

## Association offences

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## 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).

### 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	<a href="#">76</a>	Category 4 - see note below table
Accessory after the fact to piracy	<a href="#">97</a>	Category 3
Accessory after the fact to murder	<a href="#">176</a>	Category 4 - see note below table
Accessory after the fact to a crime other than those specified	<a href="#">312</a>	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 (s[312](#)).

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.

(s[137](#) 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	<a href="#">310</a> (see note below)	See below*
commit treason	<a href="#">73(f)</a>	See below*
commit piracy	<a href="#">96</a>	See below*
make a false accusation	<a href="#">115</a>	See below*
defeat justice	<a href="#">116</a>	See below*
murder	<a href="#">175</a>	See below*
prevent collection of rates and taxes	<a href="#">309</a>	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"><li>- who made the agreement</li><li>- who else was present at the time</li><li>- the planned offence</li><li>- whether the conspirators acted to further their aim.</li></ul>
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"><li>- that there was an agreement to commit an offence</li><li>- the identity of the parties</li><li>- whether any of the parties said, wrote, or did anything to further the common aim.</li></ul>
4	Consider: <ul style="list-style-type: none"><li>- obtaining a search warrant to seize evidence to support charge(s)</li><li>- electronic interception if circumstances justify this.</li></ul>
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
<b>Aiding</b>	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"> <li>- Keeping lookout for someone breaking and entering.</li> <li>- Supplying jumper leads or tools for someone unlawfully taking a motor vehicle.</li> <li>- Telling a burglar when their victims are out of the house.</li> </ul>
<b>Abets</b>	To instigate or encourage another person to commit the offence.  <b>Note:</b> “Abets”, “incites” and “counsels” overlap on their ordinary meanings.	A woman encourages her lover to murder her husband.
<b>Incites</b>	To rouse, stir up, stimulate, or urge a person to commit the offence.  <b>Note:</b> “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.
<b>Counsels</b>	To intentionally instigate the offence by advising a person on how to commit an offence, or planning its commission for another person.  <b>Note:</b> “Abets”, “incites” and “counsels” overlap on their ordinary meanings.	Teaching someone how to open a safe.  <b>Note:</b> It is not necessary for the person counselling the offender to know about the particular offence the offender plans to commit.
<b>Procures</b>	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.  <b>Note:</b> It is possible to procure by fraud, persuasion, words or conduct, e.g. by offering money to someone.
<b>Probable consequence</b>	Something that the person knows could well happen - a real or substantial risk.  <a href="#">R v Gush</a> [1980] 2 NZLR 92 (CA)	
<b>Any person</b>	Includes an innocent agent	Innocent “agent” may be procured to commit offence.  <a href="#">R v Paterson</a> : 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.
<b>Offence</b>	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 <a href="#">s66(1)(a)</a>	- they actually committed the offence	This may include the use of an innocent agent to carry out the act.
Party to the offence <a href="#">s66(1)(b) - (d)</a>	- 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 ( <a href="#">Ahsin v R</a> 2014] NZSC 153).
Party to a secondary offence <a href="#">s66(2)</a>	- 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 <a href="#">s70(1) and (2)</a>	- 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 <a href="#">66(2)</a> - 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.

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