

Formal warnings

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Policy statement and principles

What

A formal warning is a lawful alternative to prosecution when certain requirements are met. The ability to warn is derived from the Police common law power of discretion.

A formal warning can be issued from a scene or at a Police station, after consideration has been given to the weight of evidence that supports evidential sufficiency requirements, and the public interest in prosecution, as set out in the [Solicitor-General's Prosecution Guidelines](#), is taken into account. The offender must admit responsibility for the offending, and the offender must provide informed consent to take part in a warning process. The investigating officer must document the evidence that meets the elements of the offending when reporting the case. Approval from a Supervisor must also be obtained and recorded.

Why

The benefits of a formal warning include:

- timely outcomes for people through resolving the offence at the time of occurrence
- reduction in court appearances and court workload
- faster processing time for offenders
- swifter redeployment of staff

A formal warning may be an appropriate tool for resolving offences that require Police intervention, and the public interest may not support a prosecution.

A formal warning is intended to hold the offender to account and to deter them from further offending behaviour. The issuing of a formal warning informs the offender that the offence(s) committed by them has been treated seriously and has been formally recorded by Police in the National Intelligence Application (NIA).

How

The issuing of a formal warning requires a clear admission of the offending. A preliminary decision on whether a formal warning is available in the circumstances can be made by assessing the evidence (both availability and sufficiency), the underlying circumstances surrounding the event and the public interest considerations set out in the [Solicitor-General's Prosecution Guidelines](#). A formal warning must record how the evidence collected meets all the required elements of the alleged offence whereby, if a prosecution was commenced, there would be a reasonable prospect of conviction.

The final decision to warn must be made by a supervisor (a permanent **substantive Sergeant** or above) who must decide on an offender's suitability for a warning, as set out below.

For matters where the alleged offending relates to **category 3 and 4 offences**, the approving member is the relevant **District Crime Manager**.

For matters where the alleged offending relates to an offence arising from a **family harm incident**, the approving member is the **District Prevention Manager**, in consultation with the lead for the local Safety Assessment Meeting (SAM) table or local multi-agency decision-making table.

Any **adult sexual assault** or **child protection** matter also requires approval from a **tier four accredited supervisor**, in line with these policies.

A formal warning can be issued from the scene, post-arrest, and/or following an investigation, as long as it has been made in accordance with this policy.

Principles

The formal warning process is aligned with the [Prevention First Operating Model, Te Huringa O Te Tai](#) and Our Values (PRIMED) and the [Solicitor General's guidelines](#) for the use of warnings.

Purpose of this chapter

This chapter sets out:

- the intent and principles of the Formal warning policy and the alignment with [Our Values](#), and the [Prevention First Operating Model](#)
- the reasons for issuing a formal warning and the criteria around the use of formal warnings
- the expectation for consistent practice that aligns with the [Solicitor-General's Prosecution Guidelines](#) for establishing evidential sufficiency and whether a prosecution is required in the public interest
- the expected practice standards for issuing and recording a formal warning.

Forms associated with this chapter

- [Formal warning letter](#)
- [Receipt of contested \(disputed\) Police warning letter](#)
- [Upheld Police formal warning letter](#)
- [Withdrawn formal warning letter](#)

Note: These forms are also located in *WORD toolbar > Police Forms > (A-H) > Formal warnings*

Eligibility criteria for formal warnings

Who is eligible for formal warnings?

Take a holistic approach to decide which resolution option is best suited to the context. Wherever possible, discuss and consider opportunities to prevent re-offending and address any harm caused through referral to community-based support services and networks either via [Te Pae Oranga](#) or Whānau Ora Supported Resolutions options, or directly to service providers.

Work to protect vulnerable people, particularly repeat victims.

To be eligible to be considered for, or receive, a formal warning, the following criteria must be satisfied:

- Offender: aged 18 years or older
- Offender: unequivocally admits (clearly admits) to the offence
- Offender: provides informed consent to receive a formal warning
- Evidential sufficiency: exists to prosecution standard and satisfies the evidential test - refer [Solicitor-General's Prosecution Guidelines](#)
- Public interest test: if the evidential test is met, consider if it is in the public interest to issue a formal warning as an alternative to prosecution - refer [Solicitor-General's Prosecution Guidelines](#)

Public Interest factors to be considered when assessing suitability

Other than the eligibility criteria above, the Officer in Charge and supervisor must decide on an offender's suitability for a formal warning by considering these additional factors:

- the nature and seriousness of the offence
- offender considerations (e.g. mental health issues, financially struggling, homelessness)
- victim considerations, including vulnerability
- reparation considerations
- criminal history and/or previous warnings
- multiple offences stemming from one incident. Where one or more are being prosecuted, all offences should be prosecuted (provided the '[public interest test](#)' is met) so that the Court can deal with the full picture of the offending.

Previous formal warnings do not preclude another formal warning being issued if the circumstances warrant it.

The evidence available and rationale must be recorded on the NIA case/file to establish how Police has sufficient evidence for the offending and to demonstrate how the evidence provides a reasonable prospect of conviction. All evidence collected must be attached to the NIA case, including scanned copies of signed admissions and statements.

When a formal warning should not be issued

A formal warning is not the appropriate outcome when:

- The statutory time limit for prosecution has expired (statute of limitations).
- A defence is raised by the suspect.

