

Formal warnings

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Policy statement and principles

What

A formal warning is a lawful alternative to prosecution for some low level offences. A formal warning can be issued from the street or at a Police station for a qualifying offence that meets evidential sufficiency and public interest requirements set out in the Solicitor-General's Prosecution Guidelines.

The ability to warn is derived from the Police common law power of discretion.

Why

The benefits of a formal warning include:

- better outcomes for people through resolving the offence at the time of occurrence
- reduction in court appearances and court workload
- faster processing time
- swifter redeployment of staff
- better outcomes for the victim, offender and the Justice system

A formal warning is an effective tool for resolving low-level offences that require Police intervention and in normal circumstances, public interest considerations do not support a prosecution.

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

How

The approach to formal warnings should align with the Four E model; Engage, Educate, Encourage, and Enforce. The formal warning is one of the 'Enforce' options.

The issuing of a formal warning requires the Officer to assess the situation and exercise discretion. A preliminary decision on the appropriate response to the offence can be made based on the evidence (both availability and sufficiency), the underlying circumstances surrounding the event, and the public interest considerations set out in the Solicitor-General's Prosecution Guidelines.

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

A formal warning can be issued from the street, pre-arrest or post-arrest, or it can be issued post-arrest from the custody suite or station.

Principles

The formal warning process is aligned with the Prevention First Operating Model and the guiding principles of Our Values (PRIMED) with the addition of below:

- **Manaakitanga** - Action is taken to enhance the mana of each individual. Relationships are based on compassion, generosity, reciprocity and respect.
- **Kotahitanga** - People work together in unity to support and achieve common goals.

Purpose of this chapter

This chapter sets out:

- the intent and principles of the formal warning policy and the alignment with Our Values, and the Prevention First Operating Model
- the reasons for issuing a formal warning and the criteria around the use of formal warnings
- the expectation for consistent practice that aligns with the Solicitor-General's Prosecution Guidelines for establishing

evidential sufficiency and whether a prosecution is required in the public interest

- the expected practice standards for issuing and recording a formal warning

Forms associated with this chapter

- Formal warning letter
- Receipt of contested Police warning letter
- Upheld Police formal warning letter
- Withdrawn formal warning letter

Forms accessed in WORD toolbar> Police Forms> (A-H)> Formal warnings

(If unable to access forms through WORD, access directly from the Police server [here](#))

Eligibility criteria for formal warnings

Who is eligible for formal warnings?

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

- The offender **must** be 18 years or over
- The offence **must**:
 - carry a 6 months term of imprisonment or less, or
 - be possess/uses utensils (codes 3185, 3284 or 5985), and
- The offence **must not** have arisen out of a family harm incident
- The offence includes offences against the Health Act 1956 and Civil Defence Emergency Management Act 2002 (COVID-19 related offences).

Additional factors to be considered when assessing suitability

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

- evidential sufficiency - Solicitor-General's Prosecution Guidelines
- the public interest - Solicitor General's Prosecution Guidelines
- the nature and seriousness of offence
- whether or not the power of arrest is required
- offender considerations (e.g. mental health issues, financially struggling, homelessness)
- victim considerations including vulnerability
- reparation considerations
- criminal history and/or previous formal warnings
- multiple offences stemming from one incident, where one is being prosecuted they should all be bundled into the prosecution file to provide the full picture to the Court.

Take a holistic approach to deciding what resolution to issue. Discuss and seek out opportunities to prevent re-offending, including the ability to refer to community-based support services and networks either formally via [Te Pae Oranga](#) or Whānau Ora Supported Resolutions options, or directly to providers, to work to protect vulnerable people, particularly repeat victims.

Formal warnings work best for first and second time offenders. Previous formal warnings do not preclude another formal warning being issued if the circumstances warrant it.

The evidence available and rationale must be recorded on the file to prove the offence was committed, or a statutory defence applies.

Formal warning process

Stage	Description
1	The Officer must fully consider the circumstances of the incident or investigation against the <u>eligibility criteria</u> and the <u>additional factors</u> above when assessing suitability for a formal warning.
2	<p>If a decision is made to recommend the issuing of a formal warning, the Officer must then discuss their recommendation with a supervisor and gain their approval.</p> <p>When issuing from the street, if a supervisor is not working, the Officer must assess the offender's eligibility and then make phone contact with a Supervisor at the nearest 24 hour station or District Command Centre for approval.</p> <p>Note: When a supervisor is the person issuing the formal warning, approval must be sought from another supervisor i.e. the District Command Centre Sergeant, to ensure a second opinion is across decisions for each incident.</p> <p>Important: If the offender refutes their involvement in the alleged offending, the formal warning can still be issued.</p>
3	The supervisor must ensure the identity of the offender has been checked, the offence fits within the eligibility criteria and the additional factors (set out above) are considered. They must inform the Officer of the decision and provide them with their QID, decision and rationale to record against the occurrence.
4	<p>To ensure transparency, the Officer must then advise the offender in a language and manner they understand, that a formal warning is being issued on this occasion and why.</p> <p>The Officer must also check and confirm the offenders email and/or postal address, and advise that they will receive a copy of the formal warning by post or email.</p> <p>If a victim is involved and the decision to formally warn is made, the Officer must ensure they are aware of the decision and rationale.</p> <p>Important: Where the supervisor instructs the release of an offender without a formal warning due to evidential insufficiency, the incident/occurrence must still be documented thoroughly e.g. in the Occurrence / Custody Module.</p>
5	The Officer will complete sufficient notes in the occurrence to support their recommendation to give a warning and ensure the approving Supervisor's name / QID is recorded.
6	<p>The File Management Centre (FMC) will enter the warning details into NIA, making that information available for any future warning considerations for that offender.</p> <p>The FMC will then issue the formal warning letter to the offender by either email or post.</p>

Audit process

A Supported Resolutions Coordinator, Prevention Manager and others as required will be responsible for ensuring districts are adhering to the Formal warning policy. Key checks will be made to ensure there is evidential sufficiency and the issuing of the formal warning was in the public interest.

Disputes process

A formal warning can be disputed up to four weeks after the warning. Any disputes will go to 105 via email or phone. As disputes can arise, it is essential that evidence and decision making considerations are clearly recorded.

Upon receipt of a dispute the 105 team will forward this to the district Supported Resolutions Co-ordinator to organise a review.

Disputes will be reviewed by the districts Supported Resolutions Coordinator and Prevention Manager. Feedback will be provided to the Officer on the outcome of the dispute as/when required, by the Supported Resolutions Coordinator.

The Supported Resolutions Coordinator **will** update NIA with the outcome and **will** distribute the appropriate letter – Upheld Police formal warning letter or withdrawn formal warning letter. The appropriate rationale for the decision should be included within the letter.

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UPDATED ADVICE - Notice re Formal Warnings

by **s.9(2)(a) OIA** Created on behalf of **MCSKIMMING, Jevon** **s.9(2)(a)**

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Please note this has been amended to correct an earlier error - Police's position is that a formal written warning should only be issued when there is a clear admission of guilt for offences of six months or LESS (not six months or more as previously stated). Apologies for this error.

Police is currently considering whether to appeal a recent High Court ruling - S v Commissioner of Police [2021] NZHC 743 - relating to a 2018 allegation of sexual grooming, where a formal written warning was issued.

Until a decision is made regarding whether an appeal will be lodged, Police's position is that a formal written warning should only be issued when there is a clear admission of guilt for offences of **six months or LESS**. Work is also underway regarding best practice for Formal Written Warnings.

The High Court ruling can be viewed [here](#).

The Police Instructions relating to Formal Warnings can be found [here](#).