

Police Adult Diversion Scheme Guidelines

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ABOUT

The purpose of this document is to provide information to the public about the Police Adult Diversion Scheme (hereafter ‘diversion’), including who may be eligible, how it works, and what to expect during the diversion process.

What is the Police Adult Diversion Scheme?

Diversion is a discretionary scheme, managed by the Police Prosecution Service (PPS) on behalf of NZ Police. It provides an opportunity for Police to deal with some adult individuals through an alternative mechanism to full formal prosecution. Specifically, for those who have been charged with eligible offences, who meet certain criteria, who agree to undertake diversion, and who successfully complete it, Police can seek to have the associated charges dismissed by the court. In these circumstances, a conviction will not be recorded.

Diversion is a voluntary process, and individuals participating in the scheme can therefore withdraw at any stage. However, in such situations the charge/s will typically return to court at the next scheduled appearance so that the prosecution can continue.

Note: Adults who have been charged with an offence, and whose participation in diversion is yet to be determined, are referred to as ‘individuals’ in this document.

‘Supported Resolution’ and diversion

‘Supported Resolution’ is a collective term for a variety of approaches that are used by Police in both the pre-charge (e.g. Te Pae Oranga) and post-charge (e.g. therapeutic courts, Restorative Justice conferences, Te Pae Oranga) environments. Supported Resolution approaches are intended to provide assistance to both victims and participating individuals – to repay and repair the harms caused through criminal activity, and to connect people to the help they need.

There is some degree of overlap between the Supported Resolution approaches that are used in the pre- and post-charge environments (e.g. Te Pae Oranga conferences are used in both pre- and post-charge settings). The difference is the severity of the offending in question, and therefore the level of accountability that is required in response. While diversion typically encapsulates those cases at the lower end of the post-charge spectrum, it nevertheless refers to offending that is deemed to require a more formal criminal justice response than those resolved in the pre-charge environment.

Diversion is a structured framework through which a large proportion of post-charge Supported Resolution activity is managed. In doing so, the diversion process balances an appropriate degree of formal accountability for offending, with access to the rehabilitative and support services that people may require – e.g. to address the underlying drivers of their offending. Furthermore, as the concept of Supported Resolution continues to expand within the post-charge arena (e.g. through the Te Ao Mārama-led diffusion of therapeutic and restorative justice practice), diversion is likely to play an increasingly important role in the management of some post-charge offending behaviours.

What is the purpose of diversion?

Diversion serves a number of purposes, which are either restorative or rehabilitative in nature. In particular, it:

- ▶ Holds offenders accountable
- ▶ Provides opportunities for restorative activity/making amends to victims and/or communities
- ▶ Provides opportunities to address the underlying drivers of offending, through access to support services
- ▶ Provides a post-charge pathway to avoiding a criminal conviction, in cases where it has been determined that the public interest requires charges to be laid and a prosecution initiated, but where an alternative to full prosecution may be a suitable way to resolve the matter

Note: ‘Public interest’ does not mean ‘interesting to the public’. Rather, it means that the issue is one of legitimate public concern. ‘Public interest’ is broadly equivalent to the concept of ‘the public good’ and how this is best served in responding to alleged offending. As outlined in the Solicitor General’s prosecution guidelines (see later in this document) public interest is a key variable considered by Police in resolution decision making. In respect of diversion, public interest has been determined to warrant the pursuit of alleged offending by laying charges and bringing them into the District Court.

Who is the diversion officer?

