

Prosecution approach for the 2018 Census

Purpose

1. *Prosecution approach for the 2018 Census* sets out the procedures that Stats NZ will follow in accordance with Stats NZ Prosecution policy when dealing with potential prosecutions under the Statistics Act 1975 (Act) pertaining to the 2018 Census of Population and Dwellings (Census).

Scope

2. The procedures apply to all Stats NZ staff, contractors, and counsel involved in the preparation for, and conduct of, prosecutions arising from the Census.

Prosecution objectives

3. Completion of Census forms is a legal requirement under the Act.
4. The primary objective of prosecuting for breaches of the Act is to achieve compliance through general deterrence, thereby enabling greater compliance in any subsequent Census.

Decision-making procedure

Stage 1: Compliance encouragement

5. Stats NZ staff and contractors will identify and record:
 - 5.1 persons who refuse to complete the Census form/s; and
 - 5.2 persons who have completed the Census form/s in a non-compliant manner(together those who refuse).
6. The processes shown in figures 1 and 2 will then be undertaken to encourage compliance.
7. If a person remedies their non-compliance prior to the filing of charges the Prosecutions team may decide that no further steps will be taken. (The context of each specific case, including the timeliness of compliance, will be considered.)

Stage 2: Preliminary assessment

8. At the conclusion of the compliance encouragement stage (as detailed in paragraphs 5–7 above) all those who continue to refuse will be assessed by the Prosecutions team.
9. As part of the preliminary assessment the Prosecutions team will:
 - 9.1 consider whether there is strong admissible evidence of committing an offence under the Act;
 - 9.2 identify which offence under the Act is the most appropriate to form the basis for charges, on the facts of the case.

10. The assessment will be in accordance with the **Solicitor-General's Prosecution Guidelines**. Namely the test for prosecution which is:
 - 10.1 the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction; and
 - 10.2 prosecution is required in the public interest.
11. If the refusal relates to a person whose behaviour gives the Prosecution team reason to question their mental capacity or their wellbeing, no further action will be taken.
12. The cases assessed as appropriate for prosecution will then be independently peer reviewed by a statistical analyst in the Census team.

Stage 3: Selection process

13. It is expected that there will be a higher number of those who refuse than is practical to prosecute. The decision on the total number of prosecutions will be made by the Chief Executive of Stats NZ (or a nominated delegate, eg a Deputy Chief Executive).
14. Following the preliminary assessment, all cases considered appropriate for prosecution will be sorted by order of priority.
15. Priority will be given to prosecutions which include the following factors:
 - 15.1 a strong negative attitude exhibited (including but not limited to abusive or threatening conduct), particularly towards Stats NZ staff or contractors;
 - 15.2 the number of people affected by the non-compliance;
 - 15.3 if the person who refused has encouraged others to breach the Statistics Act 1975.
16. Consideration will also be given to:
 - 16.1 geographic spread throughout New Zealand;
 - 16.2 the resources available to Stats NZ relative to the public interest in a prosecution proceeding;
 - 16.3 **Stats NZ's prosecution objectives.**
17. This selection will be done by the Prosecutions team with the oversight of a legal advisor. Legal advisors may be external or on secondment to Stats NZ.

Stage 4: Legal review

18. Every prosecution selected in the selection process will be reviewed by a legal advisor, to ensure that the test for prosecution set out in the **Solicitor-General's Prosecution Guidelines** is met. This review is an integral independent check within the process.
19. A prosecution will only be initiated if both limbs are satisfied (the Evidential Test and the Public Interest Test noted in paragraph 10).

