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Adult diversion scheme policy

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Table of Contents

Table of Contents 2
Policy statement and principles 5
What 5
Why 5
How 5
Overview 7
Purpose of this chapter 7
Rehabilitation 7
Reparation 7
Relationship with the criminal justice system 7
Discharge without conviction 7
Five stage diversion process 8
Stage 1: File evaluation 11
When and who? 12
When to consider diversion 12
Who can be considered for diversion? 12
Diversion criteria 14
Offender-based criteria 14
First-time offender 14
Previous diversion, past convictions or youth offending 14
Accepts responsibility for offence 14
Offence-based criteria 14
Offence types 14
Approach to considering diversion for traffic offending 15
Offence type 16
Aggravating and mitigating factors 19
Offence seriousness by case circumstances 19
Consultation/authorisation/approval requirements 20
Consultation with the District Prosecution Manager 20
Authorisation/endorsement from the District Prosecution Manager 20
Authorisation from the Regional Manager 20
Approval/endorsement by the Director: Resolutions 20
Consultation on matters of family assault and family harm 20
Victim’s views 20
OC case's views 21
Supported resolution consultation 21
When diversion is approved contrary to the views of the victim 21

This document was current at 30 September 2026. Police policies are regularly reviewed
and updated. The most current version of Police policies are available from www.police.govt.nz

Proactively released by New Zealand Police

Diversion decisions about Police employees 21
Differences of opinion 22
Stage 2: The first court appearance 23
Stage 3: The diversion interview 24
Arrange an interview time 24
What to consider for suitability 24
During the interview 24
Offender's views 24
Informing the offender 24
After the diversion interview 25
Diversion offer 25
Right to review 25
Stage 4: Diversion agreement and conditions 26
The diversion agreement 26
Diversion conditions 26
Guiding principles of selecting conditions 26
Available diversion conditions 27
Apology letter 27
Reparation 27
Counselling/courses 28
Community work 29
Community work requirements 31
Charitable donations 31
Alternative resolution options 31
Considering Restorative Justice (a facilitated meeting with the victim) 32
Process for Restorative Justice (RJ) in diversion 33
Three prerequisites to making an RJ referral 33
Making an RJ referral 33
RJ conference has occurred 34
Referral to RJ has not occurred 34
Te Pae Oranga 34
Diversion without conditions 35
Stage 5: Completing diversion 36
Monitoring diversion conditions 36
Further adjournment 36
Dismissing the charge due to successful completion of diversion 36
Failure to complete diversion 36
Approved diversion officers 38
Diversion decision-making 38

This document was current at 30 September 2026. Police policies are regularly reviewed
and updated. The most current version of Police policies are available from www.police.govt.nz

Proactively released by New Zealand Police

Conflict of interest 38
Training requirements 38
Community involvement 39
Using and disclosing diversion information 40
Using information 40
Disclosing information 40
Criminal Records Act 40
Monitoring and auditing diversion 42
Record keeping 42
NIA data entry 42
District Prosecution Manager's audit role 42
Regional Manager and Director audit role 43
Annual reporting 43

This document was current at 30 September 2026. Police policies are regularly reviewed
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Policy statement and principles

What

The Police Adult Diversion Scheme (diversion) is a lawful way to exercise prosecutorial discretion instead of full prosecution through the court system. It is an alternative means of processing some offences and/or offenders through the courts. The Police Prosecution Service (PPS) is responsible for diversion.

Decisions to grant diversion are based on offence and offender-based criteria. I.e. low-level offending and when it is the offender's first offence (or when the offender has convictions from a number of years earlier, or for quite different offences.

Note: Children and young people under 18 years of age who are offenders should be dealt with under the Oranga Tamariki Act 1989. (See the Youth justice chapter for more information).

Why

The primary purpose of diversion is to attain rehabilitation and reparation. Additional important factors include encouraging the offender to take responsibility for their actions and reducing their risk of reoffending.

Diversion enables eligible offenders to complete diversion activities within a given timeframe to avoid both a full prosecution and the possibility of receiving a conviction. This means that judicial time is able to be reserved for more serious offences and offenders.

The diversion approach has the following advantages:

- the legal standards (evidential and public interest tests) have been met to show that the offence should have resulted in a charge within the criminal justice system
- it permits the ability to impose conditions such as seeking financial reparation and/or establishing a disability or a health-centered approach
- a charging document has already been filed in the court and can proceed if the offender does not complete the terms of diversion
- the process has the incentive of the 'shadow of the court' to bring to bear on the offender.

How

The application of Police discretion to consider and offer an offender diversion will be applied on an ethical, open and fair basis and in accordance with the Solicitor General's Prosecution Guidelines.

Police also have a duty to ensure that policing services are provided in a manner that respects and upholds human rights, as expressed in s 8(d) of the Policing Act 2008. This may include the protections afforded to people involved in the criminal justice process and the freedom from discrimination, as guaranteed in the New Zealand Bill of Rights Act 1990. Police must treat everyone with humanity and with respect for the inherent dignity of the person. For further guidance on rights and obligations when exercising powers under this chapter, refer to the Human rights in policing and New Zealand Bill of Rights chapters.

When considering and offering diversion Police will:

- have regard to the primary purpose of diversion - rehabilitation and reparation
- consider an offender's eligibility for diversion once it is determined a prosecution is justified and preferably before a plea is entered

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- apply the fundamental offender-based and offence-based criteria for diversion. The criteria must be met and the victim's and OC case's views considered before diversion can be offered
- conduct a formal one to one diversion interview to assess the offender's suitability for diversion, even when an initial decision to offer diversion was made in a court environment. Police must not minimise the importance of this interview
- agree diversion conditions that are proportionate to the offence and appropriately balance the public interest in justice being pursued through diversion; are achievable; and are appropriate in all the circumstances
- diversion officers must have sufficient proof from the offender that diversion conditions have been met, before requesting the court dismiss the charge
- only disclose diversion outcomes to a third party without the person's consent, when appropriate in limited situations.

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Overview

Purpose of this chapter

This chapter details procedures for approved diversion officers on the Police Adult Diversion Scheme. Refer to the 'Adult diversion scheme deskfiles' below for operational detail and decision-making tools for diversion.

Purposes of diversion

The primary purpose of diversion is to attain rehabilitation and reparation. The secondary function of diversion is to:

- encourage the offender to take responsibility and show remorse for their actions
- address factors that put the offender at risk of reoffending (e.g. arranging counselling for alcohol or drug problems)
- avoid the offender's first conviction and give them another chance.

Rehabilitation

Part of an offender's diversion conditions may be to enter a rehabilitative process. This is to:

- prevent re-offending
- encourage them to reflect on the impact on the victim by ensuring that they are sufficiently aware of the implications of the offence
- gain an understanding on how their own behaviour or choices led to the offending.

Reparation

Reparation might include:

- the payment of money to compensate a victim
- writing an apology letter to the victim of the offence or meeting with the victim to take part in therestorative justice process
- making good damage done to property (e.g. painting over graffiti, paying for the broken window).

Relationship with the criminal justice system

Cases that receive Police diversion are redirected away from the formal criminal justice system. Participation in diversion will usually be initiated at, or about the time of, the offender's first court appearance, within the registrar's list. An offender's charge(s) will be adjourned for a fixed period to enable diversion to be considered, offered and completed before the next court appearance date.

Discharge without conviction

An offender who is not prepared to accept the diversion conditions offered by Police or is not eligible for diversion may still seek a discharge without conviction under section 106 of the Sentencing Act 2002 without needing to complete the conditions of a diversion agreement.