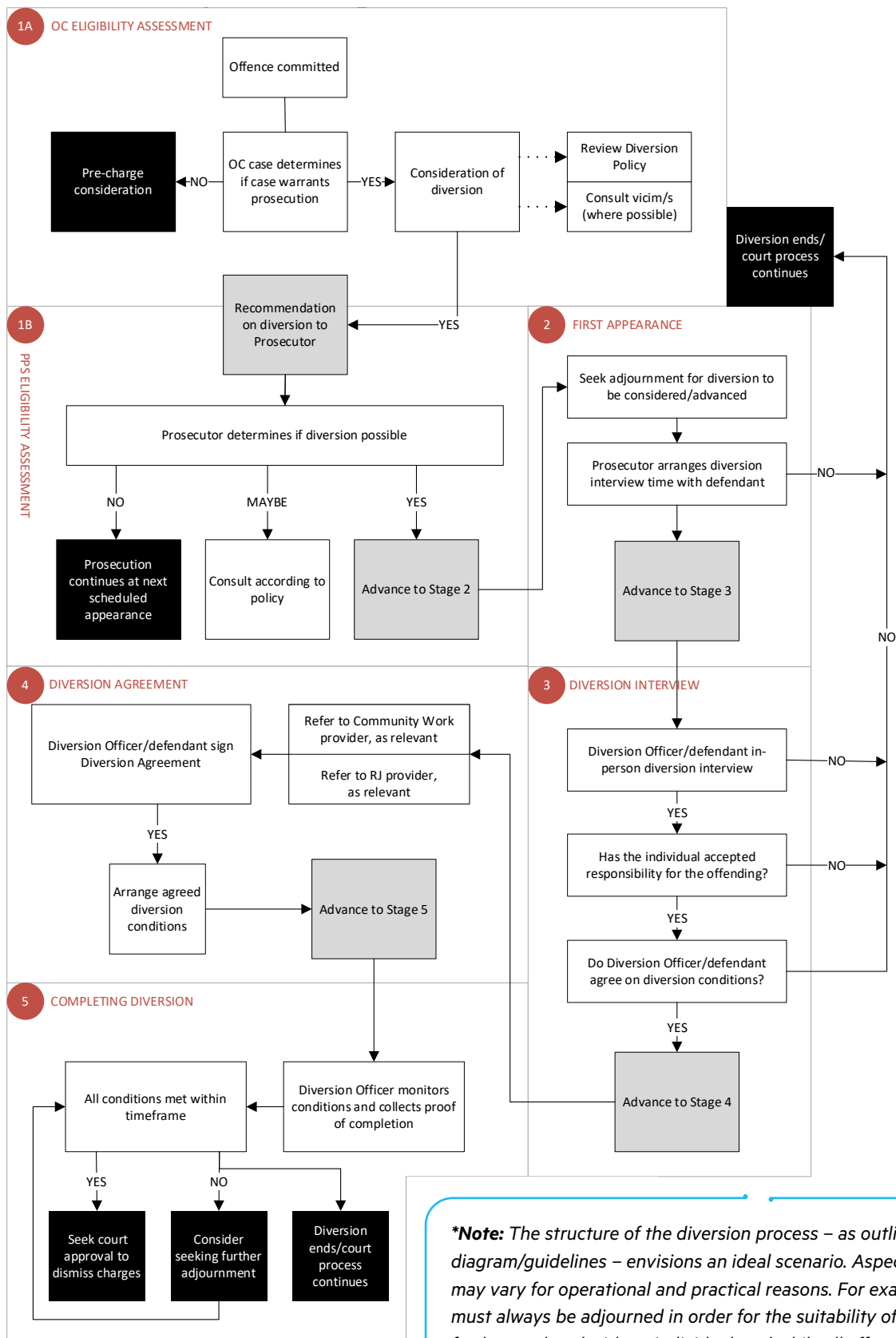
The diversion officer is a Police staff member who manages the diversion process. Diversion is administered by PPS on behalf of NZ Police; therefore, ordinarily, the diversion officer is a PPS prosecutor, working in the prosecution office that serves the district court where the related charge/s is being heard. In this document, prosecutors who manage aspects of the diversion process are referred to as ‘diversion officers’.

The 5 stages of diversion

The diversion process can be separated into five key stages, which are depicted in *FIG 1* and detailed in the sections that follow. They are:

1. Case Evaluation
2. First Court Appearance
3. Diversion Interview
4. Diversion Agreement and Conditions
5. Completing Diversion

FIG 1: Diversion Process Diagram*



***Note:** The structure of the diversion process – as outlined in the diagram/guidelines – envisions an ideal scenario. Aspects of the process may vary for operational and practical reasons. For example, while a case must always be adjourned in order for the suitability of diversion to be further explored with an individual, and while all efforts are made to do so at first appearance, this adjournment can occur at a later appearance.

STAGE 1: CASE EVALUATION

Eligibility for diversion

The diversion scheme is available to some adults, charged with particular offences, advancing through the district court process. Diversion is most typically used for offences at the lower end of the post-charge spectrum, and often where charges relate to first-time offending. The following sections set out when, and for whom, diversion is/is not available.