When considering a formal warning for a suspect requiring special consideration, care should be taken to ensure the person understands the nature and quality of the act and has the cognitive ability to consent to receiving a formal warning. Where there is a known or apparent mental impairment, the person appears intoxicated or under the influence (i.e. drugs or alcohol), or language barriers exist, a person likely is unable to consent to receiving a formal warning.

A formal warning is NOT a criminal harassment caution letter.

Formal warning process

Stage	Description
1	The officer must fully consider the circumstances of the incident or investigation against the eligibility criteria and the additional factors above when assessing suitability for a formal warning.
2	The offender must provide a clear admission of the offending. Where the admission is not electronically recorded, record the admission and, where possible, have the offender sign the record.
3	<p>If a decision is made to recommend the issuing of a formal warning, the officer must then discuss their recommendation with a supervisor (at the level of a substantive Sergeant or above) and gain their approval.</p> <p>For matters where the alleged offending relates to category 3 and 4 offences, the approving member is the relevant District Crime Manager.</p> <p>When issuing from scenes or places other than Police stations, if a supervisor is not working, the officer must assess the offender's eligibility and then make phone contact with a supervisor at the nearest 24-hour station or District Command Centre for approval if relevant or, if a category 3 and 4 offence, contact the District Crime Manager.</p> <p>For matters where the alleged offending relates to an offence arising from a family harm incident, the approving member is the District Prevention Manager in consultation with the lead for the local Safety Assessment Meeting (SAM) table or local multi-agency decision-making table. This will ensure lower end Family Harm offences are appropriately managed by leaders who have the full knowledge and experience of managing offending in the Family Harm environment.</p> <p>For matters where the alleged offending is governed by the adult sexual assault or child protection policies, approval must also be gained from a tier four accredited supervisor.</p> <p>Note: When a supervisor is the person issuing the formal warning, approval must be sought from another higher ranked supervisor, i.e. the District Command Centre Senior Sergeant, to ensure a second opinion is across all decisions for each incident.</p> <p>Important: If the offender refutes their involvement in the alleged offending, or refuses consent to enter the warning process, the formal warning cannot be issued. Reconsider the public interest to determine if a prosecution should be commenced or not. It might be proportionate and in the public interest that the matter is recorded and no further action is taken. Discuss with a supervisor as to the best course of action. Clearly record what you decide and your reasons for the decision in the Occurrence/Custody Module.</p>

4	<p>The supervisor must ensure the identity of the offender has been checked, the offence fits within the eligibility criteria and the additional factors (set out above) are considered. They must inform the officer of the decision and provide them with their name, QID, decision, and rationale to record against the occurrence.</p>
5	<p>To ensure transparency, the officer must then advise the offender in a language and manner they understand, that a formal warning is being issued on this occasion and why.</p> <p>The offender should be informed that the formal warning will be recorded and stored in Police information systems, and they must provide their consent to the warning process. If they offend again, the information relating to the warning may be taken into account when deciding on any action(s) that will be taken and it could be used in the future by Police in the course of legitimate policing functions, e.g. disclosure for Police Vetting Services.</p> <p>The officer must also check and confirm the offender's email and/or postal address and advise that they will receive a copy of the formal warning by post or email.</p> <p>If a victim is involved and the decision to formally warn is made, the officer must ensure they are aware of the decision and rationale.</p> <p>Important: Where a supervisor instructs the release of an offender without a formal warning due to evidential insufficiency, the incident/occurrence must still be documented thoroughly, e.g. in the Occurrence / Custody Module.</p>
6	<p>The officer will complete sufficient notes in the occurrence to support their recommendation to give a warning and must ensure the approving supervisor's name and QID is recorded.</p>
7	<p>The File Management Centre (FMC), or appropriately trained staff, will enter the warning details into NIA, making sure that information is available for any future warning considerations for that offender.</p> <p>The FMC or appropriate case manager will then issue the formal warning letter to the offender by either email or post.</p>

Quality assurance process

All Districts are expected to undertake their own assurance activity locally to ensure the formal warning policy is being adhered to and that timely feedback on performance is being provided to those involved in the issuing and approval of formal warnings.

Key checks will be made to ensure there is evidential sufficiency, an admission of the offending and the issuing of the formal warning was in the public interest.

National Assurance Group will also conduct assurance activity in line with their assurance cycle and ensure the organisation maintains a clear understanding of performance, national consistency of practice is being maintained, and any emerging issues or risks are promptly addressed.

Disputes process

The [Formal Warning Letter](#) outlines how a person may dispute a warning received. If a person wishes to dispute a formal warning issued to them, they can either go to 105 and select the appropriate form or approach the Officer and District involved in the original warning. Each District is responsible for having a review process in place. A review involves assessing whether the issuing criteria has been met, the appropriate approval is gained and that the warning is recorded correctly in the NIA case record.

Police Forms contains templates to use to acknowledge receipt of the dispute and to advise of the outcome of the review:

- [Receipt of Contested Formal Warning](#)
- [Upheld Police Formal Warning](#)
- [Withdrawn of Police Formal Warning](#)

Further information

- Find guidance about the steps to issue a Formal Warning and the required approvals in Checkpoint: Issuing Formal Warnings
 - See the Learning Hub (Totara) for a range of [Formal Warning training material](#).
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