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16 June 2020

ref IR 01-20-12388

Alice Karvelas

By email: fyi-request-12792-136ebff8@requests.fyi.org.nz

Dear Ms Karvelas

REQUEST FOR INFORMATION

I refer to your online request dated 6 May 2020 in which you ask for, pursuant to the Official Information Act 1982:

Could you please provide me under the Official Information Act with the following material in electronic form to the email address in this communication, Police Manual chapters or any other policies or guidelines for prosecutions and investigations under the following categories:

- (1) Harmful Digital Communications Act Offences under section 22
- (2) Harassment Act
- (3) "Threats/Intimidation" police complaint category - presumably including Summary Offences such as disorderly conduct and threats/intimidation

In relation to your request, please find attached copies of relevant parts of the NZ Police instruction documents:

- Police Response to Cyberbullying and the Harmful Digital Communications Act
- Harassment Act Caution Letters
- Part 06- Behaviour Offences

You will also notice that some of the text in the sections provided is highlighted and underlined. This text links to other Police instruction information, which has not been provided to you.

If you are not satisfied with my response to your request you have the right to complain to the Office of the Ombudsman and seek an investigation and review of my decision.

Yours sincerely

Craig Scott
Detective Inspector
National Criminal Investigations Group



Police response to cyberbullying and the Harmful Digital Communications Act

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Policy statement and principles

What

Using a mobile phone, the internet, or other technology such as a digital camera to hurt, harass, embarrass, threaten, or intimidate somebody is cyberbullying.

People of all ages use communication technology to bully and harass others and it encompasses, mobile to mobile, computer to mobile and vice versa and computer to computer. The various forums utilised include but are not limited to, instant messaging, voice over IP such as Skype, video posts such as You Tube and social media sites like Facebook and Twitter.

The [Harmful Digital Communications Act 2015](#) is aimed at deterring, preventing and mitigating harm caused to individuals by digital communications; and providing victims of harmful digital communications with a quick and effective means of redress. The HDC Act achieves this by establishing both a civil and a criminal regime. The civil regime requires an Approved Agency – Netsafe – to assess, investigate and resolve complaints about harm caused by digital communications. The HDC Act also creates two criminal offences (1) failing, without reasonable excuse, to comply with an order of the District Court pursuant to the Act and (2) causing harm by posting a digital communication. The HDC Act also provides for applications to the District Court for certain orders and deals with the liability of online content hosts.

Why

Key goals of Police are preventing crime and victimisation, and targeting and catching offenders. There is also a growing body of evidence that links bullies to criminality and family violence. Enforcement of the Harmful Digital Communications Act 2015 maximises safety, addresses offending and its causes and reducing the harm caused to individuals in our communities.

How

Police will ensure that:

- the communication principles listed in the HDC Act (s6) are taken into account
- a multi-sector approach is taken with other agencies (e.g. [NetSafe](#), [Bullying-free NZ](#), [Spark NZ](#), [2 Degrees](#) and [Vodafone NZ](#)) to dealing with harmful digital communications
- every opportunity is taken to prevent harm caused by harmful digital communications
- victims of harmful digital communications seeking assistance are advised, supported and assisted with:
 - protection and, where appropriate, harmful digital communication orders
 - advice on where to obtain educational material and assistance from other agencies
- where:
- any offences are identified, appropriate enforcement action is taken
- no offence is disclosed, harm prevention action is taken.

Overview

Harmful Digital Communications Act 2015

The [Harmful Digital Communications Act 2015](#) sets out [communication principles](#) and enforcement provisions relating to any form of electronic communication including any text message, writing, photograph, picture, recording or other matter that is communicated electronically.

The Act is intended to deter, prevent, and mitigate harm caused to individuals by digital communication (e.g. internet and mobile phone text bullying and harassment), and provide victims of harmful digital communication with a quick and efficient means of redress.

Seeking assistance against harmful digital communications

Advice and assistance with harmful digital communications can be obtained from:

- [NetSafe](#) – an independent non-profit organisation that promotes confident, safe, and responsible use of online technologies

Note: [NetSafe](#) is an [approved agency](#) under the Harmful Digital Communications Act 2015.

- Police [Cybercrime Unit](#) as the Police Liaison with Netsafe
- these mobile phone providers:
 - [Spark NZ](#)
 - [Vodafone NZ](#)
 - [2 Degrees](#)
- Police '[Kia Kaha](#)' bullying prevention resources for schools and information for parents
- Internet content hosts, such as:
 - [Facebook](#)
 - [WhatsApp](#)
 - SnapChat (<https://support.snapchat.com/co/harassment>).

Related information

Further guidance is available from these sources:

- [2 Degrees](#)
- [Bullying Prevention Advisory Group](#)
- [Bullying prevention and response: A guide for schools](#)
- [Bullying-free NZ website](#)
- [Cyberbullying](#)
- [Cyber enabled crime - Advice to investigators](#)
- [Digital Technology: Safe and responsible use in schools](#)
- [Education.govt.nz – Bullying: Preventing it and dealing with it](#)
- [NetSafe](#)
- [Online Safety Advisory Group](#)
- '[Police response to bullying of children and young people](#)' chapter
- Police '[Kia Kaha](#)' bullying prevention resources for schools
- [Preservation and recovery of electronic evidence](#) chapter
- '[Social Networking, Open Source Information and Online Practitioner](#)' chapter
- [Spark NZ](#)
- [Vodafone NZ](#)

Health and safety duties for Police

Police employees responding to harmful digital communications complaints must be mindful of their following health and safety duties.

Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk at work is the responsibility of all Police employees and persons engaged by Police to provide a service including contractors and their employees, trainees, interns and volunteers. It is delivered through meeting the obligations under the [Health and Safety at Work Act 2015](#) and Police safety policies.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

The expectation of the Commissioner and the Act is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given in order to comply with the [Health and Safety at Work Act 2015](#) or regulations under that Act. They will co-operate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to them and take immediate action to stop any perceived or potential breach of the Act or if impractical, immediately report the matter to a supervisor.

Health and safety should be an everyday conversation

Relevant Police instructions include:

- [Hazard management](#)
- [Health and safety](#)
- [Wellness and safety](#)
- this chapter in relation to the safe investigation of harmful digital communications and harassment complaints.

Definitions and principles under the Harmful Digital Communications Act 2015

This table provides hyperlinks to definitions of terms under section 4 of the Harmful Digital Communications Act 2015.

Term	Definition
Digital communication	Digital communication means: <ul style="list-style-type: none"> • any form of electronic communication; and • includes any text message, writing, photograph, picture, recording, or other matter that is communicated electronically.
Harm	Means serious emotional distress.
Intimate visual recording	intimate visual recording means: <ul style="list-style-type: none"> • a visual recording (for example, a photograph, videotape, or digital image) that is made in any medium using any device with or without the knowledge or consent of the individual who is the subject of the recording, and that is of: <ul style="list-style-type: none"> ◦ an individual who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and the individual is: <ul style="list-style-type: none"> ▪ naked or has his or her genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or ▪ engaged in an intimate sexual activity; or ▪ engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing; or ◦ an individual's naked or undergarment-clad genitals, pubic area, buttocks, or female breasts which is made: <ul style="list-style-type: none"> ▪ from beneath or under an individual's clothing; or ▪ through an individual's outer clothing in circumstances where it is unreasonable to do so; and • includes an intimate visual recording that is made and transmitted in real time without retention or storage in: <ul style="list-style-type: none"> ◦ a physical form; or ◦ an electronic form from which the recording is capable of being reproduced with or without the aid of any device or thing.
IPAP (internet protocol address provider)	IPAP has the same meaning as in section 122A(1) of the Copyright Act 1994: <ul style="list-style-type: none"> • IPAP, or Internet protocol address provider, means a person that operates a business that, other than as an incidental feature of its main business activities: <ul style="list-style-type: none"> ◦ offers the transmission, routing, and providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing; and ◦ allocates IP addresses to its account holders; and ◦ charges its account holders for its services; and ◦ is not primarily operated to cater for transient users.
Online content host	Online content host, in relation to a digital communication, means the person who has control over the part of the electronic retrieval system, such as a website or an online application, on which the communication is posted and accessible by the user.

Posts a digital communication	<p>Posts a digital communication means:</p> <ul style="list-style-type: none"> • transfers, sends, posts, publishes, disseminates, or otherwise communicates by means of a digital communication: <ul style="list-style-type: none"> ◦ any information, whether truthful or untruthful, about the victim; or ◦ an intimate visual recording of another individual; and • includes an attempt to do anything referred to above.
Individual	<p>Individual means a natural person. Note: Companies, organisations etc. are not covered.</p>

Non-legislative definitions

Offline and online bullying or harassing behaviours are closely linked. Increasingly, people move seamlessly between offline and online environments, blending information and communications from different sources and media.

Bullying

The widely-accepted definition of bullying behaviour, as stated in ['Bullying prevention and response: A guide for schools'](#), emphasises the following four characteristics:

- bullying is deliberate
- bullying involves a power imbalance
- bullying has an element of repetition
- bullying is harmful.

Cyberbullying

Cyberbullying is bullying that is enabled, enhanced, or in some way mediated through digital technology (e.g. email, mobile phones, chat rooms, social networking sites and instant messaging). See also ['Cyberbullying characteristics'](#).

Communication principles

This table provides communication principles under section 6 of the Harmful Digital Communications Act 2015.

Principles	A digital communication should not:
Principle 1	disclose sensitive personal facts about an individual.
Principle 2	be threatening, intimidating, or menacing.
Principle 3	be grossly offensive to a reasonable person in the position of the affected individual.
Principle 4	be indecent or obscene.
Principle 5	be used to harass an individual.
Principle 6	make a false allegation.
Principle 7	contain a matter that is published in breach of confidence.
Principle 8	incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual.
Principle 9	incite or encourage an individual to commit suicide.
Principle 10	denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability.

