



# Guidelines and Standards Prosecutions and Appeals

Owner:  
Chief  
Legal  
Advisor

## Overview

**Purpose** The purpose of this document is to set out the guidelines and standards to be followed by Ministry staff in making decision to prosecute or to recommend appeals. It also establishes standards to be met by Prosecutors in any Ministry prosecution.

These Guidelines and Standards must be read in conjunction with the MAF Organisational Policy: *Prosecutions and Appeals*.

**In this document** This document covers the following topics.

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# **Guidelines and Standards Prosecutions and Appeals**

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## **Decision to Prosecute**

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### **Introduction**

These guidelines and standards apply to all cases involving alleged offences which may be prosecuted by:

- a Ministry Prosecutor, or
- external Crown counsel instructed by the Ministry.

The question of who is entitled to determine whether to issue a written warning or to prosecute, is dealt with in the MAF Organisational Policy: *Prosecutions and Appeals*.

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### **In this section**

This section covers the following items:

- Standards for conferring authority to approve a prosecution
  - Deciding to prosecute
  - Standards for deciding to prosecute
  - Concurrence of the Prosecutor
  - Cases requiring significant resources
  - Cases involving international persons
  - Prosecutor's responsibilities.
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## Decision to Prosecute (continued)

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### Standards for conferring authority to approve a prosecution

The MAF Organisational Policy: *Prosecutions and Appeals* describes who has authority to decide to prosecute: DDGs for international fisheries offences, and Tier 4 Managers, their Directors and DDGs in respect of other matters.<sup>1</sup> 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.

The following criteria establish the basis on which delegated authority to approve prosecutions may be given to a Tier 5 Manager. The DDG Compliance and Response should apply similar criteria when considering whether to give authority to a Director, Tier 4 Manager or Tier 5 Manager for International Fisheries matters.

The Tier 5 Manager must have<sup>2</sup>:

- been appointed to his or her current position for more than 12 months and had their overall performance in that position assessed as satisfactory.
- demonstrated a high level of competence and understanding of legal principles, case file management and decision-making skills together with sound judgement skills as assessed by the Tier 4 Manager.
- made satisfactory warning decisions under delegation during the past 12 months.
- not received any significantly adverse comments from a senior Prosecutor or external Crown counsel in relation to the file construction and factual backing for prosecution recommendations and charges for 10 previous case files.

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### Deciding to prosecute

Before any person is prosecuted by the Ministry, two separate decisions must be made:

- is it evidence which can be adduced in Court sufficient to provide a reasonable prospect of conviction? , and
- is the prosecution required in the public interest?

**Important:** The decision must be based only on information contained in the case file.

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<sup>1</sup> "Tier 4 Manager" and "Tier 5 Manager" are defined in the MAF Organisational Policy: *Prosecutions and Appeals*.

<sup>2</sup> Decisions made and time spent in comparable positions within MAF, MFish or NZFSA leading up to the merger is to be considered for the purpose of satisfying these requirements.



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## Decision to Prosecute (continued)

### Standards for deciding to prosecute

Every person making a decision to prosecute must:

- not have had any 'significant involvement'<sup>3</sup> in the preparation of the case file
- be satisfied that all relevant information has been obtained and that the file is prepared to a satisfactory standard
- consider whether prosecution is, in the circumstances, the most appropriate course of action to influence future compliance with New Zealand law
- have considered, and applied, the current Crown Law prosecution guidelines issued by the Solicitor General
- record, and place on the case file, the reasons for the decision to prosecute or not, and
- address each and every element of this section including the specific Crown Law guidelines by way of a checklist annexed to the decision-making report.

Where a decision is made to issue a written warning, reasons for that decision must also be placed on the case file.

### Concurrence of the Prosecutor

Having applied the standards outlined above and decided that prosecution may be appropriate, the decision-maker shall refer the file to a Prosecutor for advice. The decision-maker may decide not to seek advice from a Prosecutor before approving charges in respect of a breach of amateur fishing regulations.

When presented to the Prosecutor, the case file should contain such documentary evidence, statements, certificates, etc, that it is highly probable that a competent prosecutor could, by relying on the file and the evidence contained in it, obtain convictions for all charges laid (except those laid in the alternative). The case file must be organised and indexed in accordance with appendix 1.

The Prosecutor may give advice on any legal issue raised by the file and shall provide written advice on whether there is sufficient evidence to proceed with the prosecution, and if there are any other legal deficiencies in the file.

The advice should address at least:

- the elements of the offence and any relevant statutory defences
- whether there is sufficient evidence to establish that there is a reasonable prospect of success in any prosecution, and
- any circumstances relevant to the public interest in prosecuting.

More detailed advice is not necessary for simple files, such as amateur fishing regulation offences (if a Prosecutor's advice is sought at all) or straightforward biosecurity charges involving possession of fruit.

<sup>3</sup> "Significant involvement" in the preparation of the case file means the personal involvement in gathering evidence, discussing evidence with witnesses, alleged offenders, or other parties who may be perceived to have a vested interest in the decision, handling or collating of exhibits and any other operational decisions relating to the case. It does not include the allocation of staff and resources to the case and the general management of staff.



