

Waka Kotahi NZ Transport Agency Prosecution Policy July 2022

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Overview

Purpose

This prosecution policy is to be used by Waka Kotahi NZ Transport Agency (Waka Kotahi) staff when deciding whether to prosecute a person or company for breaches of legislation Waka Kotahi is responsible for.

This policy clarifies, at a high level, the circumstances that would trigger prosecution action by Waka Kotahi staff.

References to Waka Kotahi include the NZ Transport Agency¹, the Director of Land Transport², the Registrar of Motor Vehicles³, and the RUC Collector⁴.

Scope

This policy, and any associated guidelines, apply to all Waka Kotahi staff involved in the preparation for, and conduct of, Waka Kotahi prosecutions. This policy also applies to any external counsel instructed to act for Waka Kotahi.

Waka Kotahi approach to prosecutions

Decisions about whether or not to prosecute will be made fairly, consistently, and proportionately to the seriousness of the alleged behaviour. All staff with duties or accountabilities under this policy must also comply with the Waka Kotahi Code of Conduct and must avoid any actual or potential conflict of interest. This recognises the significant impact prosecution decisions may have on those we regulate.

Context: the Waka Kotahi approach to compliance and enforcement

Waka Kotahi has been authorised to act as an **enforcement authority**, as defined in section 2 of the Land Transport Act 1998 (the Act). Waka Kotahi staff who have been issued with an enforcement warrant become **enforcement officers** as defined by the Act.

In accordance with the Waka Kotahi Regulatory Strategy (Tū ake, tū māia | Stand up, stand firm), and the Compliance Response Framework, including any amendments and updates, the right regulatory tool needs to be used to achieve the right outcome in the particular circumstances. Prosecutions are only one of the regulatory tools available to Waka Kotahi.

¹ Established by section 93 of the Land Transport Management Act 2003

² Established by section 104A of the Land Transport Management Act 2003

³ By appointment under section 271 of the Land Transport Act 1998

⁴ By appointment under section 87 of the Road User Charges Act 2012

Prosecutions under other legislation, including the Crimes Act 1961

Where Waka Kotahi considers that a relevant offence has been committed in relation to one or more of our areas of responsibility we may bring criminal prosecutions under other legislation, such as the Crimes Act 1961. Such a criminal prosecution may be instead of, or in addition to, a prosecution under land transport legislation or civil action such as the suspension or revocation of a licence or appointment. Such criminal prosecutions may involve offending that impacts the integrity of the land transport regulatory system or other conduct by a participant in the land transport regulatory system which is so serious it warrants a criminal prosecution.

How decisions to prosecute are made

Waka Kotahi will consider each case on its own merits when considering whether or not to prosecute. It will take into account the relevant legislation, the [Solicitor-General's Prosecution Guidelines](#), and any associated internal policies, guidelines and procedures.

Tests for prosecution

Prosecutions will be initiated only if:

- the evidence that can be submitted as evidence in Court is sufficient to give a reasonable *prospect of conviction* (evidential sufficiency test); and
- the prosecution is in *the public interest* (public interest test).

The evidential test

The 'evidential sufficiency' of a proposed prosecution must be satisfied first, before the public interest is considered, and the relevant decision-maker must analyse and evaluate all the evidence and information in a thorough and critical manner.

The evidential test requires that there must be credible evidence about an identifiable person that can be admitted in Court. The evidence should have a reasonable chance of proving beyond reasonable doubt that an offence has occurred.

The public interest test

If the evidential test is satisfied, the relevant decision-maker then needs to consider whether a prosecution is in the public interest. The public interest test is found in the Solicitor-General's Prosecution Guidelines and includes factors such as:

- the seriousness of the offence;
- the significance of the loss or harm (or risk) caused by the non-compliance;
- whether the non-compliance is intentional or calculated;

- the person's history or pattern of non-compliance.

Decision making procedures

A decision to prosecute must be consistent with the Solicitor-General's Prosecution Guidelines. To support consistency in approach, Waka Kotahi prosecution decision-making procedures are as follows:

- A file is prepared by a Waka Kotahi employee. The file must contain all relevant evidence, a covering report, and a recommendation on what action may be appropriate.
- The file is reviewed by the appropriate senior manager.
- If the senior manager considers enforcement action may be appropriate, the file is forwarded to the appropriate regulatory advisory group.
- If a prosecution is supported by that group, the file is referred to Waka Kotahi lawyers for a final review before a prosecution is commenced, or the matter is instructed out to external counsel.