



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

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## Warnings

## Ngā Whakatūpato

*As at 1 January 2025*

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## Introduction | Ngā kupu whakataki

1. Prosecuting agencies may issue formal warnings instead of commencing a prosecution. Warnings may appropriately resolve law enforcement concerns without burdening the courts, particularly when the conduct is less serious. The purpose of this guideline is to provide guidance to agencies on how to use formal warnings appropriately, consistently, and in accordance with the principles of natural justice.

## Scope | Te korahi

2. This guideline applies to formal warnings that are:
  - 2.1. given to a person (either natural or legal);
  - 2.2. recorded on the person's file;
  - 2.3. made in response to behaviour that a prosecuting agency believes could amount to criminal conduct; and
  - 2.4. capable of having ongoing or future negative consequences for the person.
3. This guideline provides guidance on the proper form of warnings and the proper process for issuing them. It sets out matters that should be included in prosecuting agencies' policies on warnings, and in warnings themselves. It provides high-level guidance on assessing whether a warning may be appropriate. This guideline does not prescribe a specific process for every prosecuting agency, as operational and law enforcement contexts vary. Agencies should develop their own policies and processes. They should be consistent with this guideline, the principles of natural justice, and the Privacy Act 2020.
4. This guideline only applies to formal written warnings as described in paragraph 2. Prosecuting agencies may, however, choose to adopt some or all of these principles in other contexts (for example, informal verbal warnings where the warning is not recorded on the person's file or warnings given in place of issuing an infringement notice or pursuing an infringement offence).
5. The guideline is premised on the basis that warnings will be considered instead of prosecution, as one of the available enforcement tools set out in each prosecuting agency's prosecution policy, prior to charges being filed.

## Glossary | Kuputaka

6. In this guideline, a *warning* is a formal written warning of the type described in paragraph 2.

## Guideline | Te aratohu

### Suitability

7. Not all behaviour that could amount to criminal conduct requires a prosecution response. In some cases, a prosecuting agency may warn a person for conduct it considers may be criminal. Each case is assessed on its merits.

### Range of conduct

8. Formal warnings may be used in response to a wide range of conduct. It is unlikely that a formal warning will adequately respond to conduct which, if proved, would amount to serious offending, but this guideline sets no threshold or limit for the use of warnings. Whether a formal warning is appropriate will depend on a holistic assessment of all the circumstances, including where warnings sit within an agency's available enforcement tools in its prosecution policy.

### Purposes

9. Prosecuting agencies may issue formal warnings for different purposes, for example:
  - 9.1. to show the agency takes the matter seriously;
  - 9.2. to impress on the person that the agency considers the conduct is criminal, and could have been prosecuted;
  - 9.3. to give the person an opportunity to address the underlying drivers of the conduct or make amends for it; and/or
  - 9.4. to deter the person and the public from engaging in similar conduct in the future.
10. Prosecuting agencies should be clear about the intended purpose(s) of a proposed formal warning. They should consider whether the warning is likely to achieve its intended purpose(s).

### Needs and interests

11. Prosecuting agencies should also consider:
  - 11.1. the needs and interests of the person, their whānau, and their community;
  - 11.2. the needs and interests of any victim, their whānau, and their community; and
  - 11.3. the interests of the general public.
12. When the conduct is a breach of regulatory obligations or standards, the prosecuting agency should assess the interests of the general public considering its statutory objectives and enforcement priorities, and its published enforcement criteria and prosecution policies (including any formal warnings policy).
13. Ultimately, the agency should assess whether a formal warning would be appropriate in the circumstances.

## Process

### *The evidence*

14. Prosecuting agencies should generally be satisfied there is sufficient evidence to prosecute before issuing a warning. The operational context of some agencies may, however, mean that warnings can be issued on a more limited body of evidence. In such cases, agencies should clearly identify the evidential threshold(s) for issuing warnings. Agencies should explain in their warnings policy why the adopted evidential threshold (if lower than sufficient evidence to prosecute) is appropriate.

#### *Commentary*

Some prosecuting agencies may consider it appropriate to issue a formal warning at an early stage of an investigation.

### *Admission and consent*

15. The requirements of natural justice will vary depending on the conduct and the consequences of a warning for the person concerned. It will always be necessary to put the allegations to the person for comment before deciding to issue a warning. Natural justice may also require:

- 15.1. the person's consent to receiving the warning and having the matter resolved in that way; and/or

- 15.2. an admission of the conduct in respect of which the person is to be warned.