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## Cases involving international persons

In international fisheries matters<sup>4</sup>, the DDG Compliance and Response shall refer the case file to the Manager Prosecutions, who must also consult the Chief Legal Advisor, Ministry of Foreign Affairs and Trade before advising the DDG.<sup>5</sup>

No charge shall be filed unless:

- there is agreement between the decision maker, and the Prosecutor on the persons to be charged and the charges to be laid; or
- in any case where the decision maker and the Prosecutor are unable to agree and the decision maker wishes to proceed with one or more charges, the decision maker's immediate manager considers that a charge should be laid after taking advice from the Prosecutor's immediate manager; or the relevant DDG so directs after taking advice from the Manager Prosecutions or CLA.

## Prosecutor's responsibilities

Once the decision to prosecute is finalised, the accountability for legal issues in connection with the prosecution file passes to the Prosecutor. In particular, the Prosecutor:

- Determines the wording of the charge(s)
- Ensures the prosecution file is prepared to an appropriate standard<sup>6</sup>
- Places a coversheet (as set out in appendix 2) on the top of the prosecution file and updating it as the prosecution proceeds
- Instructs external Crown counsel if necessary and if approved by the Manager Prosecutions
- Monitors progress of any prosecution briefed to external Crown counsel and provides or facilitates support for external Crown counsel
- Ensures the competent and ethical conduct of the prosecution, and
- Updates the prosecutions databases as the prosecution proceeds.<sup>7</sup>

The Prosecutor should keep the Northern Team Leader or the Manager Prosecutions (and the CLA if necessary) apprised of any significant developments in the file.

"Significant developments" include:

- developments that may affect the conduct of other prosecutions;
- indications of media interest, or developments of which the Ministry may wish to alert the media;
- matters affecting resourcing for the prosecution.

<sup>4</sup> Defined in the Policy: *Prosecutions and Appeals*

<sup>5</sup> If a prosecution would require the consent of the Attorney-General under s 113ZE Fisheries Act, the Manager Prosecutions will also consult the Team Leader of the Criminal Team in the Crown Law Office.

<sup>6</sup> The prosecution file is the case file plus other documents necessary for the prosecution, such as submissions.

<sup>7</sup> Until FOCUS or any other new databases are established, the prosecutions databases are the former MFish Offences database, the former MAF Action Step database, the significant prosecutions report and the prosecutions results report.



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## **Infringement Offences**

### **What is an infringement offence?**

Infringement offences are offences in respect of which an infringement notice can be issued. Both the Fisheries Act 1996 and the Biosecurity Act 1993 provide for infringement offences. Current infringement offences are listed in the Fisheries (Infringement Offences) Regulations 2001 and the Biosecurity (Infringement Offences) Regulations 2010.

Ministry policy is that infringement notices are not issued to anyone who aged 17 years or younger.

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### **Decision making roles**

When an infringement offence is detected and a warning is not appropriate, a warranted fishery officers or biosecurity inspector may issue an infringement notice or the Ministry may commence a prosecution. Convictions are not entered for infringement offences even if the Ministry prosecutes successfully.<sup>8</sup>

All warranted fishery officers and biosecurity inspectors are authorised to issue warnings and infringement notices for fisheries infringement offences and biosecurity infringement offences respectively. Honorary fishery officers are not authorised to issue infringement notices and should bring suspected offences to the attention of a fishery officer.<sup>9</sup> The decision to commence a prosecution in respect of an infringement offence must be made by a person who is authorised to make prosecution decisions (see page 3 above).

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<sup>8</sup> See s 78A Summary Proceedings Act.

<sup>9</sup> The legal scope of the powers of an honorary fishery officer depend on the terms of his or her warrant: see s 198 Fisheries Act. As a matter of Ministry policy, honorary fishery officers must not issue infringement notices. Details of the procedure vary from district to district, so the HFO should follow the local policy.



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## Infringement Offences (continued)

### Fisheries infringement offences

#### Issuing of notices

Although infringement notices may be issued until 6 months after the offence, the timeframes for subsequent steps mean that notices must be issued within 3 ½ months of the offence.

Fishery officers generally issue infringement notices to amateur fishers "on the spot," but they are sometimes issued later when the FO's safety would potentially be at risk, or more time is needed to consider the evidence. If a handwritten notice is issued on the spot the FO must post the green carbon copy of the notice plus a copy of the supporting note book entry and any other supporting material to the Infringement Processing Centre (IPC). IPC then enters the infringement notice into the Offences database.

If an Honorary fishery officer detects an infringement offence when a fishery officer is not available to issue an infringement notice, the HFO must report in accordance with the policy in his or her district. Any infringement notices will be issued from the IPC upon request of the HFO coordinator.

Infringement notices for commercial reporting offences are not issued on the spot. Instead, the decision to issue an infringement notice will be made after a discussion between the Fishery Officer and his or her tier 5 manager. If a decision to issue a notice is made, the tier 5 manager will request the IPC to issue a notice to the offender.

