

Prosecution

Introduction

Introduction

Fire and Emergency New Zealand (Fire and Emergency) is dedicated to keeping people, property and the environment safe from fires and other emergencies. One way we do this is through our role as a regulator. We help individuals and organisations understand their responsibilities under the Fire and Emergency New Zealand Act 2017 (the Fire and Emergency New Zealand Act) and related regulations – so they know what is required to stay compliant and prevent harm.

If these responsibilities are not met, Fire and Emergency will consider using its enforcement powers under the Fire and Emergency New Zealand Act. As well as formal enforcement actions, we may also use other regulatory tools, such as education or warnings, to strengthen understanding of legal obligations and encourage compliance. Fire and Emergency is committed to transparency in how we make decisions regarding regulatory responses, including prosecutions.

This policy explains how Fire and Emergency approaches prosecution decisions and conducts prosecutions. We are guided by principles of fairness, proportionality, consistency and integrity – in alignment with the [Solicitor-General's Prosecution Guidelines \(2024 edition\)](#), which set the standard for prosecution practices across New Zealand. This policy is subject to those guidelines.

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About this policy

What this policy covers and who it applies to

This *Prosecution policy* sets out the processes relating to prosecutions contemplated or brought by Fire and Emergency under the Fire and Emergency New Zealand Act and associated regulations,¹ including where a charging document is filed in court in respect of:

- an offence for which a conviction may be entered
- an infringement offence for which no conviction may be entered.

¹ To access Fire and Emergency's legislation, go to www.legislation.govt.nz and start typing 'Fire and Emergency' in the search bar.

This policy, and any associated procedures or guidelines, should be followed by:

- all Fire and Emergency personnel who make a recommendation or decision to prosecute or not to prosecute, or who take other actions or decisions within the scope of this policy
- all Fire and Emergency personnel involved in the preparation for, and conduct of, prosecutions brought by Fire and Emergency and related court proceedings
- all Prosecutors acting for Fire and Emergency.

This policy should be read in conjunction with:

- the [Solicitor-General's Prosecution Guidelines \(2024\)](#)
- Fire and Emergency's [Regulatory compliance guide](#)
- other Fire and Emergency policies, guidelines and processes relating to regulatory compliance and enforcement. A list of all publicly available documents relating to regulatory compliance and enforcement can be found on our website.

Purpose

The purposes of this policy are to:

- provide a clear, consistent and transparent framework for Fire and Emergency personnel involved in potential prosecutions we may bring, and for the public to understand how our decisions regarding potential prosecutions are made, and how we conduct our prosecutions
- ensure that decisions regarding prosecution are made in accordance with the law and the Solicitor-General's Prosecution Guidelines (2024)
- promote public confidence in Fire and Emergency's regulatory and enforcement functions
- support Fire and Emergency's strategic direction of being an effective regulator, fostering fire safety outcomes through education, consistent regulation and targeted and proportionate compliance interventions.

Guiding principles

Decisions regarding Fire and Emergency's prosecutions are guided by the following principles:

Independence: Fire and Emergency's prosecution decisions, and the conduct of prosecutions, will be made free from political influence, improper pressure or conflicts of interest.

Fairness and objectivity: All prosecution decisions will be made in a fair and objective manner. Processes will be in place to mitigate bias, including unconscious bias.

Public service: Fire and Emergency prosecutions serve the public interest. Decisions will give effect to the law and reflect the interests of justice in the particular case.

Fair trial: The prosecutor's role is to ensure a fair trial, not to strive for a conviction. A successful prosecution is one where an outcome is achieved after a fair and transparent process before an impartial court.

Proportionality: Prosecution will be used only where it is the proportionate and otherwise appropriate response to the circumstances of the case, having first considered any other regulatory tools which may be available.

Doing justice according to law: When deciding whether to prosecute, and when conducting a prosecution, Fire and Emergency will consider and bring to the court's attention all relevant circumstances of which it is aware.

Dignity and respect: All participants in the process, including victims and defendants, will be treated with dignity and respect. Fire and Emergency, and prosecutors acting on its behalf, will be aware of, and responsive to, the needs of victims in accordance with the Victims' Rights Act 2002.