Note: Police employees performing investigations and exercising powers under the Act must:

- take account of these [communication principles](#)
- act consistently with the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#).

Cyberbullying characteristics

Bullying using technology ([cyberbullying](#)) can be more complex and harder to deal with than traditional physical [bullying](#), because it:

- enables a person to attack someone online and still remain anonymous. This and better access to (or ability to use) technology creates an imbalance of power regardless of age, physical strength or social status
- can involve people who have never met in real life and who have no social connections.

Cyberbullying has fewer boundaries than physical bullying. This is because digital information can be:

- quickly shared, spread and viewed
- stored in multiple locations
- created and shared automatically
- stored in a way that only certain groups can see
- shared and posted at any time of the day or night
- left as a permanent record (e.g., photos posted on the internet).

See [Cyberbullying page](#) on 'Bullying Free NZ' internet site for further information.

Orders related to harmful digital communications

The purpose of harmful digital communications orders is to deter, prevent and mitigate harm caused to individuals by digital communications.

Applications for orders

Certain listed individuals may make applications for Court orders under section [18](#) (interim) and [19](#) (full) of the Act ([s11](#)) where their complaint has firstly been considered by Netsafe and they are not satisfied with the outcome. Police may also make such an application if the digital communication constitutes a threat to the safety of an individual. Police are not required to have the matter firstly considered by Netsafe. Applications must be filed in the District Court ([s15](#)).

Click on this link to obtain an [application form](#).

Orders that may be made by District Court

Orders that may be made by the District Court are covered by section [19](#) of the Harmful Digital Communications Act 2015.

Against defendant

The District Court may, on an application, make one or more of the following orders against a defendant:

- an order to take down or disable material
- an order that the defendant cease or refrain from the conduct concerned
- an order that the defendant not encourage any other persons to engage in similar communications towards the affected individual
- an order that a correction be published
- an order that a right of reply be given to the affected individual
- an order that an apology be published.

Against online content host

The District Court may, on an application, make one or more of the following orders against an [online content host](#):

- an order to take down or disable public access to material that has been posted or sent
- an order that the identity of the author of an anonymous or pseudonymous communication be released to the court
- an order that a correction be published in any manner that the court specifies in the order
- an order that a right of reply be given to the affected individual in any manner that the court specifies in the order.

Against an internet protocol address provider (IPAP)

The District Court may, on application, make an order against an [IPAP](#) that the identity of an anonymous communicator be released to the court.

Court may make additional directions

The District Court may also do one or more of the following:

- make a direction applying an order provided for against a defendant or against an [online content host](#) to other persons specified in the direction, if there is evidence that those others have been encouraged to engage in harmful digital communications towards the affected individual
- make a declaration that a communication breaches a [communication principle](#)
- order that the names of any specified parties be suppressed.

Matters for Court to take into account with making order

In deciding whether or not to make an order, and the form of an order, the court must take into account the following:

- the content of the communication and the level of harm caused or likely to be caused by it
- the purpose of the communicator, in particular whether the communication was intended to cause harm

- the occasion, context, and subject matter of the communication
- the extent to which the communication has spread beyond the original parties to the communication
- the age and vulnerability of the affected individual
- the truth or falsity of the statement
- whether the communication is in the public interest
- the conduct of the defendant, including any attempt by the defendant to minimise the harm caused
- the conduct of the affected individual or complainant
- the technical and operational practicalities, and the costs, of an order
- the appropriate individual or other person who should be subject to the order.

Note: The court must act consistently with the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#).

The Court may vary or discharge an order made under section [18](#) or [19](#) (s [20](#)).

Multi-sector approach to dealing with harmful digital communications

Multi-national initiative

Police, the Internet Safety Group ([NetSafe](#) – for internet providers/applications e.g. Facebook and Twitter), telecommunication providers and other agencies from the education, health, justice, social and human rights sectors, have agreed to work together and offer advice to:

- reduce the incidence of harmful digital communications
- reduce victimisation
- identify offenders
- take measures that include:
 - community education
 - early intervention
 - the identification and prosecution of persistent and/or serious offenders.

Bullying Prevention Advisory Group

[Bullying Prevention Advisory Group](#) (BPAG) is a collaboration of 18 organisations, with representatives from the education, health, justice and social sectors, as well as internet safety and human rights advocacy groups.

BPAG members share the strongly held view that bullying behaviour of any kind is unacceptable and are committed to ensuring combined action is taken to reduce bullying in New Zealand schools.

Online Safety Advisory Group

The [Online Safety Advisory Group](#) (OSAG) is a subgroup of the multi-agency [Bullying Prevention Advisory Group](#) (BPAG), which advises the Ministry of Education's programme for schools to manage challenges related to bullying. OSAG not only considers issues specifically related to cyberbullying, but also broader online safety issues that challenge schools, and how they plan for and manage online safety. OSAG has produced the publication '[Digital Technology: Safe and responsible use in schools](#)'.

Bullying-free NZ

Bullying-free NZ provides information to agencies, schools, students, parents and whanāu and embodies a philosophy that "together with a shared vision, we know which direction to go, together – we can prevent bullying in Aotearoa".

Educational material

NZ Police

The Police '[Kia Kaha](#)' bullying prevention resources for schools and information for parents to address issues of bullying and harmful digital communications.

Online content hosts

Online content hosts provide educational material, such as:

- [Facebook](#)
- [WhatsApp](#)
- SnapChat (<https://support.snapchat.com/co/harassment>).

Spark, Vodafone and 2 Degrees

Spark, Vodafone and 2 Degrees publish educational material on mobile phone safety, including steps that can be taken to reduce the likelihood of being a victim of cyberbullying and options available if it does occur. This information is publicly available from their respective Internet sites. See the section '[Seeking assistance against harmful digital communication](#)' in this chapter.

NetSafe

Educational information on [text and cyber bullying](#) is also available from [NetSafe](#) and from the NetSafe Freephone text and cyber bullying helpline on 0508 NETSAFE (0508 638 723).

NetSafe

Netsafe's role

Netsafe has been appointed as the [Approved Agency](#) under the Harmful Digital Communications Act (HDCA) 2015 to manage complaints about digital communications which may have caused, or are likely to cause, harm to a person.

Netsafe's role is to negotiate with the relevant parties to achieve a satisfactory outcome. This may include working with online content hosts to take down material and facilitating agreements between parties to cease harmful digital communications (HDC).

Anyone has the right to apply to the District Court for civil orders but before doing so they must have engaged with the [Approved Agency process](#). They can apply regardless of whether Netsafe has taken actions under section 19 of the HDCA.

The victim (the "Target"), a parent/guardian, a school leader as well as the Police and the Chief Coroner may all apply to the District Court under the HDCA.

Netsafe can:

- investigate complaints where harm has been caused and attempt to reach settlements
- contact producers of harmful digital communications and request that they:
 - remove/edit communications
 - desist from communicating
- liaise with website hosts, internet service providers (ISPs) and other internet intermediaries (both here and overseas) and request them to take down or moderate posts that are clearly offensive
- refer victims to Police for section 22 offences
- inform people about their legal options and the possible outcome if they wish to proceed to the District Court ([civil orders](#)).

Netsafe cannot:

- use search, surveillance and seizure powers – such as those typically given to law enforcement agencies. Netsafe can only access content that is publicly available online and work with the evidence supplied
- punish people for their actions online, or force them to take action such as removing content.

Netsafe's process for dealing with HDC complaints

This table outlines the NetSafe process for dealing with complaints.

Stage	Description
1	<p>Receive complaints via a number of channels:</p> <ul style="list-style-type: none"> • webform • email • social media • phone.
2	<p>Consider whether the reporter of the complaint is valid.</p> <p>Note: Under section 11 the report must come from:</p> <ul style="list-style-type: none"> • the affected individual or; • a parent/ guardian of the individual • the professional leader of a registered school or his/ her delegate • the Police if the communications constitutes a threat to safety of the individual.

3	<p>Clarify if the complaint constitute a serious breach of any of the ten communication principles by assessing evidence to determine if one or more of ten communication principles may have been seriously breached.</p> <p>See 'Communication principles' for the list of principles.</p>
4	<p>Decide whether the case passed the threshold for 'harm'.</p> <p>Under section 11 of the Act the affected individual must have suffered or will suffer harm. 'Harm' is defined as serious emotional distress.</p> <p>The HDCA lists factors that may be used to determine whether a communication would cause harm, including:</p> <ul style="list-style-type: none"> • the extremity of the language used • the age and characteristics of the victim • whether the digital communication was anonymous • whether the digital communication was repeated • the extent of circulation of the digital communication • whether the digital communication is true or false • the context in which the digital communication appeared.
5	<p>Attempt to achieve a successful resolution between parties.</p> <p>Under section 8 of the Act Netsafe can use persuasion, negotiation, mediation and advice to try to attempt to find a resolution.</p> <p>Resolution options may include but are not limited to the following:</p> <ul style="list-style-type: none"> • provide education and advice on online safety and conduct • advise people on steps they can take to resolve a problem (social media tools / security features) • liaise with website hosts, ISPs and other internet intermediaries (both here and overseas) and request them to take down or moderate posts that are clearly offensive • liaise with Enforcement partners – this may include Police/ DIA who may have information on active investigations related to the same case • contact producers of harmful digital communications and attempt to mediate • refer victims to Police for section 22 offences.
6	<p>Provide a 'complaint summary' if the target wishes to proceed to the District Court.</p> <p>Regardless of the outcomes that Netsafe does or does not achieve, everyone has the right to apply to the District Court for a civil order. To do this they require a 'complaint summary' from Netsafe that gives high level information. For example, communication principle(s) Netsafe considered the case against, names of the 'target' (victim) and the 'producer'.</p> <p>Notes:</p> <ul style="list-style-type: none"> • At this point the Netsafe process effectively stops. Netsafe do not help people fill in application forms and are not involved in the Court process. • Should the District Court find that there has been a breach of the HDCA, the Court may make order(s) against the defendant, against online content host and against an internet protocol address provider (IPAP). • Netsafe should be informed by the Court registrars of decisions made under section 19 of the HDCA.

