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Tēnā koe J. Beddek

Request for information

Thank you for your Official Information Act 1982 (OIA) request of 8 November 2022, in which you asked for a copy of the following Police Manual chapters:

- Association Offences
- Attempts
- Banking, currency and card policy
- Calibrating road policing equipment
- Control of high-power laser devices

You also asked for the following information in respect to each of the Police Manual chapters listed above:

- A copy of the latest version of the document.
- The date on which the current version of the document came into effect.
- The next planned review date of the document.
- The licence under which the document and any accompanying information is released.

Please find attached a copy of the current version of each of the Police Manual chapters you have requested.

All chapters have been released in full except for the one on Calibrating road policing equipment which has been released in part, whereby information has been withheld under s9(2)(a) of the OIA to protect the privacy of natural persons.

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The following table provides information relevant to the second part of your request:

Police Manual Chapter	Date the current version of the document came into effect	Next planned review date of the document	Licence under which the document and any accompanying information is released
Attempts	12 June 2017	12 June 2023	Not applicable
Association offences	13 April 2018	13 April 2024	
Banking, currency and card policy	27 Sept 2022	27 Sept 2027	
Calibrating road policing equipment	11 July 2018	11 July 2024	
Control of high-power laser devices	13 June 2022	13 June 2028	

I trust the information we have been able to provide addresses your main areas of interest. You have the right to ask the Ombudsman to review my decision if you are not satisfied with the response to your request. Information about how to do so is available at: www.ombudsman.parliament.nz.

Nāku noa, nā



Ian Barnes

Assurance Manager: Police Instructions
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Association offences

Table of Contents

Table of Contents	2
Policy statement and principles	4
What	4
Why	4
How	4
Overview	5
Purpose	5
Health and safety duties	5
Related information	5
Offences reported and recorded	6
Offences reported to, or discovered by Police must be recorded	6
Code book - charge wording, penalties and more	6
Accessory after the fact	7
What is an accessory after the fact?	7
Examples	7
Who are not accessories after the fact?	7
Receiving	7
Establishing offence	7
Attempting to be an accessory	8
Table of offences	8
Penalty	8
Who may be charged	9
of the offender is acquitted	9
Evidence of offending	9
Further information	9
Conspiracy	10
What is conspiracy?	10
When the crime has not been committed	10
Table of offences	10
Proving the offence	10
Participating in a conspiracy	11
Mens rea	11
Offences outside New Zealand	11
Place of commission of offence	11
Charges	11
Conspiracy between spouses or common partners	11
Conspiring with unknown persons	12
Substantive charges	12
Procedures when obtaining evidence	12
Notes about evidence	12
Further information	13
Parties to offences	14
What is a party to the offence?	14
Liability for probable consequences	14
Difference between parties and accessories after the fact	14
Liability for offences committed in a different way	14
Definitions	14
Aiding	15
Abets	15
incites	15
Counsels	15
Procures	15
Probable consequence	15
Any person	15
Offence	15
Further examples	15
Establishing offences	16

Attempts	16
Mens rea	17
Negligence	17
Bystanders	17
Spec a re at onsh p w th offender s requ red	17
Investigating parties	17
Further information	17
Secondary offences by parties	19
Liability for secondary offences	19
Examp e	19
Question of fact	19
Further information	19
Prosecution and conviction of parties to offences	20
Proceedings against principal and secondary offenders	20
me m t	20
Convictions	20
Conv ct on of pr nc pa offender not necessary	20
Uncorroborated ev dence of accomp ces	20
Innocent agents	20
Formulating charges	20
Charges under sect on 66	21
Spec f c party offences	21
Examp es of spec f c pa t es re ated offences	21
Further information	21

Policy statement and principles

What

This chapter outlines secondary offences associated to a principal offence. An association offence is one where there are two or more participants involved in the offence.

Association offences cover situations of:

- a person being a party to an offence at any or all stages of aiding, abetting, or actually committing an offence and includes inciting, counselling, or procuring, another person to commit the offence
- more than one offender being involved, then there is generally a conspiracy relating to that offence
- when the principal offence has been committed and other people may become involved later as accessories after the fact.

Why

Association offences are central to the provisions of the Crimes Act 1961. They specify the various ways in which persons can become liable for participating in the commission of offences. Police have a responsibility to keep people safe from victimisation by:

- preventing harm
- investigating parties to offences, conspirators and accessories after the fact
- apprehending offenders.

How

Police will ensure:

- they continue to work pro-actively with partnerships, prevention first and victim focused strategies, and
- association offences are investigated as thoroughly as principal offences and resolution action taken as deemed appropriate.

Overview

Purpose

This chapter explains the law, gives examples, and provides basic procedures and guidelines for investigating each of these association offences:

- accessory after the fact
- conspiracy
- parties to an offence.

If a planned offence does not take place, or if there is insufficient evidence to prosecute for the principal offence, do not forget that one of these association offences may have been committed.

Health and safety duties

The expectation of the Commissioner and the [Health and Safety at Work Act 2015](#) is that employees investigating association offences will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of themselves or others, comply as far as they are reasonably able to with any reasonable instruction that is given to adhere with the Act and its regulations.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace. See also '[Health, safety and wellbeing](#)' for keeping our communities safe, and ensuring our people are safe and feel safe.

Related information

Refer also to the Police Manual chapter '[Attempts](#)' for related information.

Offences reported and recorded

Offences reported to, or discovered by Police must be recorded

The National Recording Standard ([NRS Section 1.3](#)) contains rules and principles governing recording of offences.

[Recording offences](#) intranet page provides an overview of these rules and contains links to training and resources.

Code book - charge wording, penalties and more

The [Legislative Reference Table \(LRT - Code Book\)](#) is a search tool that links to information about all offence, incident and task codes.

The code book provides information for each offence code.

Accessory after the fact

What is an accessory after the fact?

An accessory after the fact is someone who, knowing a person was a party to an offence receives, comforts, or assists that person or tampers with or actively suppresses any evidence against them, in order to enable them to escape after arrest or to avoid arrest or conviction.

s71(1) Crimes Act 1961

Examples

Examples of accessories after the fact include people who, with the requisite knowledge:

- provide accommodation for an offender until they can escape from Police
- provide transport so the offender can escape
- destroy or dispose of documents or evidence (e.g. clothes or weapons used in an offence).

Who are not accessories after the fact?

Accessories after the fact are not people who are:

- a party to the offence (they are involved before or during the offence, whereas an accessory is involved after the offence is completed (see [R v Mane](#) (1989) 5 CRNZ 375 and [Larkins v Police](#) [1987] 2 NZLR 282)
- a person whose spouse (not including a de facto spouse) or civil union partner was a party to an offence and who does an act to enable that spouse or any other party to the offending to evade justice.

Receiving

A person does not become an accessory after the fact simply by receiving property that is dishonestly obtained. You must be able to prove that they received the goods in order to help the offender.

Establishing offence

This table outlines the essential elements of liability which must be proved under section 71(1): see [R v Thomson](#) (1992) 9 CRNZ 108 (HC).

You must prove:	Comment
(a) that an offence was committed by a person	It must be proved that the person whom the accessory assisted was guilty of an offence, although they do not need to have been convicted. The alleged accessory is entitled to insist on proof that the offence was actually committed, and to challenge that proof.
(b) that the suspect received, comforted, or assisted that person or actively suppressed evidence against that person	Receiving, comforting, assisting or tampering with or actively suppressing evidence are not mutually exclusive categories of conduct and may overlap - for example tampering with evidence may also amount to assisting. There must be deliberate action and more than a mere omission to act, although in some circumstances passive acquiescence may be culpable, for example, if a person allows a known offender to take refuge in their house. The accessory's actions do not need to be entirely successful in helping the offender escape from justice, but must help them in some way.
(c) that at the time of the above action, the suspect knew that the person was a party to the offence	There must be proof of either actual knowledge or wilful blindness that the person being assisted was party to the relevant offence. This knowledge must exist at the time of the assistance.
(d) that the purpose of the suspect's action was to help the person evade justice	All acts must be done with the express intention of helping the person to evade justice, but this does not need to be the accessory's only or dominant motivation.

Attempting to be an accessory

A person can be charged for attempting to be an accessory where they do an act for the purpose of helping an offender evade justice, but that act does not actually help the offender. For example, in *Nicolls v R* [2016] NZCA 201, the defendant was convicted of attempting to assist the offender to avoid arrest despite the fact that her texts warning him of the presence of the Police near his hiding place were sent after he had in fact been taken into custody.

Table of offences

While section [71](#) provides a definition of accessory after the fact, it does not create a substantive offence. There is provision for the punishment of accessories in a small number of offences, and in other cases, section [312](#) applies.

Offence	Crimes Act 1961 section	Category
Accessory after the fact to treason	76	Category 4 - see note below table
Accessory after the fact to piracy	97	Category 3
Accessory after the fact to murder	176	Category 4 - see note below table
Accessory after the fact to a crime other than those specified	312	To determine category - see note below table.

Note: Accessory after the fact offences are usually the same category of offence as the principal offence, by virtue of section [6\(2\)\(c\)](#) of the Criminal Procedure Act 2011. For example, murder is a Category 4 offence, thus the offence of accessory after the fact to murder also features as Category 4. There may be exceptions for specific offences that are listed in the [Court of Trial Protocol for Category 2 and 3 offences](#), for example the offence of being accessory after the fact to piracy (section [97](#)).