#### *Commentary*

No person should be placed under any pressure to admit the alleged conduct. In some circumstances, prosecuting agencies may wish to ensure that the person has been advised, and given the opportunity, to obtain legal advice before making any admission and/or consenting to receive the proposed warning.

### *The warning*

16. The content of the formal warning should reflect the potential for ongoing consequences arising from it. Warnings should set out, at a minimum:

- 16.1. an accurate summary of the key facts underpinning the warning;

- 16.2. the reason(s) for issuing the warning;

- 16.3. the consequences of the warning, including:

- 16.3.1. where the warning will be held, and for how long;

- 16.3.2. how the warning may be used (for example, with whom it may be shared, and if it will be published);

- 16.3.3. how the warning may be used if the person engages in similar behaviour in the future;

- 16.3.4. the person's rights in relation to the warning, including rights under the Privacy Act or in the prosecuting agency's privacy policy (for example, the right to have the warning reviewed within a certain period); and
- 16.4. the person's response to the proposed warning (if relevant), including whether they admit the alleged facts or dispute them, and whether they consent to the matter being dealt with by a warning.

### **Limits**

- 17. Warnings should respect the limits of the prosecuting agency's role as investigator and/or prosecutor. Agencies should be careful to avoid creating an impression they have an adjudicative or judicial role. Accordingly, warnings should not assert or imply that an offence has been committed, or that an offence is proven. The warning may set out that, in the agency's view, the conduct or behaviour concerned may amount to a specific offence and that, if it is repeated, a prosecution may be considered.
- 18. Warnings should not imply that a charge would have been filed if a warning had not been issued, unless that is in fact the case.

### **Explaining the proposed warning**

- 19. Prosecuting agencies should explain the matters in paragraph 16 to the person in a way the person can understand, before issuing a warning.

### **Reconsideration**

- 20. In rare cases, special reasons may justify reconsideration of the decision to warn. Those reasons include that:
  - 20.1. a review of the original decision shows the warning should not be allowed to stand; and
  - 20.2. new evidence means the original decision to issue a formal warning was not appropriate.

### **Commentary**

When a formal warning is issued early in an investigation, the prosecuting agency should consider whether to explain to the person that the agency may revisit the warning if further evidence comes to light suggesting the offending was more serious.

### **Policies**

- 21. Each prosecuting agency that issues formal warnings should have a formal warnings policy, either separate to, or part of, its prosecution policy.

### **Core policy provisions and processes**

- 22. Each prosecuting agency's formal warning policy should:
  - 22.1. be publicly available (if not incorporated in the agency's publicly available prosecution policy);

- 22.2. describe the situations in which the agency may consider issuing warnings (this may include reference to the types or seriousness of conduct eligible for warnings, and whether warnings may be issued to a person only once, or more than once);
- 22.3. set out the matters that are to form part of warnings, including the matters listed in paragraph 16;
- 22.4. identify the evidential threshold(s) below which warnings will not be considered (and, if the threshold is lower than sufficient evidence to prosecute, explain why this is appropriate);
- 22.5. describe the process for issuing warnings, which should include a process for engaging with the person under investigation to give effect to natural justice; and
- 22.6. set out the process the agency will follow for reconsidering warnings, which should include:
  - 22.6.1. a statement that reconsiderations will only occur in rare situations, consistent with the reasons set out in this guideline; and
  - 22.6.2. a requirement that the agency should seek internal legal advice, or the advice of a Crown Solicitor, as part of any reconsideration process.

### ***Further policy provisions***

23. To make warning policies and processes more robust, prosecuting agencies should consider including the following:
  - 23.1. The purpose or purposes for which the agency uses warnings.
  - 23.2. The agency's supervision and assurance processes to ensure warnings are appropriately issued, and the agency is taking a consistent approach concerning the use of warnings.
  - 23.3. A process to engage with any harmed person.
  - 23.4. A process for reviewing warnings, at the request of the warned person, within a set period after a warning has been issued. This may be an internal review or complaints process within the agency; any such process should be suitably independent from the official(s) who made the decision to warn.

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

Decisions to prosecute | Te whakataurua ki te aru  
Prosecution policies | Ngā kaupapa here mō te aru  
Making unbiased decisions | Te whakataurua rītaha-kore