Netsafe contact details

Email: queries@netsafe.org.nz

Phone: 0508 NETSAFE (0508 638 723).

Spark, 2 Degrees and Vodafone process

Spark's Call Investigation Centre, 2 Degrees Service Centre and Vodafone's Customer Care team respond to thousands of customer inquiries each month regarding unwanted calls and texts. A very small number are serious enough to advise the caller to go to Police. As per agreed guidelines, all complaints referred to Police on the advice of Telecom or Vodafone must be investigated.

[Spark](#), [2 Degrees](#) and [Vodafone](#) attempt to resolve complaints on behalf of customers with the aim of preventing further complaints. Action can include sending a warning message to the initiator of the text and barring that person from using the handset on the network. It is up to the Telco to decide what action they will take and the Police cannot make any promises to the complainant about what action the Telco might take.

When a Telco classifies the content as serious enough to refer on to Police, the customer is advised to personally contact Police and take their mobile phone with them. The customer is also advised to collate any examples for showing to Police.

The general customer inquiry number relating to mobile phone support is 0800 800 163 for Spark, 0800 000 201 for 2 Degrees and 0800 800 021 for Vodafone.

When do Police become involved?

Offences

This table details the offences that could apply.

Offence	Penalty
<p>Non-compliance with (harmful digital communication) order</p> <p>Section 21 Harmful Digital Communications Act 2015</p> <p>Person without reasonable excuse, fails to comply with an order made under section 18 or 19.</p>	<p>Natural person: 6 months imprisonment or fine not exceeding \$5,000</p> <p>Body corporate: fine not exceeding \$20,000</p>
<p>Causing harm by posting digital communication</p> <p>Section 22 Harmful Digital Communications Act 2015</p> <p>Person:</p> <ul style="list-style-type: none"> posts a digital communication with intention that it cause harm to a victim; and posting the communication would cause harm to an ordinary reasonable person in the position of the victim; and posting the communication causes harm to the victim. <p>Determining whether post would cause harm, the Court may take into account any factors it considers relevant, including</p> <ul style="list-style-type: none"> the extremity of the language used the age and characteristics of the victim whether the digital communication was anonymous whether the digital communication was repeated the extent of circulation of the digital communication whether the digital communication is true or false the context in which the digital communication appeared. <p>Note: Harm is defined to mean "serious emotional distress".</p>	<p>Natural person: 2 years imprisonment or fine not exceeding \$50,000</p> <p>Body corporate: fine not exceeding \$200,000</p>
<p>Intimidation</p> <p>Section 21(1)(a) - Summary Offences Act 1981</p>	<p>3 months imprisonment or a fine not exceeding \$2,000.</p>
<p>Criminal harassment</p> <p>Section 8 - Harassment Act 1997</p>	<p>2 years imprisonment.</p>
<p>Contravening a protection order</p> <p>Section 49 - Domestic Violence Act 1995</p>	<p>2 years imprisonment.</p>
<p>Misuse of a telephone device</p> <p>Section 112 - Telecommunications Act 2001</p>	<p>3 months imprisonment or a fine not exceeding \$2,000.</p>

<p>Aiding and abetting suicide (incites, counsels or procures another person to commit suicide)</p> <p>Section 179 – Crimes Act 1961</p> <p>Note: Offence committed even if that person does not commit or attempt suicide in consequence of that conduct.</p>	3 years imprisonment.
<p>Wounding with intent</p> <p>Section 188 - Crimes Act 1961</p> <p>(From New Zealand case law (R v Mwai) it appears likely that psychiatric injury (expert evidence) caused by menacing text messages could amount to bodily harm in terms of section 188)</p>	14 years imprisonment.
<p>Meeting young person under 16 following sexual grooming, etc.</p> <p>Section 131B - Crimes Act 1961</p>	7 years imprisonment.

Note: If it is felt that the texts received are part of a grooming offence (section 131B above), the CIB or Child Protection Team should be consulted at the time of taking the complaint. For the incident to be a grooming offence the victim must be under sixteen years of age and therefore the correct point of contact is the Child Protection Team.

More information on grooming offences can be found in the '[Child protection - Mass allegations and online offending against children](#)' chapter.

No offence disclosed: then prevent harm

Even if no offence has been identified, this may still provide an opportunity to prevent harm (as per Prevention First 2017). For schools in particular, there is a process to follow for any report of bullying (including cyber), whether or not an offence is disclosed.

See: the '[Police Response to Bullying of Children and Young People](#)' chapter for further guidance.

Consider advising the person to contact their mobile service provider or online contents host and seek their specific assistance. See the section '[Seeking assistance against harmful digital communication](#)' in this chapter for links to the service providers.

If the situation is complicated, involves schools or workplaces, or young people, the [NetSafe](#) Contact Centre (0508 NETSAFE) can offer additional advice and information, including advice on cyber bullying.

Receiving and investigating complaints/reports

Procedure for receiving complaints/reports

Follow these steps (not necessarily in order) when you receive a complaint/report of harmful digital communications.

Step	Action
1	<p>Ascertain the complaint relates to causing harm by posting digital communication, threatening, harassing, sexually offensive or other seriously disturbing content, or non-compliance with (harmful digital communication) order. If not sure, discuss with NetSafe. Remember that Netsafe may be having content removed online that could form part of your evidence.</p> <p>Note:</p> <ul style="list-style-type: none"> Do not disregard the victim. If clearly not a Police issue refer appropriately. All reports of harmful digital communication involving children or young people be recorded in NIA with the 6P incident code and if offending is identified, an offence code must be added. If complaint involves adults and offending is identified, an offence code must be recorded in NIA.
2	<p>If complaint or report of harmful digital communication involves children or young people take the following actions:</p> <ul style="list-style-type: none"> record in NIA with the 6P incident code if offending is identified, an offence code must be added discuss a range of prevention activities that: <ul style="list-style-type: none"> are based on the cross-sector publication 'Bullying prevention and response: A guide for schools' may include the nine components of the whole school approach described in the Police's school wide intervention plans provide advice and support to the target, initiator, parents/caregivers to prevent future bullying behaviour: <ul style="list-style-type: none"> advice based on the bullying pamphlets for young people and for parents and caregivers available from the Kia Kaha section on the School Portal support as required (e.g. referral to appropriate agency). <p>See 'Procedure when bullying is reported' in the 'Police response to bullying of children and young people' chapter for further information.</p>
3	<p>If complaint or report involves adults and offending is identified, an offence code must be recorded in NIA.</p>
4	<p>Complete case management process for:</p> <ul style="list-style-type: none"> recording incident, offence initial attendance (see also 'Procedure when bullying is reported' in the 'Police response to bullying of children and young people' chapter for additional steps to be undertaken for school-based bullying) process forensics.
5	<p>Record:</p> <ul style="list-style-type: none"> full particulars of victim (customer) and note demeanour particulars of mobile phone including phone number, brand, model number and serial number (if any and visible) to identify the handset. If the phone is turned on, enter *#06# on the phone keypad. In most instances this will give you the handset serial number or International Mobile Equipment Number (IMEI) number. date and time narrative of events in sequence including what if any incident may have caused the harassment to start.
6	<p>Ask complainant:</p> <ul style="list-style-type: none"> to display or play any collated messages or PXT/videos for any known particulars of suspect, including mobile phone number and reason for suspicion.

7	<p>Consider capturing any digital evidence. This may involve your local Digital First Responder (DFR) or Digital Forensic Unit (DFU). As a minimum, take a digital photograph of any text:</p> <ul style="list-style-type: none"> • with time and date stamp and then make a transcription or record messages if possible with time and date stamp • that has been sent in reply along with time and date stamp. Then make a transcription of any message reply the complainant may have made or times when a voice reply has been made.
8	<p>Advise the victim:</p> <ul style="list-style-type: none"> • to retain messages on handset for evidential purposes (depending on seriousness of messages and capacity of handset) • not to respond to any further messages • to keep the time, date and content of any further messages from the same number or same caller and save any threatening or sexually explicit messages on their handset • consider personal support available including school counsellor, family members, victim support agencies • that NetSafe on Freephone 0508 NETSAFE (0508 638 723) can provide additional advice and information.
9	<p>In some circumstances a harmful digital communications order may be advisable. Discuss with your local Prosecution section.</p>
10	<p>Issue a Complaint Acknowledgement Form.</p>

Procedure for investigating complaints/reports

Follow these steps when you investigate a complaint/report of harmful digital communications.

Step	Action
1	<p>Check procedural steps for receiving a complaint/report of harmful digital communications have been completed and the case management process for:</p> <ul style="list-style-type: none"> • recording incident, offence • initial attendance (see also 'Procedure when bullying is reported' in the 'Police response to bullying of children and young people' chapter for additional steps to be undertaken for school-based bullying) • process forensics.
2	Assess, screen and link case (case management process).
3	Prioritise case (case management process).
4	<p>Investigate case (case management process), including:</p> <ul style="list-style-type: none"> • obtain information using information request form/production order from the relevant: <ul style="list-style-type: none"> ◦ telecommunication service provider ◦ online content host.
5	<p>If using information request form (IRF):</p> <p>Go to Police Forms (I-Z) > Information Requests Production Orders > Information Request Form / Production Order Cover Sheet (wait 3 seconds and 'Information Request Form – Page 1' information box will appear on the screen) > complete details in the box.</p> <p>Note: Once the form has been completed it must be approved by an authorised approver from the currently published list, this can be either by physically signing the IRF or by the approver forwarding it to the service provider by email.</p>
6	If obtaining a production order, see 'Application procedure for production orders' in ' Production Orders ' of the ' Search ' chapter.
7	Where offending is identified and the victim is under the age of 18 at the time of making the complaint, the ' Child protection investigation policy and procedures ' apply and must be complied with. This includes ensuring that any appropriate notifications are made to Ministry for Vulnerable Children (Oranga Tamariki). Employees are encouraged to take advice from Child Protection Teams in respect of serious cases and in particular those where sexual offending is alleged.

