

## **Expert evidence – drugs and gangs**

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## Policy statement and principles

### What

Opinion evidence is not generally admissible in court proceedings. As an exception the court may allow expert opinion evidence in areas where the Judge or Jury may not have specialised knowledge or skills to interpret the evidence. Under this exception, the court may allow experienced Police employees or employees from other agencies to give expert opinion evidence in court in respect of drugs and gangs.

Drugs subject matter experts (SMEs) usually give evidence in respect of drug manufacture, cultivation, prices, methods of sale, packaging etc. A gangs expert will give evidence of structure, rules, gang patches and gang operating methods.

Police drug and gang SMEs' expertise is mostly experience-based over time, but may be backed up with qualifications, additional training and membership of professional associations.

Police employees must be selected and approved before giving expert evidence in court on drugs or gangs. Once approved, they are placed on the Police national 'Drugs and Gangs Expert Register' and their currency and competency as an expert witness is actively monitored by the District and National Coordinators.

### Why

Evidence from a suitably qualified subject matter expert can provide important evidential and probative value to support a prosecution. The evidence is also important to help the Court and or Jury to understand the criminal environment.

Expert witnesses must state their qualifications to give specialised evidence before giving testimony and may be cross-examined to test their competency and credibility. Only the court can determine a witness' suitability to be considered an expert.

The level of scrutiny on witnesses now requires that any Police employee who intends to offer expert opinion evidence in respect of drugs and gangs must be suitably qualified by their specialised knowledge or skill based on training, study or experience. They must also be able to demonstrate currency and competency as a SME. Failure to do so, places the success of investigations and prosecutions at risk.

### How

To ensure the currency and competency of SMEs to support prosecutions Police will:

- select suitable Police employees to provide expert evidence on drugs and gangs
- develop the capacity and capability of our experts
- maintain the standard and consistency of the expert evidence provided
- maintain a national register of drugs and gang subject matter experts
- identify and address any training or evidential issues
- enable Crown and Prosecutor input
- apply the [High Court Rules - Schedule 4 Code of conduct for expert witnesses to expert evidence](#)
- provide peer review and feedback.

## Introduction

### Purpose

This chapter details:

- procedures for engaging internal experts in the course of drugs and gang related investigations, including:
  - experts from Police's own specialist units
  - subject matter experts (SMEs) within districts
- processes for [selecting and approving drugs and gangs subject matter experts in districts](#) and for maintaining expertise
- the operation of the national [Drugs and Gangs Experts Register](#), how it is administered and how it can be used by police seeking experts for investigations
- the [professional expectations](#) of expert witnesses and the [code of conduct](#) applying to them.

## Evidence Act provisions relating to experts

### What is an 'expert' witness and 'expert evidence'?

An 'expert' is a person who has specialised knowledge or skill based on training, study or experience.

'Expert evidence' means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion.

([s4 Evidence Act 2006](#))

### Admissibility of expert evidence

See [section 25](#) of the Evidence Act 2006 for the legislative explanation regarding admissibility of expert evidence.

## Table of terms, acronyms and forms

Term / acronym / form	Definition
<b>Drugs and Gangs Expert Register</b>	Drugs and Gangs Expert Register is a national list of Police employees approved as drugs and/or gangs subject matter experts (SMEs) by the District Coordinator: SME, the District Experts Panel and the National Coordinator: SME.  <b>Note:</b> the register is located in the IMT application.
<b>IMT</b>	Information Management Tool application.
<b>Request for Expert Evidence: Drugs and Gangs form</b>	Online form is located on <b>Police Forms &gt; Expert Evidence Request &gt; Request for Expert Evidence: Drugs and Gangs</b> form (and can be downloaded below).  <div style="border: 1px solid black; padding: 2px; margin: 5px 0;">  <a href="#">Reques or Exper Evidence Drugs and Gangs (DOCX) 23 June 72.15 KB</a> </div> <p>Action to take with making request:</p> <ul style="list-style-type: none"> <li>- complete the relevant parts of the request document</li> <li>- save to a folder of choice</li> <li>- note:           <ul style="list-style-type: none"> <li>- once saved the request will automatically generate an e-mail to <a href="mailto:s.9(2)(g) OIA@police.govt.nz">s.9(2)(g) OIA@police.govt.nz</a> (with request document attached)</li> <li>- the request will be received by the National Coordinator and loaded into IMT</li> <li>- an IMT tasking will be created and assigned to the appropriate District coordinator for actioning.</li> </ul> </li> </ul>
<b>SME</b>	Subject Matter Expert

# Drugs and Gangs Expert Register

## Content of Drugs and Gangs Expert Register

The register contains:

- SME's name, QID, district and workgroup
- areas of evidential expertise that can be provided for drugs and/or gangs
- module that records:
  - a profile of the expert
  - a completed questionnaire
  - a completed resource survey
  - a history of requests
  - a list of their statements
  - a history of the feedback provided through peer review
  - a history of the feedback they have provided for each Court appearance
  - recent training, workshops, development opportunities and resources available or made available to the SME since being on the register
  - copy of the expert's most up-to-date brief or briefs.

### Limited access to personal module information contained in register

Only SME's name, QID, district, work group and areas of drugs and/or gangs expertise will be accessible to Police employees. Access to other SME's personal module information contained in personal folders of the IMT system is restricted to District Coordinator: SME, the District Experts Panel and the National Coordinator: SME.

