

November 2025

How we make prosecution decisions

This policy's purpose

This policy sets out our approach to prosecution and alternatives to prosecution.

It covers prosecutions we take under our work health and safety and energy safety legislation. This includes:

- Health and Safety at Work Act 2015 (HSWA) and its regulations
- Hazardous Substances and New Organisms Act 1996 (HSNO)
- Electricity Act 1992, and
- Gas Act 1992.

Our prosecution objectives

When we take prosecutions, generally it's to:

- hold people to account and to deter further offending, and
- protect the integrity of the legislation we enforce.

When we make decisions about prosecutions, we're:

- proportionate
- fair
- consistent, and
- accountable.

Our prosecution priorities

We prioritise specific high-risk sectors and high-risk work that are listed on our [website](#)

In general, we also prioritise offending that results in deaths, severe injury or illness, or catastrophic harm, as well as poorly managed extreme or substantial risk.

Who may face prosecution under our legislation

Any HSWA duty holder may face prosecution. Duty holders are PCBUs (persons conducting a business or undertaking), officers, workers, and other persons at a workplace such as visitors. People other than duty holders may face prosecution if they've committed offending that undermines the integrity of the legislation we enforce. For example, if a person obstructs a health and safety inspector.

We may prosecute natural persons or bodies corporate under the Electricity Act and Gas Act.

We follow this policy and operational guidance when deciding whether to prosecute.

What influences our prosecution decisions

The Solicitor-General's Prosecution Guidelines

How we make prosecution decisions follows the [Solicitor-General's Prosecution Guidelines](#) (the guidelines). This includes [the two-part test for prosecution](#) - the evidential test and the public interest test. If we ever depart significantly from the guidelines, we record our reason for this.

The guidelines ask us to consider whether the public interest requires a prosecution as a response to the offending. We consider if an alternative approach:

- is available and appropriate
- is proportionate
- effectively responds to the offending, and
- meets the needs of victims and their whānau, and the broader community.

The guidelines emphasise the potential for bias in making decisions about prosecution and alternatives to prosecution. To avoid inequitable prosecution outcomes, we:

- ensure our prosecution decisions are made independently
- have review points for prosecution decisions, and
- have the oversight of our enforcement steering panel.

Our policies

How we make prosecution decisions guides our prosecution decisions at a high level. The policy draws on [Our regulatory approach](#) which has more detail about our overall engagement and enforcement approach. This includes taking an educative approach early on in our interactions with duty holders.

Our enforcement decision-making model

Our inspectors apply our [enforcement decision-making model](#) when they identify a breach of HSWA legislation. (We also have an equivalent model for energy safety.) This has a range of enforcement measures, including statutory notices, and non-statutory enforcement tools that have an educative aspect.

Applying the enforcement decision-making model means key decisions have already been made before the prosecution decision-making process begins. The model is designed to ensure those early decisions are proportionate and consistent.

Our public interest factors

We consider public interest factors to help us decide whether we should prosecute offending. An experienced solicitor carries out a review to decide whether the test for prosecution is met.

We apply the public interest factors in the guidelines. We also consider other public interest factors that are specific to the legislation we enforce. These are in four categories:

- the circumstances of the offending
- the involvement of a duty holder or holders (or natural persons or bodies corporate under the Electricity Act and Gas Act)
- the victim or victims, and
- whether there are alternatives to prosecution that would be appropriate instead.

When we consider the circumstances of the offending, the factors we assess include:

- the seriousness of the offending, including the extent of the:
 - risk or harm
 - deviation from current practice in that sector
 - sector knowledge of the risk involved, its consequences, and how to mitigate it

- availability, cost, and effectiveness of the measures needed to either eliminate or else minimise the risk
- the level of influence and control over the incident, situation, or set of circumstances to which the offending relates
- whether the offending involved reckless or negligent disregard for HSWA requirements or the requirements of the Electricity Act or the Gas Act
- protecting the integrity of the legislation we enforce, and
- any other relevant factors.

When we consider the duty holder or holders' involvement, the factors we assess include:

- their compliance history
- their overall standard of health and safety management, where applicable
- whether the duty holder was an organisation carrying out a public good, and
- any other relevant factors.

When we consider the victim or victims, the factors we assess include:

- the impact of any serious injury or illness caused by the offending
- whether they were particularly vulnerable due to their circumstances that, for example, may include their age, health, or having limited knowledge of English
- their views on prosecution and alternatives to prosecutions, where applicable, and
- any other relevant factors.

When we consider alternatives to prosecution, the factors we assess include:

- whether an alternative is available and appropriate, is proportionate, effectively responds to the offending, and meets the needs of victims and their whānau, and the broader community
- whether the breach involved reckless or negligent disregard for HSWA requirements, or the requirements of the Electricity Act or the Gas Act
- the duty holder's willingness and ability to comply with an alternative such as an enforceable undertaking, and
- any other relevant factors.