Penalty

Unless a different penalty is specified in the Crimes Act or another enactment, an accessory after the fact to any imprisonable offence is

liable to these penalties ([s312](#)).

If the imprisonable offence is punishable by...	an accessory after the fact is liable to a term of imprisonment...
imprisonment for life	not exceeding 7 years
imprisonment for 10 or more years	not exceeding 5 years
other penalties	not more than half the maximum punishment to which they would have been liable if they had committed the principal offence.

Who may be charged

A person charged with being an accessory after the fact may be proceeded against:

- whether or not the principal offender or any other party to the offence or the person by whom the property was obtained has been proceeded against or convicted
- alone, as for a substantive offence, or jointly with the principal or other offender or person by whom the property was stolen or dishonestly obtained.

([s137](#) Criminal Procedure Act 2011)

If the offender is acquitted

A person may be convicted as an accessory after the fact even if the original offender has been or may be acquitted (whether in a joint or separate trial) unless in all the circumstances the accessory's conviction is inconsistent with that acquittal.

Inconsistency depends on the state of the evidence. For example, where the same evidence is relied upon to prove elements of the accessory charge and to prove the principal offence, the quashing of the principal offender's conviction due to a material misdirection on the elements of the offence will mean that the accessory's conviction cannot stand: *Tere v R* [2011] NZCA 549; *Lemanu v R* [2011] NZCA 613.

Evidence of offending

The evidence for a charge of accessory after the fact is usually discovered when you are investigating the principal offence or after the principal offender's arrest. For example:

- a search of the crime scene or principal offender's address may indicate someone has tampered with evidence, or
- a delay in locating the offender could mean they are being hidden.

Evidence of the suspect's involvement may come from:

- their admission of helping the offender
- their behaviour revealing guilty knowledge
- the principal offender's admission of receiving help after the crime
- independent witnesses
- circumstantial evidence
- your own observations (e.g. seeing the person hinder Police in their investigation or helping the offender in some other way)
- forensic evidence (e.g. DNA located on murder weapon of an accessory).

Further information

See the [commentary](#) in Westlaw NZ for further explanation of the terms applied to section [71](#) (accessory after the fact) of the Crimes Act 1961.

Conspiracy

What is conspiracy?

Conspiracy is not defined in statute but left to common law to establish the ingredients of the offence.

In essence, a conspiracy is an agreement between two or more people to commit an offence (an act or omission punishable by statute).

When the crime has not been committed

Conspiracy obviously occurs before the principal offence is committed or attempted. Therefore, in cases where the crime has not actually been committed, and where there is insufficient evidence to prove attempt, a charge of conspiracy may be appropriate.

Table of offences

This table lists conspiracy offences and their jurisdiction.

Conspiracy to...	Crimes Act section	Category
commit an offence other than those specified in Crimes Act 1961	310 (see note below)	See below*
commit treason	73 (f)	See below*
commit piracy	96	See below*
make a false accusation	115	See below*
defeat justice	116	See below*
murder	175	See below*
prevent collection of rates and taxes	309	See below*

*Conspiracy offences are the same category of offence as the principal offence, by virtue of section [6](#)(2)(c) of the Criminal Procedure Act 2011.

Note: Section [310](#) applies to any conspiracy to commit any offence, in other words any act or omission definable and punishable under the provisions of section [6](#) of the Criminal Procedure Act 2011. Conspiracy is not in itself an offence - the offence is conspiring to commit a specified offence.

Proving the offence

A conspiracy exists as soon as two or more people agree to commit an offence, or in other words to do an unlawful act by unlawful means (*Director of Public Prosecutions v Doot* [1973] AC 807). It continues until they have carried out their plan or ended their agreement.

The 'agreement' is the crucial factor. The agreement need not be expressed clearly in words. It is sufficient that the conspirators act together with the same or common aim. People can create a conspiracy in a moment, and it may last only for a minute.

Mere intention to commit an offence is not enough to create a conspiracy - a conspiracy exists when the plan moves beyond intention and there is an agreement to carry it into effect (*R v Dillon* [1956] NZLR 110 (CA)). However the exact details of the planned offending do not need to be finalised, and no actual steps need to be taken toward offending. For example, there may be a conspiracy to rob a bank, even though the question of which bank is still left open.

If 'A' plans to commit an offence and 'B' simply knows that 'A' has a plan, or was present when A discussed the plan, this is not enough for the charge of conspiracy. Each party to the conspiracy must agree to the plan and intend that it be carried out.

The courts may deduce that a conspiracy has occurred merely because of the actions of the people involved.

Participating in a conspiracy

The agreement need not be secret. However, people who know of the agreement are not guilty of conspiracy unless they are actually part of the agreement.

As conspiracy is complete upon agreement and continue until the plan is carried out, a person withdrawing from the agreement is still guilty of conspiracy, as is any person who becomes party to the agreement after it has been made. However, a person can effectively withdraw before the actual agreement is made.

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Because the conspiracy continues until the offenders commit the offence or end the agreement, people can withdraw from the conspiracy and fresh conspirators join, but there is still only one conspiracy as long as the people involved are acting together to achieve the same criminal aim. In such a situation it would be practical to charge all of the alleged co-conspirators jointly.

A person can be tried and convicted of conspiracy alone, e.g. when the other party is not able to be located to be charged. (*R v Shaw*)

Mens rea

Members of a conspiracy need to have both an intent to agree, and an intention that the plan actually be carried out. Passive acquiescence in a course of conduct over which the defendant would have had no influence is not enough.

In *Churchill v Walton* [1967] 2 AC 224 the judge held that the accused must have an intention to commit an act which, on the facts known to them, is unlawful. They don't need to know it is a crime, but they do need to know the facts that make it unlawful. An ignorance of the law is no excuse (s25 Crimes Act 1961).

While there must be an intention that the agreement be carried out, a participant in a conspiracy need not be capable of committing the substantive offence (e.g. a quadriplegic can conspire to commit murder even if they are incapable of carrying it out).

Offences outside New Zealand

Under section 310 of the Crimes Act, it is an offence to conspire to commit an offence or to do or omit to do anything, in any part of the world that would be an offence in New Zealand. The person has a defence if they can prove that the act is not an offence under the law of the place where it was to be committed.

Place of commission of offence

Under section 7 of the Crimes Act, an offence is deemed to have been committed in New Zealand (and therefore within the jurisdiction of New Zealand's courts) if:

- any act or omission forming part of the offence occurs in New Zealand, or
- any event necessary to the completion of the offence occurs in New Zealand.

The person charged with the offence, does not need to have been in New Zealand at the time of the act or omission or event.

It is sufficient that one act or omission forming part of the offence, necessary for its completion occurs in New Zealand. (*R v Sanders* [1984] 1 NZLR 636)

Charges

If the conspirators are charged:

- jointly, and any are acquitted, the others will be acquitted only if the evidence against them all is the same
- separately, some may be acquitted while others are convicted.

Conspiracy between spouses or civil union partners

A person is capable of conspiring with their spouse or civil union partner, or with their spouse or civil union partner and any other person (s67 Crimes Act 1961).

Conspiring with unknown persons

A person who conspired with other unknown people may be indicted, tried alone and convicted, as long as there is proof that an agreement was made with the unknown person, e.g. a phone conference call where an agreement is reached but the ID of one is unknown. (*R v White* (1945) GLR 109 and *Shaw v DPP* [1962] AC 220)

Substantive charges

If you can prove a substantive charge of a specific offence, you should charge the suspect with that offence, not with conspiracy. For example, if you can prove two people murdered another, charge them with murder, not conspiracy to murder.

You should not normally charge a suspect with an offence and conspiracy to commit that offence because:

- the judge may disallow evidence admissible only on the conspiracy charge because it might prove to be prejudicial to the other charge (e.g. the jury may assume the accused's guilty knowledge or intent regarding the substantive charge on the basis of the evidence presented to support the conspiracy charge)
- an added conspiracy charge can unnecessarily complicate and prolong a trial
- if the conspiracy charge is not founded on evidence or is an abuse of process, it may be quashed
- the court may order severance in the interests of justice (i.e. each charge or in some circumstances series of charges may be heard at separate trials).

Do not omit a conspiracy charge if the substantive offence does not represent the total criminality. For example, if two people succeeded in burning down a warehouse and then conspired to murder a witness, they should be charged with arson and conspiracy to murder.

Procedures when obtaining evidence

Follow these steps when obtaining evidence of conspiracy.

Step	Action
1	Obtain statements from witnesses about: <ul style="list-style-type: none"> - who made the agreement - who else was present at the time - the planned offence - whether the conspirators acted to further their aim.
2	Interview everyone involved. People are usually unfamiliar with the offence of conspiracy and, while they may be reluctant to admit committing any substantive offence, they will often discuss planning a crime, which may constitute conspiracy.
3	Establish: <ul style="list-style-type: none"> - that there was an agreement to commit an offence - the identity of the parties - whether any of the parties said, wrote, or did anything to further the common aim.
4	Consider: <ul style="list-style-type: none"> - obtaining a search warrant to seize evidence to support charge(s) - electronic interception if circumstances justify this.
5	Evaluate the evidence and consider whether a charge of conspiracy is appropriate.

