

Te Manatū Waka | Ministry of Transport Prosecution and Warning Policy

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Purpose

The purpose of this Policy is to set out the guidelines and standards to be followed by Te Manatū Waka staff in deciding whether to prosecute, issue warnings and in the conduct of prosecutions.

Decision to prosecute

A decision to prosecute will be made by the Secretary for Transport, Chief Legal Adviser or Principal Solicitor (acting under delegated authority) as appropriate.

Solicitor-General's Prosecution Guidelines

Te Manatū Waka will conduct prosecutions in accordance with the Solicitor-General's Prosecution Guidelines (the **Prosecution** Guidelines). The Prosecution Guidelines provide guidance on the conduct of public prosecutions and provide guidance in respect of decisions on a number of issues, including:

- whether prosecutions should be commenced;
- what charges should be filed; and
- once criminal proceedings are commenced, whether they should be continued or discontinued.

The Prosecution Guidelines can be found [here](#).

Test for prosecution

Pursuant to the Prosecution Guidelines, Te Manatū Waka will initiate prosecutions only where the Test for Prosecution is met. This is where:

- the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction (the Evidential Test); and
- prosecution is required in the public interest (the Public Interest Test).

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

The Prosecution Guidelines set out considerations to be taken into account when determining whether the Evidential Test is met and whether a prosecution is in the public interest. Te Manatū Waka will consider these factors as appropriate.

Even if a matter meets the test for prosecution in terms of the Prosecution Guidelines, the decision of whether Te Manatū Waka will undertake a prosecution in a specific case will be made in accordance with this Policy. In some cases, while prosecution is possible, it may be considered that a different response is more appropriate. For example, a decision may be made to issue a warning letter instead (see below section on warnings).

As a matter of practice, Te Manatū Waka will ensure that the Solicitor-General is informed of any matter relating to a Te Manatū Waka 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 Te Manatū Waka prosecutions

Once a decision to prosecute has been made, Te Manatū Waka's Legal Team has primary responsibility for managing and/or overseeing the conduct of the prosecution. The file will be referred to the relevant Crown Solicitor, whose firm will review the file and the recommended charges.

Once this review is complete, the Crown Solicitor's firm will prepare charging documents for filing.

The Te Manatū Waka solicitor(s) will work with the Crown Solicitor's firm conducting the prosecution on Te Manatū Waka's behalf. The instructing solicitor will inform and seek views on key decisions from the Secretary for Transport, Chief Legal Adviser or Principal Solicitor (acting under delegated authority) as appropriate.

Te Manatū Waka's instructing solicitor will ensure that Te Manatū Waka promptly provides all information and assistance required by the Crown Solicitor's firm.

All Te Manatū Waka 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. 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;
- comply with the disclosure obligations contained in the Criminal Disclosure Act 2008; and
- 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.

Te Manatū Waka solicitors should also conduct themselves in accordance with their ethical obligations and the rules of professional conduct.

Media and publicity

In communicating with the public through the media in relation to a prosecution, Te Manatū Waka 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;
- support the administration of justice and the integrity of the criminal justice system;
- respect the principle of open justice;
- recognise the public interest in receiving accurate information about the criminal justice system and criminal prosecutions; and
- treat victims of crime with courtesy and compassion and respect their dignity and privacy.

The Communications Team will be involved from the commencement of the prosecution, managing media interest and may proactively release media statements. Te Manatū Waka may publicise, by releasing a media statement, the outcome of a prosecution where appropriate. This will be managed by the Manager, Engagement and Communications following advice from the Chief Legal Adviser.

In relation to prosecutions under the Submarine Cables and Pipelines Protection Act 1996, Te Manatū Waka will liaise appropriately with cable operators and Protection Officers around any media releases to be made by Te Manatū Waka.

Victims and witnesses

Te Manatū Waka will ensure that victims of crime are always treated with courtesy and compassion and with respect for their dignity and privacy.

Te Manatū Waka will comply with the [Victims' Rights Act 2002](#) and [Crown Law's guidance "Victims of Crime - Guidance for Prosecutors"](#).

The relevant Te Manatū Waka solicitor / Crown Solicitor's firm will ensure that witnesses are kept informed and treated with courtesy throughout the prosecution process.

Where Te Manatū Waka employees are witnesses in a prosecution the instructing solicitor will inform their Manager. The employee(s) will attend the Court and assist as requested.

Te Manatū Waka employees who act as expert witnesses must comply with the required standards of conduct applicable to expert witnesses, consistent with the Code of Conduct for Expert Witnesses set out in Schedule 4 of the [High Court Rules 2016](#).