Transparency and accountability: Fire and Emergency's prosecution process will be transparent, and decisions will be subject to appropriate review.

Timeliness: Fire and Emergency will endeavour to conduct investigations and make enforcement decisions, including decisions to prosecute, in a timely manner without undue delay.

Fire and Emergency's compliance and enforcement tools and objectives

Fire and Emergency is committed to reducing risk and preventing harm caused by fire. We recognise that most people will comply with their legal obligations when they are aware of and understand them. For this reason, we prioritise education to help people understand what is required to keep themselves and others safe from fire and comply with the Fire and Emergency New Zealand Act and regulations. Where offences do occur, Fire and Emergency has a range of compliance and enforcement tools to enable it to fulfil its regulatory role and achieve its compliance and enforcement objectives.

Fire and Emergency's overarching regulatory compliance objectives are to:

- reduce harm from unwanted fire
- reduce harm from the unsafe use of fire as a land management tool
- support the safe use of fire as a land management tool
- minimise avoidance of the Fire Emergency Levy
- reduce non-compliance with any legislation or regulations under which Fire and Emergency New Zealand has a regulatory function.

When parties fail to comply with their legal obligations and act in a way that undermines our compliance objectives, we may take enforcement action. Through our enforcement activities we seek to support our compliance objectives by:

- helping a suspect understand relevant obligations and minimise the likelihood of them breaching the obligation again
- considering and addressing, where possible, the interests of any party who has suffered harm, damage or loss because of non-compliance
- protecting the community and environment from harm by holding the suspect accountable and deterring the suspect and others from committing a similar breach.

Our [Regulatory compliance guide](#) sets out the various tools available to respond to breaches of the Fire and Emergency New Zealand Act and regulations, and the circumstances in which they are used. Broadly, these tools include:

- Taking no further action
 - Providing information, education and assistance to ensure a party is aware of their obligations, knows how to comply with them, and understands the potential consequences of not doing so
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- Issuing notices requiring a party to take specific actions to reduce fire risk
- Warning (verbal or formal written warning)
- Issuing infringement notices²
- Civil action to address a fire risk, impose a penalty, or require a party to comply with a requirement
- Prosecution.

When considering which enforcement tool is appropriate, we will consider how effectively it will:

- address the suspect's conduct
- hold the subject accountable
- acknowledge harm caused by the offending
- otherwise meet Fire and Emergency's compliance objectives.

Where more than one tool may be appropriate in any case, we will use the most proportionate tool for the circumstances. This may include taking no further action, particularly where no harm has been caused and a suspect has subsequently done what is required to get compliant.

Prosecutions

Fire and Emergency's prosecution objectives

A decision to prosecute is not made lightly. When we do prosecute, we are guided by the following key objectives:

Risk reduction and prevention: Guided by our overarching regulatory compliance objectives, we seek to prevent or limit harm to property and land and the environment before it occurs by sending a strong message that non-compliance can have serious consequences, one of which may be prosecution. Prosecutions help uphold standards so that public safety risks are reduced, and we maintain public confidence in the regulatory system in which we operate.

Deterrence (specific and general): By taking prosecution action in appropriate cases, Fire and Emergency aims to deter both the offender and others from behaving in a similar way and thereby encourage future compliance.

Fairness and consistency: We seek to ensure our prosecution actions are fair and proportionate, by treating like cases alike, other than where to do so would be inappropriate in the circumstances of a case.

When Fire and Emergency may consider prosecution

Fire and Emergency may consider taking prosecution action where we have credible, reliable and admissible evidence of an alleged offence by an identifiable person against the Fire and Emergency New Zealand Act or regulations and the alleged offence meets the test for prosecution.

We will not consider prosecution where a less severe response would have been appropriate but is not available (for example, because a time limit has expired). In such cases, we will adopt a response that is no more severe than the unavailable option.

² Fire and Emergency does not currently have an infringement function. Infringement will be included as an enforcement tool in the future.