Notes about evidence

- Evidence given by an accomplice against their co-conspirator does not need to be corroborated for the accused to be convicted. Neither does a judge have to warn a jury about the absence of corroboration (s 121 Evidence Act 2006).
- Conspirators should be jointly charged. Anything one of them said or did to further the common intention is admissible against

the other.

Further information

See the [commentary](#) in Westlaw NZ for further explanation of the terms applied to section [310](#) (conspiring to commit an offence) of the Crimes Act 1961.

Parties to offences

What is a party to the offence?

A party to the offence is a person who either:

- actually commits the offence
- does or omits an act for the purpose of aiding a person to commit the offence
- abets a person in the commission of the offence
- incites, counsels or procures any person to commit the offence.

All parties are equally liable for the substantive offence.

[s66\(1\)](#) Crimes Act 1961

Liability for probable consequences

Where offenders agree to commit an offence together, all who entered the agreement can be charged as parties to that offence. They can also be charged as parties to any [secondary offence](#) any one of them commits in order to assist the commission of the offence originally agreed to (provided that the commission of the secondary offence was a probable consequence of pursuing the unlawful agreement).

[s66\(2\)](#)

Difference between parties and accessories after the fact

Parties include those who actually commit the offence (principal offenders) and those who assist before and during its commission (secondary offenders). A person involved after the offence is completed is not a party, but an accessory after the fact.

[Larkins v Police](#) [1987] 2 NZLR 282

Liability for offences committed in a different way

A person who incites, counsels or procures another to commit an offence is still liable as a secondary party under section [66\(1\)](#) even if that offence is committed in a different way than incited, counselled or suggested. The offence must be in the same type as the secondary party originally intended, or one of a range of offences that they knew the principal offender was likely to commit.

[s70\(1\)](#)

Definitions

This table gives meanings and examples of key terms.

Term	Means	Example
Aiding	To assist or help a person commit the offence or give them support, advice or information. (There must be proof of actual assistance).	<ul style="list-style-type: none"> - Keeping lookout for someone breaking and entering. - Supplying jumper leads or tools for someone unlawfully taking a motor vehicle. - Telling a burglar when their victims are out of the house.
Abets	To instigate or encourage another person to commit the offence. Note: “Abets”, “incites” and “counsels” overlap on their ordinary meanings.	A woman encourages her lover to murder her husband.
Incites	To rouse, stir up, stimulate, or urge a person to commit the offence. Note: “Abets”, “incites” and “counsels” overlap on their ordinary meanings.	A sports fan spurs on another to assault a protester and yells approval while the offence is taking place.
Counsels	To intentionally instigate the offence by advising a person on how to commit an offence, or planning its commission for another person. Note: “Abets”, “incites” and “counsels” overlap on their ordinary meanings.	Teaching someone how to open a safe. Note: It is not necessary for the person counselling the offender to know about the particular offence the offender plans to commit.
Procures	To cause an offence or ensure its commission by knowingly and intentionally obtaining another person to carry it out. You procure by setting out to see that something happens and taking steps to ensure that it does.	Hiring someone to undertake a contract killing. Note: It is possible to procure by fraud, persuasion, words or conduct, e.g. by offering money to someone.
Probable consequence	Something that the person knows could well happen - a real or substantial risk. R v Gush [1980] 2 NZLR 92 (CA)	
Any person	Includes an innocent agent	Innocent “agent” may be procured to commit offence. R v Paterson : used an innocent agent to uplift TV from a flat he wrongfully had a key to. Act of innocent agent was regarded as act of person who procured them.
Offence	As categorised by section 6 of the Criminal Procedure Act 2011.	

Further examples

This table gives further examples of when people are parties to offences.

A person who...	is a party to...
supplies equipment or lends a motor vehicle to be used in a burglary	burglary
brings a woman to a party with the intention that she is subjected to gang rape	rape
as an employee, gives the office key to a burglar, or who intentionally leaves a factory door unlocked for a burglar	burglary
unlawfully takes a car so that an accomplice can use it as a getaway vehicle for a robbery	robbery.

Establishing offences

This table outlines the key ingredients of 'party' offences and what must be proved.

Offence ingredient & Crimes Act section	You must prove the suspect's identity and that...	Comment
Party to the offence s66(1)(a)	- they actually committed the offence	This may include the use of an innocent agent to carry out the act.
Party to the offence s66(1)(b) - (d)	- the offence was committed by a principal offender; and - the secondary party aided, abetted, incited, counselled or procured the principal party in the commission of the offence by words or conduct or both; and - the secondary party intended to aid etc. the principal party to commit the offence; and - the secondary party knew the essential physical and mental elements of the offence to be committed.	You do not need to prove which of the subsections (b)-(d) applied to the suspect, just that the suspect participated in the offending. The secondary party must have rendered actual assistance to the principal offender (<i>Ahsin v R</i> 2014] NZSC 153).
Party to a secondary offence s66(2)	- the suspect was party to an agreement to prosecute an unlawful purpose; and - knew that the secondary offence was a probable consequence of the prosecution of the common purpose.	This implies a forming of common intention. Subsection (2) deals with offences that were not planned by the conspirators, but are committed in furtherance of the planned offence. They must be reasonably foreseeable.
Party who incites, counsels or procures s70(1) and (2)	- the offence was committed by a principal offender; and - the secondary party incited, counselled, or procured the principal offender to commit an offence; and - that offence was committed in a way different from that which was incited, counselled, or suggested; or - the offence committed was a likely consequence of that inciting, counselling or procuring.	The word "likely" carries the same meaning as "probable" in section 66(2) - something that is a real or substantial risk, and that could well happen.

Attempts

Inciting, counselling and procuring take place before the offence is committed. This means it is still possible to be guilty of being a

party to an attempted offence if the principal offence was not committed. Liability for this situation is covered by section [311\(2\)](#). Except where punishment is specifically provided, everyone who incites, counsels, or attempts to procure any person to commit any offence, when that offence is not in fact committed, is liable to the same punishment as if he had attempted to commit that offence.

Mens rea

In general, a secondary offender cannot be found guilty if the principal offender does not have the necessary mens rea (intent).

For exceptions, refer to sections [21\(1\)](#) and [22\(2\)](#) (relating to children and young people), [23\(4\)](#) (insanity), [178\(8\)](#) (infanticide) and [180\(5\)](#) (suicide) of the Crimes Act 1961.

Negligence

A secondary offender does not need to know that the law was being broken, but they must know the essential facts of the offence. Secondary offenders cannot be held liable for mere negligence or failing to investigate, but may be liable if they deliberately “turn a blind eye” to the principal offender's actions.

Bystanders

A witness to an offence is not a secondary party merely because they did nothing to prevent it. But if a bystander actively encourages someone to commit an offence (e.g. urging another to assault a Police officer) the act of encouragement would make that person a secondary party. An inference of intention to encourage can be inferred if a person is deliberately present, offering no opposition to the offending where they might have been expected to do so (Charnley v R [2013] NZCA 226).

Special relationship with offender is required

A person who merely stands by at the scene of a crime and does nothing is not liable as a secondary party unless they have a special relationship with the offender, or owe a legal duty to the victim or general public. If a person is under a legal duty, (e.g. those duties identified under sections [150](#), [150A - 157](#) of the Crimes Act) they can be liable under section [150A\(2\)](#) for omitting to perform that legal duty.

This table shows examples of situations where someone with a duty of care to an offender may be liable as secondary parties for aiding and abetting an offence, if they fail to intervene in its commission.

Situation	Relationship and duty to offender
An army sergeant who watches one of his soldiers assault a civilian.	The army sergeant has a special relationship with the offender, since he has a right or power of control over the actions of his soldiers.
A parent who looks on while his child is assaulted by an acquaintance.	The parent has a legal duty to protect and assist the child.
A person who does not take reasonable precautions when teaching another to drive.	The driving teacher has a legal duty to take reasonable precautions to protect the general public.

Investigating parties

Use the same procedures when investigating parties as you would for the principal offender. You will usually discover parties during the course of your enquiries. For example:

- it may be apparent from the crime's reconstruction that another person must have been involved, or that the offender received advice or assistance
- the principal offender may admit when giving a statement that others were involved
- a suspect or witness may admit providing aid
- a witness may give evidence of another person's involvement
- you may receive information indicating someone else was involved.

Further information

For further explanation of the terms, see the [commentary](#) in Westlaw NZ:

- section 66 ([parties to offences](#))
- section 70 ([offence committed other than offence intended](#)).

Secondary offences by parties

Liability for secondary offences

A secondary offence is an offence that is committed during the process of committing the principal, intended offence, or the prosecution of a common unlawful purpose.

Party liability for secondary offences is covered by section [66\(2\)](#), which provides that where two or more people form a common intent to help each other do something unlawful, each is a party to every offence committed by any one of them if the commission of that offence was known to be a probable consequence of pursuing the common purpose. Therefore a person may be liable for an offence that they did not intend or actively participate in, as long as it was something that they knew could well result from the prosecution of their agreed purpose.

Conversely, if one party to the agreement commits a secondary offence that goes beyond what could have been seen as a probable consequence of the planned offending, other parties will not be liable for that offence. This may involve the commission of a different type of offence, or the use of a more serious level of violence than was planned or anticipated.