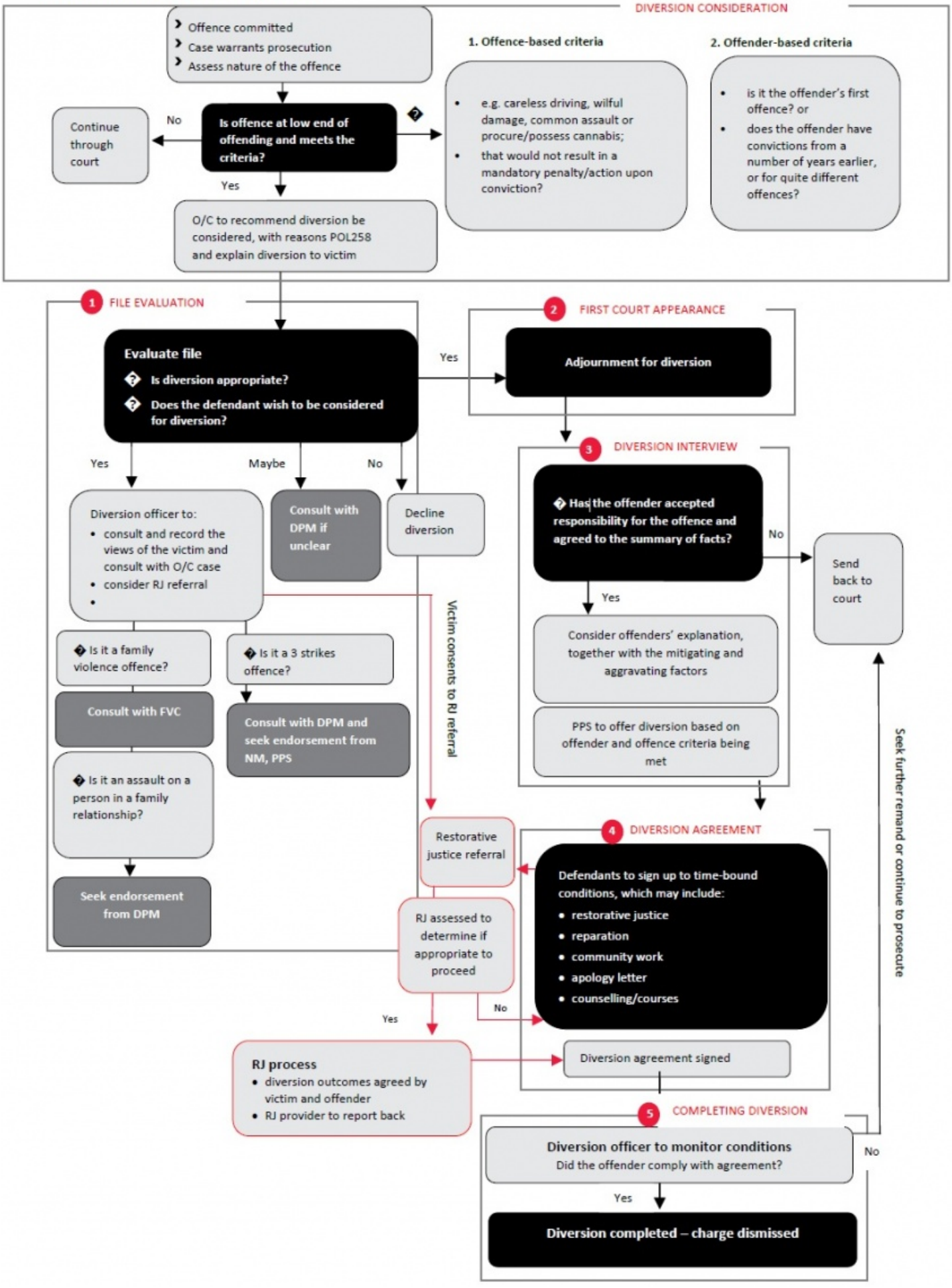
However, it is possible for the court to order:

- payment of costs
- restitution of property
- payment of a sum for loss or damage to property, emotional harm or consequential loss or damage
- any order the court may make on conviction (such as a period of disqualification from driving).

Five stage diversion process

	File evaluation
	First court appearance
	Diversion interview
	Diversion agreement and conditions
	Completing diversion

Adult diversion scheme process



Download a printable PDF of the above Adult Diversion Scheme Process.

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Adult diversion decision making flow chart	**600.13 KB**

Stage 1: File evaluation

See:

- When and who?
- Diversion criteria
- Aggravating and mitigating factors
- Consultation/authorisation/approval requirements

When and who?

When to consider diversion

An offender's eligibility for diversion is considered once it is determined that:

- the prosecution that has commenced is justified (in terms of the Solicitor- General's Prosecution Guidelines), and
- diversion may be an appropriate disposal outcome.

Do not consider diversion where there is **insufficient** evidence to support a charge proceeding. Deal with each case's facts on their merits.

When deciding whether to proceed with a prosecution (i.e. file a charging document) the key question is always whether the conduct really warrants formal criminal proceedings, and it is in the interests of justice to proceed with a prosecution.

It is preferable that diversion is considered **before** a plea is entered.

In some circumstances a defendant may have entered a plea and then seek to be considered for diversion.

If a defendant has entered...	**they...**
a **not guilty plea** but has subsequently acknowledged guilt	can still be considered for diversion.
a **guilty plea**	can be considered for diversion. Generally charges where a guilty plea has been entered cannot be dismissed under section 147 Criminal Procedure Act 2011. However dismissal following a diversion notification under section 148(1) CPA is a mandatory direction, and is there to entitle the person who has completed diversion the protection afforded by section 147(6) CPA (deemed acquittal).
a **special plea** under section 45 Criminal Procedure Act 2011, and it is accepted by the Court	cannot be considered for diversion as the charge will be dismissed anyway.

Note that an intimated guilty plea in court must not be a prerequisite for diversion.

Who can be considered for diversion?

An offender can be considered for diversion after they have met the diversion criteria. They can also be considered for diversion if they have:

- entered a plea but not been convicted
- not entered a plea, but have acknowledged guilt.

Note that a guilty plea (either entered or intimated) in court must not be a prerequisite nor a bar for diversion. See alsoPolice employee's eligibility for diversion later in this chapter.

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To ensure consistency and fairness across the country, prosecutors must consider every offender's eligibility for diversion, even if only briefly for serious, persistent or violent offenders. Each case must be decided on its merits.

The OC case:

- recommends an offender's suitability for diversion
- considers the circumstances of the offence and the victim's views on the suitability of diversion.

However, only PPS prosecutors and approved diversion officers may decide whether an offender is considered for or offered diversion.

The PPS is the Business Owner of the diversion scheme.

Diversion criteria

The criteria for diversion are offender-based and offence-based. The criteria are fundamental to considering and offering diversion. The criteria must be met and the victims and OC case's views considered before diversion can be offered.

Offender-based criteria

Consider these circumstances when determining whether offender-based criteria are achievable.

First-time offender

The diversion scheme was primarily designed to give first time offenders an opportunity to avoid receiving a conviction. This is still a central purpose of the scheme. However, with the introduction of other alternative resolutions such as formal warnings that also target low level first time offenders, diversion has evolved to have a secondary function of allowing those with past convictions the opportunity to undertake diversion if the offence criteria is met. It still addresses the underlying reasons and the consequences of their offence while still holding the offender to account.

Generally, a first offender is considered suitable for diversion. However, the offence-based criteria must also be considered.

Previous diversion, past convictions or youth offending

In some circumstances, it will be appropriate to consider diversion for an offender who has received diversion before, has past convictions or previously appeared in the Youth Court. For example:

- where the current offending is the result of an underlying problem that is likely to respond to counselling
- the direct or indirect consequences of not offering diversion would be out of proportion to the seriousness of the offence
- the offender's previous court outcomes (diversion, conviction or Youth Court) are for quite different offences **or** were a number of years earlier.

Accepts responsibility for offence

The offender must accept full responsibility for the offence by:

- admitting that they committed the offence
- showing remorse for their actions, and
- having intimated (but not entered) a guilty plea to the offence (optional).

An offender who has pleaded not guilty is not barred from consideration for diversion, provided they now accept responsibility and meet the other diversion criteria.

Acceptance of responsibility without entry of a plea is also not a bar to consideration for diversion.

Offence-based criteria

There are two aspects you **must** consider for offence-based criteria:

- the offence seriousness by offence type and case circumstances
- views of OC case and victims.

Furthermore, the circumstances of the offending should suggest that public interest would not be compromised if the offence was dealt with through diversion.

Offence types

You cannot set hard and fast rules on particular offence types. Every case must be examined individually and considered on its merits. There will be cases when the legal description of the offence or the maximum penalty may appear serious but when the offence is considered in the context of the facts, it is not.

You can consider diversion where the offence is serious but the circumstances are at the bottom end of the scale and the effect of a conviction is out of all proportion to the offence's seriousness.