Figure 1

High level Census business process

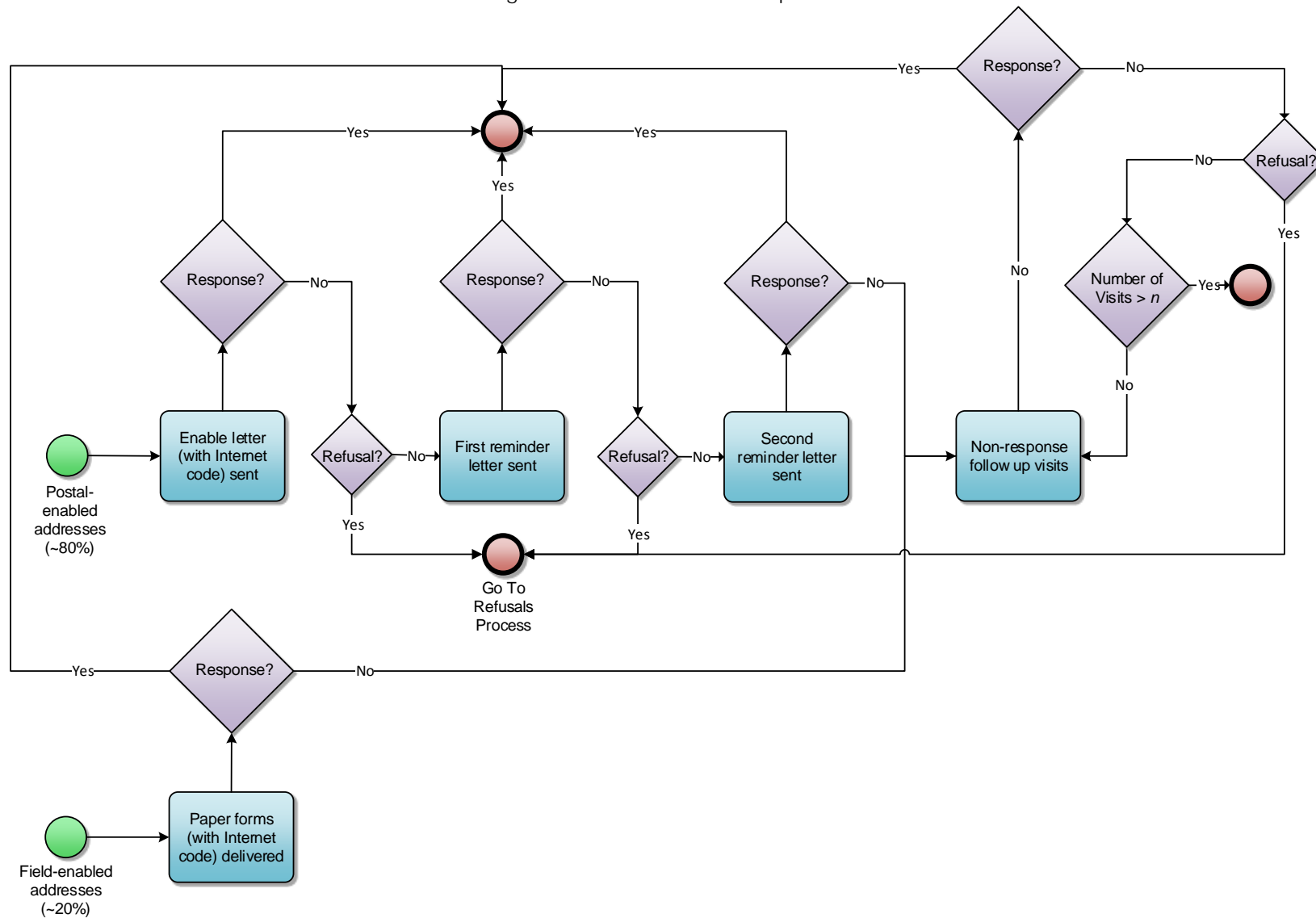
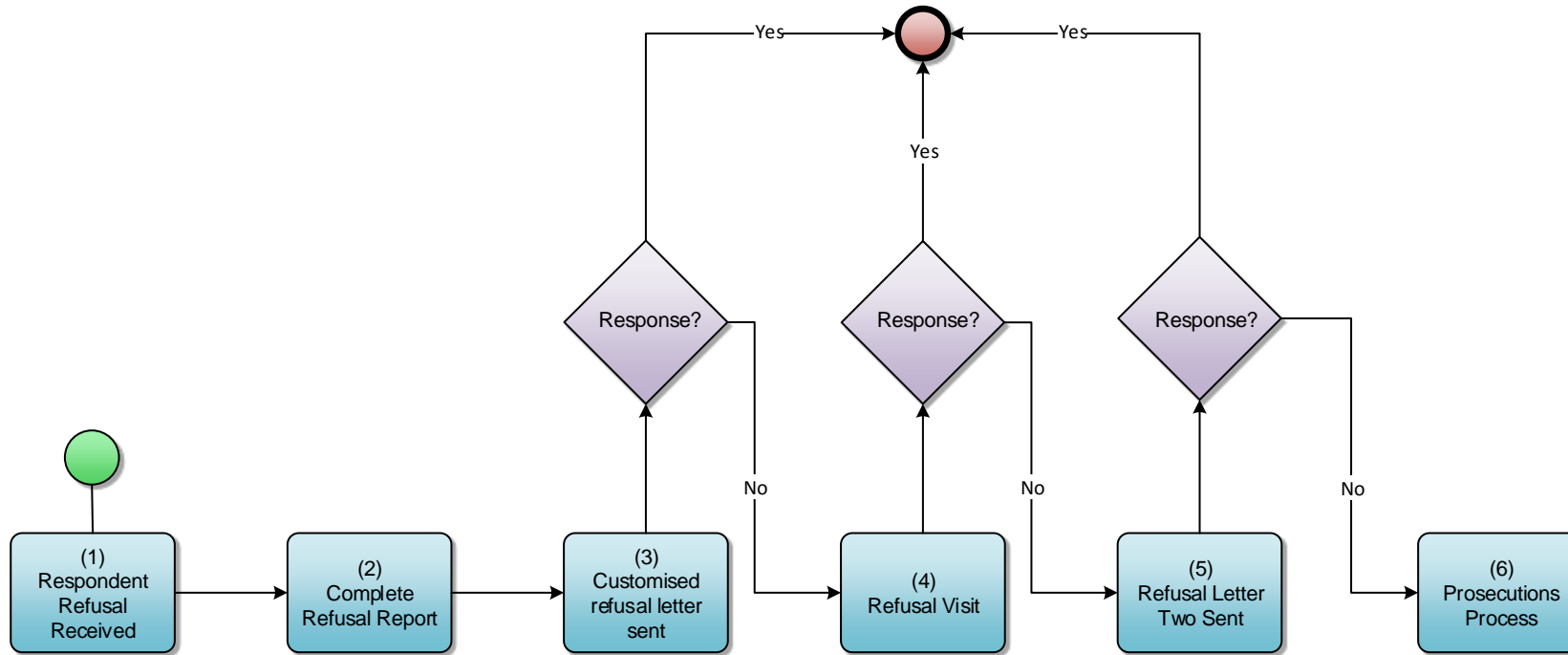