The test for prosecution

The test for prosecution should be applied to all proposed charges, before any prosecution is started, as well as periodically after a prosecution is commenced.³ The test is twofold. The first limb of the test requires Fire and Emergency to ask whether there is enough evidence to prosecute the proposed charge beyond reasonable doubt. The second limb of the test requires Fire and Emergency to ask whether the public interest requires a prosecution to be brought.

A prosecution should only be brought if both tests are met. If there is not enough evidence to prove a charge, no prosecution should be brought for that charge, regardless how strong the public interest in prosecution may be. Equally, even where there is overwhelming evidence to prove a charge, a prosecution should not be brought unless the public interest requires it.

Generally, the evidential test is applied first, and then if that test is met, the public interest test is applied. However, if it is apparent that prosecution is not required in the public interest, Fire and Emergency can decide not to prosecute without having to comprehensively evaluate whether there is sufficient evidence.

The test for prosecution should be applied to each proposed charge separately.

The evidential test

To meet this test, the decision-maker should be satisfied there is sufficient evidence to prove the proposed charge against an identifiable person beyond reasonable doubt. The evidence Fire and Emergency would rely on to prove the charge should be:

- **Available:** The evidence can be presented in court.
- **Admissible:** The evidence can be considered by the court.
- **Credible:** The evidence is believable.
- **Reliable:** The evidence can be depended upon.
- **Strong:** The evidence is strong enough that a jury or judge, properly directed, could reasonably be expected to convict.

If the evidential test is not met, the prosecution will not proceed.

The public interest test

Fire and Emergency considers the public interest test at least twice prior to taking any prosecution.

Consideration of the public interest under the *Regulatory compliance guide*

In line with our [Regulatory compliance guide](#), when we are considering how to respond to alleged offending, we will take relevant public interest factors into account and consider whether alternative responses are available and appropriate. Such decisions may be made at various early stages, including:

- during the initial assessment or preliminary review of alleged offending
- before opening an investigation.

The [Regulatory compliance guide](#) and *Warning policy* set out which Fire and Emergency roles have authority to decide on responses other than prosecution.

Consideration of the public interest under this *Prosecution policy*

After an investigation, the Chief Legal Advisor will consider the test for prosecution when deciding whether to make a recommendation of 'prosecution' or 'no prosecution' in accordance with this policy.⁴ If the Chief Legal Advisor recommends

³ See section below [Ongoing review of prosecution](#).

⁴ See the section below [Process for referring a matter for a prosecution decision](#).

prosecution, the prosecution decision-maker will again consider the test for prosecution in deciding whether to prosecute or not prosecute.⁵

What is the 'public interest'?

In the context of prosecution decisions, the public interest means the wider considerations of justice and fairness, which often reach beyond the individual case, ensuring accountability for offending, protection of the rights of both the defendant and victims, and maintenance of confidence in the regulatory system and the justice system.

The main considerations relevant to Fire and Emergency's assessment of public interest in a prosecution will usually include:

- **seriousness of the offence:** whether the alleged offending resulted in serious harm or damage, or created a risk of serious harm or damage, to a person or persons, property or the environment
- **level of culpability:** whether the alleged offending was intentional, reckless or accidental
- **harm or damage:** whether the alleged offending has impacted victims or the wider community, including iwi, and if so, to what degree
- **ongoing offending:** whether there is a likelihood non-compliant behaviour will continue
- **integrity of the regulatory system:** whether the offending undermines Fire and Emergency's regulatory objectives or the regulatory system within which Fire and Emergency operates
- **whether there are alternatives to prosecution:** whether Fire and Emergency has other enforcement tools available to it that are appropriate to address the alleged offending
- **commercial or financial motivation:** whether the alleged offending appears to have been motivated by a desire to avoid costs or gain a benefit.