All category 2 and 3 offences are considered to be less serious and eligible for diversion. However, category 4 offences, or offences listed in the Crown Prosecution Regulations 2013 and those carrying a warning under the '3-strikes' legislation would usually be considered too serious to be eligible for diversion.

Approach to considering diversion for traffic offending

Traffic offending	Description
Traffic Infringement Offence Notices (IONs)	Many traffic offences are infringement only offences and will not result in a conviction. They are beyond the scope of diversion and can be dealt with by the Traffic Compliance Scheme. However, if an offender requests a court hearing on an infringement then the offence should **not** be considered for diversion as the offender is not accepting responsibility for the offence or is challenging case elements. Similarly, denying liability for an infringement offence and then requesting diversion when appearing in court, is not supported.

Traffic Charging Documents	Any traffic offending by an individual (not by a company) commenced by the issuing of a POL 2141 Summons or the filing of a charging document can be considered for diversion. You must first consider the offender's previous traffic history. This is to meet Police's paramount concerns: - the public interest - the general deterrence road policing model - road safety. It is important that any mandatory consequences that would follow from a conviction are not avoided through a person being offered and completing diversion (e.g. demerits following from conviction, or losing their licence as these demerit points would push them over the limit). Examples of traffic offending when you must **not** consider diversion are: - an offence which carries a requirement for a judge to impose a mandatory minimum disqualification period following conviction for the offence (e.g. excess breath alcohol, driving while disqualified, sustained loss of traction) - an offender who is demonstrating a pattern of traffic offending e.g. numerous demerit points. - careless driving causing death or careless driving causing injury **Careless driving** commonly falls into the summons category where no mandatory minimum sentence is required. Careless driving charges do not normally carry a high degree of consequence for an offender on conviction. When dealing with careless driving, consider: - whether the consequences of a conviction outweigh the seriousness of the offence, and - the seriousness of the offence, particularly the risks to road safety. If the person has demerit points for speeding or not wearing a seatbelt, diversion should be closely examined on a case-by-case basis. Diversion can be granted by the approved diversion officer after all factors are taken into account. If diversion is appropriate, consider a defensive driving course or an advanced defensive driving course as a diversion condition, not just a one-off driving assessment. Diversion is not appropriate for more serious offences, such as careless driving causing death or careless driving causing injury. However, the prosecutor may support restorative justice processes before sentence.
Commercial vehicle related offences	Do not consider any offending regulated through the Commercial Vehicle Safety Team for diversion as there is an established compliance regime. Examples of these offences are: - H code series (road user charges and overloading) - K code series (transport licensing offences) - particular M code series offences (logbooks, driving hours and vehicle related offences M120 to 215 inclusive; M326, 327).

Offence type

Some types of offences need particular care before considering diversion because of:

- public interest
- safety concerns
- victim issues.

In many of these cases diversion officers are given aggravating and mitigating factors to consider when determining where the

public interest lies.

This table outlines the types of offences and possibilities for considering diversion.

If the offence type is...	then...
Dishonesty	Consider the circumstances of the offending, particularly whether there has been a breach of trust. For example, burglary is generally considered too serious for diversion and the maximum penalty is high. However, some burglary may be technical offences where the actual actions of the offender are minor.
Violence	Do not minimise violence suffered by the victim. The circumstances of the offending and the victim's views are most important in considering violent offences for diversion.
Family violence	Family violence is a subset of family harm. It is violence against a person by any other person with whom that person is, or has been, in a family relationship. Diversion can be offered for low level family violence events without the approval of the District Prosecution Manager. It is recommended that you consult with the District Family Violence Coordinator before offering diversion. Low level family violence events are those where there has been no serious physical or psychological violence between family members. Diversion should not be offered if the low-level occurrence forms part of a continuing pattern or history of family violence occurrences.
Assault on a person in a family relationship	Assault on a person in a family relationship - covers category 3 offences with a maximum 2-year imprisonment. Diversion for this type of offence will be infrequent. It can only be offered where full consideration has been given to previous family violence offending and the District Family Violence Coordinator (FVC) has been consulted. (The FVC may have further information not disclosed on the file). Authorisation **must** be obtained from the District Prosecution Manager and the FVC **must** be consulted before any offer of diversion can be made in relation to offences involving assault on a person in a family relationship. Diversion must not be considered for breach of a protection order.
Sexual or offences with sexual overtones	Diversion will be very rare due to the dynamics of this offending. Authorisation must be obtained from the District Prosecution Manager before any offer of diversion can be made in relation to sexual violence or offending with sexual overtones. **Note:** If the charge is a qualifying offence under the '3-strikes' legislation, there are additional permissions required. See NZ Police Three stage warning regime ('3 strikes') policy chapter for further details.
Alcohol-related	Diversion may be appropriate for liquor offences. Alcohol-related offences may be ones which fit the high prevalence offences (see below) making diversion unavailable for a specified period. If suitable, consider conditions offering a health-centred approach. This would likely include an alcohol and/or drug assessment and counselling.
Drugs	Diversion may be considered for class A and B drug offences if it is a low-level amount and where the circumstances indicate it is for personal use. Diversion order conditions seeking a health centred approach are deemed to be appropriate. This would likely include an assessment and counselling (if required).

Court orders	Do **not** consider breaches of court orders (e.g. protection orders, restraining orders, name suppression orders) for diversion.
High prevalence	If an area is experiencing an outbreak of a particular type of offending which might ordinarily be eligible to have diversion considered, the District Prosecution Manager may, in exceptional circumstances, seek to exclude particular offences from diversion for a specified period. This will be by an agreement reached by the Regional Manager PPS and the District Commander. The aim of these exclusions is to deter the offending behaviour. The period should be for a finite period and is reviewable. Where this decision is made, the Director Resolutions must be advised of the exclusions by the offence types and the proposed duration of the exclusion. When considering suspension of diversion for certain offences, always consider the need for national consistency.

Aggravating and mitigating factors

The following list of aggravating and mitigating factors should be considered for those offences meeting thecriteria for diversion. This list is not exhaustive.

Aggravating factors	Mitigating factors
Diversion is unlikely to be appropriate in the public interest when the circumstances of the offence have more aggravating factors. For example: - Offence was: - calculated and deliberate - carried out by a group - against a public servant acting in the exercise of duty (e.g. a police officer, fire fighter, or ambulance employees). - Offender was ringleader or an organiser of an offence. - Conviction is likely to result in significant penalty. - Weapon or violence was used or threatened during commission of offence. - Offender abused a position of trust (e.g. employee, babysitter, caregiver). - Victim was vulnerable, deliberately put in considerable fear of personal attack. - Offender refuses to identify co-offenders. - Due to the prevalence of the offence in the area it has been identified for special attention in consultation between district and PPS. - Evidence of premeditation exists. - Offender has been warned previously. - Other charges are pending. - Offender's response was disproportionate to a perceived threat. - Offender has previously received diversion for similar offending.	Diversion may be more appropriate when more mitigating factors exist. For example: - Arrest and time in custody sufficient deterrent. - Offence committed through misjudgement. - Offender: - was coerced by group to commit the offence (minor role) - was vulnerable due to disability or age - showed spontaneous and genuine remorse for their actions - was ignorant of the law - offence was not premeditated - was provoked by victim or victim's group, and offender acted impulsively - assisted in apprehending others - has mental health problems or physical illness - unlikely to repeat the offence - was in the wrong place at the wrong time - made a genuine mistake or misunderstanding - has budget problems - was influenced by others more criminally sophisticated. - Conviction is likely to result in discharge or nominal penalty. - Offence was minor and offender has put right the harm or loss caused and has expressed regret. - Historical offence where apprehension made many years later.

Offence seriousness by case circumstances

The diversion officer must:

- consider the seriousness and nature of the offence in the circumstances of the case, and
- determine the public interest in a prosecution proceeding which must also reflect the offence's particular circumstances.

To do this, consider particular aggravating and mitigating factors in relation to the offence.

Consultation/authorisation/approval requirements

It is the responsibility of the approved diversion officer to undertake consultation and gain authorisation/approval from designated personnel.