### Review and maintenance of the Drugs and Gangs experts register

The National Coordinator: SME and District Coordinator: SME will meet and review the [Drugs and Gangs Expert Register](#) annually. The register is to be checked for currency, relevancy and competency of SMEs from their district. This is to ensure that the SME is still considered current, relevant and competent with the [general](#) and [specific crime type](#) criteria, to give expert opinion evidence relating to drugs and/or gangs.

Their continued competency as an expert witness must be actively managed by the District Co-ordinator: SME and reviewed at least once per appraisal year.

See '[Removing an expert from the Drugs and Gangs Expert Register](#)' in the 'Selection and approval of SMEs topic' where an employee is no longer considered competent to give expert opinion evidence. The National Coordinator: SME will notify the employee and remove their name from the national register.

## Responsibilities and governance of district SMEs

Governance of **district drugs and gang related SMEs** occurs at both a national and district level. This table summarises the responsibilities of all involved.

Role	Responsible for
<b>O/C Investigation</b>	<ul style="list-style-type: none"> <li>- ensuring:               <ul style="list-style-type: none"> <li>- a <a href="#">Request for Expert Evidence: Drugs and Gangs</a> form is completed, (in <b>Police Forms&gt; Expert Evidence Request &gt; Request for Expert Evidence: Drugs and Gangs</b> form) submitted to the National Coordinator: SME by email (send to <a href="mailto:s.9(2)(g)OIA@police.govt.nz">s.9(2)(g) OIA@police.govt.nz</a>) for loading into <b>IMT</b> and forwarding to the appropriate District Coordinator: SME</li> </ul> </li> <li>- ensuring a member of the investigation gives the appointed expert access to relevant investigative material</li> <li>- ensuring effective liaison with the expert around their evidence including timings.</li> </ul>
<b>Subject Matter Expert (SME) [Police employee]</b>	<ul style="list-style-type: none"> <li>- sourcing and reviewing material received from the O/C Investigation and confirming whether they can provide relevant expert evidence</li> <li>- preparing formal statements in consultation with the O/C Investigation and Prosecutor</li> <li>- participating in the peer review of formal written statements and evidence</li> <li>- giving expert opinion evidence on a subject matter for which they are suitably qualified and approved</li> <li>- maintaining their expertise by relevant work experience and participating in development opportunities afforded</li> <li>- ensuring their performance/competency is current and regularly reviewed with the District Coordinator: SME.</li> </ul>
<b>District Coordinator: SME</b>	<ul style="list-style-type: none"> <li>- identifying suitable drug and gang SMEs from their district and recommending them to the District Experts Panel for inclusion in the <a href="#">Drugs and Gangs Expert Register</a></li> <li>- arranging District Experts Panel recommendations to National Coordinator: SME for approval or removal of SMEs from the <a href="#">Drugs and Gangs Expert Register</a></li> <li>- receiving and assigning requests for drug and gang expert evidence within their District</li> <li>- liaising with District Experts Panel, National Coordinator: SME and other District Coordinator: SMEs</li> <li>- annually reviewing the expert register for their district</li> <li>- liaising with prosecutors, the Crown Solicitor and the judiciary as required</li> <li>- facilitating the peer review process</li> <li>- arranging ongoing training</li> <li>- identifying national or international opportunities to develop drug and gang subject matter experts</li> <li>- communicating topical issues with:               <ul style="list-style-type: none"> <li>- relevant experts within their district and, where applicable, nationally</li> <li>- District Experts Panel</li> <li>- other workgroups where relevant.</li> </ul> </li> </ul>
<b>District Crime Manager/Field Crime Manager/District Commander</b> (may be member/s of the District Experts Panel)	<ul style="list-style-type: none"> <li>- establishing a District Experts Panel under the control of an experienced and senior CIB supervisor as the District Coordinator: SME</li> <li>- ensuring that the policy requirements and standards are met</li> <li>- providing ongoing support and resources for the management and development of drug and gang SMEs</li> <li>- reporting issues to the National Co-ordinator: SME where appropriate.</li> </ul>

<p><b>District Experts Panel</b></p>	<ul style="list-style-type: none"> <li>- ensuring membership includes experienced CIB and district managers, and the senior CIB supervisor as the District Coordinator: SME</li> <li>- receiving, considering, recommending SMEs' nominations/applications/removal for approval by the National Coordinator: SMA</li> <li>- annually reviewing the expert register of SMEs to ensure competency, currency and performance levels are maintained</li> <li>- considering the outcomes of post evidence evaluation feedback on the <a href="#">Request for Expert Evidence: Drugs and Gangs forms</a> arising from SME Court appearances</li> <li>- ensuring ongoing training, conferences, workshops are appropriate to maintain SMEs' skills, knowledge and experience.</li> </ul>
<p><b>National Coordinator: SME</b> Under delegation from Director: National Organised Crime Group (NCOG)</p>	<ul style="list-style-type: none"> <li>- providing national oversight, co-ordination where required, and giving advice on gangs and/or drugs</li> <li>- managing information, resources available and recruitment of expert witnesses</li> <li>- training development and delivery</li> <li>- reviewing each district/national group on an annual basis to ensure appropriate records are maintained on their respective SME performance/competency</li> <li>- administration of the <a href="#">Drugs and Gangs Expert Register</a></li> <li>- annual review of the Drugs and Gangs Expert Register with each District Coordinator: SME</li> <li>- liaison with Crown Solicitors and Prosecutors when appropriate</li> <li>- identifying international best practice relating to expert witnesses</li> <li>- evaluating feedback received from District Coordinators</li> <li>- liaising with local and overseas law enforcement agencies to source relevant information that would assist SMEs and fill any intelligence gaps</li> <li>- identifying local, national and international courses that SMEs would benefit from attending</li> <li>- confirming all aspects of the expert portfolio is resourced and managed</li> <li>- providing assurance to the Director: National Organised Crime Group (NCOG).</li> </ul>

## District selection, approval and removal of Police subject matter experts (SMEs)

Each district must have a District Experts Panel led by a District Co-ordinator: SME to consider selection and recommend approval of candidates' inclusion on the [Drugs and Gangs Expert Register](#).