If a Te Manatū Waka employee is required to be a witness for the defence in a prosecution, the employee should promptly inform their Manager and the Chief Legal Adviser of this requirement.

Appeals

Any decision by Te Manatū Waka to seek the Solicitor-General's approval to appeal a Court decision must be made by the Secretary for Transport on advice from the Te Manatū Waka Chief Legal Adviser.

Warnings

In some instances, Te Manatū Waka will decide to issue a warning to a person:

- where the person is either a natural or legal (e.g. a company) person; and
- in relation to behaviour that Te Manatū Waka considers could amount to criminal conduct.

Te Manatū Waka will follow the guidance contained in the [Solicitor General's Guidelines for the use of warnings](#).

When warning may be issued

As a part of the decision to prosecute, Te Manatū Waka must conduct the Public Interest Test. This test recognises that not all behaviour that Te Manatū Waka considers may amount to criminal conduct requires a prosecution response. In these situations, Te Manatū Waka may choose to warn a person regarding behaviour that may amount to criminal conduct. Decisions will be made on a case-by-case basis.

Warnings may be issued in respect of any suspected offending investigated by Te Manatū Waka and may capture a range of alleged culpability. Warnings may be issued repeatedly, as appropriate, and will be determined on a case-by-case basis.

Purpose of warnings

Te Manatū Waka may issue warnings for a range of different purposes, including to:

- show that it takes the matter seriously;
- impress on the person that, in Te Manatū Waka's view, the behaviour the person has engaged in amounts to criminal conduct that could otherwise be prosecuted but Te Manatū Waka has chosen not to prosecute;

- mitigate the risk of the behaviour recurring in the future;
- give the person an opportunity to amend or address the behaviour to avoid the risk of prosecution in the future; and

Process for the issuing of warnings

The investigation process leading up to a person being warned will follow the same path as the decision to prosecute (described above). This will involve Enforcement Officers engaging with the person under investigation to give effect to natural justice. Giving effect to natural justice will vary depending on the behaviour and consequences for the person concerned and will include:

- A Protection Officer engaging with the person at the time the behavior has been observed;
- An Enforcement Officer discussing the relevant behaviour with the person being investigated at the time, or shortly after, the behaviour has been observed; and
- advising the person being investigated of potential adverse evidence for comment before a final decision to issue a warning is reached (this could include the option for the investigated person to be interviewed or to provide a written response to the allegations).

Depending on the circumstances, giving effect to natural justice may also include:

- an interview of the investigated person by New Zealand Police on behalf of Te Manatū Waka, following the behaviour being observed;
- the person consenting to receiving the warning and having the matter resolved in that way; and
- the person admitting to the behaviour in respect of which they are being warned.

Warnings will be issued by Te Manatū Waka as soon as practicable but in any case, within a time period that would otherwise be acceptable if charges were being filed under the Criminal Procedure Act 2011. For example, charging documents for alleged offending under the section 13(1) of the Submarine Cables and Pipelines Protection Act 1996 must be filed:

- where the alleged offence was committed either while conducting an activity for the purpose of producing a commercial gain, or on a ship which is used for an activity that has as its predominant purpose the making of a commercial gain, within five years of the date the alleged offence was committed; or
- where the alleged offence was other than that described above, within 12 months of the date the alleged offence was committed.

A decision to warn a person will be made by either the Secretary for Transport, Chief Legal Adviser, or Principal Solicitor (acting under delegated authority) as appropriate.

Once issued with a warning, the warned person has the right to request a review of the warning (see 'Review of a warning' below).

Engagement with people harmed by the behaviour of the person proposed to be warned

As a part of the process for the issuing of a warning, Te Manatū Waka will, where appropriate, engage with those people who have been harmed by the behaviour of the person being investigated. This will involve written correspondence providing the harmed person(s) the opportunity to provide their views.

Content of a warning

Each warning will be issued in writing and contain a description:

- of the key facts and reasons that led to the issuing of the warning;
- of the consequences related to the warning – namely, that the warning will only be used by Te Manatū Waka in making future decisions to prosecute that person for similar behaviour;
- that the warning will be held on file by Te Manatū Waka and that it will only be considered by Te Manatū Waka in deciding whether to prosecute the person for a period of fifteen years from the date the warning is issued;
- that if person engages in similar behaviour in the future, they may be subject to a prosecution under the relevant Act;
- that the existence of the warning will be shared with the victim(s) and Protection/Enforcement Officers on a confidential basis;
- of the person's rights in relation to the warning including:
 - how they will be engaged with in the process of issuing the warning; and
 - of the person's rights under the Privacy Act 2020, including the person's right to request a copy of personal information, and Te Manatū Waka's Privacy Policy; and
 - of the person's right to request a review of the warning (see below); and
 - any relevant response the person has made to the proposed warning when engaged with (e.g. whether they admitted or disputed the facts or the alleged conduct, and whether they consented to the matter being dealt with through a warning).