Liability for secondary offences is also available under section [70\(2\)](#). Where someone incites, counsels or procures another person to commit an offence, they are liable for every offence that the person commits, if they knew that offence was a likely consequence of their inciting, counselling or procuring.

Note: Sections [66\(2\)](#) and [70\(2\)](#) can also cover party liability for the intended offence, although in such cases liability will usually be available under sections [66\(1\)](#) and [70\(1\)](#).

Example

If the parties agree to an offence that involves the use of a weapon or other serious violence, and the principal offender kills someone while carrying out their joint intention, then the secondary offender is equally responsible in law for the killing. As it was a probable consequence of their plan. So, if 'A' acts as a lookout for 'B' who is committing an armed robbery, and 'B' happens to kill their victim, 'A' is also liable for culpable homicide. (*R v Betts and Ridley* (1930) 22 Cr App R 148).

If the parties agree to an offence which they do not expect to involve violence and, while carrying out that common intention, the principal offender uses violence, then a secondary offender who took no physical part would not be liable for the consequences. For example, if during the course of a burglary where violence was not anticipated, the principal offender assaults a bystander, a lookout would not be liable for the assault.

Question of fact

It is a question of fact, for the jury to decide, whether suspects knew that furthering the common aim was likely to result in the offence in question.

Further information

See the [commentary](#) in Westlaw NZ for further explanation of the terms applied to section [66](#) (parties to offences) of the Crimes Act 1961.

Prosecution and conviction of parties to offences

Proceedings against principal and secondary offenders

You may take proceedings and obtain a conviction against every secondary offender, either with (jointly) or separately from the principal offender. Liability of secondary parties depends generally on their knowledge, intention and actions - not the knowledge, intentions and actions of the principal offender.

Time limit

The time limit for filing a charging document against a secondary offender is the same as that for the principal offender.

Convictions

An accomplice secondary party can be convicted of a lesser crime than the one that the principal offender is convicted of, particularly in cases of culpable homicide (which comprises both murder and manslaughter). For example, in [R v Hartley](#) [1978] 2 NZLR 199 the Court of Appeal ruled that in a gang shotgun killing, accomplice secondary party could be convicted of manslaughter and the principal offender of murder. Whether a secondary party is liable for murder or manslaughter will depend on their level of intention or foresight.

A person charged as a party to murder will be guilty of:

- murder, if they:
 - intentionally helped or encouraged the primary offender to kill someone, or
 - foresaw it as a real risk in the situation that arose that one of the parties to a common unlawful purpose would kill with murderous intent
- manslaughter, if they:
 - knew that at some stage there was a real risk of killing short of murder, or
 - foresaw a real risk of murder, but the killing occurred in circumstances different from those contemplated, or
 - can be expected to have known there was an ever-present real risk of a killing e.g. due to the presence of lethal weapons.

[R v Tomkins](#) [1985] 2 NZLR 253 (CA)

Conviction of principal offender not necessary

Secondary liability needs to derive from the liability of a principal offender, so it must be proved that a principal offender committed the offence to which the defendant is a secondary party. However a person can still be convicted as a secondary party if the principal offender has not been prosecuted or convicted. This may be because the principal offender cannot be located or identified, or is acquitted due to infancy, insanity, death, or the availability of a defence.

So long as it can still be proved that the principal offender actually committed the offence, even if they have been acquitted, the secondary party can be liable. However, the conviction of a secondary party where the principal offender has been acquitted will be unsafe if the verdicts are truly inconsistent - for example, if there are different findings as to the principal's liability based on the same evidence.

If the offence can be committed only by a particular class of person, such as the driver in a hit and run incident, and that person is acquitted, no one can be convicted as a secondary party.

Uncorroborated evidence of accomplices

A court can convict on the uncorroborated evidence of an accomplice.

Innocent agents

An innocent agent is someone who actually commits the offence within the meaning of section 66(1), but does so without the required mental state. This innocence may be due, for example, to youth, mental disability or ignorance of the facts. An innocent agent cannot be convicted as a secondary party ([R v Paterson](#) [1976] 2 NZLR 394 (CA)). The person who directs an innocent agent to commit a crime can be treated as the principal offender, liable under section 66(1)(a), rather than a secondary party, as they have the required mental state and have committed the physical elements of the offence through the agent.

Formulating charges

Charges under section 66

Where section [66\(1\)](#) applies and it can be clearly shown how the suspect became a party to the offence, you must use the same wording as for the principal offender, prefacing the charge with the words 'was a party to'.

You must also add at the end of the charge "...in that you did:

- aid
- abet
- incite
- counsel, or
- procure ... (use one or a combination of these words, e.g. 'aid and abet' or 'counsel and procure')

...the commission of the said offence."

If a person is being charged as a party to an offence, the relevant option from section [66\(1\)](#) should be referred to in the charging document. This ensures the defendant knows the charge being laid. If this is not done, the prosecutor must advise the court that the defendant is charged as a party, before:

- the summary of facts is read out on a guilty plea
- evidence is heard in a judge-alone trial or jury trial as the case may be.

If section [66\(2\)](#) applies (i.e. the person is a party to a secondary offence) or it is unclear which subsection applies, formulate the charge as for a principal offender.

Specific party offences

Where there is a specific offence of aiding, abetting, inciting, counselling or procuring, choose a charge under that section (e.g. inciting a person to resist a constable - [s23\(a\)](#) Summary Offences Act 1981).

Note: In offence provisions such as [s23\(a\)](#) which specifically refer to the actions of the secondary party (i.e. 'inciting') you do not cite [s66](#) on the charge. This is because the secondary element of "inciting" is an ingredient of the substantive offence under [s23\(a\)](#), namely inciting a person to resist arrest.

Examples of specific parties related offences

Some examples of association offences are:

Section	Offence
s98A Crimes Act 1961	Participation in an organised criminal group
s6A Summary Offences Act 1981	Associating with violent offenders
s6B Summary Offences Act 1981	Associating with serious drug offenders

Further information

See the [commentary](#) in Westlaw NZ for further explanation of the terms applied to section [66](#) (parties to offences) of the Crimes Act 1961.

Attempts

Table of Contents

Table of Contents	2
Policy statement and principles	3
What	3
Why	3
How	3
Overview	4
Introduction	4
Purpose	4
Health and safety duties	4
Maximising safety and minimising risk	4
Health and safety should be an everyday conversation	4
Table of 'attempt' related offences	5
Definition of attempt	6
Ingredients of attempt	7
Intent (mens rea)	7
Act (actus reus)	7
Omission	7
Proximity	7
Scenario table	8
Examples of proximate actions	8
Impossibility	9
Physical or factual impossibility	9
Legal impossibility	9
Police powers and attempt	9
Section 28 of the Summary Offences Act 1981; being found in a public place preparing to commit an imprisonable offence	10
Ingredients of the section 28 offence	10
Powers	10
Possession of instruments for burglary	10
Examples of attempts to commit offences	11
Attempted theft	11
Attempted sexual contact with young person under 16	11
Attempted murder	11
Attempting to obtain money by deception	11
Attempted dishonest taking of motor vehicle	11
Attempted deception	11
Attempting to procure a controlled drug	11
Offences that cannot be attempted	11
Attempts at attempt	11
Acts to further an offence	11
Jurisdiction	11
Part and alternative convictions	11
Parties	12
Penalties	12
Procedures	13
Action when suspect is attempting to commit an offence	13
Action when suspect may be preparing to commit an imprisonable offence	13
Framing charges	13
Example	13

Policy statement and principles

What

Section [72](#) of the Crimes Act 1961 sets out what constitutes an 'attempt'. Any one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing their object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.

The section, does not, of itself, create an offence of attempt, but does provide that it applies to all offences.

Why

Key functions of the Police are law enforcement, crime prevention and the maintenance of public safety. With 'attempts' applying to all offences Police can be focused on:

- preventing crime
- targeting and catching offenders before the principal offence is committed
- delivering a more responsive Police service.

How

- To meet law enforcement and crime prevention objectives, Police will investigate, intervene before the principal offences have been committed and apply case management resolution to those people believed to be attempting to commit an offence.

Overview

Introduction

As a general rule, an attempt to commit an offence is itself an offence. The definition of attempt is found in section [72](#) of the Crimes Act 1961. Section [72](#) does not create attempt offences. Attempt offences are found in specific statutory provisions that proscribe offences, including attempting to commit those offences. For example, section [173](#) of the Crimes Act 1961 proscribes attempted murder and provides a penalty for the offence of attempted murder. The table of offences (below) gives examples of the more common attempt offences proscribed by legislation.

Section [311](#)(1) of the Crimes Act 1961 establishes a penalty regime for attempt offences not dealt with specifically by statute. Section [311](#)(2) makes it an offence to attempt to arrange for someone else to commit an offence. Making arrangements for someone else to commit an offence is an attempt to commit the principal offence and is punishable accordingly.

Purpose

This chapter considers a body of case law that explains the law of attempt, what constitutes attempt and the nature of proximity. The chapter also considers the offence of being found in a public place preparing to commit an imprisonable offence (section [28](#) of the Summary Offences Act 1981) and procedures for investigating attempt offences.

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](#)
- this chapter in relation to the safe procedures for investigating attempt offences.