Offences that are mandatorily excluded from diversion

Certain offences/types of offence are mandatorily excluded from the diversion scheme, which means that diversion cannot be given in respect of these offences. Excluded offences are as follows:

- ▶ Careless driving causing death or injury
- ▶ Any offence which carries the requirement that a judge impose a mandatory minimum disqualification period following conviction (e.g. excess breath alcohol, driving while disqualified, sustained loss of traction)
- ▶ Infringement-only traffic offences, which will not result in a conviction (these are dealt with through the [Traffic Compliance Scheme](#))
- ▶ Offending regulated through the work of the Commercial Vehicle Safety Team (e.g. road user charges and overloading, transport licensing offences, logbook and driving hours offences), for which there is an alternative compliance regime
- ▶ Breaching of court orders (e.g. protection orders, restraining orders, suppression orders)

Other mandatory exclusion factors

In addition to the above-stated criteria, because diversion is a restorative-approach, it can only be considered when an individual accepts full responsibility for the offending in question (as outlined in the Police Summary of Facts). Diversion is therefore unavailable to those who plead not guilty. However, an initial plea of not guilty does not necessarily bar an individual from diversion if that individual subsequently acknowledges responsibility.

Relatedly, diversion is also unavailable to those who make a special plea under section 45 of the Criminal Procedure Act 2011 (i.e. a plea of previous conviction, previous acquittal, or pardon), since this defence seeks dismissal of charge/s based on a 'no case to answer' rationale.

Offences that are not mandatorily excluded from diversion

Only the above-mentioned offences/offence categories are mandatorily excluded from diversion. For all other offences, eligibility for diversion rests on considerations of the level of public interest in resolving the case through a full prosecution, and an assessment of the various details associated with the offence/s (i.e. aggravating and mitigating factors) and offender (e.g. previous diversion history).

Diversion is typically used to resolve offences at the less serious end of the post-charge/prosecution spectrum. For more serious offending – or those offences with more aggravating factors – the public interest in prosecution generally increases, and the viability of diversion as a resolution type therefore reduces. More serious types of offending, where diversion is less likely to be applicable, include the following:

- ▶ Category 4 offences, as listed in the Crown Prosecution Regulations 2013
- ▶ Dishonesty offences (e.g. burglary)
- ▶ Violent offending (including family violence offending)
- ▶ Sexual offending and/or offences with sexual overtones
- ▶ Serious Class A and B drug offences (e.g. supply or possession for supply)

Offender- and offence-based diversion criteria

As the nature of offending is different in each case, the appropriateness of diversion can vary, even between identical charges. Therefore, in order to consider whether diversion may be an appropriate resolution response, Police (the officer in charge of the case (OC case), and then the diversion officer) will consider the details of the offence and offender and, on this basis, arrive at a view as to whether diversion may be applicable (subject to various conditions being met – see Stages 3 and 4 of this document). Considerations that will typically feature in this assessment are outlined in *FIG 2*. As a general rule, aggravating factors will increase the likelihood of a full prosecution being in the public interest, while mitigating factors will have the opposite effect.

FIG 2: Possible Aggravating and Mitigating case factors

Aggravating Factors	Mitigating Factors
The victim/s opposes diversion	The victim/s supports diversion
Higher offence category	Lower offence category
Conviction is likely to result in a significant penalty	Conviction is likely to result in a discharge or nominal penalty
The individual has committed previous offences	It is the individual's first offence
The act was calculated and deliberate	The alleged offence was committed through misjudgement
The individual was a ringleader or organiser of the alleged offending	The individual: <ul style="list-style-type: none"> Expresses remorse Was coerced Was vulnerable Played a minor role in the offending Was ignorant of the law Acted without premeditation Was provoked by victim/s Assisted in the apprehension of others Has mental health problems or physical illness Is unlikely to repeat the offence Was in the wrong place at the wrong time Made a genuine mistake Has financial problems
Violence (including a weapon) was threatened or used	
The individual abused a position of trust (e.g. as an employee, babysitter, caregiver)	
The victim/s was vulnerable and deliberately put in fear of personal attack	
The alleged offence was perpetrated against a public servant conducting their duties (e.g. firefighter, police officer)	
The individual refuses to identify co-offenders	
Evidence of premeditation exists	
Additional charges are pending	
The individual's response was disproportionate to any perceived threat	
The individual has previously received Diversion for similar offending.	

Note: FIG 2 is not an exhaustive list; it is indicative only. Moreover, the weight placed on different (aggravating or mitigating) factors will vary according to the details of the case.

Decision-making responsibilities

There are two stages at which diversion eligibility is assessed by Police: first, by the OC case, and second, by the diversion officer.