After the infringement notice has been sent to IPC or issued by IPC, contact with the offender is through IPC.

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#### Reminder notices

If the offender has not paid the fee or requested a hearing, at least 28 days after the service of the infringement notice IPC will issue a reminder notice.

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#### Payment

Infringement fees can be paid to the Ministry by cheque, paid directly to the Ministry by phone or internet banking, or paid into the Ministry of Fisheries Infringement account by cash or cheque at any Westpac branch. Any cheques posted to the Ministry are received by Westpac's Government Support Branch and processed there, rather than through IPC. IPC is notified of the payments made by bank statement through online banking. IPC will then process the payment.

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## **Infringement Offences (continued)**

**Offender's other options**      The offender may submit an explanation called an "adjudication letter" and ask to be excused from paying the fee; may request a defended hearing; or may request a hearing on penalty only. See below for more detail.

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**Non payment – collection referrals**      If the offender has not paid the infringement fee or submitted a hearing request within 28 days of service of the reminder notice, IPC will file an electronic copy of the reminder notice with the Ministry of Justice together with confirmation of service. Referral to the Ministry of Justice must be within 6 months of the offence being committed.

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**Biosecurity infringement offences**      The process for biosecurity infringement offences is more streamlined.

Biosecurity infringement notices are issued by a warranted biosecurity inspector at a port or airport on detection of an infringement offence. The Auckland Biosecurity Centre is notified of the infringement notice electronically via reports from the Quanpax database, and is sent a copy of the supporting note book entry and any other supporting material. If the Auckland Biosecurity Centre "ABC" receives a copy of a manual notice it must be entered into the Quanpax database. After this, contact with the offender is by ABC.

Payment can be made in the same way as for fisheries infringement offences, but into the Ministry of Agriculture and Forestry Infringements account. In addition, immediate payment may be made at the MAF Infringements Desk at the airport where the notice was issued.

As for fisheries infringement offences, the offender may submit an adjudication letter and ask to be excused from paying the fee; may request a defended hearing; or may request a hearing on penalty only.

If the offender has not paid the fee or requested a hearing within 14 days after the service of the infringement notice, ABC will file an electronic copy of the infringement notice with the Ministry of Justice together with service details. Referral to the Ministry of Justice must be within 6 months of the offence being committed. A reminder notice is not required.

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## **Infringement Offences (continued)**

### **Adjudication letters**

Offenders who receive infringement notices have the right to submit an explanation in defence of the alleged offence. Offenders may send an adjudication letter to the Ministry, outlining why they should be excused from paying the fee. When an adjudication letter is received by IPC or ABC, it is passed on to the relevant tier 5 manager. The tier 5 manager will decide whether to accept the explanation and waive/withdraw the infringement notice, issue a warning instead of the infringement notice, or reject the explanation. IPC or ABC will advise the offender of the outcome.

Offenders who receive infringement notices have the right to submit an explanation in defence of the alleged offence. Offenders may send an adjudication letter to the Ministry, outlining why they should be excused from paying the fee. When an adjudication letter is received by IPC or ABC, it is passed on to the relevant tier 5 manager. The tier 5 manager will decide whether to accept the explanation and waive/withdraw the infringement notice, issue a warning instead of the infringement notice, or reject the explanation. IPC or ABC will advise the offender of the outcome.

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### **Defended hearing requests**

Offenders may request a defended hearing on the infringement notice. The offender will do this by writing to the Ministry. The request is passed by IPC or ABC to the relevant tier 4 or tier 5 manager<sup>10</sup>, who will review the file and decide whether to proceed with the defended hearing, waive the notice or issue a warning instead of the infringement notice. If it is decided to proceed with the hearing, the relevant SP10A forms are prepared by IPC or ABC and sent to the court.

When it is decided to proceed with a defended hearing the file is assigned to a Prosecutor in the area, who will prepare the case for court. The fishery officer or biosecurity inspector who issued the infringement notice is responsible for providing a prosecution file to the required standard. When IPC or ABC receives the hearing date from the court, they will notify both the offender and the Prosecutor.

Full disclosure under the Criminal Disclosure Act is required as soon as reasonably practicable after a defendant has requested a defended hearing.

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<sup>10</sup> Depending on whether the local tier 5 manager has been authorized to make prosecution decisions. See page ... above.



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## Infringement Offences (continued)

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### Non-defended hearing requests

Offenders may also request a hearing on penalty only. The offender must write to the Ministry accepting liability for the offence, and requesting a non-defended hearing. Again, the tier 4 or tier 5 manager will review the file and decide whether to proceed with the hearing, waive the notice or issue a warning instead of the infringement notice.<sup>11</sup> If the notice is not waived, IPC or ABC will prepare the SP10A forms for submission to court. Requests for hearings on penalty only in respect of infringement notices are dealt with by way of written submission only.<sup>12</sup>

When it is decided to proceed with a non-defended hearing the file is assigned to a Prosecutor in the area. IPC or ABC will pass on the SP10A forms, the supporting note book entry and any other supporting information to the Prosecutor, who will draft sentencing submissions and a summary of facts and send them to the Court along with the SP10A forms and the offender's submissions.