Procedure for resolution, proceedings and case disposal

Resolution, proceedings and case disposal action is to comply with the [case management](#) process. If offending is identified and the victim is of or under the age of 18 years at the time of making the complaint the '[Child protection investigation policy and procedures](#)' apply and must also be complied with.

At the conclusion of the investigation, advise the complainant and the relevant telecommunications provider or online content host of the result.

Note: The agreed processes for each provider are confidential between the individual provider and Police. Do not disclose the process by which Police obtain information from complainants, other telecommunication providers or online content hosts.

Version number: 13

Owner: NM: Criminal Investigations

Publication date: 12/10/2017

Last modified: 16/12/2019

Review date: 12/10/2019

Printed on : 25/05/2020

Printed from : <http://tenone.police.govt.nz/pi/police-response-cyberbullying-and-harmful-digital-communications-act>



Harassment Act caution letters

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Overview

The [Harassment Act 1997](#) provides civil and criminal remedies in respect of harassment.

The object of the Harassment Act 1997 is to ensure that there is adequate legal protection for all victims of harassment. This recognises that behaviour may appear innocent or trivial when viewed in isolation but may amount to harassment when viewed in context (s6).

The Act aims to achieve its object by making the most serious types of harassment criminal offences, by empowering the District Courts to make orders to protect victims of harassment who are not covered by the [Family Violence Act 2019](#), and by providing effective sanctions for breaches of the law relating to harassment.

Purpose

This chapter is a guide for Police in dealing with complaints of harassment where there has been acts that constitute harassment but a decision is made not to pursue a prosecution or issue a formal warning. A caution letter can act as an intermediary measure for Police.

The [template letters](#) associated with this guide may be used to caution people about their behaviour and inform them about the risk of prosecution if such behaviour continues.

Harassment

Harassment is defined as engaging in a pattern of behaviour against another person, being a pattern of behaviour that includes doing any specified act to the other person on at least two separate occasions within the period of 12 months. The "specified act" does not need to be the same on each separate occasion, and need not be done to the same person on each occasion, as long as the pattern of behaviour is directed against the same person (s3).

Specified act

A specified act means any of the following acts:

- Watching, loitering near, or preventing or hindering access to or from, that person's place of residence, business, employment, or any other place that the person frequents for any purpose
- Following, stopping, or accosting that person
- Entering, or interfering with, property in that person's possession
- Making contact with that person (whether by telephone, correspondence, or in any other way)
- Giving offensive material to that person, or leaving it where it will be found by, given to, or brought to the attention of, that person
- Acting in any other way that causes that person to fear for his or her safety; and that would cause a reasonable person in the particular circumstances to fear for his or her safety (s4).

Acting in any other way that causes that person to fear for his or her safety includes the situation where:

- A person acts in a particular way; and
- The act is done in relation to a person (person B) in circumstances in which the act is to be regarded, as done to another person (person A); and
- Acting in that way causes person A to fear for his or her safety and would cause a reasonable person in person A's particular circumstances to fear for his or her safety (s4).

An act is done to a person if that act is done in relation to person A; or in relation to any other person with whom person A is in a family relationship, and the doing of the act is due, wholly or partly, to person A's family relationship with that person (s5).

Criminal harassment

The most serious kinds of harassment constitute a criminal offence. It is a criminal offence to harass another person in any case where the harassment:

- Is intended to cause that other person to fear for their safety, or the safety of any person with whom that other

person is in a family relationship; or

- Is committed knowing that it is likely to cause the other person to reasonably fear for their safety, or the safety of any other person with whom they are in a family relationship (s8).

Civil harassment

Civil harassment, unlike criminal harassment, does not depend upon the state of mind or intention of the harasser.

The Act enables any person who is being or has been harassed to apply to a District Court for a restraining order in respect of that other person. Failure to comply with a restraining order itself constitutes a separate criminal offence (s25).

Examples of criminal harassment caution letters

Example of Criminal Harassment Caution Letter relating to s 8(1)(a)

This letter may be used when behaviour that constitutes harassment under s8(1)(a) of the Harassment Act 1997 has taken place and the officer wishes to caution the person as to their behaviour and the possible consequences if the behaviour continues. (Located in WORD > Police Forms> Prevention> Harassment warning letters)

Example of Criminal Harassment Caution Letter relating to s8 (1)(b)

This letter may be used when behaviour that constitutes harassment under s8(1)(b) of the Harassment Act 1997 has taken place and the officer wishes to caution the person as to their behaviour and the possible consequences if the behaviour continues. (Located in WORD > Police Forms> Prevention > Harassment warning letters)

Version number: 1

Owner: NM: Prevention

Publication date: 24/04/2020

Last modified: 24/04/2020

Review date: 24/04/2023

Printed on : 25/05/2020

Printed from : <http://tenone.police.govt.nz/pi/harassment-act-caution-letters>



Part 06 - Behaviour offences

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Executive summary

This chapter covers:

- breach of the peace
- litter offences
- public disorder offences.

Definitions, ingredients, Police powers and procedures are listed under each offence. Where possible, references to case law are given.

The chapter deals with minor offences which should be dealt with quickly and with a minimum of fuss. The power to arrest without warrant should be exercised with discretion. Use it only if the behaviour is violent or likely to precipitate violence, and the suspect does not stop the behaviour when directed.

For information on the application of the [New Zealand Bill of Rights Act 1990](#) when arresting, see the '[New Zealand Bill of Rights](#)' chapter of the Police Manual.

There are a number of behaviour offences that are commonly committed. However, '[breach of the peace](#)' is **not** an offence, although the Crimes Act provides the ability to use force, including arrest, to prevent the breach continuing or recurring.

Key, critical points for staff to note:

- If a behaviour related offence is committed, consider warning, then formal warning, then charging.
- For alcohol offences, if a warning is not appropriate, issuing of an Alcohol Infringement Offence Notice is the next appropriate consideration.

Breach of the peace

Definition

Under section 42 of the Crimes Act 1961, breach of the peace is **not** an offence, but there is provision for its prevention.

A breach of the peace is essentially violence or threatened violence.

There is a breach of the peace whenever harm is actually done or likely to be done to:

- a person, or
- a person's property, in that person's presence, or
- a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance - *R v Howell (Errol)* [1982] QB 416 (CA), at 427.

The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established.

Conversely, not all acts likely to provoke violence will necessarily amount to breaches of the peace - even if they are clearly criminal in themselves. See *Percy v DPP* [1995] 3 All ER 124 (QB), at 131, Collins.

The type of violence which the act might provoke must be violence of a defensive nature, as opposed to violence of a retributive nature. For example, the act of peeping through a bedroom window at night would not amount to a breach of the peace even though its natural consequence was likely to frighten those in the house and cause a violent response from them. *Frey v Fedoruk*, Supreme Court of Canada [1950] SCR 517.

The conduct complained of must be severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. In determining whether it is of this nature, regard must be had to the nature and quality of the conduct, its likely consequences and the context in which it is taking place: *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55; [2007] 2 AC 105 (HL); see also *Dyer v Brady, Bullen, Jones and Munro* [2006] HCJAC 72; [2006] SCCR 629.

Powers and duties in respect of breach of the peace

This section contains the following topics:

- To prevent the continuance or renewal of a breach
 - What is 'reasonable'?
 - What is 'interfere to prevent'?
- To arrest
- To receive a suspect from a witness
- After detaining a suspect

To prevent the continuance or renewal of a breach

If you witness a breach of the peace, you can interfere to prevent its continuance or renewal. You can use no more force than is reasonably necessary - section 42(1) of the Crimes Act 1961 refers.

What is 'reasonable'?

'Reasonable' means having sound judgement, being moderate and ready to listen to reason - in all the circumstances of the case.

What is 'interfere to prevent'?

A Police Inspector erected barricades around a sporting venue to prevent demonstrators from entering. This was done because there had been disruption at a similar event two days earlier. It was held that erecting the barricade was reasonable, and that the senior officer was justified in passing on to his subordinates, who did not have personal knowledge of the reasons, the power to take proper steps to prevent the breach - *Newnham v Police* [1978] 1 NZLR 844.

'Interfere to prevent' may also include seizing and temporarily holding personal belongings - *Minto v McKay* (1987) 2 CRNZ 330 (CA).

Although a Police officer has the duty to take reasonable steps to prevent apprehended breaches of the peace, this section only permits a person to be detained where a breach of the peace has occurred and is either continuing or likely to be renewed: *A-G v Reid* 23/5/86, Thorp J, HC Auckland M920/85. It also only permits action to be taken against the person actually committing the breach.

The interference must be reasonable. In determining whether it was reasonable, the immediacy of the breach is relevant.

To arrest

If you are at the scene when a breach of the peace is being committed, or if you have good cause to suspect that a breach has been committed, you, or anyone lawfully assisting you, can arrest - sections 42(2) and 315(2) of the Crimes Act 1961 refer.

Note: You cannot arrest if you merely anticipate a breach - *Reid v Attorney General* [1983] 2 DCR 237.

To receive a suspect from a witness

You can receive from a witness and take into custody the person responsible for a breach of the peace. You must have reasonable grounds for believing that the person handing them over was a witness to the breach - section 42(3) of the Crimes Act 1961 refers.