The OC case and resolution decision-making

The OC case is the first Police member to consider whether diversion may be relevant to resolution considerations.

In responding to an alleged offence, the OC case makes an initial decision about the most appropriate response. The resolution options available to Police range from pre-arrest and pre-charge approaches (such as formal warnings), through to more far-reaching outcomes (such as a prosecution); and in each case the response taken will reflect the nature and specifics of the alleged offending.

Police resolution decision-making (including the decision to initiate a prosecution) is informed by the **Solicitor General's Prosecution Guidelines**. The prosecution test within these guidelines comprises two areas of consideration:

- ▶ An 'evidential test': that is, whether, on the basis of the evidence, there is a reasonable prospect of conviction, and, this having been met
- ▶ A 'public interest' test: that is, whether a prosecution is warranted on the basis of the public interest. Generally, as offences (and/or their aggravating factors) increase in severity, so too does the public interest in prosecution

Once a decision has been made to pursue a prosecution, the OC case can then consider whether diversion may be an appropriate post-charge resolution. In forming a view, they will refer to the diversion policy criteria, and consult with the victim/s. While the views of the victim/s are important, they are not fully determinative of the outcome, and in some instances the Police view on diversion applicability may be different to that of the victim/s.

Having made an assessment, the OC case will provide their view (and that of the victim/s) to the diversion officer.

The diversion officer and resolution decision-making

The diversion officer is the second Police member to consider whether diversion may be relevant in relation to the charges being prosecuted and is the main decision-maker in respect of diversion.

Upon referral of a charge for prosecution, a prosecutor/diversion officer will consider the case – including its possible applicability for diversion – and consult with any necessary Police stakeholders – e.g. they may speak to the local Supported Resolution Coordinator, or Family Violence Coordinator. Based on an assessment of all the evidence available to them, they will then make a final decision about whether diversion is applicable and can be further explored. A Police diversion officer will always consider the views of the OC case and victim/s in making a diversion assessment, but they are not bound by those views in reaching a decision. As such, there are situations where diversion may be advanced despite the views of an OC case/victim/s to the contrary, and vice versa. If diversion is advanced against the wishes of a victim/s, the OC case will contact the victim/s to explain the decision that has been made, and the reasons for it.

In certain situations, a diversion officer will seek additional levels of agreement to advance a case through diversion. For example, in situations where they are uncertain about aspects of the case, they will seek further information and/or guidance from Police experts and/or their manager.

Diversion decisions about Police employees

To ensure the independence of the prosecution in cases where the defendant is a NZ Police employee, NZ Police engages the Crown Prosecution Service to advance the prosecution case. The Crown Prosecution advances prosecution cases where the defendant is:

- ▶ A current member of NZ Police (with the alleged offence having been committed either in the course of Police duties, or outside of those duties)
- ▶ An individual not currently employed by NZ Police but employed by NZ Police at the time of the alleged offending (with that offending having occurred either in the course of Police duties, or outside of those duties)

The involvement of the Crown Prosecution Service in cases against NZ Police employees alters the ordinary process for considering diversion. Specifically, the Crown Solicitor responsible for the case will determine whether diversion may be a suitable resolution mechanism and, if it is determined that diversion may be suitable, will advise the relevant prosecution office of this. PSS will not begin exploring the possibility of diversion unless advised by the Crown Solicitor. This approach provides an appropriate level of additional transparency over decisions about how to advance the prosecution of Police employees, and ensures that any recommendation for diversion is taken by a prosecuting agency that is independent of NZ Police. As such, it removes the perception of differential treatment regarding initial decisions on diversion eligibility for Police employees.

Furthermore, while diversion is ultimately then managed by Police (through PPS), to ensure the highest possible level of organisational accountability for diversion decisions, the decision to grant diversion to a Police employee requires approval by the Commissioner of NZ Police or their delegated executive-level representative.

Note: Individuals who have previously worked for NZ Police, but whose alleged offending occurred at a time when they were not employed by NZ Police, are treated in the same way as any other member of the public in regard to diversion decision-making.

If there is a possible conflict of interest

If a Police staff member has a possible conflict of interest in regard to conducting their role – e.g. through a personal or professional connection to an individual being considered for diversion – they will declare this to their manager at the first opportunity. A decision will then be made about whether a conflict of interest exists and, if so, to recuse and replace the Police staff member.