The Ministry is not required to give disclosure under the Criminal Disclosure Act for a non-defended hearing.

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### Withdrawal

Infringement notices can only be withdrawn by IPC or ABC, and only with approval from either a tier 5 manager or a Prosecutor. Infringement notices can be withdrawn at any time, even after a notice has been referred to the court for collections (in which case an Application to Withdraw will need to be completed by IPC or ABC on the instructions of the tier 5 manager or OIC).

It is important that any decision to withdraw an infringement notice is recorded on the file (including the reason for withdrawal), both for the transparency of the process and to account to Treasury – the issuing of an infringement notice creates a potential debt to the Crown. If the notice is withdrawn then the debt may have to be written off, requiring justification.<sup>13</sup>

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### Invalid notices

In some cases, infringement notices will be invalidated. This occurs in situations where they have been issued to underage offenders, or if evidence later comes to light that the infringement notice should not have been issued at all – for example evidence showing the offence did not actually occur. IPC or ABC will invalidate the notice on the instructions of a tier 5 manager. In cases where there is a significant error in the infringement notice but it remains appropriate to issue an infringement

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<sup>11</sup> Again depending on whether the local tier 5 manager has been authorized to make prosecution decisions.

<sup>12</sup> Pursuant to *Adam v Wellington City Council* (2 April 1998) HC Wellington AP 18/98 unreported.

<sup>13</sup> The CLA holds a delegation to write off infringement fees of up to \$1000, as do the Team Leader Financial Accounting and the National Manager Field Operations Programmes. The Chief Financial Officer and Manager Regulatory and Standards hold delegations to write off without a dollar limit.



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notice, the notice is invalidated by IPC or ABC then reissued under a different infringement number. The new notice will be sent to the offender with a letter explaining the previous error and new notice.

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**Closing the file** When an infringement notice is paid, waived, withdrawn, or referred to court for collection, the infringement file is closed by IPC or ABC. If a hearing results, the OIC is responsible for closing the file once all documents have been returned by the Prosecutor.

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**Forfeiture resulting from fisheries infringement notices** Where an infringement notice is issued, and:

- The fee is paid or
- A copy of the reminder notice is filed in Court or
- The defendant is found guilty of or admits the offence

then the following property becomes forfeit to the Crown unless the Court for special reasons relating to the offence orders otherwise:

- Any fish (in quantities not exceeding 3 times the daily amateur limit)
- Any proceeds resulting from the sale of that fish.

Any fish forfeited under this provision will be disposed of in accordance with Ministry policy. It is the responsibility of the OIC to establish the infringement notice process is complete (in regard with current practice in his or her district) and to ensure the disposal of any forfeited property.

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## Conduct of the Prosecution

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**Allocating a case for prosecution** Once the decision to prosecute is made, the decision as to who will conduct the case will be made within the Legal Services Directorate.

The Manager Prosecutions may:

- re-allocate prosecutions among Prosecutors
- in consultation with the CLA, instruct external Crown counsel for any prosecution, or
- with the agreement of the CLA, withdraw instructions to external Crown counsel.

The Manager Prosecutions will consult the Northern Team Leader before re-allocating a prosecution to or from that region.

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**Regional prosecutions** Prosecutions in a region will usually be carried out by:

- a Prosecutor based in that region, or
- where the Tier 4 Manager agrees, an Investigator under the direction of a Senior Prosecutor.<sup>14</sup>

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**Northern region prosecutions** The Northern Team Leader may re-allocate prosecutions among Prosecutors in that region, where appropriate, to:

- manage workloads, or
- ensure that a suitably experienced Prosecutor has responsibility for more complex prosecutions.

The Northern Team Leader may re-allocate prosecutions to or from the Central and Southern Regions with the agreement of the Manager Prosecutions.

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**Cases presenting significant risk** The Manager Prosecutions shall put in place a process to identify cases which may present significant risk to the Ministry. These shall include cases that:

- are large and/or technically complex
- are international fisheries prosecutions
- involve major commercial enterprises, or
- involve the use of well resourced defence teams.

In such cases the Manager Prosecutions, in consultation with the CLA, shall ensure an appropriate level of legal representation including if necessary the use of one or more external Crown counsel supported by a strong Ministry legal and operational team.

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<sup>14</sup> The legal authority is section 37(4) Summary Proceedings Act 1957, which allows other officers or employees of a prosecuting department to appear and conduct the proceeding on behalf of the informant.



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## **Conduct of Prosecution (continued)**

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Prosecutor  
standards

Every Prosecutor and all external Crown counsel briefed by the Ministry must comply with the Prosecutor Standards and Procedures outlined in the next section.

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Independent Review of Fisheries Prosecution Decisions



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## Criminal Disclosure

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Criminal  
Disclosure Act  
2008

The *Criminal Disclosure Act 2008* (CDA) codifies how disclosure is to occur for all criminal prosecutions.

