EPA Prosecution Policy

Overview

Purpose

1. This document sets out the Environmental Protection Authority’s (EPA) prosecutions policy. The purpose of the policy is to set out the guidelines and standards to be followed by EPA staff when deciding whether to prosecute, and in conducting prosecutions. The prosecutions policy is based on the Crown Law Solicitor-General’s Prosecution Guidelines, published 1 July 2013, and are attached to this Policy as Appendix 1.

Introduction

2. The EPA’s objective is to undertake its functions in a way that contributes to the efficient, effective, and transparent management of New Zealand’s environment and natural and physical resources; and enables New Zealand to meet its international obligations.

3. The EPA has enforcement responsibilities with respect to the following Acts:
   - The Climate Change Response Act 2001
   - The Hazardous Substances and New Organisms Act 1996
   - The Imports and Exports (Restrictions) Act 1988
   - The Ozone Layer Protection Act 1996
   - The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

4. The Acts set out a number of offence provisions.

Decision guidelines

5. This section sets out the principles and guidelines that the EPA will apply when deciding whether or not to prosecute. The guidelines are based upon the Solicitor General’s Prosecution Guidelines but have been tailored to meet the EPA’s objectives.

Test for prosecution

1 Crown Law Office, July 2013
6. Prosecutions should be initiated only where the EPA is satisfied that the test for prosecution is met. The test for prosecution is met if:
   • The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction (the Evidential test).
   • Prosecution is required in the public interest (the Public Interest test).

7. Each aspect of the test must be separately considered and satisfied before a decision to prosecute is made. The Evidential test must be considered before the Public Interest test is considered.

8. The Solicitor General’s Prosecution Guidelines sets out indicative matters to be taken into account for determining whether the evidential test is satisfied and if a prosecution is required in the public interest.

9. Even if a matter meets the test for prosecution in terms of the Solicitor General’s Prosecution Guidelines, the decision whether the EPA will undertake a prosecution in a specific case will be made following advice by the Enforcement Panel. In some cases, where prosecution is possible, it may be considered that a different compliance response is more appropriate.

Decision-making process

10. The enforcement officer responsible for conducting the investigation will prepare a report setting out whether the test for prosecution as set out in the Solicitor General’s Prosecution Guidelines is met.

11. The Enforcement Panel will be responsible for providing advice on whether to prosecute.

12. In appropriate cases, a decision may be made that prosecution under other legislation (for example the Crimes Act) is appropriate.

13. Other enforcement bodies (including local authorities and the Police) may also seek to prosecute under any of the above environmental Acts in some cases.

14. Certain statutory offences can only be prosecuted with the consent of the Attorney-General. Where the EPA considers that consent should be sought, the EPA will comply with the process set out in the Prosecution Guidelines.

15. As a matter of practice, the EPA will ensure that the Solicitor-General is informed of any matter relating to an EPA investigation or prosecution that is of general public or legal importance or which gives rise to substantial or new forms of legal risk.

Management and Oversight of EPA prosecutions

16. Once a decision to prosecute has been made, the file will be referred to a prosecutor who will review the file and the recommended charges.

May 2014
17. All EPA staff involved in managing a prosecution will maintain a high standard of professional and ethical conduct and manage the case in a way that is consistent with the defendant’s right to a fair trial. In particular, those involved in the prosecution should:

- Act in a manner that is fundamentally fair, performing their obligations in a detached and objective manner, impartially and without delay.
- EPA lawyers should conduct themselves in accordance with their ethical obligations and the rules of professional conduct.
- Prosecutors can prosecute their case forcefully, however this needs to be done in a dispassionate manner, avoiding inflammatory language and protecting the right to a fair trial.
- Comply with the disclosure obligations contained in the Criminal Disclosure Act 2008.
- Be aware of the needs of victims and ensure that in accordance with the law and the requirements of a fair trial, victims and witnesses are treated with care and respect.

18. The key statutes that apply to the prosecution process are the Criminal Procedure Act 2011, the Criminal Disclosure Act 2008, the Evidence Act 2006 and the Victim’s Rights Act 2002 and the relevant Crown Solicitor will be responsible for ensuring compliance with these processes. Under the Criminal Procedure Act 2011, the Solicitor-General has a responsibility to maintain general oversight of the conduct of public prosecutions, including prosecutions taken by the EPA.

19. The EPA Board will be advised of any decision to seek a prosecution.

**Victims and witnesses**

20. The EPA will ensure that victims of crime are treated at all times with courtesy and compassion and with respect for their dignity and privacy.

21. The relevant enforcement officer will be the primary point of contact with victims and ensure that they are provided with information at each stage of the process to ensure that they understand the process and are aware of what is happening. The EPA will comply with the Crown Law protocol, *Victims of Crime – Guidance for Prosecutors*.

22. The relevant enforcement officer will also ensure that witnesses are kept informed and treated with courtesy throughout the prosecution process.

23. Where EPA employees are witnesses in a prosecution the EPA solicitor or the enforcement officer in charge of the prosecution will inform their Manager. The employee will attend the Court and assist as requested.

24. EPA employees who act as expert witnesses must comply with the required standards of conduct applicable to expert witnesses.

25. In the event that an EPA employee is required to be a witness for the defense in a prosecution the employee should promptly inform their Manager and the Chief Advisor Legal of this requirement.
Media and publicity

26. In communicating with the public through the media in relation to a prosecution, EPA staff will act in accordance with the Crown Law Media Protocol for Prosecutors, and will

- Act in a way that does not prejudice the right to a fair trial.
- Supports the administration of justice and the integrity of the criminal justice system.
- Respects the principle of open justice.
- Treat victims of crime with courtesy and compassion and respect their dignity and privacy.

27. The EPA will publicise the outcome of a prosecution where appropriate. This will be managed by the General Manager Compliance or General Manager Emissions Trading in co-ordination with the Communications Team.

Interactions with defendants

28. Once charges are filed, no EPA staff members involved with the prosecution will have any communication with the defendant, or the defendant's legal representative, unless this has first been discussed and agreed to by the Crown solicitor acting for the EPA.

29. Because defendants may have other dealings with EPA staff during the course of the prosecution process, the relevant General Manager will ensure that relevant staff are aware of any prosecutions underway. EPA staff must ensure that they do not interact with defendants during the course of the prosecution in a manner that could jeopardise the right to a fair trial or adversely affect the prosecution.

Appeals

30. Any decision by the EPA to appeal a prosecution decision will follow advice from the Enforcement Panel and the process outlined in section 26 of the Solicitor-General's Prosecution Guidelines will be followed.