Table of 'attempt' related offences

This table lists offences under the Crimes Act 1961 (or as stated below) relevant to this chapter.

Offence	Jurisdiction
Attempting to procure murder outside New Zealand when murder is not in fact committed Section 68(2)	Category 4 offence
Attempted treason Section 74(3)	Category 4 offence
Attempted piracy Section 95	Category 4 offence
Attempting to pervert the course of justice Section 117	Category 3 offence
Attempted sexual violation Section 129	Category 3 offence
Attempted sexual intercourse with child or young person Sections 131 , 132 and 134	Category 3 offence
Attempted murder Section 173	Category 4 offence
Attempting to procure murder in New Zealand when murder is not in fact committed Section 174	Category 4 offence
Attempted dishonest taking or conversion Section 226(2)	Category 3 offence
Attempted arson Section 268	Category 3 offence
Attempting to commit an offence other than those specified Section 311(1)	Category - as for actual offence
Attempting to procure a person to commit an offence not committed Section 311(2)	Category - as for actual offence
Being found in a public place preparing to commit a crime Section 28 - Summary Offences Act 1981	Category 1 offence for first offence or when offence committed later than 12 months since the previous offence Category 2 offence for a second or subsequent offence within 12 months

Note: Less common offences, set out in sections [102](#), [103](#), [104](#) and [105](#) of the Crimes Act 1961, are also defined in law as specific attempts; for example, attempted corruption and bribery.

Definition of attempt

Section [72](#) of the Crimes Act 1961 defines 'attempt' but does not, of itself, create an offence of attempt. Section [72](#) provides that attempt applies to all offences and [72\(2\)](#) draws a distinction between attempting to commit an offence, and merely preparing to commit an (imprisonable) offence (discussed below under the heading of '[Proximity](#)').

Note: Preparing to commit an imprisonable offence may, in itself, be an offence; see the discussion of section [28](#) of the Summary Offences Act 1981, below.

Ingredients of attempt

These three elements of an attempt offence must be proven by the prosecution:

- Intent (mens rea)
- Act (actus reus)
- Proximity.

In addition, it must be legally possible, in the circumstances, for the offence to be committed (see discussion of physical or factual impossibility and legal impossibility below).

Intent (mens rea)

The law distinguishes between an intention to commit an offence and an attempt to commit an offence. Mere dishonest intention does not amount to an attempt. (*R v Eagleton* (1855) Dears CC 515; 169 ER 826 at p 538, p 835, *Haughton v Smith* [1075] AC 476; [1973] 3 All ER 1109)

In order for an attempt offence to be proven, it must be shown that the defendant intended to commit the completed offence. There must be an attempt to commit an actual offence, not just an attempt to do something mistakenly believed to be an offence. For example, if a person seeks to supply a (harmless) substance for use as a recreational drug wrongly believing that supply of that substance is illegal no offence has been committed.

Whether or not intent exists is a question of fact for the jury. Intent may be proven by admissions or confession, or inferred from the act itself. For example, if someone gets into a motor vehicle and turns the key in the ignition then an intention to drive away in the vehicle may be inferred.

Act (actus reus)

There must be an overt act of such a kind that it forms part of a series of acts that would constitute commission of an offence if it were not interrupted (*Haughton v Smith* [1075] AC 476; [1973] 3 All ER 1109). Effectively, the defendant must have put in train a series of events that would lead to the completion of the offence.

An act may have both an innocent and a guilty explanation; but if admission of other evidence supports the guilty explanation, a conviction may be entered.

Omission

Section 72 of the Crimes Act 1961 provides that an omission may amount to an attempt to commit an offence. For example, withholding food and drink to an infant with the intention of starving the child to death may well be attempted murder.

Proximity

The test in New Zealand of whether an act is sufficiently proximate to the offence so as to amount to an attempt to commit that offence is:

- Does the act or omission in question constitute a real or substantial step towards the commission of the offence?

(Per *Police v Wylie* [1976] 2 NZLR 167 (CA) at p 170)

The Court must apply common sense in determining whether an accused has gone beyond mere preparation, and has attempted to commit the offence.

So the answer to the question of whether an act is merely preparatory, or whether it amounts to an attempt, depends on whether real and practical step(s) or real and substantial step(s) toward the commission of the offence have been taken.

Put another way, in order for a crime to be attempted, an act must be done that goes beyond preparation of the crime, and is the commencement of execution of that crime (per *R v Henderson* (1948) 91 CCC 97 at p 105).

The test of proximity as outlined above, "enables more emphasis to be placed on what has already been done than on what remains to

be done".

(Per [R v B \(No 5\)](#) 7/9/01, William Young J, HC Christchurch T19/01)

This does not necessarily mean that the suspect has carried out most of the series of acts necessary to commit and complete the intended offence. The first step may, or may not, be enough to constitute an attempt. For example, if a person administers a small dose of poison, intending to give further doses until death occurs, the act of giving the first dose may constitute attempted murder, even in the absence of an intention that the first dose cause death.

The test of proximity requires the exercise of fine judgement on the part of Police.

Scenario table

These scenarios may assist Police in determining the distinction between preparatory acts and real or substantial steps toward the commission of an offence:

Scenario	Offence?
Intention - thinks about burglary and gathers equipment.	No offence
Preparation - decides on dairy to be burgled, borrows car.	No offence
Action - drives to dairy and parks in vicinity.	No offence
Further action - gets out of car, examines front door of dairy.	Possible attempted burglary
Still further action - places jemmy in doorway, tries to spring door open.	Attempted burglary
Final action - door gives way, offender enters and steals items.	Burglary

Examples of proximate actions

A man approached two girls and offered one of them money to show him to a place with which, it was later proved, he was familiar and, on the way, he made indecent observations to her. He took the other girl's arm and offered her money to go with him to his place without her companion. It was held that these acts justified a finding of attempted sexual intercourse with both girls - [R v Yelds](#) [1928] NZLR 18.

A man got into a car driven by his ex-lover's new lover, and pointed a loaded sawn-off shotgun at the driver, who wrested the gun from him and escaped. It was held that:

- the actions of:
 - obtaining the shotgun,
 - shortening it, and
 - going to the victim's car

were merely preparatory

- the actions of:
 - getting into the car,
 - taking out the loaded gun, and
 - pointing it at the victim with the intention of killing him

were sufficiently proximate to convict the man of attempted murder.

(Per *R v Jones* [1990] 1 WLR 1097)

If in doubt, your colleagues and / or Legal Services will be able to assist you to decide whether an act or omission amounts to an attempt.

Impossibility

Section 72(1) of the Crimes Act provides a person may be guilty of attempting to commit an offence even in circumstances where it would not have been possible to commit the actual offence.

It is not necessarily a defence to a charge of attempting to commit an offence that the actual offence could not have been carried out; i.e. it would have been impossible to carry out the offence. There are two types of impossibility; legal impossibility and factual impossibility.

Physical or factual impossibility

An act is physically or factually impossible if the act in question amounts to an offence, but the accused is unable to commit it due to interruption, ineptitude, or any other circumstances beyond their control. For example:

- The accused was seen to hustle some women on a railway platform, and he put his hand in the pocket of one of them. The woman could not be located to give evidence, and accordingly there was no evidence that there was anything in her pocket (*R v Ring* (1892) 17 COXCC 491).
- A man bought hedge clippings believing they were cannabis (*Police v Jay* [1974] 2 NZLR 204).

The defendants in each case acted with criminal intent, and were found guilty of attempted theft and attempted drug offending respectively.

Legal impossibility

By contrast with factual impossibility, where completion of an act is legally impossible, the person attempting that act cannot be convicted of attempt, even if they had criminal intentions. For example:

- In some cases, the law states that a particular act is not an offence. See, for example, section 246(4) of the Crimes Act 1961. The subsection allows dealings in goods which had once been the subject of a crime of dishonesty but which had been recovered. Thus if A steals goods from B, and B later recovers them, any disposition to C does not amount to receiving even though C was aware of A's theft. **Note:** An attempt to receive such stolen goods is therefore possible in fact, but impossible in law.
- The suspect may be mistaken in their belief that the completed act is illegal. That is, there must be an attempt to commit an actual offence, not an attempt to do something that, contrary to the person's belief at the time, does not amount in law to an offence. For example, it is not an offence to attempt to sell the hallucinatory plant, *Datura*, in the mistaken belief that possession of it is illegal.

Police powers and attempt

In cases of suspected attempted offending, Police employees have the same powers as if the principal offences had been committed. Accordingly, suspects may be arrested without a warrant under section 315(2)(a) and (b) of the Crimes Act 1961 if the principal offence is punishable by imprisonment. If the offence is not punishable by imprisonment, check your powers in respect of that offence.

Section 28 of the Summary Offences Act 1981; being found in a public place preparing to commit an imprisonable offence

Section [28](#) of the Summary Offences Act 1981 for the offences and penalties.

'Being found in a place' means to be found on, or discovered at the place, or seen entering or leaving that place, by some person, at the time of the incident. In *Braxton v Sugrue* (1929) GLR 31, the suspect admitted to being on the property, but as he had not been found or seen on the property, the judge ruled that the admission was not sufficient evidence.

Ingredients of the section 28 offence

Under section [28](#)(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- were found in a public place, and
- were behaving in a manner from which it could be reasonably inferred that they were preparing to commit an imprisonable offence.

