

Prosecution Guidelines Relevant To Local Authorities

Despite coming into effect on 1 January 2010, and being directly applicable to their enforcement activities, Crown Law's new Prosecution Guidelines appear to be little known within local authorities.

The Prosecution Guidelines (http://www.crownlaw.govt.nz/artman/docs/cat_index_13.asp) replace an earlier version released in 1992, and are a significant advancement. While not binding on Enforcement Agencies, which includes local authorities, it is the expectation of the Attorney-General and the Solicitor-General that all prosecutions be conducted in accordance with the Guidelines.

The Guidelines contain useful advice around, in particular, the matters to be considered when making the decision to initiate a prosecution, the choice of charges, the process of holding plea discussions, and the duties of prosecutors on sentencing. The Guidelines also contain a helpful outline of the prosecutors' duties in respect of disclosure under the Criminal Disclosure Act 2008.

We recommend that all prosecutors, and all local authority managers involved in decisions to prosecute, become familiar with the Guidelines. We are aware that prosecutors within local authorities are sometimes viewed as an extension of their employer, in a way that an external solicitor or barrister is not. However, it is important to note that the duties contained within the Guidelines apply to prosecutors regardless of whether they hold a practising certificate. The following duties are of note:

- Prosecutions ought only to be initiated where the prosecutor is satisfied that the available evidence is sufficient to provide a reasonable prospect of conviction and that prosecution is required in the public interest;
- The process of plea discussion and arrangement must not be initiated by the prosecutor, nor should such discussion take place on the premise that the prosecutor will support a specific sentence;
- The prosecutor should not press for a particular sentence but must ensure that the Court is aware of applicable principles, all proven aggravating factors, and the impact of the offending on any victims; and



- The prosecutor must not display what could appear to be a personal interest in the outcome, but must act with regard to the overarching values of a fair trial.

In our view, given prosecutors' duties under the Guidelines, they should ensure that they are fully involved in the decisions concerning whether to prosecute and whether charges should be maintained or withdrawn as the matter progresses.

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