

# NZ Transport Agency Waka Kotahi Prosecution Policy July 2024

## Contents

Overview .....	2
Purpose.....	2
Scope .....	2
NZTA approach to prosecutions .....	2
Context: the NZTA approach to compliance and enforcement.....	2
Prosecutions under other legislation, including the Crimes Act 1961.....	3
How decisions to prosecute are made .....	3
Tests for prosecution .....	3
The evidential test.....	3
The public interest test .....	3
Decision making procedures .....	4
Safety Camera System Prosecutions .....	4

## Overview

### Purpose

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

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

References to NZTA include the NZ Transport Agency<sup>1</sup>, the Director of Land Transport<sup>2</sup>, the Registrar of Motor Vehicles<sup>3</sup>, and the RUC Collector<sup>4</sup>.

### Scope

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

### NZTA 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 NZTA 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 NZTA approach to compliance and enforcement

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

In accordance with the NZTA 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 NZTA.

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<sup>1</sup> Established by section 93 of the Land Transport Management Act 2003

<sup>2</sup> Established by section 104A of the Land Transport Management Act 2003

<sup>3</sup> By appointment under section 271 of the Land Transport Act 1998

<sup>4</sup> By appointment under section 87 of the Road User Charges Act 2012

## **Prosecutions under other legislation, including the Crimes Act 1961**

Where NZTA 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**

NZTA 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, NZTA prosecution decision-making procedures are as follows:

- A file is prepared by an NZTA 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 NZTA lawyers for a final review before a prosecution is commenced, or the matter is instructed out to external counsel.

### **Safety Camera System Prosecutions**

NZTA has taken over the function of operating Safety Cameras. Due to the scale and speed with which decisions must be made it has decided to adopt a separate procedure for decision-making. This procedure ensures the same robust application of the Solicitor-General's Prosecution Guidelines but provides a more direct route to prosecution. Either, when an offence is identified as requiring the filing of a charging document, or when a person requests a Court hearing of their infringement, the Safety Camera System procedures are as follows:

- an NZTA employee will prepare a file with all relevant evidence.
- The file will be considered by the Delegated Decision Maker (DDM). They will document their decision to prosecute in a covering report.
- The DDM has the option to refer the file to the Enforcement Advisory Group (EAG) for consideration and recommendation on the Public Interest Test. Initially and with complex matters, the file will be referred to the EAG for review and recommendation. An NZTA lawyer will advise the EAG on matters of law and evidence.
- The DDM will consider any EAG recommendation, and if a prosecution decision is made by the DDM, they will file documents in the relevant Court and refer the file to NZTA lawyers who will instruct external lawyers.
- The lawyers instructed will ensure that they review the file for both Evidential Sufficiency and the Public Interest test prior to continuing Court action.