The more serious, deliberate or reckless the alleged offending, the more likely it is that Fire and Emergency will consider that the public interest requires prosecution. Conversely, Fire and Emergency may consider that the public interest test is not met where:

- no harm or minimal harm or damage was caused and there was no real risk of serious harm or damage; or
- the suspect has taken full remedial action, cooperated fully with the investigation, and the alleged offending is unlikely to be repeated; or
- prosecution would be a disproportionately harsh response given the circumstances or the suspect's age, health or other personal circumstances (where relevant and not outweighed by other public interest factors); or
- prosecution would involve an inefficient use of Fire and Emergency's resources, particularly relative to the seriousness of the offence, or would impose disproportionate cost on the justice system or others; or
- delay in bringing the prosecution is likely to prejudice the suspect's ability to defend themselves; or
- there is a more appropriate regulatory response available (e.g. warning, education or other enforcement tool); or
- prosecution would otherwise be unfair or inappropriate.

⁵ See the section below [How a decision whether to prosecute is made](#).

The prosecution decision-maker will also consider, where appropriate:

- Fire and Emergency's statutory and regulatory objectives and any relevant compliance and enforcement priorities
- the need to maintain public confidence in Fire and Emergency's regulatory framework and activities
- the relevant statutory timeframes and the period since the matter first came to Fire and Emergency's attention
- any existing or likely prosecution or other proceedings involving the defendant(s) by another government agency, and the likely outcome.

Factors that should neither motivate nor deter the taking of a prosecution include:

- colour, race, ethnicity, sex or marital status, religious, ethical or political beliefs
- personal knowledge of the suspect
- political advantage or disadvantage to the prosecuting agency or people linked to it
- the possible effect on the personal or professional reputation or prospects of those involved in or linked to Fire and Emergency.

We are committed to maintaining cultural competency in all prosecutorial work. Where tikanga or other cultural practices or beliefs are relevant to the facts of the case, the harm caused, or possible alternatives to prosecution, we will take them into account.

Cost of prosecution

In considering whether prosecution is in the public interest, the decision-maker will consider the resources available to Fire and Emergency, and the likely costs of prosecution to Fire and Emergency and the court system, as well as others, including other agencies, and the defendant. Fire and Emergency should decide whether prosecution is the best use of its resources to achieve its compliance and enforcement objectives.

Cost is one of many factors to be weighed in deciding whether prosecution is in the public interest, and not determinative. Where cost is disproportionately high for relatively minor offending, prosecution may not be in the public interest, even if evidentially sound. Where the alleged offence is serious, involves significant harm or repeated offending, cost is less likely to be a sufficient reason not to prosecute.

Process for referring a matter for a prosecution decision

Fire and Emergency may decide to investigate a matter in accordance with the [Regulatory compliance guide](#). Once the investigation is complete, the Investigation Report will be provided to the Chief Legal Advisor, who will provide (or instruct Fire and Emergency Legal Counsel or a prosecutor from an office of the Crown Solicitor to provide) legal advice as to whether the test for prosecution is met.

The legal advice will include, as a minimum:

- an outline of the material facts of the case
- the evidence considered
- any possible issues of admissibility that have been identified
- any other legal matters that may pose a significant risk to, or impede, a successful prosecution
- advice on whether the evidential and public interest tests have been met and the reasons for that advice.

In cases where it is apparent that the public interest test will not be met, regardless of the strength of the evidence, an overview of the evidence is sufficient.

The Chief Legal Advisor will then progress the matter to the decision-maker, together with their own recommendation as to whether to prosecute or not prosecute and will provide the decision-maker with relevant legal advice, the Investigation Report and any other relevant documents, for a prosecution decision.

Prosecution decision-maker

The prosecution decision-maker within Fire and Emergency is the Chief Executive. The Chief Executive may delegate prosecution decision-making to another suitable person or role within Fire and Emergency, either on a case-by-case basis, generally, or for specific types of prosecution decisions (for example, those relating to infringement or strict liability offences only).

The decision-maker may, at their complete discretion, convene an internal panel to advise on and discuss the prosecution decision, though the prosecution decision ultimately remains that of the decision-maker. Where a panel is convened, it will typically include:

- the Chief Legal Advisor (or representative from Fire and Emergency's legal team delegated by the Chief Legal Advisor)
- the investigator who authored the Investigation Report
- a senior and experienced Fire and Emergency inspector or manager who was not directly involved in the investigation
- an independent subject matter expert if technical expertise is required.