After detaining a suspect

If you detain someone, you should either file further charges promptly or release the person - section 23(2) of the New Zealand Bill of Rights Act 1990 refers.

Caution: Any undue delay could lead to a civil action against Police.

Procedures in respect of breach of the peace

This section contains the following topics:

- Preventing an anticipated breach of the peace
- Arresting a person
- After arresting the person
- Charging the person

Preventing an anticipated breach of the peace

In *Percy v DPP*[1995] 3 All ER 124 (QB), at 131, Collins J, emphasised that "The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established."

If you anticipate that a breach of the peace **will** occur, issue lawful instructions to the persons involved. If they fail to carry them out, or breach them, arrest them for obstruction - *Minto v Police* (1991) 7 CRNZ 38.

Arresting a person

Where possible, it is better to arrest for a specific offence rather than breach of the peace. If you decide to arrest, follow these steps.

Step	Action
1	Note what each person is doing before and during arrest.
2	Tell each person they have been arrested for breach of the peace.
3	Give each the rights caution (see PDF below) according to the Chief Justice's practice note on Police questioning
4	Inform each person of their rights according to the New Zealand Bill of Rights Act 1990.

After arresting the person

Because breach of the peace is **not an offence**, you **cannot** lawfully obtain the arrested person's personal details, or take photographs or fingerprints, unless:

- you are filing a charging document for another charge, or
- the person consents.

Decide in each case whether there is evidence of an offence to the extent that would satisfy the Evidential Test in the [Solicitor General's prosecution Guidelines](#). If there is not, release the person as soon as is practicable - see 'Release Notice' form.

Note: Where further evidence is subsequently obtained, release at this stage does not preclude the person being summonsed for an offence later.

Charging the person

If there is evidential sufficiency, also consider public interest considerations in then deciding whether to warn, issue a summons or charge the person. This decision should be made in consultation with the custody supervisor.

Important: Do not delay this decision; you **cannot** hold a prisoner solely for the purpose of interrogation. Delay would only be justified in situations where, for example, there were many prisoners to process, or a long distance to travel between the scene and the station.

If you decide to charge the person for an offence (breach of the peace is not an offence), follow these steps.

Step | **Action**

1	Tell the person of the nature of the charges as soon as practicable.
2	Give the rights caution (see PDF below) according to the Chief Justice's practice note on Police questioning .
3	Inform the person of their rights under the New Zealand Bill of Rights Act 1990.
4	Decide on summons, bail, release or formal warning .
5	Submit a file to your supervisor, including a report outlining the justification for the arrest and release, a copy of the 'Breach of the Peace release notice' and your notebook entry relating to the incident.

Litter offences

This section contains the following topics:

- Definitions
- Depositing dangerous litter
- Depositing litter
- Wilfully breaking bottles or glass
- Failing to comply with directions of a Litter Control Officer

Definitions

This table outlines definitions of terms under section 2 of the Litter Act 1979 relevant to this chapter.

Term	Definition
Depositing	'Depositing' in relation to litter includes: <ul style="list-style-type: none"> • casting, placing, throwing or dropping litter, and • allowing litter to be cast, thrown, dropped or, without reasonable excuse, to escape, from a motor vehicle or trailer.
Litter	'Litter' includes any refuse, rubbish, animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, or waste matter, or any other thing of a like nature.
Litter Control Officers	'Litter Control Officer' means any person appointed as such under section 5 or section 6 of the Litter Act 1979. Note: Under section 6(1)(a) every Police constable is a Litter Control Officer.
Occupier	'Occupier', in relation to any land or premises, means any lessee, licensee, or other occupant of the land, and includes the owner or the agent of the owner where there is no apparent occupier.
Private land	'Private land' means every place other than a public place.
Public place	'Public place' includes: <ul style="list-style-type: none"> • every motorway, road, street, private street, footpath, access way, service lane, court, mall, and thoroughfare • any public reserve within the meaning of section 2 of the Reserves Act 1977 to which the public generally has access, whether with or without payment of any fee, and any reserve under that Act classified as a nature reserve or a scientific reserve • any park, garden, or other place of public recreation to which the public has access, whether with or without payment of any fee • any beach or foreshore, or the bank of any river or stream, or the margin of any lake, to which the public traditionally has access, whether with or without payment of any fee • any waters to which the public traditionally has access, whether with or without payment of any fee, for bathing or other recreational purposes • every wharf, pier, or jetty (whether under the control of a harbour board or not) to which the public has access • any conservation area within the meaning of the Conservation Act 1987 • any airport within the meaning of section 2 of the Airport Authorities Act 1966 • any cemetery within the meaning of section 2 of the Burial and Cremation Act 1964 • any land vested in or controlled by any local authority (within the meaning of section 5(1) of the Local Government Act 2002 or the Crown, being land that is not occupied pursuant to any lease, licence, or other authority by any private person • any National Park constituted under the National Parks Act 1980 • any other place whether public or private in the open air, including any walkway within the meaning of section 4 of the Walking Access Act 2008, to which the public has access, whether with or without payment of any fee <p>but does not include any site for the disposal of litter, or any receptacle installed in any such public place pursuant to this Act or any other Act.</p>

Depositing dangerous litter

Under section 15(2) of the Litter Act 1979, you must prove the identity of the suspect and that they:

- committed an offence against section 15(1) of the Litter Act 1979, and
- the litter was likely to cause any person any danger, injury, disease or infection.

Powers

You can:

- demand the suspect's name and address (section 7(5) of the Litter Act 1979)
- arrest without warrant (section 315 of the Crimes Act 1961).

Depositing litter

Under section 15(1) of the Litter Act 1979, you must prove the identity of the suspect and that they:

without reasonable excuse, deposited litter, or having deposited it, left it, in or on any public place, or private land, without the occupier's consent.

Powers

You:

- can require the suspect to remove and dispose of the litter appropriately, and you can demand their name and address (section 7(2) & (5) of the Litter Act 1979)
- **cannot** arrest - any charge should be initiated by way of a summons.

Wilfully breaking bottles or glass

Under section 16 of the Litter Act 1979, you must prove the identity of the suspect and that they:

- wilfully and without lawful authority
- broke any bottle, glass or article made of glass
- in or on any public place or private land.

Powers

You can:

- demand the suspect's name and address (section 7(5) of the Litter Act 1979)
- arrest without warrant (section 315 of the Crimes Act 1961).

Failing to comply with directions of a Litter Control Officer

Under section 17(1)(b) of the Litter Act 1979, you must prove the identity of the suspect and that they:

- without lawful excuse
- failed to comply, within a reasonable time, with the directions of a Litter Control Officer.

Powers

You:

- **cannot** arrest - any charge should be initiated by way of a summons.

Personating a Litter Control Officer

Under section 17(1)(d) of the Litter Act 1979, you must prove the identity of the suspect and that they personated or falsely pretended to be a Litter Control Officer.

Powers

You:

- **cannot** arrest - any charge should be initiated by way of a summons.

Refusal to give name to a Litter Control Officer

Under section 17(1)(c) of the Litter Act 1979, you must prove the identity of the suspect and that they:

were required to disclose name and address by a Litter Control Officer and refused to do so, or gave a false name or address.

Powers

You:

- **cannot arrest** - any charge should be initiated by way of a summons.

Wilful obstruction of a Litter Control Officer

Under section 17(1)(a) of the Litter Act 1979, you must prove the identity of the suspect and that they:

- wilfully obstructed a Litter Control Officer
- were acting in the execution of their duties or powers, as conferred by the Litter Act 1979.

Powers

You:

- **cannot arrest** - any charge should be initiated by way of a summons.

Procedures in respect of litter offences

For all of the Litter Act offences, follow these steps.

Step	Action								
1	Ask for and record any explanation.								
2	Consider whether the explanation indicates wilfulness or lack of reasonable excuse.								
3	Record the: <ul style="list-style-type: none"> • number and type of passers-by (this can be used as evidence to prove that people could have been endangered) • suspect's sobriety • suspect's full particulars and verify these. 								
4	<p>Decide whether to warn, report for summons or arrest.</p> <table border="0"> <thead> <tr> <th>If you decide to...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>warn</td> <td>record your decision</td> </tr> <tr> <td>report for summons</td> <td>inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td>arrest (where that power exists)</td> <td> <ul style="list-style-type: none"> • give the rights caution according to the Chief Justice's practice note on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider a formal warning if relevant criteria are met. </td> </tr> </tbody> </table>	If you decide to...	then...	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest (where that power exists)	<ul style="list-style-type: none"> • give the rights caution according to the Chief Justice's practice note on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider a formal warning if relevant criteria are met.
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report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time								
arrest (where that power exists)	<ul style="list-style-type: none"> • give the rights caution according to the Chief Justice's practice note on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider a formal warning if relevant criteria are met. 								
5	If possible, have the suspect clean up the litter. If necessary, do it yourself.								
6	Complete the file and arrange the filing of the charging document.								

Public disorder offences

This section contains the following topics:

- Definition of public place
- Public disorder offences

Definition of public place

A number of provisions in the Summary Offences Act 1981 concern public disorder offences; that is, socially unacceptable behaviour in a public place, or within hearing or view of a public place.

'Public place' means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train or vehicle carrying or available to carry passengers for reward - section 2(1) of the Summary Offences Act 1981 refers.

Without limiting the definition of the term 'public place' in subsection 2(1) above, for the purposes of the Act, a person is in a public place if they are in any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle, which is in a public place - section 2(2) of the Summary Offences Act 1981 refers.