The eligibility decision

Stage 1 of the diversion process concludes with a decision about whether – based on the criteria noted in this section, and the assessments made – the individual is eligible to be considered for diversion. Eligibility for diversion does not mean that diversion is thereafter guaranteed. Rather, it means that the possibility of resolving the charge/s through diversion can be further explored with the individual.

Conversely, if diversion is not viewed as an appropriate way of resolving the charges, the diversion process ends here, and the court process continues as normal.

STAGE 2: THE FIRST COURT APPEARANCE

Diversion officers who have formed the view that an individual may be considered for diversion will (ideally during the individual's first court appearance) seek an adjournment of the case. The purpose of this adjournment is to further explore diversion with the individual through the diversion process (see Stages 3 and 4). Excepting those who are charged with offences that are mandatorily excluded from diversion, Police must consider the eligibility of all individuals charged with offences that are brought before the district court; however, the individual (or their counsel) may also proactively raise the possibility of diversion with a diversion officer.

If the case is not adjourned at the first court appearance, this does not necessarily mean the individual has been deemed ineligible. Sometimes, the eligibility assessment cannot be completed until later in the court process, when more information is known, and once there has been more time for consideration. If diversion is not raised until a later court appearance, a not guilty plea does not necessarily bar the individual from the scheme (noting, however, that an acknowledgement of responsibility is required).

When an individual is deemed eligible, the diversion officer will notify the court registrar or judge and request an adjournment. At this time, more information about the diversion scheme is provided to the individual, including the diversion officer's contact details and a timeframe within which a Diversion Interview must be arranged. The individual will also have an opportunity to discuss the scheme with their lawyer, the duty solicitor, or (in some instances) the judge.

STAGE 3: THE DIVERSION INTERVIEW

Arranging the Diversion Interview

The Diversion Interview is a face-to-face meeting between the individual and a Police diversion officer. Its purpose is two-fold:

- ▶ To consider the suitability of diversion in greater detail, and (if it is considered to be suitable)
- ▶ To put in place a formal Diversion Agreement

The interview will occur as soon as possible after first court appearance, and a diversion officer will contact the individual to arrange a time for this meeting to occur. The individual is entitled to bring a support person to the interview.

The Diversion Interview is a mandatory component of the diversion process, and it is the responsibility of the individual to make time available for this meeting. If a meeting cannot be held, diversion cannot be advanced as a resolution option.

During the Diversion Interview

During the interview, the diversion officer will explain the purpose, process, and benefits of diversion in greater detail, and will answer any questions. The individual will also have an opportunity to:

- ▶ Take responsibility for their offending (noting that diversion is only available to those who accept guilt)
- ▶ Explain their understanding of the harms caused by their offending
- ▶ Explore the reasons for their offending
- ▶ Consider what the implications of a conviction might be for them and their whānau

The following requirements must be met during the interview in order for diversion to proceed:

- ▶ The individual must take responsibility for the offence
- ▶ The diversion officer must be satisfied that – following this more detailed conversation with the individual – diversion remains the most appropriate resolution option for the charge/s
- ▶ The diversion officer and individual must agree to an appropriate, proportionate, and achievable set of diversion conditions (and ideally, these should be achievable before the next court appearance)

After the Diversion Interview

If, following the Diversion Interview, the individual and diversion officer are in agreement that diversion remains an appropriate resolution approach, and that the proposed conditions are suitable, the diversion officer will document this in a formal Diversion Agreement that will be signed by both parties. This will happen either at the end of the Diversion Interview or (in some cases) shortly afterwards. The Diversion Agreement process is outlined in further detail in section 4 of these guidelines.

Note: Individuals who agree to and sign a Diversion Agreement are henceforth referred to as either ‘participants’ or ‘former participants’.

Conversely, if, following the Diversion Interview:

- ▶ The diversion officer concludes that diversion is not an appropriate resolution method, or
- ▶ An agreement cannot be reached between the two parties, or
- ▶ The participant wishes to withdraw

Then, the diversion process will conclude, and the charge/s will return to court (at the scheduled time of next appearance) so that the prosecution can continue in the usual way. When the individual returns to court (for second appearance) they will be expected to enter a plea.

At this court event, options such as a discharge without conviction pursuant to section 106 of the Sentencing Act 2002 can be sought by the individual. Unlike diversion, in which the participant and diversion officer agree conditions, the court may impose conditions when granting a discharge without conviction.