Consultation with the District Prosecution Manager

Consultation with the District Prosecution Manager (DPM) should occur when:

- the diversion decision is unclear due to past offences
- the diversion decision is unclear due to the type of charge/s involved

Consultation with the DPM **must** occur when:

- the diversion case is subject to review. In this situation, the decision will ultimately rest with the District Prosecution Manager
- the offender has been charged with a '3-strikes' qualifying offence
- there is a potential for any strategic, corporate or organisational risk (as defined by the Risk Management Policy) that may arise from impending or past diversion decisions.

Authorisation/endorsement from the District Prosecution Manager

- Use of diversion for a strikeable offence (three strikes regime) must be supported by the Prosecutor's DPM. Without this approval diversion cannot be used. If the DPM supports the use of diversion in such an instance, the Prosecutor or DPM must seek further approvals (see below, and also the NZ Police Three stage warning regime ('3 strikes') policy chapter.
- Authorisation **must** be received from the DPM before any offer of diversion can be made in relation to assault on a person in a family relationship.

Authorisation from the Regional Manager

- When a Conflict of Interest has been identified and where it is deemed necessary to arrange an alternative approach, authorisation of the approach **must** be received from the Regional Manager.

Approval/endorsement by the Director: Resolutions

- The use of diversion for a strikeable charge must be approved by the Director: Resolutions. If the Prosecutor's DPM supports the use of diversion in such a case, the Prosecutor or DPM must send the file to the PPS National Legal Counsel for their consideration. They will provide advice to the Director: Resolutions, who will then review the case and make a final determination.
- Endorsement of a proposal to offer diversion to a Police employee**must** first be obtained by the Director: Resolutions prior to sending the file to the Commissioner or Deputy Commissioner for consideration of approval.

Consultation on matters of family assault and family harm

- Consultation with the District Family Violence Coordinator **must** occur before offering diversion for assault on a person in a family relationship.
- It is recommended that you consult with the District Family Violence Coordinator before offering diversion for low level family violence events.
- Authorisation **must** be received from the DPM before any offer of diversion can be made in relation to assault on a person in a family relationship.

Victim's views

When an identified victim exists, consultation with the victim must occur and the victim's views considered before making a final diversion decision so that all information can be evaluated.

Consultation with the victim must cover:

- the victim's views and their reasons for those views

- the range of diversion conditions that could be agreed
- an explanation of the advantages of diversion, so they can express an informed view
- notification that it is the diversion officer's responsibility to decide whether the offender is prosecuted, offered diversion or warned.

When a decision has been made on whether or not the defendant is to be offered diversion, Police should attempt to contact the victim immediately (either through the OC or the prosecutor, according to local practice), and, if they are unable to contact the victim, should make further reasonable efforts to do so. Police should also keep victims updated regarding the outcome of diversion.

OC case's views

Consultation with the OC case must occur and be considered. The OC case may have further information not disclosed on the file. While the OC case's views are persuasive, they are not determinative. The diversion decision is the approved diversion officer's responsibility.

Supported resolution consultation

For guidance on diversion conditions and supported resolution pathways, the diversion officer should consult with the Supported Resolutions Coordinator and/or the Te Pae Oranga Coordinator in each district. The intent of these discussions is to determine the best approach for offenders who could benefit from having the underlying reasons for their offending addressed and/or for offenders that could benefit from diversion conditions being provided in a culturally responsive way.

When diversion is approved contrary to the views of the victim

If a decision has been made to offer diversion, contrary to the views of the victim, it is the responsibility of the diversion officer, or the diversion approving officer, to advise both the victim and the OC case that the matter is progressing through diversion, including articulation of the reasons why.

Diversion decisions about Police employees

Diversion can be considered for any person, including any Police employee. However, to ensure the independence of the prosecution in cases where the defendant is a Police employee, New Zealand Police engages the Crown Prosecution Service to advance the prosecution case. The Crown Prosecution advances prosecution cases where the defendant is:

- A current member of New Zealand Police (with the alleged offence having been committed either in the course of Police duties, or outside of those duties)
- An individual not currently employed by New Zealand Police, but employed by New Zealand Police at the time of the alleged offending (with that offending having occurred either in the course of Police duties, or outside of those duties)

The involvement of the Crown Prosecution Service in cases against New Zealand Police employees alters the ordinary process for considering diversion. Specifically, the Crown Solicitor responsible for the case will determine whether diversion may be a suitable resolution mechanism and can therefore be further explored by PPS.

PSS will not begin exploring the possibility of diversion unless advised by the Crown Solicitor. This approach provides an appropriate level of additional transparency over decisions about how to advance the prosecution of Police employees, and ensures that any recommendation for diversion is taken by a prosecuting agency that is independent of New Zealand Police. As such, it removes the perception of differential treatment regarding initial decisions on diversion eligibility for Police employees.

In circumstances where a Crown Solicitor declines diversion, this decision is final, and the Crown Solicitor-led prosecution will continue as normal. However, if the Crown Solicitor considers that diversion may be applicable, Police will then undertake its own review of the case, to consider its suitability for diversion. Specifically, the case will be reviewed by the Director: Resolutions (with the advice of the PPS National Legal Counsel). If declined by the Director, the normal Crown Solicitor-led

prosecution process will continue. If supported by the Director, the case will then progress to the Commissioner of Police or a Deputy Commissioner (as the Commissioner's representative) for a final decision. The Commissioner (or representative) may deny diversion to any employee charged with any offence that could adversely affect the integrity of Police. If diversion is approved by the Commissioner (or representative) the normal PPS diversion process will then begin.

For further guidance about the prosecution of Police employees see the Prosecuting Police Employees practice note here.

Differences of opinion

A prosecutor should ordinarily honour another prosecutor's diversion decision or position. A prosecutor may depart from it only where there is a clear and material basis for doing so. This may include:

- New information or a material change in circumstances;
- A relevant matter that was not known or properly considered;
- A material error of law;
- Material inconsistency with applicable policy or guidelines; or
- Another matter that means maintaining the earlier position would be contrary to the interests of justice.

A difference of opinion about the assessment of the evidence, the public interest or the exercise of prosecutorial discretion, is not, of itself, sufficient reason to depart from an earlier position. Defendants and the court are entitled to expect that prosecutor decision can be relied on and that PPS will not depart from previous prosecutorial decisions without a compelling reason. Prosecutors remain responsible for ensuring that any position they adopt or maintain is lawful, objective and properly supported.

Subsequent alleged offending does not automatically justify a different decision. Its relevance must be assessed in light of the circumstances of the case, including whether it materially affects the evidential or public interest test assessments.

Before departing from an earlier position, the prosecutor must notify their DPM. Where practicable, the proposed departure must be reviewed by the DPM or Principal Prosecutor. The basis for departure, why it is material, the outcome of the review and the reasons for the resulting position must be recorded. If prior review is not practicable the prosecutor must record the reasons the prior review could not be obtained and the reasons for the resulting decision.

From time to time there may be fundamental differences of opinion between a prosecutor and the O/C in respect of a Diversion decision. PPS will manage disagreements professionally and where appropriate, seek direction from supervisors (PPS and operational). For further guidance see, PPS Statement of Policy and Practice for further information.

Stage 2: The first court appearance

At the first court appearance, the offender has access to speak to the duty lawyer and may also have the opportunity to discuss the case with the judge. However, in most cases an adjournment is sought by a registrar in the registrar's list before the offender appears before the judge. This process ensures that the scheme is transparent.

Prosecutors forming the view that an offender may be considered for diversion should ensure that no plea is entered and seek an adjournment. The adjournment should be long enough to allow time for:

- the diversion interview to be held
- diversion conditions to be determined and agreed, and
- where appropriate, the diversion conditions to be completed before the next court appearance.

There are timeframes set out in the Criminal Procedure Rules 2012 for the time between the first and second appearance and time to case review, which may not be sufficient for the diversion process to occur. Prosecutors must make an oral application at the time of the adjournment for either:

i. an extension of time between first and second appearance, or
ii. a departure from the Case Management Meeting (CMM) process, or
iii. an extension to the time until the case review hearing and for filing aCMM.

As the appearance where diversion is likely to be signalled will probably be before a registrar, only i) or iii) can be requested, as registrars cannot order a departure from CMM process.

Note: Diversion is not agreed to at this point. The case is stood down to consider diversion. It can only be offered to the offender once the interview has been held.