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Roles and  
responsibilities

Responsibility for preparing disclosure falls on the OIC of the file. An OIC Disclosure may be appointed for larger files.

The Prosecutor for the file (or the instructing Ministry Prosecutor where external Crown counsel is instructed) is responsible for checking full disclosure and advising as required.

Final decisions on withholding or disclosing information in non-straightforward cases should be made jointly between the Prosecutor, the OIC and the relevant Tier 5 manager. The Northern Team Leader Regional and/or Manager Prosecutions should be consulted in the following instances:

- there is a dispute between the OIC, Tier 5 manager and/or Prosecutor;
- where the information to be withheld or disclosed could be regarded as controversial, or have serious ramifications outside the prosecution in question; and
- where the information is of a novel form.

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Disclosure File  
Index and filing  
copies of  
disclosed  
materials

A Disclosure File Index should be created for every Prosecution file, and kept up to date by the OIC. A hard copy of the Disclosure Index should be placed on the desk of file.

At each point when disclosure is required the OIC should send a copy of the materials to be disclosed to the defendant, with a template covering letter. A copy of the letter should be saved in the Meridio offences file or in ActionStep.

Any documents to be withheld must also be listed in the Disclosure Index along with the reasons for the non-disclosure.

It is good practice to also keep an exact copy of the disclosure that was sent out. This may not be possible where large amounts of paper are involved, but it is important to keep an exact copy of any partially disclosed documents that were sent out. The copies of disclosed materials may be destroyed when the Prosecution file is closed, so long as this is after the end of the prosecution, any appeals and any further appeal period. Copies of the covering letters, including a list of all disclosed documents, must be retained on the file even if the copies of disclosure material are destroyed.



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## **Criminal Disclosure (continued)**

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### **Specific disclosure steps**

#### **Initial disclosure**

Initial disclosure should be done immediately on charges being filed in Court, and must be done within 21 days from the service of the summons.

Infringement notices do not require disclosure unless they end up going to court for hearing.

The initial disclosure required to be provided includes:

- caption sheet (with penalties for the offence included)
- summary of facts
- a copy of the defendant's criminal history and offences under the relevant legislation (eg prior fisheries offending or biosecurity offending) if one has been obtained
- a standard initial disclosure letter giving advice as to the defendant's entitlement to further information
- a copy of the Disclosure File Index.

The OIC is responsible for preparing and sending the initial disclosure.

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#### **Further initial disclosure**

Defendants may request further information at an early stage in the prosecution process. The defendant or a lawyer acting for the defendant should request this information in writing, but an oral request should be accepted.

The types of information that defendants may request is set out in the CDA. It is possible to withhold some of this information should grounds exist.

The CDA requires further initial disclosure to be provided as soon as reasonably practicable or at least 7 days before the next substantive hearing date. In practice, the Ministry should aim to respond to further initial disclosure requests within 14 days of receiving a request, although longer periods are permissible for larger requests. The OIC should consult the Prosecutor if more than 14 days may be required.

All further initial disclosure should be checked by a Prosecutor before it is sent out.

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## **Criminal Disclosure (continued)**

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**Full disclosure**      Full disclosure is required if:

- a not guilty plea is entered;
- trial by jury is elected; and/or
- charges are laid indictably after first appearance.

The defendant does not need to request full disclosure. Full disclosure includes any relevant information. If any relevant information is withheld, a list must be given to the defendant specifying the documents/exhibits being withheld and the reasons for the reason.

The Prosecutor will advise the OIC if full disclosure is required. The full disclosure must be checked by the Prosecutor before it is sent out.

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**On-going  
further  
disclosure**

When new relevant information comes into the possession of the OIC or Prosecutor after full disclosure has occurred, it must be disclosed to the defendant (unless there is a reason for withholding, in which case an updated Disclosure File Index should be sent detailing the document/exhibit and reason for withholding).

The additional particular disclosure must be checked by the Prosecutor before it is sent out.

This obligation continues until the period for lodging any appeal has expired. The O/C should consult with the prosecuting solicitor if new potentially relevant information comes to light during this time.

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**Additional  
particular  
disclosure**

Occasionally, a defendant or their counsel may request a specific particular piece of information that was not included in full disclosure. The requests should be handled in the same way as full disclosure, with reasons given for any information not provided.

The additional particular disclosure must be checked by the Prosecutor before it is sent out.



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## Criminal Disclosure (continued)

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### Standard form letters and disclosure file indices

Standard form letters and Disclosure File Indices should be used wherever possible. Templates for these can be found on the [Prosecutions and Appeals page](#) of the intranet:

- Disclosure File Index
- standard initial disclosure letter
- standard letter for further initial disclosure
- standard letter for full disclosure
- standard letter for ongoing further disclosure
- standard letter for additional particular disclosure

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### Service of disclosure

Documents can be hand-delivered to the defendant or their counsel by fishery officers, or posted. Electronic copies can be sent if requested. Prosecuting solicitors may also hand-deliver disclosure at court to the defendant or counsel.