Public disorder offences

Public disorder offences in this chapter include:

- Disorderly assembly
- Disorderly behaviour
- Drinking in a public place
- Excreting in a public place
- Fighting in a public place
- Indecent exposure
- Intimidation
- Language offences
- Offensive behaviour
- Obstructing a public way
- Resisting and obstruction
- Throwing stones
- Unlawful assembly

Disorderly behaviour

This section contains the following topics:

- Definitions
- Ingredients and powers in respect of disorderly behaviour
- Procedures in respect of disorderly behaviour

Definitions

This table outlines the key definitions of terms relevant to disorderly behaviour.

Term	Definition
Disorderly behaviour	'Disorderly behaviour' is behaviour seriously disruptive of public order. It must cause a disturbance to public good order which in the particular circumstances of time and place, any affected members of the public could not reasonably be expected to endure because of its intensity and/or its duration - <i>Brooker v Police</i> [2007] NZSC 30; <i>Morse v Police</i> [2011] NZSC 45
Insulting behaviour	'Insulting behaviour' is behaviour that insults and seriously annoys one or more of those present - <i>O'Connor v Police</i> [1972] NZLR 379
Offensive behaviour	<p>Within the legal framework post the New Zealand Bill of Rights Act 1990, the Supreme Court reformulated the test for determining whether conduct is disorderly or offensive in terms of s4(1)(a) Summary Offences Act 1981 in that proof of disturbance of public order is required. The word 'offensive' is to be interpreted in the context of a provision concerned with offences against public order. The offence must be to such an extent, or of such a kind, that it disturbs or disrupts public order - <i>Brooker v Police</i> [2007] NZSC 30; <i>Morse v Police</i> [2011] NZSC 45.</p> <p>'Offensive behaviour' is behaviour that an ordinary and reasonable New Zealander would consider to wound the feelings of, or arouse real anger, resentment, disgust or outrage in, the type of person actually subjected to it.</p> <p>In deciding this, consider:</p> <ul style="list-style-type: none"> • what was done or said, and • the intent of the suspect, and • the age, sex and other characteristics of the person exposed to the behaviour, and • all the other circumstances, including the time and place of the behaviour. <p><i>O'Brien v Police</i> (unreported, High Court Auckland, 12 October 1992, AP219/92) refers.</p>
Riotous behaviour	<p>'Riotous behaviour' involves force or violence that is likely to cause alarm in at least one person of reasonable firmness and courage - <i>Scott v Parkinson & Howard</i> (1912) VLR 389.</p> <p>Riotous behaviour is more serious than disorderly behaviour, but falls short of the offence of riot. Because it is also disorderly behaviour, it is rarely filed as a charge</p>
Threatening behaviour	'Threatening behaviour' has not been defined by the courts. According to the Police legal section's commentary on the Act, a threat is 'a declaration of an intention to punish or hurt'. If the person has the power to carry out the threat, the offence may become an assault.

Ingredients and powers in respect of disorderly behaviour

Under section 3 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in or within view of any public place

- behaved, or incited or encouraged any person to behave in a riotous, offensive, threatening, insulting or disorderly manner that was likely to cause violence against persons or property.

In the case of insulting behaviour, you must also prove that the suspect knew that the person insulted was likely to be present - *O'Connor v Police* [1972] NZLR 379.

If a court finds that a charge under this section is not proven, it can convict under section 4, whether or not a charge has been filed under that section - section 44 of the Summary Offences Act 1981 refers.

Additional information: See '[Offensive Behaviour](#)'.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures in respect of disorderly behaviour

When faced with behaviour that contravenes section 3 of the Act, follow these steps.

Step	Action
1	Obtain full details of the offending behaviour, the victim, the suspect and any witnesses, and verify. Check that the offence occurred in, or within view of, a public place and obtain proof of disturbance of public order.
2	Record any injuries or damage, whether alcohol was involved, and the type and number of people present.
3	Find out if the suspect was driving or in charge of a motor vehicle at the time. At the discretion of the court, they may be disqualified from driving.
4	Decide whether to warn, report for summons or arrest. Consider whether: <ul style="list-style-type: none"> • a breach of the peace is imminent • the conduct is likely to be repeated.
5	If the offence was minor, warn the suspect. If the offender is co-operative, no further action may be necessary. Verify the identity of the offender before letting them go and record your decision.
6	<p>If you decide to . . then . . .</p> <p>.</p> <p>report for summons inform the suspect of this. It may be feasible to issue a summons at the same time</p> <p>arrest <ul style="list-style-type: none"> • caution (see PDF below) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met. </p>
7	Prepare the prosecution file and file the charging document.

Disorderly assembly

This section contains the following topics:

- Ingredients
- Exception
- Power of arrest

Ingredients

In accordance with section [5A\(2\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- were a participant in a disorderly assembly, and
- were warned by an officer to disperse or otherwise desist;
- and without reasonable excuse:
- continued to participate in the assembly, or
- participated in another disorderly assembly in circumstances in which it was reasonable to deem the warning to have also applied to the new assembly.

Exception

Section [5A](#) does not apply to any group of people who assemble in a public place for the purpose of demonstrating support for, or opposition to, or otherwise publicising, any point of view, cause or campaign.

Power of arrest

You can arrest under section [39\(1\)](#) of the Summary Offences Act 1981.

Unlawful assembly

This section contains the following topics:

- Ingredients
- A lawful assembly can become unlawful
- Exception when protecting a house
- Power of arrest

Note: For further information on 'Unlawful Assembly and Rioting' please refer to [Part 7](#) of this chapter.

Ingredients

Unlawful assembly

[Section 86, Crimes Act 1961](#)

An assembly of 3 or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the persons so assembled:

(a) Will use violence against persons or property in that neighbourhood or elsewhere; or

(b) Will, by that assembly, needlessly and without reasonable cause provoke other persons to use violence against persons or property in that neighbourhood.

Three elements must be proven beyond reasonable doubt:

- Assembly of at least three people;
- Those people had a common purpose. The common purpose may be lawful or unlawful. Each defendant must be a willing participant in the assembly and share the common purpose;
- The members of the assembly must conduct themselves in such a way as to cause the kind of fear described in (a) and (b).

The conduct causing alarm must relate to the common purpose in that it was expected or reasonably anticipated by the members of the assembly at the time they formed the intent to carry out their common purpose. Similar conduct by each defendant will not be sufficient for common purpose, for example, when a social gathering turns into a riotous disturbance.

A lawful assembly can become unlawful

In accordance with section [86\(2\)](#) of the Crimes Act 1961, people who are lawfully assembled may become an unlawful assembly if, with a common purpose, they conduct themselves in such a way that their assembling would have been unlawful if they had assembled in that manner for that purpose.

Exception when protecting a house

In accordance with section [86\(3\)](#) of the Crimes Act 1961, it is lawful for three or more people to assemble for the purpose of protecting the house of any one of their number against persons threatening to break and enter that house in order to commit a crime therein.

Power of arrest

You can arrest under section [315\(2\)](#) of the Crimes Act 1961.

Forcibly hindering

This section contains the following topics:

- Ingredients
- Direct participation or interference necessary
- Power of arrest

Ingredients

In accordance with section [21\(2\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- forcibly hindered or prevented
- any person from
- working at or exercising
- any lawful trade, business, or occupation.

Direct participation or interference necessary

Hindering must have been occasioned by direct participation or interference (*Ports of Auckland Ltd v New Zealand Seafarers Industrial Union* [1999] BCL 80).

Note: To forcibly hinder or prevent a person from working requires actual physical force or a threat of it.

Power of arrest

You can arrest under section [39\(1\)](#) of the Summary Offences Act 1981.

Drinking in a public place

This section contains the following topics:

- Ingredients
- Minor drinking in a public place
- Powers in respect of drinking in public places offences
- Procedures in respect of persons other than minors drinking in public places offences
- Alcohol bans and enforcement

Ingredients

Under section [38\(1\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in or on any aircraft, hovercraft, ship or ferry or other vessel, train or vehicle that is carrying passengers for reward
- drank intoxicating liquor; or
- supplied or offered intoxicating liquor to any other person for consumption there; or
- had in their possession, or under their control, any intoxicating liquor for consumption there.

Note: These offences do not apply in licensed premises, e.g. ferries that have a liquor licence.

Note: A conveyance carrying passengers under charter is deemed to be carrying them for reward – section [38\(2\)](#) of the Summary Offences Act 1981 refers.

Minor drinking in a public place

There are a number of offences involving a minor and alcohol, for which an Alcohol Infringement Offence Notice may be issued. The penalty for each offence is \$250. Consult the AION book for full details.

See the '[Minors](#)' chapter in the Police Manual for good practice guidance on 'policing minors in public places'.

Powers in respect of drinking in public places offences

Under section [39\(2\)](#) of the Summary Offences Act 1981, you can arrest any person if:

- **you see** the offence

and

- the suspect fails to give name and address on demand, or
- you believe that the details given are false.

Note: You have **no** power of search **prior** to arrest.

If you intend to prosecute the suspect, you can seize and remove any intoxicating alcohol (and the vessels containing it) that you have reasonable grounds to believe is intended for consumption in contravention of section [38](#).

If a person is convicted of an offence against section [38](#), the alcohol and vessels seized are forfeited to the Crown - section [45\(1\)](#) and (2) of the Summary Offences Act 1981 refers.

Procedures in respect of persons other than minors drinking in public places offences

If you find someone other than a minor drinking in a public place, follow these steps.

Step Action

1	Decide whether to warn, issue an AION, arrest or report for summons.
2	<p>Consider whether:</p> <ul style="list-style-type: none"> • you saw the offence • the suspect failed to give name and address • you believe the details given are false.
3	<p>If you decide to... then...</p> <p>warn record your decision</p> <p>Issue AION Use AION book, penalty is \$250</p> <p>report for summons inform the suspect of this. It may be feasible to issue a summons at the same time</p> <p>arrest</p> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
4	Obtain all relevant details from the suspect and witnesses, and verify.
5	Prepare the prosecution file and file the charging document.