In determining the defendant's guilt the court may have regard to any previous convictions of a similar nature (section [28](#)(3) refers).

You do not have to specify the imprisonable offence. It is sufficient to show that the suspect was preparing to commit a particular class of crime ([Mellon v Police](#) (unreported), High Court Dunedin, 19 July 1994, AP8/94, AP9/94).

Note: Section [28](#) of the Summary Offences Act applies to offences punishable by imprisonment, reference to 'crime' being replaced as a result of the Criminal Procedure Act 2011.

Powers

You can arrest a person suspected of 'preparing to commit an imprisonable offence' pursuant to section [28](#)(1) of the Summary Offences Act 1981 without warrant under section [39](#)(1) of the Summary Offences Act 1981.

Possession of instruments for burglary

Section [233](#) of the Crimes Act 1961 and section [14](#) of the Summary Offences Act 1981 contain provisions similar to those of section [28](#) of the Summary Offences Act 1981 (above). They relate to disguises and possession of instruments for burglary. See the '[Burglary and allied offences](#)' chapter of the Police Manual.

Examples of attempts to commit offences

Attempted theft

A person enters a parked car intending to steal items in the car; later, it cannot be proven that anything is missing from the car (factual impossibility, but attempted offence committed).

Attempted sexual contact with young person under 16

Man invites boys aged less than 16 to enter vehicle for express purpose of committing an indecent act.

Attempted murder

A woman tries to shoot another person with a firearm she mistakenly thinks is loaded (factual impossibility, but attempted offence committed).

Attempting to obtain money by deception

A person writes letter seeking money by false pretences although recipient not deceived; *Light* (1915) 84 LJ KB 865.

Attempted dishonest taking of motor vehicle

Person unlawfully gets into driver's seat of vehicle with intention of driving it away.

Attempted deception

A man arranges his own disappearance so his partner may collect his life insurance (*DPP v Stonehouse* [1977] 2 All ER 909).

Attempting to procure a controlled drug

A person contacts dealer, negotiates to purchase controlled drug, attends dealer's premises with money and asks to see a sample (*Police v Wylie and Anor* [1976] 2 NZLR 167).

Offences that cannot be attempted

In some cases a principal offence cannot be attempted. Such cases include:

- the offence is one of recklessness or negligence. For example a charge of manslaughter arising from reckless driving is based on an unintended consequence, i.e. the death. It is not possible to attempt to bring about something that is unintended;
- an element of attempt is part of the definition of the principal offence. For example, attempting to apply force is an element of the offence of assault, so attempting to assault a person is in itself an assault;
- the offence is such that the act has to be completed in order for it to exist at all. For example, a person cannot attempt to demand money with menaces because as soon as the demand is made the principal offence is committed.

Attempts at attempt

A person cannot attempt to attempt to commit an offence.

Acts to further an offence

In some cases, an act that is done to further the commission of an offence is punishable without needing to address the issue of whether the act actually amounts to an attempt at that offence. For example, a person who has committed an assault with intent to commit rape can be prosecuted for the assault, whether or not there is sufficient evidence to proceed with the charge of attempted rape.

Jurisdiction

Attempts to commit offences covered by section [311](#) of the Crimes Act 1961 will be proceeded in the same category that would apply if the complete offence was alleged, (refer section [6\(2\)](#) of the Criminal Procedure Act 2011).

Part and alternative convictions

If a person is found not guilty of the principal offence but the evidence establishes an attempt, they can be convicted of the attempt

even though an attempt charge was not filed (section [149](#) of the Criminal Procedure Act 2011 refers).

If a person is charged with the attempt but the evidence establishes that the principal offence was committed, they can be convicted of the attempt, or, if in the court's opinion the person will not be or has not been misled or prejudiced in his or her defence by an amendment, the court may amend the charge. After a conviction for an attempt however, the person cannot later be charged with the principal offence (section [150](#) of the Criminal Procedure Act 2011 refers).

If a person is charged with the attempt to commit an offence that includes in its commission any other offence, they may be convicted of an attempt to commit any of the offences included, even if the attempt to commit the whole offence is not proven (section [143](#) of the Criminal Procedure Act 2011 refers; (attempts to commit offences are themselves offences)).

Parties

If a person intends to be a party to an offence and carries out the physical act that is his or her part in the offence, the ingredients in section [72](#)(1) are met. It is immaterial (on the question of the party's guilt) that it was impossible for the offence to be completed because the principal offender did not carry out the physical act that was their part of the offence ([R v Peneha](#) (unreported), High Court Invercargill, 22 November 1993, T 7/93).

Penalties

Some provisions include express penalties for attempts to commit specific offences; see for example section [268](#) of the Crimes Act that provides for a penalty of imprisonment not exceeding 10 years for attempted arson.

If no express punishment is provided, section [311](#)(1) of the Crimes Act 1961 applies. Section [311](#)(1) provides that:

- where the maximum penalty for the principal offence is life imprisonment, an offender convicted of an attempt is liable to a term of imprisonment not exceeding 10 years, and
- in all other cases, the maximum punishment for an attempt is one half of the penalty for the principal offence.

Procedures

Action when suspect is attempting to commit an offence

Investigations into attempts should follow the procedure for the principal offence, with any necessary modifications. Follow these steps.

Step	Action
1	<p>Establish intent. This can often be inferred from:</p> <ul style="list-style-type: none"> - the act referred to in the complaint; for example, when a shopkeeper reports an attempted burglary after finding jemmy marks on the door to the premises - suspicious behaviour - interview with the suspect.
2	<p>In the case of suspicious behaviour:</p> <ul style="list-style-type: none"> - watch the suspect until they do something that shows intent and is proximate to the offence, unless early intervention is necessary to prevent the commission of a serious offence - obtain the suspect's explanation - complete enquiries - consult your supervisor about prosecution. <p>Note: Where the suspect's actions are insufficient to constitute an attempt, consider whether there is evidence of preparing to commit an offence, or of conspiracy.</p>

Action when suspect may be preparing to commit an imprisonable offence

If a person is acting suspiciously, follow these steps.

Step	Action
1	In a public place, watch until the suspect's actions amount to preparing to commit an imprisonable offence. Elsewhere, watch until the suspect's actions amount to an attempt to commit an imprisonable offence.
2	<p>Call for assistance and contain the scene.</p> <p>Remember: The suspect may have company.</p>
3	Obtain the suspect's explanation.
4	Complete enquiries.
5	Consider obtaining a warrant to search the premises and any vehicle.
6	Securely label and store any instruments or tools found. They may be used in court or examined alongside evidence from premises to which entry has been forced.

Framing charges

When framing the charge, add the words "attempted to" before the main text. After the reference to the Act and section that creates the full offence, add the Act and section that creates the offence of attempt (where applicable).

Example

"Attempted to enter a building, namely (), without authority and with intent to commit an imprisonable offence in that building.

Crimes Act 1961 s231(1)

Crimes Act 1961 s72"

Calibrating Road Policing Equipment

Table of Contents

Table of Contents	2
Policy statement and principles	3
What	3
Why	3
How	3
Overview	4
Police Calibration Services	4
Main Office	4
Technicians	4
Equipment tested and/or calibrated by PCS	4
Additional duties	4
Equipment calibration schedule and other requirements	5
Speed detection equipment	5
Alcohol detection equipment	5
Other equipment	5
District responsibilities in respect of equipment	6
Service costs	7
PCS covers calibration costs	7
Exceptions	7
Reporting	8

Policy statement and principles

What

All Police equipment used for road policing enforcement must be calibrated and/or certified to international standards so it operates accurately.

Why

Results from the use of such equipment can be used to issue infringement notices or as evidence in a court of law.

How

Police maintains a specialist group, the Police Calibration Services (PCS), which is primarily responsible for:

- maintaining the calibration and certification of speed enforcement equipment used by Police
- maintaining the calibration and certification of weighing enforcement equipment, primarily used by Commercial Vehicle Safety Team (CVST)
- maintaining the calibration and certification of Total Station Forensic Mapping equipment, used by Serious Crash Unit staff (SCU)
- maintaining a national database of all employees qualified to use speed detection equipment
- providing certified copies of calibration certificates for district employees as required for court defended matters
- nationwide coordination of all alcohol enforcement equipment
- management and supply of speedometer testing equipment and Crash Data Recorder kits to authorised employees.

Overview

Police Calibration Services

Police Calibration Services (PCS) is a specialist group within Road Policing Support, PNHQ. It is an International Standards Organisation (ISO) accredited metrology laboratory in Wellington, and is required to meet all ISO requirements in terms of calibration processes, documentation and auditing (ISO/IEC 17025). Maintaining these high standards provides assurance that the work performed by PCS meets the highest of current scientific standards in the world.

Annually the PCS manages over 5000 individual items at their Wellington Laboratory and in the districts.

The PCS is located at:

s.9(2) OIA

and can be contacted between 0800 - 1600 hours (Monday to Friday excluding public holidays) as follows:

Main Office

s.9(2) OIA

Technicians

s.9(2) OIA

Equipment tested and/or calibrated by PCS

- Stalker Radars
- Stalker Lidars (lasers)
- Redflex Red Light, mobile and static safe speed cameras
- Red light & static safe speed camera sites
- Weighbridges
- Portable scales
- Electronic Distance Measuring Equipment (used by SCU).