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### Decision not to disclose relevant information

All relevant information must be disclosed unless it falls within a specified exception in ss15, 16, 17, or 18 of the CDA. The OIC must check with the Prosecutor before deciding not to disclose information/

If information is not to be disclosed, the document/exhibit must still be listed in the Disclosure File Index with the level of disclosure (full, partial or not disclosed), and reasons for non-disclosure identified (mentioning the specific section of the CDA). This is then sent to the defendant, who may challenge the decision in court if they wish. If that happens, a Judge will make the final decision.

Documents that should **never** be disclosed without the agreement of the relevant Tier 5 manager and Manager Prosecutions:

- operations orders;
- information relating to operational plans for surveillance, covert operations or other information that discloses a similar type of content;
- informant names (including real names of undercover fishery officers) or details that could lead to their identification;
- witness addresses;
- ministerial briefings or similar documents;



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- internal emails or communications relating to the prosecution; and
- legally privileged information.

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## Prosecutor Standards and Guidelines

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Introduction	Except as otherwise provided in these Guidelines and Standards, and in the MAF Organisational Policy: <i>Prosecutions and Appeals</i> , the Prosecutor or external Crown counsel has the authority to conduct the prosecution in the manner he or she considers best.
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In this section	<p>This section covers the following items:</p> <ul style="list-style-type: none"><li>• Ethical requirements and codes</li><li>• File review</li><li>• Familiarity with charges</li><li>• Consultation</li><li>• Certification provisions of Fisheries Act</li><li>• Level of Counsel Expertise</li><li>• Resolution of prosecution</li><li>• Ministry approach</li><li>• Prosecution report</li><li>• Accounts payment.</li></ul>
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Ethical requirements and codes	Prosecutors and external Crown counsel appearing for the Ministry are expected to observe all relevant ethical requirements and codes of practice as set by the New Zealand Law Society or the Solicitor General. If a Prosecutor or external Crown counsel considers that, either generally or in a particular case, there is a conflict between the obligation under this clause, and those imposed by other clauses, he or she should consult the Manager Prosecutions.
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File review	<p>The Prosecutor is responsible for reviewing the completed prosecution file to ensure that it is sufficiently detailed and documented to disclose a reasonable prospect of success on a prosecution of the charges to which it relates.</p> <p>Except where the instructions clearly show the case is a 'test' case, if a completed file is below the required standard the reviewing Prosecutor must immediately notify the OIC with:</p> <ul style="list-style-type: none"><li>• details of the file defects, and</li><li>• advice for improvements or further enquiry (see Decision to Prosecute, above).</li></ul> <p>If the file is substantially below the required standard, or files for which the OIC is responsible are often inadequate, the Prosecutor should discuss this with the OIC's Team Manager.</p>
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## **Prosecutor Standards and Guidelines (Continued)**

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### **Familiarity with charges**

The Prosecutor must, prior to the hearing, be familiar with

- the charges
- the facts (including Briefs of Evidence, certificates, etc), and
- any legal issues (e.g., admissibility of evidence) likely to arise during the case, including issues of which the prosecutor has been notified of by another Prosecutor or defence counsel.

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### **Consultation**

The Prosecutor shall ensure that there is effective and timely consultation in respect of the case, with the:

- OIC on matters of file preparation and presentation; and
- Northern Team Leader or Manager Prosecutions on any legal issues that could affect the prosecution.

The Prosecutor should ensure that all correspondence relevant to the preparation and administration of the prosecution is forwarded to the OIC.

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### **Certification provisions of relevant Acts**

Prosecutors shall employ, except where inappropriate or instructed otherwise, any certification provisions of relevant legislation in proving, or negating matters relevant to the prosecution.

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### **Level of Counsel Expertise**

Where the case is conducted by a member of a Crown Solicitor's firm, it is the responsibility of the Crown Solicitor to ensure that the assigned counsel has a sufficient level of expertise to conduct the case, or is effectively supervised by counsel with sufficient expertise. External Crown counsel may not instruct agents (including other Crown Solicitors' firms) without the agreement of the Manager Prosecutions.

Prosecutors, including external Crown counsel, are expected to be familiar with relevant legislation and case law or to have approached the Manager Prosecutions, the Northern Team Leader or a Senior Prosecutor for assistance.

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### **Resolution of prosecution**

Except as otherwise instructed, the authority to accept, on behalf of the Ministry, any proposal for resolution of a prosecution remains with the prosecution decision-maker, who shall seek advice from the Prosecutor. If the Prosecutor thinks that a proposal may be made during a court hearing, he or she should discuss with the decision-maker what resolution would be acceptable before the hearing.



# **Guidelines and Standards Prosecutions and Appeals**

**Owner:  
Chief  
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## **Prosecutor Standards and Guidelines (Continued)**

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### **Resolution of prosecution (continued)**

No appeal is to be initiated or defended on behalf of the Ministry unless:

- the Manager Prosecutions has been notified and agrees, and
- in the case of Crown initiated appeals:
  - the Manager Prosecutions has consulted the CLA and the prosecution decision-maker (and if appropriate the relevant DDG), and
  - the approval of the Solicitor General is obtained.