### Application/nomination process

Police employees who hold specialist skills, knowledge and experience, and consider that they could provide expert opinion evidence on a particular subject matter should first discuss their potential suitability with their immediate supervisor.

Any nomination should then be made to the District Coordinator: SME who will make the final determination of the employee's suitability in consultation with the District Experts Panel, the Crime Manager and the National Coordinator: SME.

The District Co-ordinator: SME may also directly approach employees who have been identified with the suitable attributes.

See [Responsibilities and governance of district SMEs](#) for more information on the role of the District Coordinator: SME in identifying, selecting and supporting District SMEs.

### General criteria for being an expert SME witness

These factors must be considered by the District Coordinator SME before nominating any employee as competent to give expert opinion evidence relating to a particular subject matter:

- length of service and relevant law enforcement experience
- positions held relevant to the subject matter
- their depth of knowledge of subject matter
- the currency of their knowledge of the subject matter
- training received or delivered on the subject matter
- demonstrated ability in giving reliable evidence in court
- commitment to developing and maintaining their expertise
- any formal qualifications on the subject matter
- membership of any recognised associations or groups pertaining to their expertise
- no issues that compromise the integrity of any evidence to be given.

### Factors specific to particular crime types

In addition to the general criteria above, the following factors should be considered when determining an employee's competency to give expert opinion evidence on drugs and gangs, and comparative to any prospective defence witness. **Note:** These lists are indicative only and not meant to be exhaustive.

#### Drugs

Consider:

- experience with executing search warrants relating to drugs
- conducting related scene examinations
- arrests and interviews of offenders in relation to drugs
- experience in managing drug investigations
- experience with CHIS - e.g. handler, supervisor, controller levels, course completed
- independent study
- experience in covert investigations
- undercover programme involvement
- clandestine laboratory training
- experience in National Cannabis Crime Operation' and / or National Organised Crime Operations
- research of trends

- relevant reading and research e.g. NDIB information reports
- networking with other experts in the same field
- training received or delivered
- course, forums, conferences attended.

## Gangs

Consider:

- experience in gang intelligence
- gang liaison involvement
- experience executing gang related search warrants
- conducting related scene examinations
- arrests and interviews of gang members and associates
- experience with CHIS - e.g. handler, supervisor, controller levels, course completed
- courses, forums, conferences attended
- research
- networking with other experts in the same field
- training received or delivered.

## Maintaining expertise after approval as a SME

The SME is responsible for maintaining the currency of their expertise, skill and knowledge in respect of their subject matter. Their continued competency as an expert witness must be actively managed by the District Co-ordinator: SME and reviewed at least once per appraisal year.

The National and District Coordinators are responsible for providing relevant training, networking opportunities and review process.

Each District is responsible for supporting their experts to maintain currency. This may include meeting the costs of the expert attending relevant courses, forums or conferences.

## Removing an expert from the Drugs and Gangs Expert Register

Should any issues be experienced with a SME, first discuss the matter with your supervisor and/or District Crime Manager for consideration by the District Coordinator: SME and the District Experts Panel.

Where an employee is no longer considered competent to give expert opinion evidence, the **District Coordinator SME must flag that the SME position is under review** on the register and notify:

- District Experts Panel
- National Coordinator: SME at NOCG, PNHQ.

The District Experts Panel will consider:

- any adverse feedback on the expert's performance from an O/C Investigation, Crown Solicitor, Police Prosecutor or other legitimate source
- whether:
  - further training or development of the SME is appropriate with a view to reinstatement; or
  - the removal from the register should be recommended to the Director: National Organised Crime Group (NM: NOCG).

A SME may request to be removed from the district SME register in discussion with their District Coordinator: SME.

An SME may be removed from the [Drugs and Gangs Expert Register](#) when:

- SME requests removal
- Director: NOCG authorises the removal of a SME from the register after following the process above.

## Engaging the services of a drug or gang SME

### Who to use - internal or external SMEs?

Drug and gang SMEs may be Police employees or experts from other agencies. District Police employees approved to give expert opinion evidence in court on drug or gang subject matter should be used before engaging a SME from other agencies.

SMEs from other agencies should only be used when a Police employee with drug or gang expertise:

- is unavailable
- does not have specialised knowledge or skills based on training, study or experience for the particular expert evidence required to be given in Court.

### Process for requesting and approving District drug or gang SMEs

Follow these steps if you require a district based drug or gang Police SME witness.