The warning letter templates that Te Manatū Waka will use in relation to the Submarine Cables and Pipelines Protection Act 1996 can be found at the end of this Policy.

Review of a warning

A person who is issued with a warning by Te Manatū Waka has the option to have the warning reviewed.

The warned person has four weeks from the day they receive the warning to request a review. A warning is deemed to have been received:

- for an electronic warning sent to the person by email, unless the contrary is shown, at the time the email first enters an information system nominated by the receiving party; or
- for a warning delivered, posted or left at the person's usual or last known place of residence or business, unless the contrary is shown, when it would have been delivered in the ordinary course of post.

The review process will be suitably independent from the officials who made the decision to warn. This means that the review process will be conducted by a separate group of officials and the decision will be made by a separate decision maker. Officials who worked on the initial warning will have no input in the review process, other than to hand over the file.

Reconsidering decision not to prosecute

In rare cases Te Manatū Waka may reconsider its decision not to prosecute a person for their behaviour and to instead warn them (a **reconsideration**). The special reasons where prosecution may be restarted include:

- rare cases where a reassessment of the original decision shows that it was wrong and should not be allowed to stand; and
- cases where new evidence becomes available.

Any reconsideration will be reviewed by Te Manatū Waka's legal team or by a Crown Solicitor.

No prosecution or warning

Where the Evidential and Public Interest Tests conclude that neither prosecution nor a warning is appropriate, Te Manatū Waka will provide the person under investigation with a letter advising the person that no further action will be taken. A template of this letter is attached below.

While the primary purpose of this letter is to advise the person under investigation that no further action will be taken, the fact of the investigation and the notification by Te Manatū Waka of the offences under investigation, may be used by Te Manatū Waka in some limited circumstances when considering any future conduct, for instance where the relevant offence requires proof of knowledge or willfulness.

Roles in relation to the Submarine Cables and Pipelines Protection Act 1996

Cable/pipeline operators

Cable/pipeline operators own/operate the cables and pipelines within protected areas declared under section 12 of the Submarine Cables and Pipelines Protection Act 1996 (SCPPA).

Enforcement Officers

Enforcement Officers are constables and certain officers of the New Zealand Naval Forces (definition found in section 2 of the SCPPA). Enforcement officers have the powers set out in the SCPPA (see in particular sections 20 – 23).

Notably, section 13(4) of the SCPPA provides that where an Enforcement Officer gives evidence that they observed fishing operations from a ship or a ship anchoring in a protected area, it will be presumed that, in the absence of evidence to the contrary, fishing operations were being conducted from the ship or the ship was anchored.

Protection Officers

Protection Officers are appointed by the Minister (or the Minister's delegate) under section 16 of the SCPPA. Protection Officers have the powers set out in the SCPPA (see in particular sections 17 – 19). For the purposes of the SCPPA, an Enforcement Officer is deemed to be a Protection Officer.

Notably, section 13(4) of the SCPPA provides that where a Protection Officer gives evidence that they observed fishing operations from a ship or a ship anchoring in a protected area, it will be presumed that, in the absence of evidence to the contrary, fishing operations were being conducted from the ship or the ship was anchored.

Ministry of Transport

The Ministry of Transport | Te Manatū Waka administers the SCPPA and will investigate and, where appropriate, prosecute breaches of the SCPPA.

Maritime New Zealand

The Minister has currently delegated the following functions and powers to Maritime New Zealand.

- To approve equipment to be approved maritime surveillance equipment under section 35 of the SCPPA.
- To appoint a person to be a Protection Officer under section 16 of the SCPPA.

Submarine Cables and Pipelines Protection Act 1996- Warning Letter Template 1 – admission

Name
Address 1
Address 2
City / Postcode
Email [if via email]

Tēnā koe [name]

Formal warning for conduct regarding the Submarine Cables and Pipelines Protection Act 1996

On [date] at [time], you were the [master / owner] of the vessel [vessel name] from which Protection Officers observed you [brief details of incident] at [location including longitude and latitude]. [Note – this section should include the key facts that led to the issuing of the warning, an a brief summary of how the person was engaged with leading up to the issuing of the warning.]

