



HERITAGE NEW ZEALAND
POUHERE TAONGA

Prosecution Enforcement Policy

Prepared in accord with report on
Government Prosecuting Services 2012

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1. Introduction

One of the key objectives of Heritage New Zealand Pouhere Taonga (Heritage New Zealand) is to promote the protection and preservation of New Zealand's historical and cultural heritage. As part of this objective, Heritage New Zealand has a regulatory role in respect of archaeological sites, including sites of importance to tangata whenua.

The Heritage New Zealand Pouhere Taonga Act 2014 (the Act) provides Heritage New Zealand with certain enforcement powers to perform this role effectively. This policy sets out how Heritage New Zealand exercises those powers to pursue its objectives.

The purpose of this policy is to provide general guidance and is made available as required by the Report on Government Prosecution services by J Spencer. It does not provide a binding set of rules about how Heritage New Zealand will exercise its enforcement powers in particular cases. The touchstone in any case will always be whether the proposed exercise of enforcement powers is likely to further Heritage New Zealand's objectives.

2. Heritage New Zealand's Enforcement Toolbox

Heritage New Zealand's enforcement toolbox includes:

- The publication of pamphlets, brochures, and other written material to assist organisations and individuals in complying with the Act;
- Site visits and site inspections;
- Dialogue, training or correspondence with parties where a breach of the Act is suspected;
- The execution of heritage covenants; and
- Prosecution of offences in the District Court.

3. Approach to use of Enforcement Powers

Heritage New Zealand is guided in its enforcement role by the following enforcement principles:

Proportionality: Heritage New Zealand's enforcement action will reflect its assessment of the seriousness of the breach, including the nature and historical significance of the relevant site, the extent of any damage caused by the breach, the previous record of the person or organisation in respect of the damage of archaeological sites, 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: Heritage New Zealand undertakes its work on behalf of all New Zealanders, including future generations. Sometimes enforcement action will be informed by legitimate public expectations of accountability.

Prioritisation: Heritage New Zealand may target certain types of offending. The cost of potential enforcement action, relative to the seriousness of the breach, is one relevant consideration.

4. Solicitor-General's Prosecution Guidelines

The Solicitor-General's Prosecution Guidelines provide a framework for Heritage New Zealand's decisions to prosecute under the Act. Accordingly, Heritage New Zealand will only initiate a prosecution if it is satisfied that:

- the evidence able to be put before the court provides a reasonable prospect of conviction; and
- the prosecution is required in the public interest.

Prosecution is more likely to be required in the public interest when one or a number of the following factors apply:

- The breach is serious (taking into account the factors listed above under the "proportionality" heading);
- The breach is premeditated or blatant;
- The breach relates to a site of significance to iwi, hapu, or other interested groups;
- Breaches of the relevant sort are prevalent (either nationwide or in the particular area);
- There are previous relevant breaches; or
- The breach is likely to be continued or repeated.

5. The Prosecution Process

Heritage New Zealand will generally take the following steps as part of its prosecution process under the Act:

- Investigation of the suspected breach;
- Correspondence with the person suspected of breaching the Act, during which an opportunity is provided to respond to the allegations;
- Obtaining external legal advice about the merits of prosecution; and
- Where appropriate, laying charges in the District Court.

6. Publicity

Heritage New Zealand will generally publicise the outcome of enforcement actions for the purposes of education and deterrence (unless such publicity is not in the public interest or is not allowed by law).

7. Additional Guidance

Heritage New Zealand wants individuals and organisations to operate effectively and lawfully when dealing with New Zealand's historic heritage. Heritage New Zealand encourages stakeholders to:

- Access Heritage New Zealand's information pamphlets, legislation, and other relevant information;
- Work with Heritage New Zealand's Regional Archaeologists and other staff to ensure that obligations are complied with;
- Contact Heritage New Zealand as soon as possible if a breach of obligations is suspected; and
- If there has been a breach, discuss potential remedial action as early in the process as possible.