Step	Action
1	<p><b>Online request</b></p> <p>O/C Investigation completes the <a href="#">Request for Expert Evidence: Drugs and Gangs form</a> (<b>Police Forms &gt; Expert Evidence Request &gt; Request for Expert Evidence: Drugs and Gangs</b>) and emails the request to the National Coordinator: SME (email address <a href="mailto:s.9(2)(g)OIA@police.govt.nz">s.9(2)(g) OIA@police.govt.nz</a>) for loading into IMT and forwarding to the appropriate District Coordinator: SME. Include the following information:</p> <ul style="list-style-type: none"> <li>- an outline of the investigation and the expert evidence sought</li> <li>- charges</li> <li>- Court date and location</li> <li>- district</li> <li>- O/C Investigation contact details.</li> </ul> <p>Consider if it would be advantageous to call a SME to a scene, while it is still secured by Police. For example, using a SME for cannabis cultivation to examine a large scale cannabis plot in situ. Make contact directly with the District Coordinator and follow-up in writing.</p>
2	<p><b>Approval</b></p> <p>The e-mail <a href="#">Request for Expert Evidence: Drugs and Gangs</a> form sent by the requestor and loaded into <a href="#">IMT</a>, is forwarded through that tool from the National Coordinator: SME to the District Coordinator: SME via an IMT tasking, who reviews the request and either:</p> <ul style="list-style-type: none"> <li>- declines the request and notifies the O/C Investigation; or</li> <li>- identifies, and assigns the SME to the request.</li> </ul> <p><b>Note</b>, the SME:</p> <ul style="list-style-type: none"> <li>- should where possible be independent of the investigation.</li> </ul>

3	<p><b>Information for SME</b></p> <p>If a SME is assigned, then the O/C Investigation must provide the assigned SME with all relevant information that will assist with providing expert evidence. This may include:</p> <ul style="list-style-type: none"> <li>- details of the investigation and the expert evidence sought</li> <li>- summary of facts</li> <li>- relevant job sheets</li> <li>- exhibit/witness lists</li> <li>- photographs/plans/maps</li> <li>- ESR reports</li> <li>- formal statements of other relevant witnesses</li> <li>- defence expert reports and statements</li> <li>- other expert information, e.g. NDIB reports.</li> </ul>
4	<p><b>Duties of the assigned SME</b></p> <p>The assigned SME should:</p> <ul style="list-style-type: none"> <li>- confirm availability for Court dates</li> <li>- discuss case with the O/C Investigation, O/C Scene, O/C Exhibits as appropriate</li> <li>- confer case with related parties e.g. Police Prosecutions Service, Crown Solicitor regarding any issues</li> <li>- determine if the matter is suitable for their SME testimony. (In the event of a disagreement about this, the parties should consult the District Co-ordinator: SME and/or District Crime Manager in the first instance, or if appropriate, the Police Prosecution Service or Crown Solicitor)</li> <li>- confirm that they are competent to provide evidence required and that their expertise is current</li> <li>- where possible/appropriate attend the scene or search warrant to observe first hand</li> <li>- review all relevant material, seeking additional material as required</li> <li>- draft a formal written statement (FWS)</li> <li>- have their FWS peer reviewed (locally or outside of District) via the District Co-ordinator: SME</li> </ul> <p><b>Note:</b> The FWS is returned to the SME and the District Coordinator: SME after peer review for their confirmation of any suggested changes to the document</p> <ul style="list-style-type: none"> <li>- submit their completed formal written statement to the O/C Investigation for disclosure via the prosecutor</li> <li>- email a copy of the formal written statement to <a href="mailto:s.9(2)(g)OIA@police.govt.nz">s.9(2)(g) OIA@police.govt.nz</a> for loading into the IMT library</li> <li>- attend court and provide evidence as required</li> <li>- complete post evidence evaluation feedback on the <a href="#">Request for Expert Evidence: Drugs and Gangs forms</a> in IMT on completion of their court case/appearance and submit.</li> </ul>
5	<p><b>Review of expert evidence</b></p> <p>District Coordinator: SME may:</p> <ul style="list-style-type: none"> <li>- arrange for another SME to review and comment on the oral evidence given at Court</li> <li>- maintain records of feedback received or given in relation to SME</li> <li>- present findings to the District Experts Panel for consideration and recommendation.</li> </ul> <p>All SME, Expert Panels and District Coordinators are responsible for identifying any new issues, evidential matters, case law, defence angles etc.</p> <p>The District Coordinator: SME is responsible for providing feedback and updates to the National Coordinator: SME for wider evaluation and dissemination.</p>

## **No district SME available**

Where a district does not have a resident SME available or an expert cannot be confirmed, the District Co-ordinator: SME should seek the assistance of other districts or seek advice from the National Co-ordinator: SME at National Organised Crime Group (NOCG), PNHQ.

## **Expert witnesses engaged by Crown Solicitors**

A Crown Solicitor engaging an expert witness must consult with Police. The Crown must meet the cost and may claim reimbursement. See:

- [Crown Solicitors: Terms of Office](#)
- [Police Guide to Crown Solicitor Billing \(27 Jul 17\)](#).

## Professional conduct of expert witnesses

### Witnesses to comply with Code of conduct for expert witnesses

Expert witnesses giving evidence in criminal proceedings in New Zealand are required to adhere to the [High Court Rules - Schedule 4 Code of conduct for expert witnesses](#).

### High Court Rules - Schedule 4: Code of conduct for expert witnesses

The [Code of conduct for expert witnesses](#) set out in schedule 4 of the High Court Rules is summarised below.

#### Duty to the court

An expert witness:

- has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
- is not an advocate for the party who engages the witness.

#### Evidence of expert witness

In any evidence given by an expert witness, the expert witness must:

- acknowledge that they have read the code of conduct and agrees to comply with it
- state their qualifications as an expert witness
- state the issues their evidence addresses and that the evidence is within their area of expertise
- state the facts and assumptions on which their opinions are based
- state the reasons for the opinions they give
- specify any literature or other material used or relied on in support of the opinions they express
- describe any examinations, tests, or other investigations on which they have relied and identify, and give details of the qualifications of, any person who carried them out.

