



Health Quality &  
Safety Commission  
Te Tāhū Hauora

# Health Quality & Safety Commission

## PROSECUTION POLICY

### GLOSSARY

<b>Pae Ora Act</b>	Pae Ora (Healthy Futures) Act 2022
<b>HQSC</b>	Board of the Health Quality and Safety Commission
<b>NMRC</b>	National Mortality Review Committee
<b>Policy</b>	Mortality Review Committee Prosecution Policy

### INTRODUCTION

- 1 The Health Quality and Safety Commission (HQSC) was established under s 59A of the New Zealand Public Health and Disability Amendment Act 2010 and is continued by s 70 of the Pae Ora (Healthy Futures) Act 2022 (the Act). The HQSC can appoint Mortality Review Committees (MRCs) under s 82 of the Act.
- 2 The functions of an MRC are to:
  - 2.1 review and report to the HQSC on specified classes of deaths of persons, or deaths of persons of specified classes, with a view to reducing the numbers of deaths of those classes or persons, and to continuous quality improvement through the promotion of ongoing quality assurance programmes; and
  - 2.2 advise on any other matters related to mortality that HQSC specifies in notice.
- 3 The Act provides the chairperson of a MRC with a power to require information from people. It also provides for the prosecution of a person for failing to provide information without reasonable excuse.
- 4 The Act also provides for the prosecution of a person for disclosing information contrary to clause 4 of schedule 5.
- 5 This Policy sets out how the HQSC intend to exercise its discretion to prosecute. It is to be read together with, and subject to, the Solicitor-General's Prosecution Guidelines. The purpose of this Policy is to provide general guidance. It does not provide a binding set of rules about how the HQSC will exercise its powers in particular cases. The touchstone in any case will always be whether the proposed

exercise of prosecution powers is likely to further the HQSC's functions.

## POWER TO PROSECUTE

- 7 HQSC is entitled to commence a prosecution in respect of the following two offences per s 82 of the Act:

Every person who fails, without reasonable excuse, to comply with a requirement imposed under Schedule 5 of the Pae Ora Act by the chairperson of a mortality review committee commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Every person who discloses information contrary to Schedule 5 of the Pae Ora Act commits an offence and is liable on conviction to a fine not exceeding \$10,000.

- 8 Any member of a registered occupational profession who commits one of these offences is liable to any disciplinary proceedings of that profession in respect of the offence, whether or not they are fined. The HQSC will send notification of conviction to the appropriate professional body.

## APPROACH TO USE OF PROSECUTION POWER

- 9 HQSC is guided in the exercise of its prosecution power by the following principles:

*Proportionality:* The decision to prosecute will reflect an assessment of the seriousness of the breach, including the nature and importance of the information, the previous record of the person (good or bad history in terms of meeting the requirements of the law), the level of knowledge of the breach, and the attitude towards the breach.

*Consistency:* This means treating like cases alike. It does not mean that every case will be treated in the same way; every situation will have its own distinguishing features.

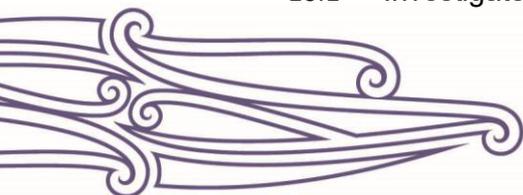
*Accountability:* An MRC undertakes its work on behalf of all New Zealanders, including future generations. Sometimes prosecutions will be informed by legitimate public expectations of accountability.

*Prioritisation:* The cost of a potential prosecution, relative to the seriousness of the breach, is one relevant consideration.

## THE PROSECUTION PROCESS

- 10 HQSC will generally take the following steps as part of its prosecution process under the Pae Ora Act:

10.1 Investigate the suspected breach and obtain advice from the NMRC.



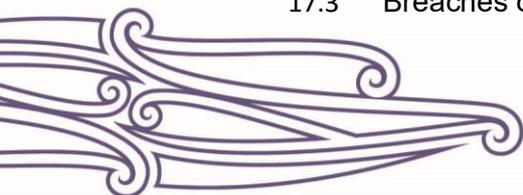
- 10.2 Correspond with the person suspected of breaching the Pae Ora Act, during which an opportunity is provided to respond to the allegations.
  - 10.3 Obtain external legal advice about the merits of prosecution per clause 18.
  - 10.4 Where appropriate, lay charges in the District Court.
  - 10.5 Where appropriate, consider alternatives to prosecution such as attending mediation, issuing a written warning, agreeing that an amount be paid to a charity by way of penalty, and / or requiring that there be a public acknowledgement of the breach.
- 11 HQSC can decide to take no further action in relation to an alleged breach.

## **DECISION TO PROSECUTE**

- 12 Any decision to prosecute a person for a breach of the Pae Ora Act will be made by the Board of the HQSC.
- Any prosecution that is commenced will aim to:
- 13
- 13.1 penalise non-compliance with the Pae Ora Act; and
  - 13.2 inform and guide the behaviour of others.
- 14 Any decision to prosecute is subject to and guided by the Solicitor-General's Prosecution Guidelines.

## **SOLICITOR-GENERAL'S PROSECUTION GUIDELINES**

- 15 The Solicitor-General's Prosecution Guidelines provide a framework for the Board's decision to prosecute under the Pae Ora Act.
- 16 Accordingly, the HQSC will only initiate a prosecution if it is satisfied that:
- 16.1 the evidence able to be put before the Court provides a reasonable prospect of conviction; and
  - 16.2 prosecution is required in the public interest.
- 17 Prosecution is more likely to be required in the public interest when one or a number of the following factors apply:
- 17.1 The breach is serious.
  - 17.2 The breach is blatant.
  - 17.3 Breaches of the relevant sort are prevalent.



17.4 There are previous relevant breaches.

17.5 The breach is likely to be continued or repeated.

## **THE HQSC WILL OBTAIN LEGAL ADVICE**

18 Before deciding to commence a prosecution, the HQSC may obtain external legal advice as to the appropriateness of prosecution as a response to the alleged breach.

## **PUBLICITY**

19 The HQSC will generally publicise the outcome of prosecutions for the purposes of education and deterrence (unless such publicity is not in the public interest or is not allowed by law).

## **ADDITIONAL GUIDANCE**

20 The HQSC encourages stakeholders to:

20.1 Access information about the MRC via their website, legislation, and other relevant channels.

20.2 Work with the NMRC and the HQSC to ensure that obligations are met.

20.3 Contact HQSC as soon as possible if a breach of obligations is suspected.

20.4 If there has been a breach, discuss potential remedial action as early in the process as possible.

## **REVIEW**

21 This Policy will be reviewed every two years.