Alcohol bans and enforcement

See: '[Enforcement of alcohol bans](#)'.

Excreting in a public place

This section contains the following topics:

- Ingredients and powers
- Procedures in respect of excreting in a public place offence

Ingredients and powers

Under section [32\(1\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- urinated or defecated
- in any public place other than a public toilet.

It is a defence if the suspect had reasonable grounds for believing that they would not be seen - section [32 \(2\)](#) of the Summary Offences Act 1981 refers.

If the suspect was not seen, but you think further action is necessary, consider arresting or summoning the suspect on a charge of offensive behaviour.

Additional information: See '[Offensive Behaviour](#)'.

Powers

Under section [39\(2\)](#) of the Summary Offences Act 1981, you can arrest if:

- you see the offence

and

- the suspect fails to give name and address on demand, or
- you believe the details given are false.

Procedures in respect of excreting in a public place offence

When you have reason to believe that a person has urinated or defecated in a public place, follow these steps.

Step	Action
1	Decide whether to warn, arrest or report for summons. Note: The usual procedure is to warn or report.
2	Consider whether: <ul style="list-style-type: none"> • you saw the offence • the suspect failed to give name and address • you believe the details given are false.
3	<p>If you decide to . . then . . .</p> <p>•</p> <p>warn record your decision</p> <p>report for summons inform the suspect of this. It may be feasible to issue a summons at the same time</p> <p>arrest</p> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justices practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
4	Obtain all relevant details from the suspect and witnesses, and verify.
5	Prepare the prosecution file and file the charging document.

Fighting in a public place

This section contains the following topics:

- Ingredients and powers
- Procedures in respect of fighting in a public place

Ingredients and powers

Fighting includes striking, punching, kicking, wrestling, mauling, slapping and scratching, between two or more people who are each taking, or have been taking, a willing and active part.

Under section 2 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they were fighting in a public place.

Note: You need not prove that both parties were exchanging blows -*Taylor v DPP* [1973] AC 964.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Note: You do not have to charge both or all the parties. If one suspect is not caught, the other can still be charged with 'fighting with a person or persons unknown'.

Procedures in respect of fighting in a public place

If two or more people are fighting in a public place, follow these steps.

Step	Action
1	Separate the suspects.
2	Ask each suspect to describe the incident out of the other's hearing. Find out if either suspect was simply acting in self-defence.
3	Note each suspect's physical and mental condition, and any signs of intoxication.
4	Look for independent witnesses. This is the best way to find out what really happened and to ensure that you do not arrest innocent people.
5	Check that all the ingredients of the offence are met.
6	<p>Decide whether to warn, report for summons or arrest.</p> <p>If you decide to . . then . . .</p> <p>.</p> <p>warn record your decision</p> <p>report for summons inform the suspect of this. It may be feasible to issue a summons at the same time</p> <p>arrest</p> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
7	Obtain all relevant details from suspects, victims and witnesses, and verify.
8	Prepare the prosecution file and file the charging document.

Indecent exposure

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures in respect of indecent exposure

Definitions

This table outlines the key definitions of terms relevant to indecent exposure.

Term	Definition
Expose	This means to uncover, display or exhibit.
Genitals	Genitals are the sex organs, not including pubic hair or breasts.
Intentionally	'Intentionally' means on purpose.
Obscene	An act is obscene if it is objectionable or repugnant to an average person's standards of decency or morality - <i>Philpott v Police</i> (unreported, High Court Christchurch, 13 July 1993, AP 138-142/93).

Ingredients and powers

Under section 27(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within view of, a public place
- intentionally and obscenely exposed any part of their genitals.

It is a defence to prove that the suspect had reasonable grounds for believing they would not be observed - section 27(2) of the Summary Offences Act 1981 refers.

Note: If the act was intentional, obscene and witnessed, the suspect should be charged, even if they failed to cause offence.

Powers

You can arrest under section 39 (1) of the Summary Offences Act 1981.

Procedures in respect of indecent exposure

If an offence against section 27 appears to have been committed, follow these steps.

Step/Action

1	<p>Decide whether the ingredients of the offence are met. Consider:</p> <ul style="list-style-type: none"> • Did the offence occur in, or within view of, a public place? • Was it intentional? 						
2	<p>If you have grounds for believing that an offence against section 27 has been committed, decide whether to warn, report for summons or arrest.</p> <p>If you decide to . . . then . . .</p> <table border="0"> <tr> <td>warn</td> <td>record your decision</td> </tr> <tr> <td>report for summons</td> <td>inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td>arrest</td> <td> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met. </td> </tr> </table>	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest	<ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
warn	record your decision						
report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time						
arrest	<ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met. 						
3	<p>Obtain all relevant details from suspects, victims and witnesses, and verify.</p>						
4	<p>Prepare the prosecution file and file the charging document.</p>						

Intimidation

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures in respect of intimidation

Definitions

This table outlines the key definitions of terms relevant to intimidation.

Term	Definition
Forcibly	This means using intimidation or an implicitly menacing show of force, as well as violence. A picket line passively obstructing access to a place is not displaying forcible prevention - <i>Ihaia v Police</i> [1982] 2 NZLR 211 (CA). However, if a picket line offers a show of force, this is forcible prevention, even if the victim turns away and no violence occurs - <i>Police v Brown</i> (1981) 1 DCR 145.
Intent	Intent may be proved by the circumstances alone. Driving without lights past a person's house and then knocking on the door at 1.00 am shows an intent to intimidate, even if the resulting encounter is civil - <i>Eiao v Police</i> (unreported, High Court Masterton, 30 July 1986, M9/86).

Ingredients and powers

Under section 21(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they, with intent to frighten or intimidate:

threatened to injure the other person or a member of their family, or damage their property

or

followed that other person

or

hid any property owned or used by that other person or deprived them of it, or hindered them in its use

or

watched or loitered near the house or other place where the person lived, worked, carried on a business or happened to be

or

stopped, confronted or accosted that other person in any public place.

Under section 21(2) of the Summary Offences Act 1981, you must prove the identity of the suspect, and that they forcibly hindered or prevented any person from working at or exercising any lawful trade, business or occupation.

For any of the offences under section 21, you need not prove the suspect intended to carry out the threat(s) - *R v Syme* (1911) 6 Cr App R 257.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures in respect of intimidation

When dealing with a complaint of intimidation, follow these steps.

Step	Action						
1	<p>Decide whether the threat is genuine. Don't accept that the first person to complain is in the right.</p> <p>Remember: Threats can be difficult to prove and some people tell lies, so be patient and get to the bottom of the matter.</p>						
2	<p>If the threat is genuine:</p> <ul style="list-style-type: none"> • tell the CIB and your supervisor • interview the victim and obtain a statement including: <ul style="list-style-type: none"> ◦ the suspect's identity, or as many clues to it as possible ◦ full details of the threat and the accompanying conversation, including any weapons used ◦ any motive for, or history behind, the threat ◦ any previous threats ◦ evidence of its source ◦ any corroboration • if victim protection is needed, discuss it with your supervisor and take any necessary action • preserve the evidence (take possession of any letter or writing if possible, and photograph any damage) • interview independent witnesses promptly • make enquiries to find out whether the suspect had any excuse, colour of right, or lawful justification • interview the suspect and obtain a statement. 						
3	<p>Decide whether to warn, report for summons or arrest.</p> <p>If you decide to . . then . . .</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 20%; vertical-align: top;">warn</td> <td>record your decision</td> </tr> <tr> <td style="vertical-align: top;">report for summons</td> <td>inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td style="vertical-align: top;">arrest</td> <td> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met. </td> </tr> </table>	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest	<ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
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4	<p>Prepare the prosecution file and file the charging document.</p>						

Language offences

This section contains the following topics:

- Definitions
- Addressing indecent or obscene words
- Addressing threatening, alarming, insulting or offensive words
- Using indecent or obscene words
- Using threatening or insulting words
- Procedures in respect of language offences

Definitions

This table outlines the key definitions of terms relevant to language offences.

Term	Definition
Addressing	Directing the language at a specific person or persons; usually accompanied by acts or gestures.
Alarming words	Words that disturb, frighten or agitate; for example, shouting 'fire' in a crowded theatre.
Indecent words	Words that an average person finds seriously repugnant or distasteful.
Insulting words	Words with a meaning or double meaning that refer offensively to a person's character, upbringing or way of life.
Obscene words	Words used to refer to sexual acts or organs in a manner and in circumstances that make such references offensive to the community's standards of propriety - <i>Police v Drummond</i> [1973] 2 NZLR 263 (CA).
Offensive words	Words intended to outrage or hurt the feelings of the person to whom they are directed.
Reckless	Reckless use of language is more than careless; it is knowing the consequences of using certain words, and using them anyway.
Threatening words	Words that convey an intention to harm a person, or that person's family, property or the like.

Addressing indecent or obscene words

Under section 4(1)(c)(ii) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place,
- addressed indecent or obscene words to any person.

In determining whether words are indecent or obscene, the court must consider the circumstances pertaining at the material time, including whether the suspect had reasonable grounds for believing the hearer would not be offended - section 4(3) of the Summary Offences Act 1981 refers.

Powers

You can arrest under section 31(1) of the Summary Offences Act 1981.

Addressing threatening, alarming, insulting or offensive words

Under section 4(1)(b) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in any public place
- addressed words to a person
- intending to threaten, alarm, insult or offend.

If the intent cannot be inferred from the words used, and if the suspect does not admit intent, a charge under section 4(1)(c)(i) may be more appropriate.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Using indecent or obscene words

Under section 4(2) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place
- used indecent or obscene words.

It is a defence if the suspect had reasonable grounds for believing their words would not be overheard - section 4(4) of the Summary Offences Act 1981 refers.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Using threatening or insulting words

Under section 4(1)(c)(i) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place
- used threatening or insulting words
- and was reckless about whether anyone was alarmed or insulted by them.