If an expert witness believes that:

- their evidence or any part of it may be incomplete or inaccurate without some qualification, they must state that qualification in their evidence
- their opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in their evidence.

#### Duty to confer

An expert witness must comply with any direction of the court to:

- confer with another expert witness
- try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses
- prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.

**Note:** In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

### Police expert witnesses to conduct themselves professionally

SMEs appearing in court as witnesses are representing the New Zealand Police. Police expert evidence is often vital to the prosecution case and in cases of wider public interest can be a focus of media attention.

SMEs giving evidence must do so in a clear and concise manner that reflects the professional standards of Police. Notwithstanding the fact that experts must be independent, Police expert witnesses are Police officers and must present themselves professionally. Under cross examination by defence counsel, the SME must maintain the same unbiased and fair presentation of evidence to avoid any perception that Police are being obstructive to the court.



## **Police drug and alcohol policy**

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## Policy statement and principles

### What

The NZ Police Drug and Alcohol Policy has been developed to protect the wellbeing of all Police employees, as well as the integrity, reputation and effectiveness of Police. It seeks to facilitate the health, safety and wellness of all Police employees in relation to drug and alcohol use by focusing on rehabilitation. Wherever possible Police will prioritise a rehabilitative approach to manage staff with drug and alcohol difficulties.

It has been developed by Police in consultation with the New Zealand Police Association, the Police Leaders Guild and the Independent Police Conduct Authority.

### Why

'Our Business' aims to ensure both our communities and our people feel safe and are safe. Achieving this requires enabling our people to be the best they can be. The use of drugs and alcohol increases the likelihood of errors of judgment and increases health and safety risk in the workplace.

All employees have a duty to take care of their own and others' safety. Police officers deploy into operational environments where they are frequently exposed to multiple hazards and associated high risks, and any such incidents are often fast-paced, dynamic and require sound judgement to mitigate risks. Those employed in roles that support our frontline staff also perform functions that require sound judgement, again to mitigate risk to themselves, the safety of colleagues and the wider community. It is therefore critical that any employee who consumes alcohol while on duty (without authorisation of the District Commander or Director) or reports for duty under the influence of drugs or alcohol is identified and held accountable for their decision to be at work.

This Policy is rehabilitation focused. If an employee is concerned that they have issues with drugs or alcohol they are encouraged to seek confidential support and assistance through our Employee Assistance Programme (EAP) or a District Wellness Advisor.

### How

Testing will be undertaken in accordance with the relevant AS/NZ alcohol and drug testing standards and explained further in this Policy. In accordance with [Our Values](#) and [Our Code](#), Police requires all employees and other Police workers to:

- not use illegal drugs
- not report for duty when under the influence of drugs or alcohol, including prescribed and over the counter medication not taken in accordance with a health practitioner's or manufacturer's instructions or that present a risk to the individual's safety at work or the safety of others while at work
- immediately notify their manager if they feel that any medication, they are taking could present a risk to their safety or the safety of others while at work.
- not consume alcohol while on duty, unless it has been authorised by the District Commander or Director
- follow the lawful and reasonable request for a breath, oral fluid or urine sample in accordance with
- this policy (Refer to Employer and Employee responsibilities regarding consent)
- adhere to the requirements of any rehabilitation programme they may be directed to participate in.

The primary focus of this policy is to keep people safe at work. The focus is on rehabilitation, but in some circumstances breaches of this policy may amount to misconduct or serious misconduct under the Code of Conduct and a disciplinary pathway may apply. Circumstances could include:

- being impaired by alcohol or drugs at work where there is risk to others
- refusing a test without reasonable cause.

### Who and when

This policy applies to all Police employees whether constabulary or non-constabulary. It also applies to all new preferred employees and constabulary applicants who have been identified as the preferred candidate for placement in a recruit wing (in relation to pre-employment testing).

There are four categories of drug and alcohol testing for Police employees and further defined under Categories of Employee Testing:

- **Pre-employment**
- **Critical incident** (constabulary)
- **Reasonable cause** (all employees)
- **Designated workgroups** (constabulary)

**Random** testing is not included in this policy, however, may be included at a future date following further consultation and agreement.

## **Alcohol and drugs defined**

### **Alcohol**

Any substance containing more than 1.15% ethyl alcohol (ethanol) including but not limited to beer, wine and distilled spirits.

### **Drugs**

Any substance that causes or can cause impairment, including (but not limited to):

- controlled drugs (as defined in section 2 of the Misuse of Drugs Act 1975);
- psychoactive substances (as defined in section 9 of the Psychoactive Substances Act 2013);
- medicines (as defined in section 3 of the Medicines Act 1981) that are misused, whether prescription or 'over the counter' and whether capable of causing impairment on their own or in combination with other substances; and
- other substances that are intended to have a mind-altering effect, whether regulated or unregulated (such as synthetic and herbal highs, party pills).

## **Employer and employee responsibilities**

### **Employer**

Police has a primary duty of care to ensure, so far as is reasonably practicable:

- the health and safety of its employees; and
- that the health and safety of other persons is not put at risk from work carried out as part of Our Business.
- Wherever possible, Police will take a rehabilitative approach to the implementation of this policy and testing procedures

Police also has obligations to act in good faith and to comply with the principle of being a good employer. This means providing our employees with all relevant information (including their rights), a reasonable opportunity to take legal advice, and the ability to have a representative and/or support person present.