Note: In the event that the case returns to court, all discussions that have taken place within the diversion process are classified as ‘without prejudice’. This means that the information exchanged/provided within the diversion process (including any acknowledgement of guilt) cannot be used as evidence.

However, if, during the diversion process, an individual admits to additional offending (i.e. offending that is not/has not been before the court), the diversion officer is bound to caution them in respect of this additional offending, provide New Zealand Bill of Rights 1990 advice, and disclose the new information to another police officer to be investigated separately from the current diversion matter.

STAGE 4: AGREEMENT AND CONDITIONS

The Diversion Agreement

The Diversion Agreement is a formal document, signed by the participant and diversion officer, which outlines the diversion conditions that have been agreed to by both parties at the Diversion Interview. The agreement contains:

- ▶ The participant's details (e.g. name, age, address, contact details)
- ▶ The participant's acceptance of responsibility for the offence/s relating to diversion
- ▶ Details of the agreed diversion conditions, including their expected timeframes for completion

The participant is free to discuss the agreement with their lawyer before signing the document. Once signed, a copy of the agreement is provided to the participant by the diversion officer, and this then forms the basis upon which the satisfactory completion of diversion is judged.

Diversion without conditions

It is possible (although rare) for Police to offer diversion without conditions. That is to say, by time of Diversion Interview, it may be the case that the participant is considered to have already met the necessary requirements of a Diversion Agreement (e.g. by spending a night in police custody prior to court attendance, or through having taken time off work to attend an initial court appearance and Diversion Interview). In such circumstances, diversion may be sought without conditions, and a dismissal of the charges by the court (i.e. the process that happens when a participant has successfully completed diversion) will be sought by the diversion officer at the participant's next scheduled court appearance.

However, in most instances, a diversion agreement will contain one or more conditions that must be met by the participant in order for diversion to be successfully completed.

Diversion conditions

In proposing diversion conditions, the diversion officer will be guided by three key factors:

1. **Appropriateness:** that is, the reparative and rehabilitative conditions must relate to the offending to which diversion refers
2. **Proportionality:** that is, the conditions must be commensurate with the offending, and must not be more onerous than a sentence that might be imposed by the court following conviction
3. **Achievability:** that is, the conditions must be achievable (to the satisfaction of the diversion officer) within an agreed period of time (which is typically the adjournment period)

Diversion conditions mostly fall into two categories:

- ▶ Reparative (i.e. those conditions that are about making amends for offending – such as community work, or a financial payment to the victim/s)
- ▶ Rehabilitative (i.e. those conditions that are about helping the participant to address the underlying causes of their offending, and thereby avoid reoffending – such as counselling or support services)

A Diversion Agreement may contain one or more diversion conditions (and in rare cases, no conditions). ‘Reparative’ and ‘rehabilitative’ diversion conditions that are commonly included in the Diversion Agreement are outlined below.

Reparative diversion conditions

Reparation is about making amends for harm. Common reparative diversion conditions include the following:

Apology letter to the victim/s

A participant will often write a letter of apology to their victim/s, acknowledging the wrongfulness of their actions, and demonstrating an understanding of the consequences of their offending. This is typically provided to the diversion officer for review before being sent to the victim/s by the OC case; however, where the diversion process contains a restorative justice (RJ) meeting, an apology may be delivered verbally, or the RJ provider may work with the participant to prepare and provide a letter.

Financial reparation

In some instances, a participant may reimburse the victim/s for financial expenses they have incurred as a direct result of the diversion-related offending. For instance, such payments might include: the cost of repairs to damaged property, or the costs of a taxi or rental car, following the unlawful taking of a victim’s vehicle. The diversion officer (or, in some instances, an RJ provider) ensures that any such payment agreements are informed by a written quotation.

Generally, where financial reparation is relevant to diversion, it must be paid at one time and in full. Where financial reparation is a necessary component of any Diversion Agreement and this condition cannot be met, it is most likely that diversion will not be a suitable resolution method.

Note: Bank cheques have been withdrawn from circulation by all New Zealand banks, and are therefore no longer an available payment option for diversion reparation. However, a range of alternative payment options are available, and a diversion officer will provide information about these where reparation is a component of the diversion conditions.

Community work

Community work is another condition through which a participant can make amends – typically through voluntary activity within their community. Examples of the types of community work that can form a component of a Diversion Agreement include:

- ▶ Repairing specific damage caused by the offending (e.g. fixing a broken fence)
- ▶ General maintenance/repair of public buildings or spaces (e.g. cleaning windows, removing graffiti)
- ▶ Assisting community support groups in their role (e.g. preparing/serving meals at a food bank or marae, or rubbish recycling)

Community work carried out as a reparative condition of diversion cannot be retrospective (i.e. previous volunteering is not applicable). Diversion officers hold information about approved community work providers that can be accessed for diversion.