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### **Ministry approach**

Unless the Chief Legal Advisor specifies otherwise, the decision as to which charges shall be laid and against whom, rests with the decision maker.

When appearing on the Ministry's behalf, prosecutors shall have regard to, and apply, the following Ministry approach to prosecutions and sentencing:

- Notwithstanding the strict liability provisions of many offences in legislation for which the Ministry is responsible, the Ministry takes an active stance on leading evidence demonstrating the actual degree of culpability and evidence negating defences (within reasonable limits).
- The Prosecutor should take an active role in assisting the Court on relevant case law and legal principles to be applied. This includes the presentation of written submissions where appropriate.
- Where forfeiture will occur as a consequence of conviction, the Prosecutor should produce a schedule of forfeit items.
- Prosecutors should oppose applications for non-forfeiture orders based on "special reasons", unless instructed otherwise by the decision-maker. Prosecutors should ask defence counsel if any such application is intended and, where a Prosecutor considers grounds exist for such an order (either because of his/her own views or those put forward by defence counsel), instructions should be sought from the decision-maker.

The Ministry takes an active role on sentencing and puts relevant sentencing material before the Court in order that nationally consistent and appropriate penalties are imposed.

Ministry Prosecutors will follow the format of documents in the Ministry's prosecution precedents in their court documents, and will follow the NZLS Style Guide where that applies. External Crown counsel are not required to follow the Ministry's document format.



## ***Guidelines and Standards Prosecutions and Appeals***

**Owner:  
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### **Prosecutor Standards and Guidelines (Continued)**

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#### **Prosecution report**

The Prosecutor shall, within five days of the completion of the prosecution, provide a prosecution report, in the Ministry standard format, on the result.<sup>15</sup>

The result shall, in the case of external Crown counsel, be supplied to the instructing Prosecutor, and in the case of a Ministry Prosecutor, be supplied to the OIC. The Ministry Prosecutor will update the prosecutions databases.

Where any oral decision has precedent value or contains a contentious ruling relating to the determination of a point of law that may be subject to appeal, the Prosecutor should request the Court to have the decision typed up.

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#### **Accounts payment**

All accounts, for payment for prosecutions taken on behalf of the Ministry, should be directed to the Manager Prosecutions or CLA. In prolonged or lengthy cases invoices should be submitted on a regular basis to avoid a single large invoice at the completion of the case.

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<sup>15</sup> The standard format is illustrated in Appendix 3.





# **Guidelines and Standards Prosecutions and Appeals**

**Owner:  
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## **Appeals**

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**In this section**      This section cover the following items:

- Appeals by the defendant
  - Appeal by the Crown
  - Procedure to obtain approval from Solicitor-General for permission to appeal
  - Choice of counsel and conduct of appeal
  - Reporting
- 

**Appeals by the  
defendant**

Any external Crown counsel who receives notice of an appeal filed by a defendant, in a case originally prosecuted for the Ministry by that counsel, shall immediately inform the instructing Ministry Prosecutor.

Any Ministry Prosecutor who receives notice of an appeal filed by a defendant shall immediately inform the Manager Prosecutions.

The Manager Prosecutions shall advise the external Crown counsel or Ministry Prosecutor, as soon as practicable after receiving notice of the appeal, whether the Ministry wishes to oppose the appeal or not. The Manager Prosecutions will discuss the appeal with the Prosecutor who appeared on the prosecution. If they consider that the appeal is likely to succeed, the Manager Prosecutions will consult the CLA and the prosecution decision-maker before deciding whether to oppose the appeal.

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**Appeal by the  
Crown**

No appeal shall be commenced on behalf of the Ministry, whether by a Ministry 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.



# Guidelines and Standards Prosecutions and Appeals

Owner:  
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## Appeals (Continued)

Guidelines for  
obtaining  
consent to  
appeal from  
Solicitor-General

The relevant DDG, Director, Tier 4 Manager or Prosecutor may initiate a request for approval to appeal. The initiator of the request is responsible for forwarding **urgently** to the Manager Prosecutions the following material:<sup>16</sup>

- 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 for the Ministry or the defendant.
- An outline of the importance to the Ministry of conducting an appeal and any risks in doing so.

The decision on requests for the Solicitor-General's consent to appeal will be made by the Manager Prosecutions in consultation with the:

- Chief Legal Advisor,
- Prosecutor who appeared on the prosecution,
- prosecution decision-maker, and
- relevant DDG if appropriate.

Where the Manager Prosecutions agrees an appeal is appropriate, he or she will prepare the request and email it for approval to the Solicitor General, with the assistance of the Prosecutor who appeared on the prosecution.<sup>17</sup> The material sent to the Solicitor General must contain at least:

- the decision to be appealed
- 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 Ministry of conducting an appeal.

<sup>16</sup> Note that the appeal period for lodging a case stated appeal from the District Court is 14 days; and the Solicitor-General's consent must have been obtained within that time.

