



**Te Tari Ture  
o te Karauna**  
Crown Law

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## **Avoiding unlawful bargains**

### **Te kaupare i te tauhokanga takahi ture**

*As at 1 January 2025*

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## **Introduction | Ngā kupu whakataki**

1. Prosecuting agencies may enter into plea arrangements or operate diversion schemes that include the defendant making reparation payments to the victim, or other payments of money. Prosecutors and prosecuting agencies should be careful that these arrangements are not unlawful.

## **Scope | Te korahi**

2. This guideline relates to reparation and other payments made by defendants that are connected to plea arrangements or diversion. It does not cover any court-ordered payments.

## **Guideline | Te aratohu**

### **Policies and procedures relating to reparation payments**

3. Reparation payments are relevant to the work of many prosecuting agencies. Such agencies are expected to have clearly documented policies and processes for considering reparation payments. This should include:
  - 3.1 the method for receiving and administering reparation payments;
  - 3.2 a mechanism to ensure the defendant is advised of, and provided, the opportunity to obtain legal advice before agreeing to such payments; and
  - 3.3 the consequences for a defendant if they fail to make the agreed reparation payment once proceedings are discontinued.

### **Is a plea arrangement or diversion appropriate?**

4. Prosecuting agencies should continue to apply the Public Interest Test when considering whether the payment by the defendant of reparation or another payment is appropriate in a particular case. A prosecutor should only agree to diversion or a plea on a lesser charge when satisfied that the public interest is met. The defendant's willingness to make amends by paying reparation is only one of the factors considered in the public interest assessment.
5. A plea arrangement or diversion is likely to be unlawful where the reparation payment is the primary or pivotal reason for amending the charge or offering diversion. In general, it will be more appropriate for a prosecutor to agree to a plea arrangement or diversion where the alleged offending is of low to moderate seriousness.

### **Obtaining victims views**

6. Prosecutors should make reasonable efforts to seek the victim's views when they are considering whether a reparation payment would be appropriate. This ensures the victim's circumstances are considered (in order to calculate the full extent of loss, damage or expenses) and allows prosecutors to manage the victim's expectations about what is reasonable in the circumstances given the defendant's financial means. However, the decision about whether a plea arrangement or diversion is appropriate is ultimately one for the prosecutor.

### Types of payments

7. Typical types of payments include reparation payments to victims that cover the reasonable expenses a victim has incurred as a result of the offending and other payments, such as donations to charity.
8. Prosecuting agencies should avoid any appearance of a private bargain with defendants. Prosecuting agencies should be cautious before including payment of fines, costs or other fees in diversion or plea arrangements.

### Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru

Diversion | Te autaki

Making unbiased decisions | Te whakatau rītaha-kore

Prosecution policies | Ngā kaupapa here mō te aru