Restorative Justice conference

Restorative Justice (RJ) is a victim and community-orientated approach. It actively involves participants and victims in discussions about wrongdoing, and seeks to repair the harms caused by offending, through mechanisms like reparation, forgiveness, and reconciliation.

Within diversion, RJ meetings (or ‘conferences’) involve the victim/s, participant, any support parties, and either a meeting facilitator or a panel of community members. In some meeting formats, a Police representative – known as a Supported Resolution Coordinator – also attends.

RJ is administered by a variety of non-governmental groups and agencies, including Te Pae Oranga and a range of service providers accredited by the Ministry of Justice to deliver RJ services.

In most instances (though not exclusively so), RJ relies on a victim’s agreement to participate. If RJ forms part of a Diversion Agreement, the diversion officer provides various relevant information to the selected provider, before handing the process to that provider to manage. The RJ provider then organises and holds the conference and any associated outcomes (including agreed activities) and reports back to Police on whether this component of a diversion agreement has been met.

Rehabilitative diversion conditions

Rehabilitation is about getting the support needed to address the underlying drivers of offending and desist from further offending. Common rehabilitative options within diversion are outlined below.

Counselling services and courses

Each Police prosecution office has a list of local Ministry of Health accredited counselling agencies and other support services and courses. Dependant on the nature of offending and its drivers, the following types of service may form part of a Diversion Agreement:

- ▶ Addiction support services (e.g. alcohol and other drugs, gambling)
- ▶ Family support services (e.g. child welfare, family, relationships)
- ▶ Behavioural support services (e.g. anger management/stopping violence programmes)
- ▶ Financial support services (e.g. managing money and budgets)
- ▶ Personal support services (e.g. dealing with previous sexual abuse or grief)
- ▶ Skills and knowledge courses (e.g. driving lessons, defensive driving, first aid)

Where counselling services and/or courses are included within a Diversion Agreement, it is the participant's responsibility to pay any associated fees or costs for these services, and for supplying the diversion officer with proof of completion and full payment.

STAGE 5: COMPLETING DIVERSION

Monitoring diversion conditions

Once diversion conditions are agreed and in place, the diversion officer will oversee progress towards completion. In order for diversion to be successfully completed, the diversion officer needs to be satisfied that all agreed conditions have been met. It is the responsibility of the participant to provide this evidence to the diversion officer (no later than three days prior to the next court appearance). For example, dependant on the details of the Diversion Agreement, proof of completion of different elements of diversion (which the participant is primarily responsible for providing) might include:

- ▶ A letter of apology, given to the diversion officer (to review and then pass on to the victim)
- ▶ Receipts for the full payment of counselling/course fees, and evidence of full attendance
- ▶ A reparation payment receipt (or evidence of payment – e.g. confirmation from RJ provider)
- ▶ An attendance sheet for community work, showing agreed hours completed
- ▶ A report from an RJ provider, confirming the completion of an RJ meeting and any agreed actions

Further adjournment when delay is reasonable

If, in monitoring a participant's progress towards the completion of a Diversion Agreement, the diversion officer considers that more time is reasonably required so that the participant can complete all elements, they may request a further court adjournment. However, this is at the discretion of the diversion officer, should not be assumed, and relies on evidence that the participant has genuinely engaged with the process.

Impact of further offending

Participants who are charged with further offences while undertaking diversion must meet with their diversion officer. The diversion officer will consider these new charges, their implications for the current Diversion Agreement, and the feasibility of continuing with diversion in these circumstances. In doing so, the diversion officer may:

- ▶ Cancel the Diversion Agreement, and move to resume the prosecution at the next scheduled court appearance
- ▶ Continue with diversion for the existing charge/s, while the new charge/s proceed through court separately
- ▶ Continue with diversion, incorporating the new charge/s within a revised Diversion Agreement (although this is very rare)

Successful completion of agreed diversion conditions

If and when the diversion officer is satisfied that the diversion conditions outlined in the Diversion Agreement have been fully completed, they will:

- ▶ Notify the court pursuant to section 148 of the Criminal Procedure Act 2011 that the defendant has successfully completed diversion in respect of the offence/s charged. If a notification is given under section 148(1), the court or the registrar must dismiss the charge
- ▶ Make an application to have the participant excused from appearing in court (although the participant must make a separate application to the court if they wish to seek permanent name suppression)

Failure to complete diversion

If diversion is not completed, and/or if, on review, the diversion officer considers that there has been insufficient progress (without good reason), they will conclude that the Diversion Agreement has not been completed.