How a decision whether to prosecute is made

A 'prosecution decision' is a decision to **prosecute** or **not prosecute**.

A decision to **not prosecute** will be made when there is:

- *insufficient* evidence to prosecute; or
- *sufficient* evidence to prosecute but the public interest does not require prosecution.

A decision to **prosecute** may only be made when:

- there is *sufficient* evidence to prosecute; and
- the public interest *requires* prosecution.

The prosecution decision-maker should:

- consider whether both the evidential and public interest tests are met before making any decision to prosecute
- abide by the principles of natural justice, including ensuring that they:
 - have not had any significant involvement with the investigation
 - are making their decision independently, fairly and free from improper influence (political, media, public opinion and any conflict of interest)
 - consider each proposed charge separately
 - ensure they consider all information of which they are personally aware
 - document their decision and the reasons for it
 - be prepared to revise their decision should information come to light that would tell against taking or continuing a prosecution.

When considering whether the test for prosecution is met, the decision-maker will have appropriate regard to the legal advice provided. The Chief Legal Advisor may

Review of prosecution decisions

provide additional legal advice or obtain an independent second opinion from a Crown Solicitor where necessary or desirable.

Fire and Emergency's Legal Review process ensures that all recommendations and advice supporting prosecution decisions undergo rigorous scrutiny before any final decision is made.

Following a decision to prosecute, the appropriateness of continuing the prosecution is subject to ongoing review.⁶

Fire and Emergency will also audit previous prosecution decisions at appropriate intervals to assess matters such as:

- **Consistency:** Similar cases are receiving similar responses.
- **Adherence to policy:** Prosecution decisions align with Fire and Emergency's internal enforcement and prosecution policies.
- **Compliance with Solicitor-General's Guidelines:** Prosecution decisions meet the high standards and principles set out by the Solicitor-General for public prosecutions in New Zealand.
- **Fairness and objectivity:** Unconscious bias is actively mitigated, and decisions have considered only relevant factors.
- **Policies remain fit for purpose:** Fire and Emergency's Regulatory compliance and Prosecution policies, processes and guidelines remain appropriate and compliant.

Request to review prosecution decisions

There is no statutory right to seek review of a prosecution decision. Where a victim or member of the public seeks review of a prosecution decision (namely, a decision to prosecute or a decision not to prosecute), Fire and Emergency will consider the request in accordance with the Prosecution Complaints and Review Process (currently in development).

Any request for review of a prosecution decision should be sent to the to the Chief Legal Advisor at Legal@fireandemergency.nz.

Conducting a prosecution

Choice of charges

When a decision to prosecute is made, consideration will be given to the charges that are most appropriate. Charges should be chosen which:

- adequately reflect the nature and seriousness of the alleged offending
- give the court appropriate sentencing options relative to the seriousness of the alleged offending
- allow the case to be presented clearly and fairly without 'over charging' by filing more charges, or more serious charges, than the evidence supports
- are within the statutory limitation period for filing such charge/s.

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.

When determining whether to prosecute, the decision-maker should consider any existing or likely prosecution or other proceedings involving the suspect by another government agency, and (where possible) the likely outcome. If offending against

⁶ See [Ongoing review of prosecution](#) below.

legislation not administered by Fire and Emergency is detected, the matter should be referred to the relevant agency if it is not already informed.

The fact another agency is investigating or prosecuting under its own legislation does not automatically preclude Fire and Emergency from investigating or prosecuting offences under the Fire and Emergency New Zealand Act or regulations, though there may be situations where it is appropriate that that other agency takes the lead in the investigation and prosecution process. For example, the Police would take any prosecution for matters involving arson and WorkSafe would take any prosecution for harm in a workplace. Fire and Emergency may elect, having regard to the facts of the matter and any relevant legal principles that are applicable, not to investigate or prosecute an offence in these circumstances.

Who conducts our prosecutions

All Fire and Emergency prosecutions will be conducted by a Crown Solicitor.

Where a defendant elects trial by jury for a category 3 offence, the prosecution becomes a 'Crown prosecution' and the Solicitor-General assumes responsibility for the proceeding in accordance with regulation 5(c) of the Crown Prosecution Regulations 2013. The Crown Solicitor conducts these matters on behalf of the Solicitor-General.