### **Employee**

Police employees are expected to act in good faith and to comply with all applicable laws, Police processes and policies (including this policy, Our Values and Our Code). This includes safe and responsible use of drugs and/or alcohol. Employees must also comply with the advice and instructions of the relevant Police- approved testing and rehabilitation providers.

If an employee is concerned that they have issues with drugs or alcohol they are encouraged to seek funded confidential support and assistance through our Employee Assistance Programme (EAP) or a District Wellness Advisor.

While drug and alcohol testing is required under this policy, testing will only occur if an employee has given consent. Refusal to consent to, or failure to comply with, drug and alcohol testing under this policy may result in the implementation of a disciplinary pathway and could amount to misconduct or serious misconduct.

Rehabilitation is the primary focus of this policy however there may be some circumstances where a disciplinary pathway may be considered, this could potentially include by way of example:

- being impaired by alcohol or drugs at work where there is risk to others
- not complying with an agreed rehabilitation programme
- failing a retest after completion of a rehabilitation programme
- refusing a test without reasonable cause.

## **Further information**

Further information can be found at these links:

Police drug and alcohol policy  
Proactively released by New Zealand Police

- Code of Conduct
- Rehabilitation policy and procedures
- Disciplinary policy
- Off duty interventions
- Host responsibility-Police canteens and social functions

## Categories of employee testing

This section details the four testing categories for Police employees and explains when and how tests will occur.

### Pre-employment

All new preferred applicants (non-constabulary) and constabulary applicants to join New Zealand Police are required to undergo a drug and alcohol screening test prior to their employment.

Testing will occur for constabulary applicants at the end of the selection process when the applicant has been identified as the preferred candidate for the role, or for placement in a recruit wing. A letter of offer will be conditional on a negative result.

Testing will occur for all preferred applicants for non-constabulary positions (excluding contractors and volunteers) prior to a letter of offer being made.

Applicants will be required to submit to the nearest Police approved testing provider within 5 days of notification from the hiring manager or recruiting staff.

### Consequences of non-negative and positive results - pre-employment testing

A non-negative result is deemed a positive result. The applicant may, at their own expense, have the sample re-tested in the provider's accredited laboratory. In the event of a negative result from this test, the application may proceed.

In some circumstances, Police will cover the expense to have the sample retested, at the discretion of the Director: Safer People

An applicant will not receive a letter of offer in the event of a positive result.

Applicants will not be eligible to re-apply until after a period of at least 2 years, at which time they must supply, at their own expense, evidence of a minimum of four (4) negative drug tests done by the Police approved provider over that period. Each re-application will be judged on its own merits. The re-applicant must undergo another pre-employment Police drug screening test (in accordance with the above pre-employment process) if they are sent another offer of employment.

### Designated work groups

The groups listed below are designated workgroups for drug and alcohol testing due to their special functions which are associated with higher than normal or unique workplace risks:

- Special Tactics Group (STG)
- Armed Offenders Squad (AOS)
- Police Protection Services (PPS)
- Airport Police
- Operational Dog Handlers.

All current and active employees within a designated workgroup will be tested at least once every two years while they remain part of the group. They will also be tested following any involvement in a critical incident.

Testing will be conducted by the Police approved testing provider at:

- the designated work group base/station, or
- the testing provider office, or
- at another suitable venue, e.g., at a training session.

These tests should be unannounced so far as is reasonably practicable.

Testing will be in accordance with the relevant AS/NZ alcohol and drug testing standards.

The employee will be notified at the time of testing if the result is negative. If a non-negative result is received at the time of testing, the urine sample will be sent to the accredited lab for analysis by the service provider. A positive result will be in line with the above standard.

Other workgroups may be designated under this policy in consultation and agreement with the Police Association and Police Leaders

Guild.

## Critical incident

A critical incident in respect of this policy applies to situations where an employee has:

- used force or had direct contact with a person where death or significant injury or illness has resulted. The use of force or direct contact includes (but is not limited to) a firearm, taser, OC Spray, baton and/or physical restraint or hold
- used a firearm, where death or serious injury has resulted, whether caused by a firearm or not. This includes where the employee has discharged a firearm in the direction of a person in the execution of his or her duty, regardless of whether or not it resulted in an injury or death.

**NB:** For clarity, fleeing driver incidents are not included in the definition of critical incident for the purposes of this policy.

## Procedures specific to critical incident testing

As soon as is reasonably practicable after a critical incident, and following the management of immediate safety and welfare considerations, the relevant employee(s) should be tested for drugs and alcohol in accordance with the following process:

Step	Action
1.	The District Commander or their delegate (e.g., District Command Centre), in consultation with the Critical Incident Liaison Officer (CILO) (or involved officer's supervisor if CILO not appointed) must contact the Police approved testing provider as soon as it has been determined to be a critical incident, and make arrangements for testing, either on site or at an agreed location, e.g. Police station, or the provider's premises. The need to protect the anonymity of employees involved in critical incidents should be considered when deciding the place of testing.
2.	Where possible, the breath alcohol test should be conducted within 2 hours of the critical incident. (Access the <b>Drug Testing Consent for Police Employees</b> in <a href="#">Police Forms&gt; Safer People</a> )
3.	Where the service provider is able to attend, the employee/s will be required to provide a sample of their breath and urine in accordance with the relevant AS/NZ drug and alcohol testing standards. Note that these vary if the employee requiring testing is receiving treatment at a hospital.  For more information, see the <a href="#">standard drug and alcohol testing procedures used by service providers</a> or <a href="#">those applying in hospitals</a> .
4.	The urine sample will be sent to the accredited lab for analysis by the service provider. A positive result will be in line with the above standard.
5.	The result of the test will be sent to the Director Safer People. The employee will be notified via CILO as soon as practicable.