In such cases, the diversion outcome will be recorded by Police as 'failed to complete contract', and the prosecution will continue as normal at the next scheduled court appearance. The former participant must then attend court on the date of the hearing. They will be expected to enter a plea (if they have not done so already and if they have been given the opportunity to seek legal advice).

ADDITIONAL INFORMATION

Right to review

An individual/participant involved in the diversion process can seek a review of decisions made in regard to this process, and specifically in regard to:

- ▶ The diversion eligibility decision
- ▶ The proposed diversion conditions
- ▶ The decision on whether diversion conditions have been fully met (and diversion therefore successfully completed)

This review request must be made to the District Prosecution Manager of the prosecution office that services the district court in which the case is being heard. Where the decision in question has been made by a diversion officer, without the need for any higher-level approval, the review will be conducted by the District Prosecution Manager. However, where the District Prosecution Manager has been involved in the decision to be reviewed, the review will be conducted by another PPS representative.

On completion of the review, the requester/s will be notified of the outcome. The outcome of this review will be final, and there is no further right of review.

What information will Police record about diversion?

Police will attach several diversion documents to the prosecution file relating to the charge/s that receive diversion, particularly:

- ▶ The Diversion Agreement
- ▶ Evidence of compliance/non-compliance with agreed diversion conditions
- ▶ Correspondence with those providing diversion services (e.g. RJ providers) and the court (e.g. adjournment requests relating to diversion)
- ▶ The diversion officer's notes (e.g. discussions with victim/s or the OC case)

Police also uses a central database, called the National Intelligence Application (NIA), to record certain diversion information. This may include:

- ▶ Details of the Diversion Interview and decision
- ▶ Details of any consultation with the OC case, victim/s, and/or other parties, relating to the diversion process
- ▶ Diversion conditions, and details about when, and if, these were completed
- ▶ The diversion outcome (i.e. whether it was 'successfully completed' or the participant 'failed to complete contract')

What diversion information can Police disclose?

Police can and will disclose certain diversion information, under certain circumstances. However, in doing so, our responsibilities are governed by legislative requirements, notably those relating to the [Privacy Act 2020](#).

Under the terms of this legislation, any individual can:

- ▶ Request any personal information that can be readily retrieved
- ▶ Request the correction of their information, where this is inaccurate
- ▶ Authorise information about them to be disclosed to a third party (see below for further details about third-party disclosure)

Requests to access personal information, or to request the correction of personal information, can be made by submitting a request through one of the methods described on [this page](#) of the NZ Police website.

In accordance with the Police vetting process, Police may disclose, to a third party, certain information that it holds. Advice on Police vetting can be viewed on the NZ Police website [here](#). This advice states:

“Any information that is held by New Zealand Police including any interaction with New Zealand Police in any context, or any information received by New Zealand Police may be disclosed if deemed relevant. This is not limited to conviction information” and includes the ability to release diversion information, as outlined on the [Vetting Service Request and Consent Form](#). Any such decisions are made on a case-by-case basis and governed by a Police Vetting Panel.

Beyond vetting processes, Police will also disclose diversion information to comply with certain specific responsibilities, such as:

- ▶ Meeting legislative obligations, and/or where required to disclose this information by a court
- ▶ Explaining to a court why an individual is not being considered for diversion in a current case

Public reporting of diversion data

Police releases diversion data in its annual report, and may release data in response to Privacy Act and [Official Information Act 1982](#) requests. However, beyond our legal responsibilities to release individual data, this data is only ever summative (e.g. a count of the total number of cases for which diversion was completed in the previous year), which means that individuals cannot be identified.

Criminal Records (Clean Slate) Act 2004

The Criminal Records (Clean Slate) Act 2004 enables individuals with certain (less serious) convictions, who have not received additional convictions for at least seven years, to conceal their criminal record for most purposes.

However, as a successfully ‘diverted’ charge is not recorded on the individual’s criminal record, there is no charge to conceal. As such, the Criminal Records (Clean Slate) Act 2004 provisions do not apply to diversion.