Stage 3: The diversion interview

Arrange an interview time

The diversion interview provides the opportunity to assess the offender's suitability for considering diversion. You must not minimise the importance of the interview.

All offenders whose cases are adjourned to consider diversion must have a face-to-face diversion interview with an approved diversion officer. While the initial decision to offer diversion may be made within the court environment, a formal one to one diversion interview must be conducted.

This interview must happen as soon as practical after their court appearance. An interview time may be set up with the offender before they leave court. If this is not possible, give the offender a brochure with the local diversion officer's contact details to arrange a time.

What to consider for suitability

To consider an offender's suitability for diversion, the approved diversion officer must ensure that the diversion criteria are met and all information from the offender and offence-based criteria is obtained.

During the interview

Offender's views

The interview gives the offender an opportunity to:

- express their understanding of the offence's impact on themselves and any victim
- explore the possible reasons for the offending
- consider what the impact of a criminal conviction might be on their life or their whānau or family's life
- have support people attend the diversion interview
- accept diversion or exercise their right to test the prosecution before a court.

Informing the offender

In the interview the diversion officer must explain to the offender:

- the purposes and benefits of diversion
- the ground rules for diversion, and
- what happens if/when diversion is completed.

During the interview, the diversion officer must determine whether the offender accepts responsibility for the offending. If the offender does not, diversion is not appropriate.

The interview will also explore possible conditions of diversion that are appropriate, proportionate and achievable by the offender before the next scheduled court date. Refer to the Guiding principles of selecting conditions.

The diversion officer must also inform the offender that:

- they must voluntarily accept to undertake diversion with its attached conditions instead of continuing a prosecution
- any discussions of the offence are 'without prejudice'. This means that if diversion does not proceed then no evidence concerning the diversion discussions can be called at the offender's trial
- if they admit other offences during the interview, they will be disclosed to another Police employee and dealt with separately from the diversion offence. **Note** that you must give an offender who admits other offences the usual caution and Bill of Rights advice
- if they commit more offences during their diversion period, they may no longer be suitable for diversion.

After the diversion interview

Diversion offer

The approved diversion officer makes the decision to issue diversion only after the:

- diversion interview has been held, and
- the offender agrees, in principle, to the conditions that will form part of the diversion agreement.

If the diversion offer is accepted, you must prepare the diversion agreement for the offender to formally accept and sign the conditions.

The offender may withdraw from diversion at any stage of the process before their next court appearance.

Right to review

The offender or their counsel may request, in writing or verbally, a review of either:

- the decision to consider, offer, or not offer diversion
- the diversion offer conditions.

The review process must be undertaken either by:

- a prosecutor from the same PPS office or another PPS office, or
- in the case of a non-PPS diversion officer, the PPS office responsible for the prosecution file, or
- the District Prosecution Manager.

Note: The final decision whether to grant diversion or not rests with the District Prosecution Manager and no further right of review is available past this point.

The reviewing diversion officer must consider the offender and offence-based characteristics and create a file note on the outcome of the review, including how the decision was derived.

The outcome must be communicated to the offender or their counsel in writing within five working days of PPS receiving the request. If the review is declined, the decision must outline the reason/s why diversion was declined using the aggravating and mitigating factors or offender/offence based criteria covered in this policy.

Stage 4: Diversion agreement and conditions

The diversion agreement

The diversion agreement template is available on Microsoft Word Police Forms> Diversion> Div 9 - Police Adult Diversion Scheme Diversion Agreement.

The agreement must include:

- the offender's acceptance of responsibility for the offence
- the offender's contact details
- the agreed diversion conditions (these conditions must be explained to the offender in full)
- acknowledgement that the offender has been informed of the terms of diversion relating to failure to complete and that information about the offence is 'without prejudice'
- the expectations and times for completing the conditions. This includes providing receipts and attendance records to the diversion officer for activities such as counselling, service to the community
- the adjournment date and recognition of the diversion officer's action following successful completion, i.e. they will notify the registrar to withdraw the charge and conversely, the impact of failure to comply with the agreement
- the charge may be dismissed by the registrar on the papers, rather than being in open court. The offender's attendance will be excused unless the offender wishes to appear and have the charge dismissed in open court.

The offender may discuss the agreement with a lawyer before signing it to make it valid. After the agreement is signed, a copy of the agreement must be given to the offender either immediately after the interview or sent by post as soon as possible.

Diversion conditions

Imposing conditions in the diversion agreement is an opportunity to find a meaningful way to deal with an offender who:

- has admitted responsibility for their offending
- has shown remorse for their actions
- is prepared to be accountable for those actions.

Some diversion conditions can target the reasons for offending and highlight the purpose of diversion, e.g., alcohol and violence prevention counselling. Offence related conditions can aid the reduction of the likelihood of further reoffending.

Take into account, the offender's full circumstances and ability to comply with those conditions. The offender may decline or accept the diversion agreement.

See Diversion without conditions later in this policy.

Guiding principles of selecting conditions

These three principles will guide the diversion officer's selection of diversion conditions.

Principle	Description
Proportionality	The condition must be proportionate to the offence and must appropriately balance the public interest in justice being pursued through diversion. The condition(s) must not be more onerous than a sentence that might be imposed by the court following a conviction.
Achievability	All conditions must be able to be completed by the offender within the adjournment period (or any extension that is granted to that period) to the satisfaction of the diversion officer before a charge is dismissed.
Appropriateness	The conditions need to relate to the offending and should be targeted towards reparation to any victim, the offender's rehabilitation or a combination of the two to ensure the purposes of diversion are met.

Available diversion conditions

Diversion officers can impose one or more conditions in the agreement. The offender must voluntarily agree to the selected condition(s), restorative justice or a Te Pae Oranga.

Conditions may include:

- apology letter
- meeting with the victim
- reparation
- counselling/courses
- community work

Apology letter

The offender is asked to write an apology to the victim to acknowledge that their actions were wrong and to show they understand the implications of their offending. The letter must be given to the diversion officer to review before it is sent to the victim.

This may not be necessary if the offender is going to meet with the victim through a restorative justice process.

Reparation

Reparation should consist of any reasonable expense incurred by the victim as a direct result of the offence. For example:

- the cost of repairs to damaged property, or
- the cost of a taxi or rental car by the victim after their car was unlawfully taken.

Always get a written quote before reparation is directed as part of diversion. Reparation should be for full value and include any insurance excess.

If...	then...
the offender cannot pay reparation in full or disputes the amount of the reparation	the general rule is that the case is referred back for the prosecution to continue. In certain circumstances, if the victim agrees, an offender without financial ability can: - 'work off' the amount owed, or - be given time to pay (in very rare circumstances). All reparation must be paid before the prosecution agree to withdraw a charge. If this is not done, and an extension to the adjournment is not considered appropriate, prosecution against the offender will continue. Reparation made towards costs of store security should not be made a condition of diversion.
the offender agrees to pay	the offender can pay: 1. directly, when meeting with the victim as part of a restorative justice process, or 2. via an intermediary account, such as a restorative justice trust bank account, or 3. if the victim agrees, via online banking into the victim's account or one nominated by the victim. ***Note:*** *bank cheques were fully withdrawn from circulation in mid-2021 and are no longer available as a payment option.* If options 1-3 are not available or viable the Diversion Officer should explore alternative payment options, such as: 4. payment through a lawyer's trust account, a single-load credit card, or at a court appearance. In circumstances where an alternative option (option 4) is necessitated, the Diversion Officer must: - seek and ensure the approval of their DPM for the proposed payment solution. All reparation payments must be made, in full, at least three days before the next court appearance date. The Diversion Officer must ensure they have proof of payment to ascertain that this condition has been met.

Counselling/courses

Each District Prosecution Manager must create, use, and maintain a list of local Ministry of Health accredited counselling agencies. The following directories will support this: Family Services Directory and the Alcohol Drug Helpline Directory.

Counselling and/or courses may be appropriate in relation to the nature of the offending and/or to address the underlying reasons for the offending, in order to reduce or prevent re-offending. The Adult Diversion Scheme desk file provides information about determining appropriate conditions.

Types of counselling and/or practical training may include:

- alcohol and drug counselling
- stopping violence / anger management
- budgetary advice
- gambling

- child welfare
- family or relationship counselling
- counselling for unresolved personal issues (e.g. grief, sexual abuse)
- firearm theory and/or practical training
- basic first-aid
- driving lessons
- defensive driving should be considered in all traffic offence cases.

