



MPI Organisational Policy

PROSECUTIONS AND APPEALS

Owner:
Chief Legal
Adviser

OVERVIEW

PURPOSE

The purpose of this policy is to establish the principles to which MPI staff must adhere in making decisions to prosecute, and to recommend appeals. It also establishes standards to be met by prosecutors in any MPI prosecution.

ACCOUNTABILITY / AUTHORISATIONS

This policy and the associated Guidelines and Standards must be adhered to and followed by:

- all **MPI staff** involved in the preparation for, and conduct of, prosecutions relating to Acts administered by MPI, and related court proceedings, and
- all **prosecutors** acting for MPI, including external Crown counsel.¹

Decisions on what further action to take where a breach is detected of an Act, regulation or other legal instrument for which MPI is responsible, including the decision to issue a written warning or to prosecute, must be made by an authorised official (as detailed in the Rules and Requirements below).

BACKGROUND

This policy harmonises the MAF policy of February 2011 and the MFish policies CPS7 and CPS7A of March 2006 and comes into effect on 31 July 2012.

SCOPE:

This policy statement applies to all MPI staff involved in decisions about responses to apparent breaches of legislation administered by MPI, and prosecutions and related litigation undertaken by:

- a MPI Prosecutor, or
- an external Crown counsel instructed by MPI.

See also: MPI Organisational Guidelines and Standards: Prosecutions and Appeals.

¹ The Manager Prosecutions is responsible for providing a copy of this Policy and related Guidelines to external Crown counsel instructed by MPI.



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RULES and REQUIREMENTS:

A prosecution must not be commenced unless:²

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

Prosecutions under legislation for which MPI is responsible.

Where a breach is detected of an Act, regulation or other legal instrument for which MPI is responsible, the decision on what further action to take, apart from a decision to issue a warning or an infringement notice, must be taken by one of the following managers in the branch of MPI that has investigated the breach:

- the relevant DDG;
- a Director;
- a Tier 4 Manager;
- a Tier 5 Manager authorised in accordance with the *Guidelines and Standards: Prosecutions and Appeals*.

A **DDG** is the only authorised prosecution decision maker for international fisheries matters.³

An infringement notice or a warning may be issued by a duly approved, warranted and authorised officer under the relevant Act. The decision to proceed to a defended hearing on an infringement notice, or to revoke an infringement notice, must be made by a Tier 4 Manager or a Tier 5 Manager who is authorised to make prosecution decisions. Note that an infringement notice may only be revoked by someone who is authorised to issue it under the relevant Act.

A **Prosecutor** must make the decision as to whether there is sufficient evidence to support a prosecution. The prosecution decision maker may decide not to seek advice from a Prosecutor before approving charges in respect of a breach of amateur fishing regulations.

It is expected that prosecution decisions will be made by **Tier 4 Managers** or authorised **Tier 5 Managers** except in cases of disagreement with the reviewing **Prosecutor**, sensitive cases, and high profile cases. Disagreements with the reviewing Prosecutor must be resolved in accordance with the *Guidelines and Standards: Prosecutions and Appeals*.

Once the decision to prosecute is made, the accountability for legal issues in connection with the prosecution file passes to the Prosecutor.

Prosecutions under other legislation

No MPI employee may file an information alleging offences against legislation for which MPI is not responsible, or conduct any prosecution in respect of such an information, unless:

- the prior written advice of a Legal Manager or Chief Legal Advisor ("CLA") has been obtained; and
- approval has been given by the relevant DDG.

² This test is set out in the Crown Law Prosecution Guidelines issued on 1 January 2010.

³ (a) Offences against the Territorial Sea and Exclusive Economic Zone Act 1978, the Driftnet Prohibition Act 1991, or regulations made under these Acts, or
(b) Offences involving foreign fishing vessels, foreign registered companies, foreign nationals or vessels registered pursuant to s 103(4) Fisheries Act 1996.



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Before any Prosecutor requests a Crown Solicitor to commence proceedings on indictment against any person, that Prosecutor must obtain the approval of a Legal Manager or the CLA.

Civil proceedings related to enforcement action

Any application or other civil proceeding taken against MPI in the District Court that arises in the course of a prosecution must be managed by the Prosecutor or external Crown counsel who has been instructed on the prosecution (unless a Legal Manager directs otherwise), with appropriate support from the relevant Branch.

Any application or other civil action taken against MPI in the High Court that arises in the course of a prosecution (including any judicial review application) must be managed by the Prosecutor, Crown Solicitor and/or Crown Law Office as directed by a Legal Manager with appropriate support from the relevant Branch.

Proceedings for damages that relate to a prosecution must be managed as directed by:

- a Legal Manager with prosecution responsibilities if they arise from the criminal process (e.g. allegations of malicious prosecution or search under an invalid authority to enter);
- the Legal Manager whose team is partnered with the relevant Branch if they arise from other aspects of an investigation or response (eg allegations of invalid exercise of statutory powers of inspection).⁴

Proceedings for a pecuniary penalty under the Hazardous Substances and New Organisms Act 1996 or the Climate Change Response Act 2002 and proceedings for deemed values under the Fisheries Act 1996 shall be managed as directed by the Legal Manager whose team is partnered with the relevant Branch.

A Legal Manager must comply with the Cabinet Directions for the Conduct of Crown Legal Business in their management of any civil proceedings, and must inform and consult the CLA as appropriate.