<sup>17</sup> Email the Team Leader of the Criminal Team in Crown Law. At present: s 9(2)(a)



# **Guidelines and Standards Prosecutions and Appeals**

**Owner:  
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## **Appeals (continued)**

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### **Choice of counsel and conduct of appeal**

The Manager Prosecutions shall, in consultation with the CLA, decide who should appear on the appeal whether the Ministry is the appellant or the respondent.

Where a case was prosecuted by external Crown counsel, the appeal should be conducted by that Prosecutor unless the Manager Prosecutions considers the Ministry's aims would be better served by other counsel conducting the appeal. The Manager Prosecutions should consult with the CLA before advising the external Crown counsel that other counsel will conduct the Ministry's case.

If the appeal is to be conducted by a Ministry Prosecutor, it is the responsibility of the Manager Prosecutions to ensure that the Solicitor-General's approval is or has been obtained.

Counsel on the appeal will provide

- a copy of the submissions for the opposing party to the Manager Prosecutions as soon as possible after they are received, and
- a draft of the submissions for the Ministry sufficiently in advance of the time for filing submissions to allow any comments to be considered (preferably at least three days).

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### **Reporting**

On receipt of the appeal judgment, Counsel appearing on an appeal shall forward a copy urgently to the Manager Prosecutions and to the Prosecutor.

The Manager Prosecutions will circulate the decision to the CLA and the prosecution decision-maker and otherwise as appropriate.

The Prosecutor will complete a report on the case in the Ministry standard format and provide it within five days to the Manager Prosecutions.

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# Guidelines and Standards Prosecutions and Appeals

Owner:  
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## Appendix 1

### FILE INDEX

1	Informations and/or Infringement and Notice of Hearing
2	Affidavit of Service / Summons
3	Caption Sheet and Summary of Facts (x3)
4	Criminal History and MAF History (x3)
5	Sentencing / Forfeiture Submissions
6	Pre-Sentence Reports / Fines Report
7	Opening/Closing Submissions / Legislation
8	Briefs of Evidence / Witness Statements / Contact Reports
9	Job Sheets
10	Notebook Entries
11	Weight / Length / Frequency Charts
12	Photographs
13	Interview Synopsis / Transcript
14	Photo Montages
15	Authorities to Enter
16	Inspection Sheets (DIF & LFR)



## ***Guidelines and Standards Prosecutions and Appeals***

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17	Property Record Sheets / Bonds / Valuations
18	Disclosure Index
19	Blue Copy of Initial Disclosure
20	Memorandums / Correspondence (Date Order)

Proactive Release – 16 September 2016  
Independent Review of Fisheries Prosecution Decisions



# Guidelines and Standards Prosecutions and Appeals

Owner:  
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## Appendix 2

NAME					
DOB				Offences No.	OFF000
				Infringement No.	
Address				O/C	
O/C FILE TO COMPLETE		BREACHES			
File Created		Description	Offence Section/Reg	Penalty Section/Reg	Max. Penalty
Offence Date					Decision (P, I, W)
Offence Location					
RELEVANT PERSON TO COMPLETE		Date	Name	Comments	
• Memorandum from O/C					
• All notebooks/jobsheets on file					
• File to Prosecutor for review					
• Prosecution review completed					
• Decision to prosecute made					
• Informations sworn					
• Summons served					
• Initial disclosure served					
• Proof of service on Court file					
• To Prosecutor for prosecution					
PROSECUTOR TO COMPLETE			Bail Conditions (if any)		
Time	Date	Court	Hearing Type	Judge	Comments
			FIRST CALL		
(Continue overleaf)					
CRN	Charge	Outcome	Comments		
RELEVANT PERSON TO COMPLETE		Date	Name	Action	Date
Action					
1. Prosecution report completed				6. All interested parties advised	
2. Offences updated				7. Exhibits destroyed/returned/other	



## ***Guidelines and Standards Prosecutions and Appeals***

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3. File to FOM			8. FIN entry completed		
4. Advertise forfeit property (if any)			9. Meridio input completed		
5. All applications/property disposed of as applicable			FILE CLOSED:		
		NAME			

Proactive Release – 16 September 2016  
Independent Review of Fisheries Prosecution Decisions





# Guidelines and Standards Prosecutions and Appeals

Owner:  
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## Appendix 2 (continued)

PROSECUTOR TO COMPLETE					
Time	Date	Court	Hearing Type	Judge	Comments
GENERAL COMMENTS					



## Guidelines and Standards Prosecutions and Appeals

Owner:  
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### Appendix 3

Offender	Charges	Date	Court	Result	Sentence	Forfeiture/ Banning	Quantity of items (eg animals, fish, risk goods	Risk/Comments	Prosecutor	Region N, S or C
PETTERSON Michael	S233 charge for selling CRA to local shops	31 August 2011	Gisborne DC	convicted	200 hours community work		5 Crayfish		Morgan Dunn	N
HARVEY, Ross	dumping	12 September 2011	Tauranga DC	convicted	Sentencing 16 August 2011				Morgan Dunn	N