosecution, the file is forwarded to the Legal Services Team (Corporate Services Group) for review in accordance with section 6.2.

### **6.2 Legal review of recommendation to prosecute**

The review will be carried out by:

- The Solicitor (Compliance and Law Enforcement); or
- Any other DOC Solicitor approved by the Chief Legal Adviser to review a Warranted Officer's recommendation to prosecute; or
- With the prior consent of the Chief Legal Adviser, a Crown prosecutor.

The Solicitor reviewing the file must:

- (a) Thoroughly assess the matter in accordance with this policy and the Solicitor-General's Prosecution Guidelines;

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<sup>4</sup> This is the Incident Record in CLE Works/Pūnaha Tūtohu.

- (b) Advise the relevant Warranted Officer if further investigations, enquiries, or information are necessary, or if the record is not to a satisfactory standard;
- (c) Provide written advice on whether the prosecution should or should not proceed in accordance with the test for prosecution in this policy;
- (d) Provide advice on the appropriate nature and number of charges to be filed;
- (e) Identify whether the prosecution will be conducted by a DOC solicitor or, with the prior consent of the Chief Legal Adviser, by a Crown prosecutor.

When the Solicitor reviewing the file, having regard to this policy, endorses or does not endorse the Warranted Officer's recommendation to prosecute, the Solicitor must communicate this to the Warranted Officer.

### 6.3 Decision to prosecute / not prosecute

Whether or not the Solicitor endorses the Warranted Officer's recommendation, the file must then be forwarded to one of the following Managers, as appropriate, for consideration:

- Any Regional Operations Director
- The National Compliance Manager (Operations Group)
- Any Operations Manager delegated jointly by a Regional Operations Director, and the National Compliance Manager, to make prosecution decisions under this policy.

The Manager receiving the file, including the Solicitor's advice, must promptly assess and consider the matter in accordance with this policy. There are three potential outcomes, as follows:

1. If the Manager determines that prosecution should be taken and the Solicitor had advised the same, the Manager must note the file with the reasons for the decision<sup>5</sup>, then forward the file to the Legal Services Team. Legal Services will then commence the prosecution process.
2. If the Manager determines that prosecution should not be taken, and Legal Services had advised the same, the Manager must note the file with reasons for the decision. Whether to take different enforcement action, such as issuing an infringement notice, can be considered under the Enforcement Policy.
3. If the Manager's determination to prosecute or not prosecute is not what Legal Services advised then, having regard to this policy, the following procedures apply:
  - (a) The Solicitor will discuss the matter with the Warranted Officer and/or the Manager and other relevant staff in order to try and resolve any issues of concern or differences in view;
  - (b) If the Solicitor and Manager are not able to resolve issues or differences, the responsible Manager must refer the matter to the Chief Legal Adviser for further review;
  - (c) The Chief Legal Adviser, after consulting with the National Compliance Manager, the Solicitor conducting the original review and any other person s/he thinks fit will provide his/her advice to the Deputy-Director General Operations;
  - (d) The decision of the Deputy-Director General Operations will be final.

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<sup>5</sup> Documented in the incident record in CLE Works/Pūnaha Tūtohu.

## 7. Responsibility of prosecutors

Once a decision to prosecute is made, accountability for the legal issues in connection with the prosecution passes to the Solicitor allocated the file. These responsibilities include:

- (a) Determining, in consultation with the Solicitor (Compliance and Law Enforcement) the correct nature, number and wording of charges;
- (b) Ensuring the prosecution file is to an appropriate evidential standard for Court;
- (c) Preparing a summary of facts document, in consultation with the Warranted Officer and the Solicitor (Compliance and Law Enforcement);
- (d) Complying with the Criminal Procedure Act 2011 and the Criminal Disclosure Act 2008;
- (e) Representing DOC with competency and to the ethical standards expected of prosecutors by the New Zealand Law Society and by the Solicitor-General;
- (f) Ensuring prosecutions are supervised by, and allocated to, solicitors appropriately classified under the Solicitor-General's 'Prosecutor Classification of In-House Lawyers' framework;
- (g) Seeking approval from the relevant Level 4 classified supervising solicitor, or from the Solicitor (Compliance and Law Enforcement), before taking significant procedural steps that affect the conduct of the prosecution, such as plea arrangements, warrants to arrest in lieu of service, and withdrawal of charges;
- (h) Consulting the National Compliance Manager or staff authorised by that Manager wherever practicable before deciding to take any significant procedural steps that affect the conduct of the prosecution, such as plea arrangements, warrants to arrest in lieu of service, withdrawal of charges, and diversion offers;
- (i) Respond to requests for diversion or offers of diversion in accordance with DOC's Diversion Policy;
- (j) Advising the National Compliance Manager and other relevant staff about any media interest in the prosecution;
- (k) Advising relevant staff on matters affecting resourcing for the prosecution;
- (l) Providing regular internal progress reporting and updating of internal databases.

## 8. Infringement offences

### 8.1 Infringement notices – request for Court hearing

If a Warranted Officer detects an offence for which an infringement notice may be issued, the Officer may, acting in accordance with DOC's Enforcement Policy, issue or cause to be issued an infringement notice to the offending person or organisation.

If a person or organisation issued with an infringement notice disputes the notice and formally requests a hearing, then the test for prosecution must be satisfied and the following procedure complied with before DOC files any Notice of Hearing in Court:



- (a) The request is passed to a Solicitor (Compliance and Law Enforcement) and the legal review is carried out in accordance with section 6.2 above;
- (b) The Solicitor's recommendation is communicated to a Compliance Officer;
- (c) If the Compliance Officer receiving the Solicitor's recommendation agrees with it, then the matter proceeds accordingly (ie, the notice is withdrawn, or a Notice of Hearing is filed);
- (d) If the Compliance Officer receiving the Solicitor's recommendation does not agree with it, then the file must be forwarded to the National Compliance Manager and the procedures above (at 6.3, paragraphs (a) to (d)) above apply (with references to "Warranted Officer" and "Manager" read as "Compliance Officer" and "National Compliance Manager").

## 8.2 Infringement offences – decision to prosecute

If a Warranted Officer detects an offence for which an infringement notice may be issued, the Officer may, if acting in accordance with DOC's Enforcement Policy, recommend that the matter be referred for prosecution instead of issuing an infringement notice.<sup>6</sup> In that case, the test for prosecution must be satisfied and the procedures in Section 6 of this policy must be complied with.

## 9. Appeals

No appeal may be brought from any DOC prosecution unless:

- The Manager who decided that a prosecution be brought, the National Compliance Manager and any other relevant staff, have been consulted; and
- The Chief Legal Adviser has agreed to the proposed appeal being referred to the Solicitor-General for consideration; and
- The Solicitor-General has given approval in accordance with the Criminal Procedure Act 2011.

## 10. Related documents

- [Conflict of Interest Policy](#) doc-863986
- [Enforcement Policy](#) doc-6077326
- [Solicitor-General's Prosecution Guidelines](#) (published by the Crown Law Office)
- [Template: delegation to Operations Managers to make prosecution decisions](#) doc-6481734
- [Diversion Policy](#) doc-1404680

## 11. Document history

This policy may be amended from time to time as necessary. This policy will be reviewed jointly by the Chief Legal Adviser and the National Compliance Manager every three years, or sooner if circumstances warrant it.

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<sup>6</sup> For example, refer section 51V(1)(a) Conservation Act 1987.

Date	Details	Document ID and version	Amended by
29/03/2016	First version of document published	<a href="#">doc-1199575</a>	
08/04/2021	Incorporates changes to decision-making procedures following the introduction of DOCFlow Enforcement	<a href="#">doc-6622770</a>	

## 12. Documents replaced

This policy replaces the following document which has been revoked:

- Prosecution Policy 2016 doc-1199575