Additional duties

Additional duties performed by PCS includes:

- training district staff to test Police car speedometers
- maintaining vehicle speedometer test kits
- testing new enforcement equipment
- management of Dräger 7510NZ & 9510NZ Alcohol Breath Test devices
- providing specialist responses to speed and alcohol disclosure requests (especially ones that relate to calibration of test equipment, and accuracy of the devices)
- training district mobile speed camera operators
- maintaining database of Speed Detection Device Operators & Instructors
- management of CDR equipment
- liaison with manufactures of specialist equipment.

Note: Districts pay all costs of travel for their staff attending training programs provided by the PCS.

Equipment calibration schedule and other requirements

Speed detection equipment

This table details the PCS role and requirements in respect of speed detection equipment.

Equipment	Frequency	PCS must. . .
Radar speed devices	Annual	calibrate: <ul style="list-style-type: none"> - within the District, within 24 hours of the unit being delivered (provided it arrived before 0900 hrs on the day allocated for its calibration) - within 3 working days of a device being returned from a service agent to the Wellington laboratory.
Mobile and static safe speed cameras	Annual	<ul style="list-style-type: none"> - calibrate cameras within 2 days of their arrival at the Wellington or Masterton laboratories (weather permitting) - conduct static camera site inspections and produce certificates of compliance in accordance with section 146 of the Land Transport Act 1998.
Laser speed detection devices	Annual	<ul style="list-style-type: none"> - calibrate within 7 days of their receipt at the Wellington or Masterton laboratories (provided it arrives before 0900 hrs on the day allocated for its calibration)

Alcohol detection equipment

This table details the PCS role and requirements in respect of alcohol detection equipment.

Equipment	Frequency	PCS must action. . .
All alcohol devices		<ul style="list-style-type: none"> - Refer devices received from districts for calibration to Dräger - return alcohol devices to the district within 24 hours of calibration by Dräger - advise the relevant Road Policing Manager (RPM) within 5 working days of being so advised by Dräger, of alcohol devices being removed from service.

Other equipment

This table details the PCS role and requirements in respect of other equipment.

Equipment	Frequency	PCS must. . .
Electronic distance measuring devices (used by serious crash investigators)	Annual	<ul style="list-style-type: none"> - calibrate within 3 days of receipt at the Wellington laboratory (weather permitting) and provided it arrives before 0900 hrs on the day allocated for its calibration.
Other non-specified devices	As required	<ul style="list-style-type: none"> - calibrate within 7 days of receiving the unit at an appropriate laboratory.

District responsibilities in respect of equipment

Districts must:

- present all devices (complete with all parts as required) for calibration on time and on the allocated day as specified by PCS (**Note:** PCS holds any device presented for calibration that is not complete, until all parts are received)
- pay all costs for repairs to district-owned devices charged by the authorised Service Agent
- ensure that speed, distance measuring, CDR and alcohol devices are properly looked after and operated correctly
- pay to replace or repair any device that is leased and supplied to a district by PCS that is lost or sustains damage that is not considered normal operational wear or usage, or where the said item is proven to have been lost in transit by courier
- pay to replace or repair any device that is owned by Police and supplied to a district by PCS that is lost or sustains damage that is not considered normal operational wear or usage, or where the said item is proven to have been lost in transit by courier
- acknowledge the PCS policy to impound speed equipment provided by PNHQ to the district, that has not been used, or:
 - for lasers, has been used for less than 160 hours in any calibration cycle;
 - for radars, has been used for less than:
 - 800 hours by Highway Patrol in any calibration cycle;
 - 500 hours by Road Policing Units (except CVST) in any calibration cycle;
 - 250 hours by all other work groups in any calibration cycle.

Note: Where speed equipment is impounded under the policy due to insufficient use, the device may, on the first occasion, be returned to the District Road Policing Manager for relocation within the district. If any device is impounded twice from the same district it must be returned to PCS for relocation to any other district / work group.

Service costs

PCS covers calibration costs

The PCS provides calibration services to the districts and covers these costs:

- costs to freight devices / equipment back to districts after calibration
- costs to freight faulty devices / equipment (rejected by the PCS) to the authorised service agent
- service calibration costs for Dräger devices, but not any costs associated with physical damage or misuse of the device (see 'Exceptions' below)
- all lease costs for radar and laser equipment not owned by Police, and all normal maintenance costs associated with this equipment.

Exceptions

Districts must pay all costs associated with loss or damage to:

- speed detection equipment (including radars, lasers, safe speed cameras, lost tuning forks and all associated equipment, e.g. radar remotes, power cables etc.)
- alcohol equipment
- equipment contained in vehicle speedometer testing kits supplied by Police Calibration Services
- electronic distance measuring devices
- CDR kits

Where:

- that loss or damage is due to circumstances other than normal wear and tear, or
- the item is proven to have been lost in transit by courier.

Should a district fail to provide devices for calibration when they are requested by PCS, the district may be charged any additional costs incurred.

Reporting

CS provides districts with:

- reports on the location of all speed and alcohol devices provided to the district by PCS, as and when required
 - reports on equipment that is overdue for calibration
 - reports on any other performance assessment of equipment, as and when required
 - certificates of accuracy within two working days of receipt of any request.
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Control of high-power laser pointers

Table of Contents

Table of Contents	2
Policy statement and principles	3
What	3
Why	3
How	3
Overview	4
What uses do laser pointers have?	4
What is a high-power laser pointer?	4
Meaning of beam divergence	4
How powerful are laser pointers?	4
Controls on high-power laser pointers	5
Restrictions on sale and supply	5
Import restrictions	5
Laser devices exempted or not considered high-power	5
Police are authorised suppliers or recipients	5
Offences	6
Summary Offences Act 1981	6
Health (High-power Laser Pointers) Regulations 2013	6
Customs and Excise Act 2018	6
Civil Aviation Act 1990	6
Crimes Act 1961	6
Other	6
Guidance for specific offences	8
Offences against aircraft	8
Identifying high-powered laser pointers	9
How can you tell if a device is a high-power laser pointer?	9
Laser light characteristics	9
Typical labels	9
Laser pointers and torches	10
Surveying and measuring devices (exempt)	10
Hunting devices and laser flares (exempt)	10
If in doubt, contact the Ministry of Health	11

Policy statement and principles

What

Laser pointers are a type of laser, with laser meaning 'Light Amplification by Stimulated Emission of Radiation'. Laser pointers emit a tightly focused beam of light that can be concentrated onto a very small area over long distances. While the power in the beam may be only a few milliwatts, the concentration of this power onto a small area creates a point of very high intensity.

Lower-power laser pointers have been sold unrestricted for many years in New Zealand, but more powerful laser pointers have now become available at relatively low cost, often via the internet. Purchase of these from overseas suppliers via the internet is not difficult, and importation into the country will likely only be noticed by Customs if the labelling of the product on declaration certificates is accurate.

Why

There have been incidents of laser beams directed into the cabins of moving motor vehicles and the cockpits of flying aircraft. This reckless practice can blind drivers and pilots and endangers life.

How

- The supply of, and receipt of high-power laser pointers is controlled by the [Health \(High-power Laser Pointers\) Regulations 2013](#), and is limited to authorised suppliers and recipients.
- The [Customs Import Prohibition \(High-power Laser Pointers\) Order 2019](#) prohibits the importation of high-power laser pointers except with the consent of the Director-General of Health.
- Purchase of high-power laser pointers from overseas suppliers over the internet is not difficult, therefore, there is a high risk of these devices being available in the community.
- It is an offence against [13\(b\)](#) of the Summary Offences Act 1981 for anyone, in a public place, to be in possession of a high-power laser pointer without reasonable excuse.
- High-power laser pointers can generally be identified by description labels found on the device. Lasers used for surveying, measuring or hunting are generally exempt from regulations.

Overview

What uses do laser pointers have?

Laser pointers are often used as presentation aids by lecturers and teachers and are also used for recreational purposes - to shine onto objects. The lower-power laser pointers are sufficient for such purposes. The higher-power ones can be shone into the night sky and are used by astronomers. Some researchers or scientists may also use them.

What is a high-power laser pointer?

The [Health \(High-power Laser Pointers\) Regulations 2013](#), the [Customs Import Prohibition \(High-power Laser Pointers\) Order 2019](#), and the [Summary Offences Act 1981](#) define a **high-power** laser pointer as a device that:

- in the Director-General of Health's opinion, is of the kind commonly known as a laser pointer; and
- is battery operated; and
- is designed or intended to be operated while held in the hand; and
- produces a coherent beam of optical radiation of **low divergence**; and
- has a power output **of greater than** 1 milliwatt (mW).

Meaning of low divergence

In this context, low divergence means a beam that does not fan out like, for example, a torch beam.

How powerful are laser pointers?

Laser pointers come in a range of power outputs. The power output is usually measured in milliwatts. As a guide, the relationship between power and potential harm of the different types of laser pointer is shown in this table.

