

Formal warnings

Table of Contents

Table of Contents	3
Policy statement and principles	4
What	4
Why	4
How	4
Principles	5
Purpose of this chapter	5
Forms associated with this chapter	5
Eligibility criteria for formal warnings	6
Who is eligible for formal warnings?	6
Additional factors to be considered when assessing suitability	6
Formal warning process	7
Quality Assurance process	8
Disputes process	8

Policy statement and principles

What

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

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

Why

The benefits of a formal warning include:

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

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

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

How

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

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

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

For matters where the alleged offending relates to an offence arising from a family harm incident, the

approving member is the District Prevention Manager, in consultation with the lead for the local Safety Assessment Meeting (SAM) table or local multi-agency decision-making table.

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

Principles

The formal warning process is aligned with the [Prevention First Operating Model, Te Huringa O Te Tai](#) and [Our Values](#) (PRIMED).

Purpose of this chapter

This chapter sets out:

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

Forms associated with this chapter

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

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

Eligibility criteria for formal warnings

Who is eligible for formal warnings?

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

Work to protect vulnerable people, particularly repeat victims.

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

1. The offender must be 18 years or over.
2. The evidential sufficiency threshold for the offence must be obtained - refer [Solicitor-General's Prosecution Guidelines](#) - This must be recorded in compliance with the National Recording Standard rules as they pertain to recording offences and offenders.
3. When the public interest is in favour of a formal warning as an available and appropriate alternative to prosecution - [Solicitor General's Prosecution Guidelines](#).
4. The offender **must** clearly admit to the offending or alleged behaviours.
5. The offender **must** provide informed consent to take part in a warning process.

Additional factors to be considered when assessing suitability

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

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

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

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

Formal warning process

Stage	Description
1	The officer must fully consider the circumstances of the incident or investigation against the eligibility criteria and the additional factors above when assessing suitability for a formal warning.
2	The offender must provide a clear admission of the offending. Where the admission is not electronically recorded, record the admission and, where possible, have the offender sign the record.
3	<p>If a decision is made to recommend the issuing of a formal warning, the officer must then discuss their recommendation with a supervisor and gain their approval.</p> <p>For matters where the alleged offending relates to category 3 offences, the approving member is the relevant District Crime Manager.</p> <p>When issuing from scenes or places other than Police stations, if a supervisor is not working, the officer must assess the offender's eligibility and then make phone contact with a supervisor at the nearest 24-hour station or District Command Centre for approval if relevant or, if a category 3 offence, contact the District Crime Manager.</p> <p>For matters where the alleged offending relates an offence arising from a family harm incident the approving member is the District Prevention Manager in consultation with the lead for the local Safety Assessment Meeting (SAM) table or local multi-agency decision-making table. This will ensure lower end Family Harm offences are appropriately managed by leaders who have the full knowledge and experience of managing offending in the Family Harm environment.</p> <p>Note: When a supervisor is the person issuing the formal warning, approval must be sought from another higher ranked supervisor, i.e. the District Command Centre Senior Sergeant, to ensure a second opinion is across all decisions for each incident.</p> <p>Important: If the offender refutes their involvement in the alleged offending, or refuses consent to enter the warning process, the formal warning cannot be issued. Consider whether prosecution is in the public interest and should be commenced or not. Discuss with a supervisor as to the best course of action. Clearly record what you decide and your reasons for the decision in the Occurrence/Custody Module.</p>
4	The supervisor must ensure the identity of the offender has been checked, the offence fits within the eligibility criteria and the additional factors (set out above) are considered. They must inform the officer of the decision and provide them with their name, QID, decision, and rationale to record against the occurrence.

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

Quality Assurance process

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

Disputes process

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

Upon receipt of a dispute the 105 team will forward this to the district's disputes team to organise a review.

Disputes will be reviewed, with feedback provided to the Officer on the outcome of the dispute as/when required, by the disputes team.

The disputes team will update NIA with the outcome and will distribute the appropriate letter - Upheld Police formal warning letter or withdrawn formal warning letter. The appropriate rationale for the decision **must** be included within the letter.

Printed on : 13/07/2022