Our alternatives to prosecution

Our alternatives to prosecution include:

- issuing a formal warning
- issuing an Infringement Notice, and
- agreeing to an enforceable undertaking (HSWA).

Infringement Notice

We may issue an Infringement Notice if our assessment, investigation, or audit indicates there's serious non-compliance, or there's a history of non-compliance.

Formal warnings

A formal warning is a written document we give to a person in response to behaviour we believe is likely to be an offence under the legislation we enforce.

Our [How we use formal warnings](#) policy has more information about this alternative.

Enforceable undertakings

An enforceable undertaking is a formal agreement between WorkSafe and a duty holder that's entered into voluntarily after a breach or alleged breach of HSWA. It sets out a series of actions that the duty holder will take to make improvements in response to the breach or alleged breach.

Our [Enforceable undertakings](#) policy has more information.

When prosecution is the only proportionate response

There are situations where taking a prosecution may be the only appropriate enforcement action. We don't consider alternatives if the offending and other factors are so serious – for example when it involves recklessness – that prosecution is the only proportionate response.

Who makes decisions about prosecutions

There are two stages to making decisions about prosecutions: before the prosecution begins and once it's underway. In the first stage a delegated senior manager from our Inspectorate decides whether to:

- refer a case to our legal team to consider the test for prosecution, and
- begin prosecution.

Our enforcement steering panel provides advice to the delegated senior manager on these decisions. The senior manager also considers information provided by the Inspectorate.

The General Counsel or their delegated prosecutor decides:

- whether the test for prosecution is met, and
- the appropriate charges.

Once the prosecution is underway, the General Counsel or their delegated prosecutor decides whether to:

- amend or add charges
- seek or agree to withdrawal of charges
- offer or agree to a plea arrangement, and
- seek consent to appeal or seek a Solicitor-General's reference.

We record all our prosecution decisions and the reasons for them.

When we're one of multiple agencies taking a prosecution, we follow processes set out in applicable [relationship agreements](#)

We may revisit the test for prosecution if more information or evidence becomes available.

Summary of decision-makers

| DECISION: PRE-LITIGATION | DECISION-MAKER |
|---|--|
| Refer to Legal for consideration of test for prosecution | Delegated senior manager from our Inspectorate |
| Determine whether the test for prosecution is met | General Counsel or delegated prosecutor |
| Decision to commence prosecution | Delegated senior manager from our Inspectorate |
| Decide the content and form of the charges | General Counsel or delegated prosecutor |
| DECISION: DURING LITIGATION | DECISION-MAKER |
| Amend charges | General Counsel or delegated prosecutor |
| Offer or agree to a plea arrangement | General Counsel or delegated prosecutor |
| Decision to withdraw or agree to dismissal of charges | General Counsel or delegated prosecutor |
| Decision to seek consent to appeal/seek a Solicitor General Reference | General Counsel |

Media and publicity

If requested, we confirm the start of an investigation to clarify factual and procedural matters and to avoid speculation in the media. Generally, we don't comment on the specifics of an ongoing investigation.

We may release information about filing of charges, the progress of prosecution proceedings, or a trial. We may also issue a media release, social media post, or provide information via our website. The information we release is restricted to stating facts only. Generally, we don't publish information that may identify a defendant before the first court appearance to allow an application for name suppression.

After a finding of guilt and sentencing by the court, we may publish identifying information about defendants, the offence, and the penalty imposed. We may also make general comments about relevant issues such as the prevalence of a risk or of a particular industry practice. If an alleged offender is found not guilty at trial or charges are withdrawn, we may publish identifying information in some circumstances such as to clarify the status of proceedings.

Private prosecutions

Private prosecutions are an important tool in the work health and safety system. They provide an opportunity for victims, their whānau, or other parties to take a prosecution when we don't.

People are entitled to bring a private prosecution under HSWA in relation to an offence if neither WorkSafe nor any other regulatory agency has taken or intends to take any action, and they have been notified of this. A private prosecution may also be taken with leave of the court.

If a charge is dismissed, a private prosecution generally can't be taken for that offence. A private prosecution can't be taken while an enforceable undertaking is in force or once one is fully discharged. We take this into account when considering an application for an enforceable undertaking.

Our [website](#) has more information about private prosecutions.

Working with victims

We keep victims informed about our decisions in line with:

- the Victims' Rights Act 2002
- the *Victims Code*, and
- and the *Solicitor-General's Prosecution Guidelines – Victims*.

We're also guided by our policy [How we work with victims](#) which has more information about what people can expect of us, including how to raise a concern.

Due to the legislated time limits we have to bring a prosecution we aren't able to have a formal review process. However, people can provide us with feedback or make a complaint about us or a decision we've made via our [website](#)