See also the Flowchart for critical incident testing below.

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 [Critical Incident Testing Process \(Oct 2019\)](#)

129.69 KB

## Reasonable cause

This testing category applies where a Manager/Supervisor has reason to suspect that an employee has consumed or is under the influence of drugs and alcohol. This includes prescribed and over the counter medication not taken in accordance with a health practitioners or manufacturer's instructions or that present a risk to the individual's safety at work or the safety of others while at work.

**NB: In all cases reasonable cause must exist at the time of assessment.**

Any decision made to initiate a reasonable cause process is significant, both in terms of process and the impact and effect it may have on the person being tested. Individual's rights regarding privacy and confidentiality must be respected. Therefore, a Manager/Supervisor needs to be confident that reasonable cause exists and requiring a test is justified. If it is not, this may create a

breach of the employee's privacy. Procedures in this Policy must be carefully followed. A manager's/supervisor's pack has been developed and is to be used in all circumstances where practicable to determine whether a reasonable cause testing procedure should be undertaken. This will assist in making an assessment and give guidance throughout the process. It contains all relevant forms including employee information and consent forms.

[Manager's/supervisor's Pack - reasonable cause testing of employees](#) (includes all documents including consent forms).

Training (Reasonable Cause Drug and Alcohol Testing) is available within Success Factors on the Reasonable Cause Process, including signs and symptoms and guidance on using the manager's/supervisor's pack.

For contractors, use the alternate procedure listed.

## **Reasonable cause procedures**

- [Employees](#)
- [Contractors](#)

## Requests for tests and notification of results

### Employee rights and assistance

Whenever an employee is required to undertake a test it is important, they understand their rights throughout the process. This Policy has been developed to ensure testing takes place in a consistent and professional manner and with the consideration for an individual's rights, including privacy and confidentiality. This includes the right to:

- Seek advice prior to undertaking a test, providing that any delay in obtaining advice is not unreasonable
- Support if requested where possible, provided that the safety of all can be assured and it does not result in unreasonable delay
- Effective communication which is open and honest
- Easily accessible information and questions answered in a timely manner
- Be treated in line with NZ Police values
- Respect for an individual's culture, values and beliefs
- Be fully informed about any process the individual is involved in, including what they are being tested for, what will practically be required, (i.e., what is involved and who will undertake it) the timeframes involved, what the test results are and what the outcome will be (dependent on the test results)
- Ask to have any concerns addressed and to be informed about options for resolving these
- An individual's privacy is respected and all relevant legislations relating to privacy and access to information are complied with, how the information will be managed and who has access to it.
- Refuse to undergo any process (NB this may result and involve the implementation of a disciplinary pathway)

### Testing procedures

**Alcohol** - A breath test will be completed.

**Drugs** - A urine screening device will be used to carry out testing. The verification for the device used and the cut off concentrations for the onsite device are in line with best practice standards set by drug testing industry. It will be collected in an area where you can be monitored by a TDDA testing technician, and all practicable steps taken to ensure your privacy is maintained. These steps and procedures will be explained to you at the time of testing by the technician.

Drug and alcohol testing will be undertaken by [The Drug Detection Agency \(TDDA\)](#) in accordance with their standard testing procedures.

Download:

- a summary of the standard Drug and Alcohol Testing Procedures Used by Service Providers

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 [Drug and Alcohol Testing Procedures Used by Service Providers](#)

128.82 KB

- Drug and Alcohol Testing Procedures When Employees are in hospital

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 [Drug and Alcohol Testing Procedures When Employees are in Hospital](#)

278.58 KB

### More information

See also TDDA's step by step Overview of the Screening Process on the Police TenOne [Drug and Alcohol Policy intranet page](#).

### Request to undertake test

Any employee who is requested to perform a test in accordance with this policy and related testing procedures is expected to cooperate and provide a sample for testing, where the service provider is available to take the sample. However, consent is required by the employee before testing can be undertaken.

### Refusal or failure to be tested

The Director: Employee Relations must be advised whenever an employee refuses to consent to or fails to comply with drug and

alcohol testing. The Director: Employee Relations should consider all relevant circumstances and may initiate a disciplinary pathway if appropriate (see more information in the [Disciplinary policy](#)).

## Test results

Whenever a critical incident or reasonable cause drug or alcohol test is carried out, the District Commander, or their delegate, is responsible for notifying the Director: Safer People. The service provider will communicate directly with the Director: Safer People regarding the test results.

All test results will be notified to the tested employee as soon as practicable. If a non-negative or positive result is obtained the employee will be given an opportunity to respond to the result and to seek retesting of the sample (within 5 working days of being notified of the test result) if they wish.

In all cases, Police will take steps to support an employee's rehabilitation and/or wellness needs. In the event of a positive test, rehabilitation will be the primary focus for a current employee and, depending on the circumstances, in some circumstances a disciplinary process may also need to be undertaken.

Consideration should be given to whether it is appropriate for an employee to continue in their current role while undergoing a rehabilitation plan.

## Result related definitions

### Negative test result

Drug and/or alcohol levels do not reach or exceed the cut off levels set out in the relevant AS/NZ standards.