Figure 2

Refusals business process



Stage 5: Decision to prosecute

20. The cases recommended by the legal advisor(s) will be reviewed by the Census General Manager who will approve which cases go to the Chief Executive of Stats NZ for final approval.
21. The ultimate decision to prosecute will be made by the Chief Executive, although the Chief Executive may delegate this decision-making accountability to a Deputy Chief Executive.

Prosecution

22. Once approval has been given a legal advisor will draft the charging documents. Where necessary, the relevant Crown Solicitor may be instructed by the legal advisor to draft the charging document.
23. All charging documents will be reviewed by the Prosecutions team and signed by the Prosecution team leader.
24. When the charging document has been signed, the file will be referred with an instruction letter to the Crown Solicitor in whose warrant region the charge is to be filed.
25. As an alternative to using the Crown Solicitor network, Stats NZ may choose to conduct some or all prosecutions through Crown Law or an in-house legally qualified employee/seconded.

Withdrawal of charges

26. At any stage the Chief Executive (or their delegate) may instruct the Crown Solicitor to **withdraw a charge if Stats NZ believes that the defendant's circumstances warrant it** (for example a defendant with a terminal illness).
27. Completion of a Census form by the defendant after a charge has been filed will not be a sufficient reason to withdraw the charge.

Other offences

28. Under section 43(2) of the Act, a further prosecution may be brought against a person who, having been convicted of failing to fill in a Census form, continues to refuse. The circumstances of each case will be used to determine whether or not to pursue a further prosecution.



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