If an offender attends counselling or a course, one of the conditions for diversion must be that the offender must pay all counselling/course fees.

In the referral form, the counsellor or course provider must be advised that a receipt for counselling/course fees and a report outlining attendance is required as soon as the counselling/training has finished. The offender must provide the report at least three days before their next court appearance.

Community work

Community work enables offenders to take responsibility for their offending and right their wrongs by undertaking unpaid community work (this provides the punitive aspect).

Community work can include a range of tasks including, but not limited to:

- maintenance of community group or public spaces (e.g. widow washing, lawn mowing, graffiti removal and cleaning beaches/community parks/bush tracks) etc.
- assisting community support group services e.g. preparing and serving meals at food banks or at a local marae
- working at organisations that support the local community e.g. clothing and rubbish recycling
- working to repair the damage undertaken by the offender e.g. replacing a broken fence.

Three factors must be considered when assessing the suitability of community work as a diversion condition:

1. offender eligibility
2. community service work placement suitability
3. work task suitability

Factor	Consideration
Offender eligibility	Community safety is of paramount importance when assessing whether an offender is eligible to undertake community work. Prior to a request being made to a community organisation, the PPS office must first consider the following when assessing whether or not an offender is eligible for community work: - the offender's willingness to comply - the offence that the person has committed - the level of supervision required for the offender to undertake the work - the offender's availability - disability, medical conditions and mental health issues - drug and/or alcohol dependence - language barriers - the offenders needs and skills - availability of work.

Community service work placement suitability	Health and safety matters must be considered before community work is established as a diversion condition. It is the responsibility of the diversion officer to: - assess the general suitability of the proposed community work organisation - ensure that the placement is undertaken for an approved organisation for service to the community - ensure that offenders are aware of their health and safety obligations to the placement organisation - determine if the community work placement is covered by suitable and sufficient health and safety management practices, so as to not place the offender or public at risk when work is being performed.
Approved organisation for service to the community	Community work can be undertaken on an individual basis (e.g. painting a fence) or as part of a community group (e.g. serving a meal) or organisation that benefits the community generally, including: - a local council - government agency - voluntary organisation - school - marae organisation - sports group or - other community group that is registered as charitable trust (with an IRD number) - working at a registered private business that works to support the local community e.g. clothing and rubbish recycling. Each District Prosecution Manager must create, use and maintain a list of appropriate organisations which meet the criteria. This list will be updated annually by District Prosecution Managers and signed off by PPS Regional Managers.
Offender health and safety obligations	It is the responsibility of the offender to: - take reasonable care of their own health and safety and that of other people who may be affected by their actions (e.g. wearing sunscreen and appropriate clothing, drinking water and use equipment as instructed by the placement provider) - report accidents and incidents to the placement organisation.
Suitable and sufficient health and safety management practices	Determining if an organisation has suitable and sufficient health and safety management practices will require communicating with the organisation to ascertain if they: - have an organisational health and safety plan in place that covers the type of work being undertaken by the offender - are able to provide adequate training on how to undertake work in a safe manner, including use of all equipment they may need to use - are able to identify the health and safety risks associated with the work tasks to be carried out by the offender and any controls that may need to be implemented to ensure the health and safety of all those that may be affected - are capable of meeting work, health and safety standards if required e.g. providing access to protective equipment and a first aid kit - understand who is responsible for health and safety in their organisation. If a work placement organisation is unable to present any awareness of health and safety documentation or practices, it will most likely not be suitable for work placement. If in doubt, the diversion officer should consult with the New Zealander Police Safer People team to determine the best course of action.

Work task suitability	High risk work is not acceptable (this includes, but is not limited to: the use of some power tools, dangerous equipment or hazardous substances, or working in high risk environments such as at heights and tree felling). Exceptions to this will be permitted for offenders with appropriate credentials, training and/or experience to undertake the designated task. All exceptions will need to be approved by the District Prosecution Manager.

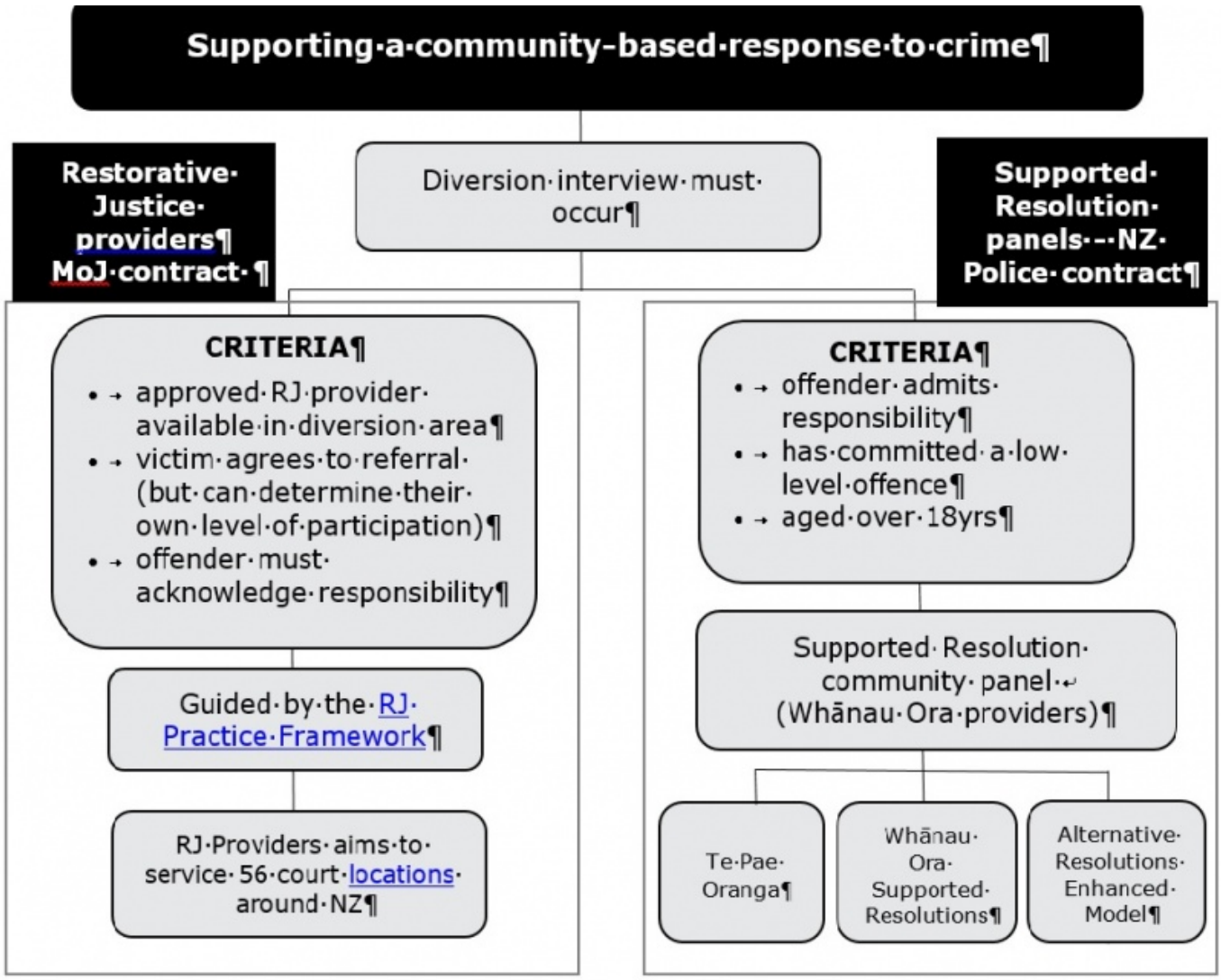
Community work requirements

Component	Expectation
Supervision	Constant supervision of the offender is not a requirement of community work. Hence, this option will not be suitable for all offenders. The type of work selected should be mindful of the lack of supervision and be focused on undertaking tasks where the completion of which can be demonstrated.
Evidence of work completed	The offender must present evidence of their completed work back to the diversion officer at least three days before their next court appearance (or longer as specified by the Diversions Officer). Evidence must include confirmation from the approved organisation that the work has been completed and may include before and after photos (if requested by the diversion officer).
Equipment	In most cases, organisations will need to provide the equipment to be used by the offender undertaking the community work.
Retrospective work	Retrospective community work (i.e., community work undertaken prior to a diversion agreement being signed) is not permitted. For community work to count, it needs to start anew and be completed.
Duration	When determining the number of hours appropriate for community work, consider the following: - the level and duration of work should be reasonable and in proportion with what might be imposed by the court if the offender was convicted - the work should be able to be completed before the next court appearance.
Attendance sheet	For longer durations of community work (e.g. more than three days) an attendance sheet may be required for the offender to prove the hours of work undertaken. This will need to be signed by a designated supervisor and the offender must bring their completed attendance sheet back to the diversion officer at least three days before their next court appearance. The diversion officer and/or RJ provider can determine if an attendance sheet is required.
Non-compliance	If the offender has failed to complete the community work adequately (as judged by the diversion officer) this must be treated as failing to meet the diversion conditions and the offender should be referred back to Court for their prosecution to continue. Ensure that the prosecutor is given a report on the offender's non-compliance with the conditions at least three working days before the next court appearance date.