Ongoing review of prosecution

A decision to prosecute is not 'once and done'. After filing charges, the prosecutor is responsible for keeping the decision to prosecute under review to determine whether any charge/s should be amended, added or withdrawn. While it is a matter of judgement for the prosecutor to decide when to review the decision to prosecute, the test for prosecution should be revisited if:

- further information or evidence comes to light which either contradicts some of the evidence to be relied upon or otherwise weakens the prosecution; or
- further material information is received, or there is a material change in circumstances, relevant to the factors considered as part of the Public Interest Test.

Any decision to amend, add or withdraw charges will be made by the decision-maker (or person delegated to make prosecution decisions), after receiving advice from the prosecutor and/or Chief Legal Advisor.

Victims

Where there are victims of alleged offending to which this policy applies, Fire and Emergency will comply with the requirements of the Victims' Rights Act 2002, including advising victims of the Victims' Code, and keeping victims informed and consulting them where required, and will advise victims of their right to make a victim impact statement, should they wish.

Fire and Emergency will treat victims with respect, courtesy and compassion, and will be mindful of the impact the offending has had and aim to minimise further harm in the process.

Fire and Emergency will consider victims' views relating to a prosecution decision or a matter regarding the conduct of a prosecution, though a victim's views will not be determinative.

Victims have the right to complain to Fire and Emergency if they believe they have not been afforded their rights under the Victims' Rights Act.

Complaints by victims

Complaints by victims relating to a Fire and Emergency prosecution may be raised directly with the person who has acted as the victim liaison for an investigation or

prosecution (generally this will be the Officer in Charge) or can be sent by email to the Chief Legal Advisor at Legal@fireandemergency.nz.

Any complaints made by a victim to a member of Fire and Emergency, or a prosecutor acting for Fire and Emergency, should be advised to the Chief Legal Advisor without delay.

The Chief Legal Advisor has ultimate responsibility for ensuring complaints from victims are managed in accordance with the Prosecution Complaints and Review Process.

Media and public communications

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.

Fire and Emergency will decide on a case-by-case basis whether to publish information about prosecution actions.

When communicating with the public or the media in relation to a prosecution, Fire and Emergency will act in accordance with the guidance for media contained in the [Solicitor-General's Prosecution Guidelines](#), and will act in a way that:

- 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
- is fair to the defendant.

Fire and Emergency will take care to ensure only factual information is provided to the media and we will advise the relevant media outlet should we become aware of inaccurate reporting of any Fire and Emergency prosecution.

All media and public communications regarding a Fire and Emergency prosecution will be via the Fire and Emergency Media Team.

Disclosure

Fire and Emergency will comply with its disclosure obligations under the Criminal Disclosure Act 2008.

The person in charge of the file is responsible for ensuring timely and compliant disclosure of evidence to the defendant. Generally, this will involve the Fire and Emergency Officer in Charge of the case preparing disclosure to a standard that complies with the Criminal Disclosure Act 2008 and providing it to the Crown Solicitor to review and provide to the defendant. While initial disclosure will usually be provided to the defendant directly when the summons is served, where the defendant is represented by a lawyer, further and full disclosure will generally be provided to that lawyer rather than to the defendant directly.

Self-represented defendants

Fire and Emergency will take particular care when engaging with self-represented defendants to ensure their right to a fair trial is not unfairly disadvantaged by their lack of legal counsel. We will:

- treat self-represented defendants respectfully
- communicate in clear and plain language

- assist the court to ensure that all relevant and admissible evidence is considered, even if the self-represented defendant does not raise it
- at sentencing, draw the court's attention to section 30 of the Sentencing Act 2002 where appropriate and inform the court of any relevant mitigating factors of which we are aware.

We will not provide legal advice to self-represented defendants or act in court on their behalf.

Plea discussions and arrangements

The [Solicitor-General's Prosecution Guidelines](#) recognise that principled plea discussions and arrangements have significant value for the administration of the criminal justice system. These discussions may be initiated by the prosecutor (other than in the case of self-represented defendants) or defence counsel.