Offences under the Submarine Cables and Pipelines Protection Act 1996

The Ministry of Transport | Te Manatū Waka considers that there is enough evidence for it to charge you with the following offence(s) and you have admitted to committing [that/those] offence(s) [insert whether the person consented to the matter being dealt with through a warning]:

- [list offences e.g. anchoring a ship in a Cable Protection Area per section 13(1)(b) of the Submarine Cables and Pipelines Protection Act 1996 (the Act)]
- [list offences].

The penalty on conviction for these offences is a fine not exceeding \$100,000 where the activity is for commercial gain or a commercial vessel is used or \$20,000 in other circumstances. The penalty for willfully or negligently damaging a cable in a protected area is a fine not exceeding \$250,000.

Formal warning

On this occasion, a decision has been made to issue you with a formal warning letter. You will not be charged and you are not required to attend court. This formal warning letter will not result in a criminal conviction.

However, you are reminded of your responsibilities and obligations under the Act, including to not conduct fishing operations or anchor in a protected area. If you engage in similar behaviour in the future, you are likely to be prosecuted under the Act.

More information on the protected areas, and your responsibilities regarding them, can be found here - <https://www.transport.govt.nz/about-us/what-we-do/queries/protecting-new-zealands-undersea-cables/>.

Use and storage of this warning letter

This warning letter will be held on file by Te Manatū Waka and may be used as a significant factor in deciding whether to prosecute you, should engage in similar behaviour in the future.

However, it will only be used for this purpose for a period of 15 years from the date of this letter and it will not be used for any other purpose.

The fact that the matter has not resulted in prosecution, but rather a warning letter, will also be shared, on a confidential basis and on the basis that it is not to be disseminated further, with [insert cable owner] (the owner of the cable) and [insert details of Protection/Enforcement Officers – e.g. Seaworks Ltd (who manage the Cook Strait protected area on Transpower's behalf and provide Protection Officers who patrol the Cook Strait protected area under the Act)].

Information Te Manatū Waka holds about you is protected under the Privacy Act 2020. You also have the right to request a copy of this information under the Privacy Act. For more information relating to your rights under the Privacy Act please see here - <https://www.privacy.org.nz/your-rights/your-privacy-rights/>.

Review

If you wish to contest this formal warning, you can request a review of it within four weeks of receiving this letter. To do so, you will need to contact Te Manatū Waka and provide details of the issues you dispute, along with your name and the name of the vessel in question.

You can send this information to:

- Chief Legal Adviser, Ministry of Transport, PO Box 3175, Wellington 6140, or
- Email address.

The details will then be reviewed by suitably independent Te Manatū Waka officials, and you will be advised of the result.

Finally, we would remind you that you are able to seek your own legal advice regarding the contents of, or process followed for issuing, this warning.

Ngā mihi,

[Signatory]

Submarine Cables and Pipelines Protection Act 1996- Warning Letter Template 2 – no admission

Name
Address 1
Address 2
City / Postcode
Email [if via email]

Tēnā koe [name]

Formal warning for conduct regarding the Submarine Cables and Pipelines Protection Act 1996

On [date] at [time], you were the [master / owner] of the vessel [vessel name] from which Protection Officers observed you [brief details of incident] at [location including longitude and latitude]. [Note – this section should include the key facts that led to the issuing of the warning.]

[Insert here a summary of the engagement with the person, including the opportunity the person was given to comment on the allegations and the fact they may have disputed the facts / alleged conduct, did not make an admission and/or did not consent for the matter to be dealt with through a warning.]

Offences under the Submarine Cables and Pipelines Protection Act 1996

The Ministry of Transport | Te Manatū Waka considers that there is enough evidence for it to charge you with the following offence(s):

- [list offences e.g. anchoring a ship in a Cable Protection Area per section 13(1)(b) of the Submarine Cables and Pipelines Protection Act 1996 (the Act)]
- [list offences].

The penalty on conviction for these offences is a fine not exceeding \$100,000 where the activity is for commercial gain or a commercial vessel is used or \$20,000 in other circumstances. The penalty for willfully or negligently damaging a cable in a protected area is a fine not exceeding \$250,000.

Formal warning

On this occasion, a decision has been made to issue you with a formal warning letter. You will not be charged and you are not required to attend court. This formal warning letter will not result in a criminal conviction.

However, you are reminded of your responsibilities and obligations under the Act, including to not conduct fishing operations or anchor in a protected area. If you engage in similar behaviour in the future, you are likely to be prosecuted under the Act.