Laser pointer output power	Health risk posed
Up to and including 1 milliwatt	Low-risk
Greater than 1 and up to 5 milliwatts	Relatively low-risk, but could still potentially cause some harm to the eye (e.g., if shone into eyes from a short distance)
Greater than 5 and up to 500 milliwatts	Risk of eye damage
Greater than 500 milliwatts	Can burn skin and damage eyes

There are schemes which classify laser pointers according to the risks they pose. The classification may use Arabic numerals (1, 2, 3, 4 - with or without a letter after the number) or Roman numerals (I, II, III, IV - with or without a letter after the number). Laser pointers of Class 1, 2, I, II or IIA have a power up to and including 1 milliwatt and so would not be covered by the Health or Customs Regulations.

At a glance most people will not be able to tell the difference between a low-power laser pointer and a riskier high-power pointer. While some devices have their power outputs written on them, most people cannot readily translate such inscriptions (e.g., '5 mW') into the potential for harm to be caused by such a device.

Controls on high-power laser pointers

Restrictions on sale and supply

The [Health \(High-power Laser Pointers\) Regulations 2013](#) restrict the sale/supply of high-power laser pointers to those who are 'authorised suppliers'. The regulations also restrict the acquisition of such devices to those who are 'authorised recipients'. The Director-General of Health may authorise (upon application) a person or class of person to supply or acquire high power laser pointers. Offences against these regulations include:

- Supply by a non-authorized supplier
- Supply to a non-authorized recipient
- Acquisition using misleading or deceitful means.

The Director-General of Health is the only person who can authorise suppliers/recipients and **Police have no specific search and seizure powers under the regulations.**

Import restrictions

The [Customs Import Prohibition \(High-power Laser Pointers\) Order 2019](#) prohibits the importation of high-power laser pointers, except with the **consent** of the Director-General of Health.

See *PDF below*: Police authority to import

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 [Approva o import aser pointers March 2020](#)

101.75 KB

Laser devices exempted or not considered high-power

The regulations do not apply to:

- specialist equipment for use in construction or surveying
- equipment used to measure distances
- equipment supplied with fixtures for mounting on a firearm (as a sighting aid)
- devices intended for use as a rescue flare.

No consent needed	Consent required
<ul style="list-style-type: none"> - Power ≤ 1 mW - Class 1x, 2x, 1x, Class IIx (x any letter) - Laser used in surveying, construction or distance measurement - Device supplied with attachments for mounting on rifle - Rescue flare 	<ul style="list-style-type: none"> - Power greater than 1 mW - Class 3x, Class 4, Class IIIx, Class IV (x any letter)

Police are authorised suppliers or recipients

The Director-General of Health has **declared** "the New Zealand Police and all Police employees (as defined in the Policing Act 2008) acting in the course of their duties" to be authorised suppliers or authorised recipients.

See the [Supply, acquire and import of high-power laser pointers delegation](#).

Offences

Summary Offences Act 1981

Under section [13B](#) of the Summary Offences Act 1981 anyone who, in any public place, without reasonable excuse, has any high-power laser pointer in their possession commits an offence. If convicted, the penalty is imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000. In addition the court may order that the high-power laser pointer be forfeited to the Crown.

Where this offence has been committed, Police may seize the high-power laser pointer pursuant to arrest or while conducting a lawful search power (see sections [88](#) and [123](#) of the Search and Surveillance Act 2012).

For any prosecution where there is a dispute about whether the device is a high-power laser pointer, the following steps may need to be taken.

Step	Action
1	A picture along with information about the laser pointer will need to be sent to the Ministry of Health (laserpointers@moh.govt.nz). The Director-General of Health (or delegate) will advise by letter whether the laser pointer "is of a kind commonly known as a laser pointer".
2	The laser pointer will need to be tested to confirm whether it meets the requirements of section 13B(3)(b) - (e) .

Health (High-power Laser Pointers) Regulations 2013

Offences include:

- supplying such devices to non-authorized suppliers or recipients (regulations [4](#) and [5](#))
- acquiring such devices using misleading or deceitful means (regulation [6](#))
- authorised suppliers who acquire high-power laser pointers for any purpose other than supply (unless they are also an authorised recipient) (regulation [7](#)).

A person who commits an offence against the regulations is liable upon conviction to a maximum penalty of \$500 under section [136](#) of the Health Act 1956. There are no specific powers of seizure. The Ministry of Health has primary responsibility for investigations and prosecutions against the regulations.

Customs and Excise Act 2018

Section [388\(1\)\(a\)](#) of the Customs and Excise Act 2018 provides for the offence of importing prohibited goods. If convicted, an individual is liable to a fine not exceeding \$5,000. A body corporate is liable on conviction to a fine not exceeding \$25,000.

Civil Aviation Act 1990

Where a high-powered laser is shone at an aircraft that is in the air, or in the process of taking off or landing, there is the provision for an offence in the Civil Aviation Act. Under section [44](#) of the Civil Aviation Act 1990, any person who does any act in respect of an aircraft in a manner which causes unnecessary danger to any other person or property is liable on conviction to a term of imprisonment of 12 months or a fine not exceeding \$10,000.

Crimes Act 1961

Similarly, where a high-powered laser is shone at an aircraft that is in the air, or in the process of taking off or landing, there is the provision for an offence in the Crimes Act where the offending or is more serious. Under section [270](#) of the Crimes Act 1961, everyone is liable for a term not exceeding 14 years who with intent to cause danger to persons or property, or with reckless disregard for the safety of persons or property, interferes with any transport facility or does anything to any transport facility that is likely to cause danger to persons or property. Under section [270\(2\)](#), transport facility includes an aircraft and equipment of any kind used in navigation or for the guidance of an aircraft.

Other

Other offences may be committed through improper use of a laser. Such offences could include:

- Assault if a laser is deliberately shone in someone's eyes or at their body (see [Graves v Police](#) (HC Rotorua, Lang J, 12/12/10, CRI-2010-463-57)).
- Acts endangering public safety if shone at drivers.

Guidance for specific offences

Offences against aircraft

High-powered lasers aimed at aircraft is a regular occurrence. Where it is shone into the cockpit it can potentially cause “flash blindness” or temporary blindness to the pilot. This can last for up to three minutes and presents a serious risk to the safety of the aircraft. Typically, these incidents will occur at airports as aircraft are landing or taking off. Where a laser has been aimed at an aircraft, the pilot will notify air traffic control who will then notify Police.

For further assistance or guidance on incidents involving laser strikes on aircraft, the Civil Aviation Authority (CAA) is available. Their contact details are:

- Phone: 0508 4SAFETY (0508 472338) - a voicemail can be left after hours
- E-mail: isi@caa.govt.nz
- Website: <https://www.aviation.govt.nz/>

Identifying high-powered laser pointers

How can you tell if a device is a high-power laser pointer?

The Ministry of Health has developed a flow chart to provide some practical guidance to help identify whether or not a device is a high-power laser pointer covered by the new controls:

[Laser pointer diagram \(MoH\).pd](#)


937.27 KB

Laser light characteristics

- Single colour (e.g., red, blue, green).
- Fine beam, low divergence (i.e., doesn't spread or fan out, like a torch).
- Laser speckle when shine on matt surface.

Typical labels

You can also identify these devices by checking their labels.

Label	Example
Laser "starburst" symbol:	
Other warnings	"LASER RADIATION AVOID DIRECT EYE EXPOSURE"
Power output	<5 mW, <1 mW, <100 mW
Laser Class	II, III, IIIA, IIIB

However, labels are small and can be hard to read, as shown in this diagram.



If a device has no labelling, look at the power source:

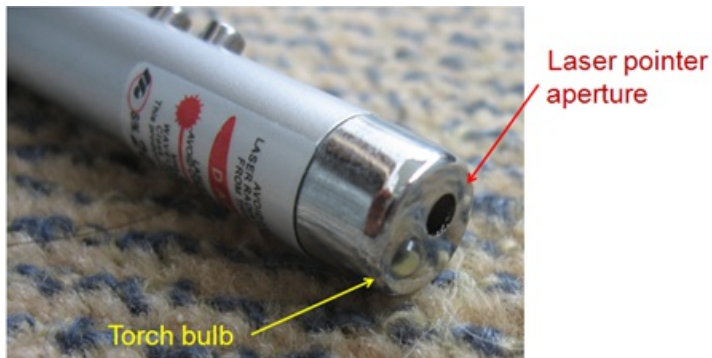
If ...	then ...	and ...
only one button battery	assume less than 1 mW	the device is exempt.
two or more button batteries, or AAA or bigger, or external battery	assume greater than 1mW, import consent needed	the person in possession must prove they are an authorised supplier or recipient.
still in doubt	the person in possession must prove they are an authorised supplier or recipient.	

Laser pointers and torches

Laser pointers and torches can look very similar as shown in this diagram.



This diagram shows a hybrid laser pointer/torch device.



Surveying and measuring devices (exempt)

This diagram shows some typical surveying or measuring devices which are [exempt](#).



Hunting devices and laser flares (exempt)

This diagram shows some typical hunting devices and laser flares which are [exempt](#).



Typically labelled Class 3R,
<5 mW

If in doubt, contact the Ministry of Health

If you are still unsure, you can email the Ministry of Health at laserpointers@moh.govt.nz. Provide your contact details and a description of the device (and a photo, if possible). Provide as much information about the device as you can. For example, its output power, a link to the manufacturer's or supplier's website, any labelling or documentation provided with the device, etc.

For more information see the [Ministry of Health information website](#).