Fire and Emergency will not initiate plea discussions with a self-represented defendant. Where a self-represented defendant seeks to initiate plea discussions, we will record the communication accurately and address the matter in open court to ensure fairness and transparency.

All discussions to offer or agree to a plea arrangement should be approved by the decision-maker (or person delegated to make prosecution decisions), after receiving advice from the prosecutor and/or Chief Legal Advisor. Where a decision-maker is unavailable within the timeframe within which a decision should be made, the Chief Legal Advisor may make the decision.

Sentencing

Where a prosecution results in a guilty plea or a finding of guilt, a range of sentencing options are available to the court. Fire and Emergency will seek sentencing options that consider the circumstances of each case, are proportionate to the offending, and are aimed at holding the offender accountable and reducing offending.

Where appropriate, Fire and Emergency will apply for other orders (such as reparation orders or costs orders).

Fire and Emergency will make submissions to the court based on the evidence and information of which it is aware and is not required to conduct investigations into all potential mitigating circumstances beyond what is already known.

Fire and Emergency will ensure victims who wish to make a statement to the court about the impact of the offending on them are supported in doing so.

Appeals

Defendant appeals

The Chief Legal Advisor will instruct a Crown Solicitor to represent Fire and Emergency on appeals made by defendants.

Fire and Emergency appeals

Fire and Emergency will only appeal a decision of the court where there is high public interest in doing so and where the appeal has a reasonable chance of success.

No appeal against a decision of a court in any prosecution brought by Fire and Emergency may be filed on behalf of Fire and Emergency unless:

- it has been authorised by the Chief Legal Adviser in consultation with the decision-maker
- the prior written consent of the Solicitor-General has been obtained where required.

	The Crown Solicitor will file the notice of appeal and appear on the appeal for Fire and Emergency.
Bail or name suppression decisions	<p>In deciding whether to appeal a decision relating to bail or name suppression, Fire and Emergency's considerations will include:</p> <ul style="list-style-type: none"> • whether the appeal is both in the public interest and has a reasonable prospect of success • the views of victims, where relevant • for bail appeals, whether appeal is required for public safety reasons.
Pre-trial rulings	<p>In deciding whether to appeal a pre-trial ruling, Fire and Emergency will consider:</p> <ul style="list-style-type: none"> • whether the appeal is in the public interest • the likelihood of success (i.e. whether the appeal has good prospects) • the impact of the ruling on the prosecution's case, e.g. whether evidence excluded is significant or central versus peripheral • the effect of appealing on the trial schedule: whether an appeal would delay the trial, require adjournment or have other procedural consequences • the impact on victims and their whānau of any delay or adjournment.
Appeal against sentence	<p>Although there may be several possible sentences within a correct range, only in clear cases (manifest inadequacy or wrong legal principle) will an appeal normally be appropriate. In deciding whether to appeal a sentence, or an aspect of a sentence, imposed by the court, Fire and Emergency will consider:</p> <ul style="list-style-type: none"> • whether the sentence is manifestly inadequate, or whether there is an error of principle or law in how the sentence was imposed • whether the sentencing judge failed to follow established sentencing methodology or guideline judgements • whether pursuing the appeal will promote consistency in sentencing for similar crimes/offenders • whether there are distinct public interest reasons for appealing.
Appeal on a question of law	<p>Fire and Emergency may consider appealing a decision of the court of a matter of law. Key consideration include:</p> <ul style="list-style-type: none"> • the ruling must involve a point of law rather than purely fact • the legal issue must have clearly arisen and been material in the case • whether resolving the question will have importance beyond the particular case (i.e. significance to future cases) • whether consent from the Solicitor-General is required.

Monitoring and review of prosecution policy and practices

This policy will be reviewed periodically, and at a minimum, every three years, or earlier if changes to Fire and Emergency policy, law or practice, or further guidance from the Solicitor-General, necessitates review, to ensure this policy remains current, effective and compliant with all legal requirements and best practice.