More information on the protected areas, and your responsibilities regarding them, can be found here - <https://www.transport.govt.nz/about-us/what-we-do/queries/protecting-new-zealands-undersea-cables/>

Use and storage of this warning letter

This warning letter will be held on file by Te Manatū Waka and may be used as a factor in deciding whether to prosecute you, should engage in similar behaviour in the future. However, it will only be used for this purpose for a period of 15 years from the date of this letter and it will not be used for any other purpose.

The fact that the matter has not resulted in prosecution, but rather a warning letter, will also be shared, on a confidential basis and on the basis that it is not to be disseminated further, with [insert cable owner] (the owner of the cable) and [insert details of Enforcement/Protection Officers – e.g. Seaworks Ltd (who manage the Cook Strait protected area on Transpower's behalf and provide Protection Officers who patrol the Cook Strait protected area under the Act)].

Information Te Manatū Waka holds about you is protected under the Privacy Act 2020. You also have the right to request a copy of this information under the Privacy Act. For more information relating to your rights under the Privacy Act please see here - <https://www.privacy.org.nz/your-rights/your-privacy-rights/>.

Review

If you wish to contest this formal warning, you can request a review of it within four weeks of receiving this letter. To do so, you will need to contact Te Manatū Waka and provide details of the dispute, along with your name and the name of the vessel in question.

You can send this information to:

- Chief Legal Adviser, Ministry of Transport, PO Box 3175, Wellington 6140, or
- Email address.

The details will then be reviewed by suitably independent Te Manatū Waka officials, and you will be advised of the result.

Finally, we would remind you that you are able to seek your own legal advice regarding the contents of, or process followed for issuing, this warning.

Ngā mihi,

[Signatory]

Submarine Cables and Pipelines Protection Act 1996- Letter Template – advice of no prosecution

Name
Address 1
Address 2
City / Postcode
Email [if via email]

Tēnā koe [name]

Advice of no further prosecution for conduct regarding the Submarine Cables and Pipelines Protection Act 1996

On [date] at [time], you were the [master / owner] of the vessel [vessel name] from which Protection Officers observed you [brief details of incident] at [location including longitude and latitude]. [Note – this section should include the key facts that led to the investigation.]

[Insert here a summary of the engagement with the person, including the opportunity the person was given to comment and the fact they may have disputed the facts / alleged conduct.]

No further prosecution

This letter is to advise you that, while this kind of conduct can risk breaching the Submarine Cables and Pipelines Protection Act 1996 (the Act), the Ministry of Transport | Te Manatū Waka does not consider there is evidence that you have breached the Act on this occasion. Te Manatū Waka will take no further action in relation to this conduct, you will not be charged and you are not required to attend court.

Responsibilities under the Act

However, Te Manatū Waka would like to remind you of your responsibilities and obligations under the Act, including to not conduct fishing operations or anchor in a protected area. If you engage in such behaviour in the future, you may be prosecuted under the Act.

More information on the protected areas, and your responsibilities regarding them, can be found here - <https://www.transport.govt.nz/about-us/what-we-do/queries/protecting-new-zealands-undersea-cables/>

Use and storage of this letter

This letter will be held on file by Te Manatū Waka. However, it will only be used:

- as a record that no prosecutorial action was taken regarding the above-described conduct, and
- in some limited circumstances this letter may be used when considering any future conduct, for example where the relevant offence requires proof of knowledge or willfulness.

It will not be used for any other purpose.

The fact that the matter has not resulted in prosecution will also be shared, on a confidential basis and on the basis that it is not to be disseminated further, with [insert cable owner] (the owner of the cable) and [insert details of Enforcement/Protection Officers – e.g. Seaworks Ltd (who manage the protected area on Transpower's behalf and provide Protection Officers who patrol the Cook Strait protected area under the Act)].

Information Te Manatū Waka holds about you is protected under the Privacy Act 2020. You also have the right to request a copy of this information under the Privacy Act. For more information relating to your rights under the Privacy Act please see here - <https://www.privacy.org.nz/your-rights/your-privacy-rights/>.

Review

If you wish to contest the contents of this letter, you can request a review of it within four weeks of receiving this letter. To do so, you will need to contact Te Manatū Waka and provide details of the dispute, along with your name and the name of the vessel in question.

You can send this information to:

- Chief Legal Adviser, Ministry of Transport, PO Box 3175, Wellington 6140, or
- Email address.

The details will then be reviewed by suitably independent Te Manatū Waka officials, and you will be advised of the result.

Finally, we would remind you that you are able to seek your own legal advice regarding this letter and its contents.

Ngā mihi,

[Signatory]