Charitable donations

Charitable donations are not an option within the Police diversion scheme, therefore requiring a defendant to make a donation to charity, is not a valid condition of Police diversion.

Alternative resolution options



Considering Restorative Justice (a facilitated meeting with the victim)

Restorative justice is a community-based response to crime that aims to hold offenders to account for their offending and, as far as possible, repair the harm they've done to the victim and the community. It also gives victims a voice and may enable victims to receive answers, apologies and reparation.

In some circumstances, providing a more holistic response to the offending may be the most appropriate way forward. This approach will be particularly appropriate where there is a need to address the underlying reasons for the offending that meets the needs of the victim, the offender and their whānau in a culturally responsive way.

Participation in restorative justice is voluntary and involves a facilitated meeting between the victim and offender. Research shows restorative justice:

- reduces reoffending:
  Key findings in the Reoffending Analysis for Restorative Justice Cases 2008-2013 survey show that on average, offenders who participated in a restorative justice conference: committed 26% fewer offences than comparable offenders over the following 12-month period; and had a 15% lower rate of reoffending than comparable offenders over the following 12-month period
- has high rates of victim satisfaction:
  Key findings in the Restorative Justice Victim Satisfaction Survey 2018 show that the majority of victims (84%) said they were satisfied with their overall experience of restorative justice, and similarly, 84% said they would be likely to recommend restorative justice to others in a similar situation.

See Victim's views for more information.

Process for Restorative Justice (RJ) in diversion

Three prerequisites to making an RJ referral

All three prerequisites must be met before a referral is made:

1. the victim has consented to a referral to restorative justice (note the RJ provider will give information and seek consent from all participants to proceed to a conference)
2. a diversion interview must have occurred with an approved diversion officer
3. an approved RJ provider is available in the diversion area.

1. Gaining victim consent to make an RJ referral

The Police Diversion Officer should give information about restorative justice to the victim to gain consent for a referral to be made to a restorative justice provider. The information provided to the victim should include:

- restorative justice is a meeting, facilitated by a professional, between the victim and offender, where the offender can take responsibility for their actions and victims can receive answers, apologies and/or reparation
- restorative justice is voluntary at every stage of the process
- as part of the referral, a restorative justice facilitator will contact the victim to explain how restorative justice works in more detail - they don't need to decide now whether they want to go to a conference (meeting) with the offender
- a conference (meeting) will only take place if everyone agrees to participate, and the restorative justice facilitator determines that it will be a safe process for everyone.

2. Diversion interview must have occurred with approved diversion officer

The referral for restorative justice can only be made after the diversion interview but before a complete diversion agreement is signed. The diversion agreement with the offender should reflect that an RJ referral has been made as part of the diversion conditions.

3. Approved RJ provider is available

Only an approved RJ provider should complete the restorative justice process. Approved restorative justice providers are contracted and paid for by the Ministry of Justice. Approved RJ providers are required to:

- follow the Restorative Justice Practice Framework, which supports safe, consistent and robust restorative justice practice. There are additional standards and services in place for family violence and sexual violence
- have trained and experienced RJ facilitators delivering services
- meet quality assurance standards set by the Social Sector Accreditation agency and the Ministry of Justice.

Making an RJ referral

To make an RJ referral:

- check the Ministry of Justice website to get the contact information of the local approved restorative justice provider
- email the RJ provider with the Restorative Justice Referral Form.

The referral must include:

- offender contact information
- victim contact information
- Summary of Facts (or information about the charges)

It is also helpful to include:

- any issues which should be considered by the RJ provider to form part of the agreed plan
- criminal conviction history
- victim impact statement (if available).

The conditions suggested in the referral are the basis for the discussion. The referral will not state what must be agreed.

The RJ facilitator will ensure that outcomes are developed and agreed by the victim and offender (as the primary participants) without coercion. RJ facilitators will ensure the victim and offender understand what has been agreed, including what is required for agreed outcomes to be completed. Reaching agreement on outcomes are not the sole focus of the restorative justice process.

RJ conference has occurred

The referral process for court referred restorative justice pre-sentence cases is outlined here. The process is the similar for police diversion referrals, except the Police Diversion Officer makes the referral, and the facilitator provides a report to the Police Diversion Officer about the conference and any agreements made.

When a referral for RJ has occurred, the RJ provider must give the diversion officer a copy of the agreed actions (as part of the conference report) as soon as practical after the meeting. This must be at least three working days before the next court appearance date.

Note that this report must be an accurate reflection of the restorative justice conference, including a summary of outcomes (such as any apologies made by the offender and the victim's response), any agreements made, and who will monitor these agreements.

The Police Diversion Officer must monitor the agreed outcomes to determine whether diversion has successfully been completed. If the adjournment period is not long enough to complete the conditions, then the RJ facilitator must advise the diversion officer to arrange for an adjournment under s167 Criminal Procedure Act 2011.

See Further adjournment for more information.

Referral to RJ has not occurred

When referral to RJ has not occurred, the RJ facilitator must follow these steps:

Step	Action
1	Inform the offender that they will be advising the Police Diversion Officer that RJ could not proceed, and that the Police Diversion Officer will be in contact with them directly.
2	Ensure that the Police Diversion Officer is advised that a restorative justice conference could not be completed at least three working days before the next court appearance.

Te Pae Oranga

In addition to Ministry of Justice-funded restorative justice providers, Te Pae Oranga can be used.

Te Pae Oranga is available in the post charge environment only via Police Diversion. The Prosecutor, in consultation with the Supported Resolution Coordinator, will assess the appropriateness of the matter to proceed to Te Pae Oranga via Police

Note: When reporting a diversion case that contains TPO into NIA, please ensure that there is a written reference to the phrase ‘TPO’ or ‘Te Pae Oranga’ in the NIA narrative, so that all such cases can be easily identified for further analysis, as required.

Diversion without conditions

When all circumstances of the offender and offence have been considered, no additional diversion conditions may be required to meet the purposes of diversion, for example, when an offender has spent a night in Police custody before a court appearance or has had to take time off work for the initial court appearance and diversion interview.

In these instances, a formal warning and an agreement acknowledging diversion with no further conditions may be enough.

Stage 5: Completing diversion

Monitoring diversion conditions

The offender must give the diversion officer evidence to prove that the diversion conditions have been met. This should be provided no later than three days before the offender's next court appearance.

Completion proof includes (where relevant):

- the diversion officer's receipt of the letter of apology to send to the victim
- receipt for counselling fee payment (where appropriate) and a report on attendance and response
- receipt for reparation payment (or other means of payment for sending to the victim)
- completed attendance sheet for community service
- report from a restorative justice provider on what was agreed at theRJ conference, and who was assigned to monitor that agreement.

You must make any enquiries about the reparation payments, counselling/training reports, or evidence of community work undertaken before the next court date.

Further adjournment

A further adjournment may be sought from the registrar, under section 167 of the Criminal Procedure Act 2011 where there is an early indication that the conditions cannot be completed within the timeframe, and that additional time would be appropriate due to the offender's response.

If the diversion officer, after discussion with those involved, considers diversion is not applicable, the case will proceed through the prosecution process.