The words need not be addressed to any particular individual. The prosecution must prove, however, that the suspect used them deliberately and took an unjustified risk that someone would be offended - *Purves v Inglis* (1915) 34 NZLR 1051.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures in respect of language offences

When dealing with a language offence, follow these steps.

Step Action

1	Identify yourself and ask the suspect to stop using the language in question.	
2	if .	then...
	the suspect complies with your request	no further action may be necessary
	the suspect does not comply	decide whether to warn, arrest or report for issue of a summons. Consider: <ul style="list-style-type: none"> • whether the ingredients of the offence are met • whether anyone other than you heard the language • the suspect's behaviour and demeanour • if the conduct is likely to be repeated
	the above considerations are met	arrest and: <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met
	you decide to report for summons	inform the suspect of this.
3	Obtain full details of the offence, the victim, the suspect and any witnesses, and verify.	
4	Prepare the prosecution file and file the charging document.	

Offensive behaviour

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures

Definitions

For the definitions of disorderly behaviour and offensive behaviour, see '[Disorderly behaviour](#)'.

Ingredients and powers

Under section [4](#)(1)(a) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within view of, a public place
- behaved in an offensive or disorderly manner
- seriously disrupted public order (in the circumstances of time and place and which affected members of the public whom could not be expected to endure the behaviour because of its intensity and/or duration).

A court can convict under this section if a charge filed under section [3](#) is not proven. See '[Disorderly behaviour](#)'.

Powers

You can arrest under section [39](#)(1) of the Summary Offences Act 1981.

Procedures

See '[Disorderly behaviour](#)'.

Obstructing a public way

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures

Definitions

This table outlines two definitions of terms relevant to obstructing a public way under section 22(2) of the Summary Offences Act 1981.

Term	Definition
Obstruct	'Obstructs', in relation to a public way, means unreasonably impedes normal passage along that way.
Public way	'Public way' means any road, street, path, mall, arcade or other way over which the public has the right to pass and re-pass.

Ingredients and powers

Under section 22(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- without reasonable excuse
- obstructed a public way

and

- having been warned by a constable to stop
- continued the obstruction, or
- repeated it, or
- moved it to another place to which it was reasonable to assume the warning also applied.

The obstruction does not have to be stationary - *Gordon v Police* (unreported, High Court Christchurch, 26 August 1985, M322/85).

You need not prove that any particular person was obstructed, but rather that the obstruction impeded normal passage - *McLachlan v Police* (unreported, High Court Christchurch, 26 August 1985, M323/85).

The obstruction need only partially diminish the space available for public traffic.

A warning is a precondition to the offence - *Gordon v Police* (unreported, High Court Christchurch, 26 August 1985, M322/85). It should cover whatever time and area is reasonable in the circumstances. For example: "I am warning you not to obstruct this footpath again, either here or in this street, while this football match is in progress."

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures

When required to deal with a person obstructing a public way, follow these steps.

Step	Action
1	Obtain details from the victim.
2	Find independent witnesses and obtain their statements.
3	Confirm the situation at the scene yourself.
4	Warn the suspect(s) to stop the obstruction (you don't have to warn them individually). If the suspect. then... .. complies take no further action, but obtain the details for a Police 101 does not decide whether to report for summons or arrest. If you decide to report for issue of a summons, comply inform the suspect.
5	If you decide to arrest: <ul style="list-style-type: none"> • give the rights Caution (see PDF above) to the suspect according to the Chief Justice's practice notes on Police questioning • look for independent witnesses • obtain all relevant details from the suspect and witnesses, and verify • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
6	Prepare the prosecution file and file the charging document.

Resisting and obstruction

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures

Definitions

This table outlines two definitions of terms relevant to resisting and obstruction.

Term	Definition
Acting in the execution of duty	An officer's duty has not been fully defined, but includes taking all necessary and lawful steps to: <ul style="list-style-type: none"> • keep the peace • prevent and detect crime • protect life and property from criminal injury or damage • bring offenders to justice. <p>(<i>Rice v Connolly</i> [1966] 2 All ER 649)</p>
Incite or encourage	'Encourage' means to advise or suggest; 'incite' means to arouse or stimulate. The difference lies in the degree of 'encouragement'.
Intentionally	Intentionally means on purpose. Intent is a question of fact and can be proved by direct evidence or from the circumstances (<i>Lloyd's Bank Ltd v Marcan</i> [1973] 2 All ER 359).
Obstruction	'Obstruction' means preventing or retarding the progress of, impeding (The Concise Oxford Dictionary). In more practical terms, it means "making it more difficult for the police to carry out their duties" (<i>Hinchcliffe v Sheldon</i> [1956] 3 All ER 406). <p>Note: This may be physical obstruction, such as wedging oneself between a Police officer and the suspect; or verbal obstruction, such as lying, or warning suspects of approaching Police. It may also be a matter of delaying Police entry to premises or of failing to carry out instructions.</p> <p>It is not obstruction to:</p> <ul style="list-style-type: none"> • refuse to give name and address unless there is a statutory obligation to do so (<i>Elder v Evans</i> [1951] NZLR 801) • ask Police to leave premises or to refuse to answer questions.
Resisting	Some degree of force on the part of the offender, for example, violently trying to break away from an officer after arrest.

Ingredients and powers

Under section 23 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- resisted or intentionally obstructed, or
- incited another person to resist or obstruct:
 - a constable, prison officer or traffic officer acting in the execution of their duty (or a person helping any of these), or
 - a Police dog working under the control of a Police Dog Handler.

You:

- must prove that the suspect intended to obstruct (*Police v Barcham* (1983) 2 DCR 195)

- do not have to prove that the suspect knew who you were or that you were carrying out your duties (*Pounder v Police* [1971] NZLR 1080).

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures

If you have to take action for an offence under section 23, follow these steps.

Step	Action
1	Ensure that you identify yourself as a Police constable.
2	<p>If the suspect resists or verbally obstructs:</p> <ul style="list-style-type: none"> • give a warning • if the offence continues, arrest.
3	<p>If the obstruction is physical, or blatant - that is, if it really pushes you to the limit - arrest and:</p> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • look for independent witnesses • obtain all relevant details from the suspect and witnesses, and verify • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
4	Prepare the prosecution file and file the charging document.

Throwing stones

This section contains the following topics:

- Ingredients and powers
- Procedures

Ingredients and powers

Under section 34 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- threw or discharged any stone or other object
- in a manner that was likely to cause injury or damage.

This includes objects discharged from slings, catapults, bows and other such weapons. Objects discharged by firearms are covered by the Arms Act 1983. See: '[Arms](#)' chapter.

This charge is brought only when no injury or damage results. If injury or damage occurs, the suspect should be charged with assault under section 9 or intentional damage under section 11 of the Summary Offences Act 1981.

Powers

You can arrest under section 39(2) of the Summary Offences Act 1981 if:

you see the offence

and

- the suspect fails to give name and address on demand, or
- you believe that the details given are false.

Procedures

If you have reason to believe that a person has committed an offence against section 34, follow these steps.

Step	Action
1	Note the result of the action.
2	Locate any independent witnesses.
3	Isolate and interview the suspect, obtaining full details.
4	Decide whether to warn, report for issue of a summons or arrest. Consider whether: <ul style="list-style-type: none"> • you saw the offence • the suspect failed to give name and address • you believe the details given are false.
5	If you decide to report for summons, inform the suspect.
6	If you decide to arrest: <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • in conjunction with the Custody Supervisor, consider formal warning if relevant criteria are met.
7	Prepare the prosecution file and file the charging document.

Appendix A

A guide to categories of offences can be found in section 6 of the Criminal Procedure Act 2011.

Widely understood definitions for 'offence' and 'crime' were repealed as one consequence of major changes heralded by the introduction of the Criminal Procedure Act 2011. The following informal definition is intended to provide assistance and has been drafted with assistance from legal experts.

'Offence' and 'crime' are words that are used interchangeably in statute, and there is no material difference between them. They may be described as any act or omission that is punishable on conviction under any enactment, and are demarcated into four categories as defined in section 6 of the Criminal Procedure Act 2011.

Summary of behaviour related offences

This table summarises the offences associated with behaviour.

Offence	Category
Breach of the peace Section 42 - Crimes Act 1961 Note: Although there is a power of arrest, breach of the peace is not an offence	*Not an offence
Disorderly, offensive, threatening, insulting behaviour Section 3 - Summary Offences Act 1981	Category 2 offence
Offensive behaviour Section 4(1)(a) - Summary Offences Act 1981	Category 1 offence
Language offences Section 4(1)(b)&(c) - Summary Offences Act 1981	Category 1 offence
Using reckless or obscene words Section 4(2) - Summary Offences Act 1981	Category 1 offence
Fighting in a public place Section 7 - Summary Offences Act 1981	Category 1 offence
Intimidation Section 21 - Summary Offences Act 1981	Category 2 offence
Obstructing a public way Section 22 - Summary Offences Act 1981	Category 1 offence
Resisting and obstruction Section 23 - Summary Offences Act 1981	Category 2 offence
Indecent exposure Section 27 - Summary Offences Act 1981	Category 2 offence
Excreting in a public place Section 32 - Summary Offences Act 1981	Category 1 offence
Throwing stones Section 34 - Summary Offences Act 1981	Category 1 offence
Drinking in a public place Section 38 - Summary Offences Act 1981	Category 1 offence

Documentation

 [Breach of the Peace release notice.doc](#)

36.5 KB

Version number: 2

Owner: NM: Response &
Operations

Publication date: 03/03/2016

Last modified: 01/05/2020

Review date: 03/03/2018

Printed on : 20/05/2020

Printed from : <http://tenone.police.govt.nz/pi/part-06-behaviour-offences>