

Not related to request

3. Policy

3.1. Prosecution Policy – The decision to Prosecute

In deciding whether to prosecute a person for an offence, police and police prosecutors are to follow the principles set out in the Prosecution Policy of the Director of Public Prosecutions.

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The prosecution process is usually enlivened by a suspicion, an allegation or a confession. Not everyone, however, will result in a prosecution.

It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration: per Sir Hartley Shawcross QC, UK Attorney General and former Nuremberg trial prosecutor, speaking in the House of Commons on 29 January 1951

That statement applies equally to the position in New South Wales. The general public interest is the paramount criterion.

The question whether or not the public interest requires that a matter be prosecuted is resolved by determining:

1. whether or not the admissible evidence available is capable of establishing each element of the offence;
2. whether or not it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed as to the law; and if not
3. whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

The first matter requires no elaboration: it is the prima facie case test.

The second matter requires an exercise of judgment which will depend in part upon an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case in light of the anticipated course of proceedings, including the circumstances in which they will take place. It is a test appropriate for both indictable and summary charges.

The third matter requires consideration of many factors. Those factors can be found in part 4 of the ODPG guidelines (link above).

A decision whether or not to proceed must not be influenced by:

- i. the race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the alleged offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively);
- ii. personal feelings of the prosecutor concerning the offence, the alleged offender or a victim;
- iii. possible political advantage or disadvantage to the government or any political party, group or individual;
- iv. the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution or otherwise involved in its conduct; or
- v. possible media or community reaction to the decision.

It is recognised that the resources available for prosecuting are finite and should not be expended pursuing inappropriate cases. Alternatives to prosecution, including diversionary procedures, should always be considered.

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