Dismissing the charge due to successful completion of diversion

When diversion has been completed to the diversion officer's satisfaction, they must send a letter to the registrar (under section 148 Criminal Procedure Act 2011).

In their letter, the diversion officer must:

- request the court dismiss the charge under section 147 Criminal Procedure Act due to successful completion of diversion
- apply for the offender to be excused from appearing in court.

Note that if an offender wishes to seek permanent name suppression they must appear in court and apply just as any other offender.

The Police Prosecution Service must:

- update NIA diversion record once the registrar has dismissed the information
- return the file to the OC case with an accompanying memo covering the:
    - completed diversion conditions for victim notification of the outcome, and
    - return of exhibits and file completion.

Failure to complete diversion

If diversion is not completed to the diversion officer's satisfaction, the diversion is recorded as "No, Failed to Complete

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Contract" against the NIA Diversion record, and the defendant must attend court on the date the case had originally been adjourned to. The defendant will be required to enter a plea (if they have been given the opportunity to seek legal advice) and the case will progress through the normal Criminal Procedure Act process.

Approved diversion officers

In some locations non-PPS staff (i.e. district staff) facilitate the diversion interview and agreement, as well as condition monitoring. This ensures that diversion is available in a fair and consistent manner across New Zealand. It is therefore crucial that these district staff receive the same training as approved diversion officers.

Diversion decision-making

The person making the decision to consider and offer diversion must:

- have the authority to make the decision
- be trained and fully understand the diversion criteria and its purpose, and
- be responsible for that decision.

Diversion also involves making sound judgments about the suitability of the offender for diversion. This applies when considering any special circumstances. The diversion officer should preferably be a diversion-trained prosecutor and, in the absence of a prosecutor, diversion should be carried out by a diversion-trained Sergeant or Senior Sergeant.

All prosecutors within the PPS must be trained as 'approved diversion officers'. Each District Prosecution Manager must have a list of approved diversion officers in their office, or those district staff that have been approved and trained to perform the role of the approved diversion officer.

Conflict of interest

If the offender, who is being considered for diversion, is known to the diversion officer or the OC case (via a personal connection and/or a professional relationship), a conflict of interest must be declared as soon as practicable. A discussion must take place with the Regional Manager and where necessary an alternative approach must be arranged. The RM must authorise the alternative arrangement for diversion consideration.

Training requirements

Approved diversion officers must be trained before working with offenders to consider Police diversion. Diversion training must be undertaken immediately prior to becoming a Diversion Officer, a District Prosecution Manager, and any other Police roles responsible for making decisions on the diversion process. See Part B - Diversion court appearance, interview, agreement and completion for more information.

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Community involvement

Diversion is a scheme which has a community-oriented component by involving community groups in service to the community, providing counselling, and restorative justice.

One purpose and great advantage is to bring wider experience to the problem of dealing with offenders. It also permits the diversion officer to tap into the knowledge, experience and expertise of community support networks and services through community group members.

Community involvement also:

- strengthens the offender's links with their own community
- allows members or groups in that community to accept more responsibility for 'their' offenders
- provides a more culturally appropriate response to the offending - particularly significant with restorative justice approaches.

Where community groups are playing a part in diversion it remains important that the process stays in PPS's control and that the community group is aware of this and of diversion’s purposes and benefits.

The community group must be aware that failure to comply with the diversion requirements will result in the case being referred back to the court. Where the community group is uncertain of diversion’s requirements or effects, they must consult the diversion officer. The diversion officer is responsible for advising the community group of the requirements for diversion.

Using and disclosing diversion information

Using information

NIA records if an offender has been considered for diversion regardless of whether it has been successfully completed or not. These records may be used by employees only to determine if:

- the OC case should make a diversion recommendation, or
- an approved diversion officer should consider the offender for another diversion.

Prosecutors must not print diversion information and provide it to the court in relation to any hearing or determination it may make (e.g. bail hearings, sentencing decisions).

Diversion officers may take into account an offender's failure to complete a previous diversion when considering whether or not to consider diversion for any further offending.

Disclosing information

Under the Privacy Act 2020, an individual can:

- access any personal information that can be readily retrieved, including records relating to diversion held electronically or in a current or archived file
- request correction of their information
- authorise information about them to be disclosed to a third party.

Police also has a duty to ensure policing services are delivered in a manner that respects and upholds human rights, such as the right to privacy. Disclosure of diversion information must be completed with human rights obligations in mind.

In respect of authorised disclosure to a third party, note that the Privacy Commissioner considers that authority to disclose information to a third party must be freely given without threats or inducements. For example, if an employer or employer's agent contacts Police seeking information on whether a job applicant had been considered for diversion, the information should not be disclosed, even when the job applicant’s written authorisation is provided except in limited circumstances (see next paragraph). The reason for this approach is that written authorisation may have been obtained as a result of an implied threat of the applicant not getting the position applied for.

However, disclosure of diversion outcomes may be appropriate, for example:

- where required by the Police Vetting Service at PNHQ (because the individual authorises the disclosure and the agencies approved for vetting meet certain criteria such as caring for children, national security, occupational registration or licensing, etc.)
- to meet legislative obligations or where required by a Court
- to meet public interest considerations such as law enforcement or public safety
- in court to highlight that the defendant has already received diversion previously and that is why he/she is not being offered it for this offence/s.

Requests for personal information by the individual concerned or by a third party should be dealt with by the Police employee most closely associated with the matter and logged on the **Information Request Database** (see Intranet homepage > Application and Databases). Guidance may be obtained from the Police Manual chapter on Privacy and official information, and, if necessary, legal advice can be sought from the appropriate District legal team.

A request for information from someone other than the individual without the individual’s authorisation may be refused under section 9(2)(a) of the Official Information Act 1982 to protect the individual’s privacy.

Criminal Records Act

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The Criminal Records (Clean Slate) Act 2004 allows individuals with less serious convictions who have been conviction-free for (in most cases) at least seven-years, to put their past behind them.

Individuals who qualify are able to conceal their convictions for most purposes. This legislation does **not** apply to diversion, as it is not a conviction (the charge was dismissed) and does not form part of their criminal record as defined in that legislation.

Monitoring and auditing diversion

To ensure the integrity of the Police Adult Diversion Scheme, all prosecutors and approved diversion officers must make consistent decisions. Consistency is measured using rigorous monitoring, evaluation and audit processes.

Record keeping

These diversion documents must be kept on the prosecution file:

- the diversion agreement
- record of third-party reparation details (including the level of shortfall suffered by the victim if applicable)
- evidence of compliance with conditions (receipts, reports)
- any correspondence with the court relating to adjournments
- diversion officer notes regarding victim and OC contact
- request to the registrar to dismiss the charge
- confirmation where decisions, requiring DPM or Director endorsement and/or approval, have received the applicable sign-off requirements.

NIA data entry

NIA entries must be completed for all individuals who are considered for diversion. This data entry must be conducted incrementally as the diversion progresses. The functionality records:

- details of the diversion interview
- details of the diversion decision
- if OC case and victim were consulted by the diversion officer (or are recorded on the POL 258P or file cover sheet)
- diversion conditions
- whether conditions completed
- the diversion outcome (completed/not completed).

Training notes have been provided to employees on how to record the diversion details. Seetraining requirements earlier in this policy.

District Prosecution Manager's audit role

Monitoring all diversions helps:

- assess the scheme’s delivery
- identify difficulties and problems
- recommend remedial action for problems.

District Prosecution Managers monitor diversion officers’ activities to ensure they are consistently and transparently following the scheme’s policies, procedures and operating standards.

District Prosecution Managers examine files and data from NIA to review the:

- consistency of decision making
- types of offence diverted
- conditions of diversion agreements
- audit trails for:
    - counselling
    - hours and organisations for community service.

Regional Manager and Director audit role

PPS Regional Managers monitor District Prosecution Managers' diversion audits as part of their district visits and ensure any actions required to address problems are completed in agreed timeframes.

Audits examine and review high-risk areas to ensure the scheme's standards, practices and financial management are being followed. The Director: Resolutions directs when an audit is to be carried out.

Annual reporting

New Zealand Police's annual reports (financial year 1 July to 30 June) count the number of charges where diversion is successfully completed.