Post-prosecution review: After the conclusion of a prosecution (whether charges are proven, withdrawn or dismissed), a review may be conducted to identify

lessons learned regarding evidence gathering, legal strategy, decision-making processes and adherence to policy.

Training needs analysis: Analysis of review outcomes will inform ongoing training needs for Fire and Emergency personnel involved in enforcement and prosecution.

Policy refinement: Insights gained from reviews will contribute to the continuous refinement and improvement of Fire and Emergency's enforcement and prosecution policies and guidelines.

By embedding these rigorous review mechanisms, Fire and Emergency aims to ensure that its prosecution decisions are consistently fair and legally sound, and continue to meet Fire and Emergency's prosecution objectives.

Preserving independence and freedom from bias

Conflicts of interest

All personnel involved in prosecutions or potential prosecutions should act lawfully, fairly, promptly and free of any actual, potential or perceived conflict of interest. This applies when making decisions or contributing in any way to any Fire and Emergency prosecution. Any conflict of interest (whether actual, potential or perceived) should be disclosed immediately, including to the Chief Legal Advisor. In the case of disagreement as to the existence of a conflict of interest or the way in which it should be managed, the Chief Legal Advisor's decision is final.

Where disclosure of a conflict of interest is made to the Chief Legal Advisor, they will record, in writing, the nature of the conflict, the date of disclosure, any impact on the prosecution and any directions given as to its management.

The independence of a person, including a prosecutor, is not compromised merely by the fact that they have provided advice at the investigative stage, unless they are likely to be a witness. Where a person has disclosed a conflict of interest, that person should cease further involvement in the process.

Unconscious bias

Fire and Emergency is committed to mitigating unconscious bias in its enforcement and prosecutions to ensure fairness, equity and public trust. This involves a multi-faceted approach, drawing on principles of evidence-based decision-making, cultural intelligence and ongoing learning.

Fire and Emergency guards against unconscious bias impacting its prosecutions through the audit and review processes described in this policy and in any supporting guidelines.

Public availability

This Fire and Emergency *Prosecution policy* will be made publicly available on the Fire and Emergency website to ensure transparency and accountability.

Definitions

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, and any partner or employee of the Crown Solicitor's firm.
Fire and Emergency personnel	As defined in section 6 of the Fire and Emergency New Zealand Act 2017 and includes Fire and Emergency employees, volunteers and contractors.
Investigation	A formal inquiry by Fire and Emergency to identify and confirm the facts of a matter involving alleged offending.
Investigation Report	A report that documents the issue(s), evidence gathered and findings. It provides a formal record of the investigation for the decision-maker. Findings will be based on a careful assessment that links directly to the facts, evidence and analysis.
Offence	Any action or omission specified as an 'offence' in legislation. Includes infringement offences, strict liability offences (offences not requiring the prosecutor to prove the defendant had particular knowledge or state of mind) and <i>mens rea</i> offences (offences requiring proof of knowledge, recklessness or intent as the case may be).
Officer in Charge	Means the person within Fire and Emergency responsible for the management of a file during the investigation and for managing matters relating to the file during prosecution, as required by the prosecutor.
Prosecution	A proceeding against a defendant to determine whether they are guilty of an alleged offence. A Fire and Emergency prosecution is commenced by filing a charging document in the District Court.
Prosecution decision	A decision to prosecute, or not prosecute, an identified person.
Prosecutor	Means the lawyer(s) acting for Fire and Emergency in a prosecution.

Related information

Policies

Warnings coming soon

Guidelines

[Regulatory compliance](#)

[Solicitor-General's Prosecution Guidelines \(2024 edition\)](#)

Legislation

[Criminal Disclosure Act 2008](#)

[Criminal Procedure Act 2011](#)

[Fire and Emergency New Zealand Act 2017](#)

[Sentencing Act 2002](#)

[Victims' Rights Act 2002](#)

Document information

Owner	Chief Legal Advisor
Last reviewed	13 November 2025
Review period	Every three years

Record of amendments

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.
13 November 2025	This policy replaces the previous Prosecution Policy 2017 and was made in compliance with the Solicitor-General's Prosecution Guidelines 2024 .