A negative alcohol test is required to be at 150 micrograms of alcohol per litre of breath or below.

### Non-negative test result

Drug levels appear to reach or exceed the cut off levels set out in the relevant AZ/NS standards. A non-negative drug test is an indicator only and requires laboratory analysis to confirm the result.

### Positive result

Drug and/or alcohol levels reach or exceed the cut off levels set out in the relevant AS/NZ standards.

## Rehabilitation options

### Police approach to drug and alcohol use

The cornerstone of this policy is a rehabilitative approach to drug and alcohol use. If an employee is concerned that they have issues with drugs or alcohol, they are encouraged to seek confidential support and assistance through:

- a. Wellness Advisors who are embedded in all Police districts, are degree qualified in the health, wellbeing and/or psychology areas, operate on a strictly confidential basis, and are available for support.
- b. [Employee Assistance Programme \(EAP\)](#). This is a dedicated service for Police employees to seek voluntary and confidential assistance with drugs and alcohol.

### Compulsory rehabilitation programmes

In the event of a positive test for drugs or alcohol, an employee may be required to participate in a compulsory rehabilitation programme (where appropriate). This will be managed as a formal referral to a qualified and approved rehabilitation service provider who will be DAPAANZ registered. The employee will be required to sign a rehabilitation agreement. Consideration will be given as to whether it is appropriate to amend the employee's current duties.

The provider will manage the rehabilitation process and Police will, subject to recommendation of a treatment plan by the qualified and approved rehabilitation provider, fund the rehabilitation as follows:

- An initial assessment by a substance abuse specialist.
- Up to six sessions with a drug and alcohol substance abuse specialist.
- Up to six unannounced follow-up tests over a period of up to two years.

The employee will be monitored by comparison testing by the provider if required during rehabilitation to determine whether levels of drugs and/or alcohol are decreasing at the rate expected and will be required to return a negative test before they return to work. The employee may use leave entitlements, including annual and sick leave, to cover the absence and/or attendance at sessions. If these are insufficient to cover the absence then the employee must take unpaid leave or attend sessions outside work hours.

Where the above rehabilitation programme is not suitable, or is not recommended by the provider, a Police Drug and Alcohol Panel will need to consider whether any other rehabilitative process is appropriate, e.g. a residential rehabilitation programme. This decision, and a decision as to the appropriate next steps, will be made by a person or people agreed to between Police and the Police Association. There is a standard process that will ensure that Police takes into account all relevant circumstances, including any medical or specialist advice and the employee's views. In all cases, Police will continue to provide support to the employee.

## Privacy and use of information

All information about an employee's drug and alcohol testing must be handled sensitively. Police will at all times comply with legislation in relation to managing employees personal and health information including the Privacy Act 2020, Official Information Act 1982, Human Rights Act 1993, NZ Bill of Rights Act 1990 and the Health Information Privacy Code 2020.

In some circumstances, information may be disclosed where it is lawful and appropriate to do so (including where disclosure is necessary to prevent or lessen a serious threat to public health, public safety or an individual's life or health). The information will otherwise not be used or disclosed for any other purposes except as required by law. Disclosure of the test results with appropriate confidentiality requirements includes to an employee's manager/supervisor and Director: Safer People. It may also include:

- Members of the Drug and Alcohol Assessment Panel (DAAP)
- NZ Police HR and ER representative
- NZ Police Medical Advisor
- Independent Medical Review Office (MRO)
- Any other individual who may be directly involved in any associated rehabilitation or disciplinary process

Information regarding the employee's test results will be stored and retained in a secure online database system, Imperans, independently managed by TDDA.

For critical incidents only, an employee will be assigned an alpha code and this code, and not the employee's name or QID, will be used on any forms or documentation relating to the drug and alcohol sample and testing.

Officers in charge of designated work groups will ensure their people are tested on acceptance of joining the work group, and then bi-annually. This will be subject to audit.

Access to all test results, via Imperans will be available to Director: Safer People.

## Review of Policy

Review of this Policy will follow all relevant NZ Police Policy review requirements. In addition to this, this Policy will take a collaborative approach with our Unions and any review will require consultation with the Police Association and Leaders Guild and agreement to any amendments proposed. The Unions will be involved early in the process of review and will be given reasonable opportunity to provide input.

When NZ Police are required to consult Unions for making an amendment to the Policy, both parties must in good faith, mutually agree to a suitable timeframe for the Union to provide feedback on proposed changes. Recognising both parties must consider competing priorities, timing for internal consultation processes, risk to employees if the policy remains unchanged and any other factors to ensure the Policy is reviewed within a suitable time.

## Flowcharts and related documents

These flowcharts provide an overview of the processes used for [critical incident testing](#) and for reasonable cause testing of [contractors](#)

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<input checked="" type="checkbox"/> <a href="#">Critical Incident Testing Process (Oct 2019)</a>	129.69 KB
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<input checked="" type="checkbox"/> <a href="#">Reasonable Cause Testing Process (Contractor)</a>	213.4 KB
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[Manager's/supervisor's Pack](#) Reasonable Cause testing of employees (includes all documents including consent forms)

Police Forms: 'Drug Testing Consent for Police Employee (Critical Incident)' (DA1) - accessed from [Word > PoliceForms > Safer People](#)

Drug and Alcohol Testing Procedures Used by Service Providers:

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Drug and Alcohol Testing Procedures When Employees are in hospital

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See also TDDA's step by step [Overview of the Screening Process](#) (step 3 does not apply to Police).