Reporting

In the case of investigation and prosecutions involving a "victim" or "victims" for the purposes of the Victim Rights Act 2002,⁵ the OIC must keep victims informed of progress of investigations and prosecutions in accordance with s12 of the Act. The Prosecutor must discharge obligations relating to victim impact statements under the Act.

Prosecutors must report on the progress and outcome of a prosecution in accordance with the *Guidelines and Standards: Prosecutions and Appeals*.

Witnesses

Any MPI employee who is requested by a Prosecutor or Investigator to give evidence in support of a MPI prosecution must attend Court and assist as requested. The Prosecutor or OIC must notify the employee's manager of the request.

⁴ Partnering arrangements are as follows:

- Verification and Systems, Compliance and Response, Maori Primary Sector Partnerships: Operations and Maori Partnership team.
- Resource Management and Programmes, Office of the Director-General, Corporate Services: Commercial and Contracts team.
- Policy and Standards: Legislation and International team.

⁵ So far as relevant, a "victim" is a person who has suffered loss of or damage to property that is the subject of the prosecution.



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In the event that a defendant's counsel requires a MPI employee in their official capacity to be a witness for the defence, the employee must ask to be served with a Court summons to attend the court.

Any employee who is asked or summonsed to appear as a witness for the defence in any criminal case or associated proceeding must notify his or her manager and the Manager Prosecutions and advise them of the nature of the case.

New information in the prosecution context

MPI has a continuing obligation to consider the propriety of a prosecution and to investigate potentially exonerating material if it comes to hand (and to disclose new information to the defence). MPI staff must provide any relevant new or previously undisclosed information to the Prosecutor.

Conflicts of Interest

Any person involved in the investigation, preparation or prosecution of a case who has an actual or potential conflict of interest in anyway whatsoever must declare that to the Manager Prosecutions or CLA the moment that person is aware of the actual or potential conflict.

Media statements

Public statements concerning prosecutions and investigations must be treated with particular care and regard must be had to the Crown Law Office Media Protocol for Prosecutors. Draft statements during the course of an investigation or prosecution must be approved by the OIC in consultation with the Communications and Channels Directorate and the Prosecutor, Legal Manager or CLA. All communications must also comply with the MPI Organisational Policy: Media Response Policy.⁶

MPI will publicise the outcomes of prosecution cases where it considers it appropriate to do so. When deciding whether or not to publicise a prosecution, the Communications and Channels Directorate will seek the agreement of the OIC, Legal Manager and proposed MPI spokesperson. When deciding whether to publicise an outcome they must consider the public interest, including the importance of deterring future non-compliance, encouraging and reinforcing compliant behaviours and maintaining the community's perception of the integrity of the regulatory systems MPI administers.

Appeals

Counsel

A Legal Manager will instruct a Prosecutor or external Crown counsel to represent MPI on appeals in accordance with the *Guidelines and Standards: Prosecutions and Appeals*.

Appeal by the Crown

No appeal on behalf of MPI may be commenced, whether by a MPI Prosecutor or by external counsel, unless authorised by a Legal Manager in accordance with the *Guidelines and Standards: Prosecutions and Appeals* and the written approval of the Solicitor-General or delegate has been obtained.

⁶ The Policy says that – "A decision as to who is the best person to front an enquiry or issue is made by the appropriate Director or as part of an issue management or communications plan, in conjunction with the Communications and Channels Directorate."



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FURTHER GUIDANCE and INFORMATION

MPI INTERNAL GUIDANCE

Delegation of prosecution decision-making

Where a DDG, Director, or Tier 4 Manager is satisfied that it is appropriate to do so, he or she may, generally or in respect of a particular case or class of cases, authorise a named Tier 5 Manager to make prosecution decisions in accordance with the *Guidelines and Standards: Prosecutions and Appeals*. The DDG Compliance and Response may authorise a named Director or Tier 4 Manager to make prosecution decisions on international fisheries matters.

The DDG, Director or Tier 4 Manager remains accountable for prosecution decisions made under authorisation from them, and must have adequate administrative systems in place to enable timely and effective monitoring and auditing of all prosecution decision-making.

Amendments to Policy

Any amendment to this policy may be made only by the Director-General. The CLA must consult the DDGs of Compliance and Response and Verification and Systems before proposing any amendment.

DEFINITIONS AND ACRONYMS

Term / Acronym	Meaning
Relevant Branch	Branch of MPI that is responsible for the matter in question.
DDG	Deputy Director General.
Relevant DDG	DDG of the relevant branch.
Investigator	Any Biosecurity Inspector, Fishery Officer, Food Act Officer, Forestry Officer, Animal Welfare Inspector, Fisheries Investigator, or other officer of MPI who investigates suspected offending.
Director	A Director in the Verification and Systems Branch or Compliance and Response Branch.
Tier 4 Manager	Border Clearance Services Directorate tier 4 managers; Operational Programmes Directorate tier 4 managers; Compliance and Response Branch tier 4 managers.
Tier 5 Manager	Border Clearance Services Directorate tier 5 managers; Compliance and Response Branch tier 5 managers.
CLA	Chief Legal Advisor.
OIC	Officer in Charge.
Legal Manager	Any Manager reporting to the Chief Legal Adviser or a Team Leader with prosecution responsibilities reporting to a Legal Manager.
Northern Team Leader	Team Leader Northern Prosecution Team.
Prosecutor	MPI Solicitor- Prosecutions or Senior Solicitor- Prosecutions (including Manager Prosecutions and Team Leader Prosecutions (Northern Regions)), and includes external Crown counsel where the context requires.