

Formal Warning Policy

Purpose

This policy sets out how the Plumbers, Gasfitters and Board (Board) decide whether to issue a formal written warning. The policy aims to ensure the Board are consistently using warnings in the appropriate circumstances in a manner that is fair, consistent and in the public interest.

What is a formal warning

A formal written warning is a written letter or email identifying non-compliance with the Plumbers, Gasfitters and Drainlayers Act 2006 (Act) and relevant regulations. The Board may issue a formal written warning as an alternative to a taking a prosecution or a disciplinary hearing to address conduct that may, in the Board's view, amount to a specific offence.

Purpose of a formal warning

The purpose of the formal written warning is to prompt a change in behaviour in the recipient and to encourage future compliance. It also provides an opportunity to educate the recipient and other stakeholders about how they can meet their compliance obligations. A formal written warning will outline what needs to be done to achieve compliance (if applicable) and give a summary of possible consequences if the non-compliance is not remedied or is repeated.

A warning may be issued for a number of purposes. For example, to:

- show that the Board takes the matter seriously
- inform the recipient that in the Board's view, the behaviour the person has engaged in amounts to conduct that could otherwise be prosecuted, or heard before the Board in a disciplinary hearing, but the Board has chosen not to take this course of action
- mitigate the risk of the behaviour occurring in the future
- give the recipient an opportunity to amend or address the behaviour to avoid the risk of prosecution or disciplinary hearing
- send a clear message to the recipient, and others in similar situations, including the public

When the Board may use a formal warning

Not all behaviour that may involve an offence requires a prosecution or disciplinary hearing. In some circumstances a warning may better achieve the Board's objectives. A formal warning letter is considered appropriate for incidents where any loss or harm is minor and caused by a genuine

mistake, or in circumstances where a prosecution is likely to have a detrimental impact on a victim. It may also be appropriate where an incident is unlikely to be repeated in the future, or in circumstances where the alleged offender has rectified the loss or harm caused.

The Board may choose to use a formal warning where:

1. There is evidence of conduct or behaviour that would likely be an offence or breach under the Act or regulations.
2. There is a standalone action that is not suitable to pursue for further enforcement action (e.g. the nature of the non-compliance is low level, however a repeated failure to comply may lead to a different outcome)
3. An audit or visit has identified an offence or breach.

Form and content of a formal warning

When the Board issues a formal written warning, it must be in writing and be sent as a letter or email to the recipient. The written warning must be written in a manner and language that is appropriate to the recipient's level of understanding.

The written warning will:

- provide an accurate summary of the key facts that led to the formal written warning being issued
- state the reason for which the Board has issued the formal written warning
- set out the actions or omission that has resulted in non-compliance
- describe any possible consequences related to the formal written warning, including:
 - Where the warning will be held and for how long
 - How the warning may be used, i.e. shared with who
 - Any likely consequences if, in the future, the person engages in similar behaviour
- set out the recipient's rights in relation to the warning including how they will be engaged with the process of issuing the warning, and their rights under the Privacy Act or the Boards privacy policy, e.g. the right to have the warning reviewed within a certain period
- set out any relevant response of the recipient to the proposed warning, e.g. whether they admit the facts or conduct alleged or dispute it, or whether they consent to the matter being dealt with by a warning
- identify what needs to be done to achieve compliance, if applicable, e.g. registration and licensing to be achieved)
- acknowledge any steps the recipient of the formal written warning has taken to remedy the breach
 - acknowledge any remorse or acknowledgement by the recipient of the formal written warning and any other steps taken to ensure future compliance
- not assert or imply that an offence has been committed or is proven. However, a warning may set out that, in the Board's view, such conduct or behaviour may amount to a specific offence or breach, and that, if repeated in the future, further enforcement action including a prosecution or disciplinary hearing may be considered

- should not indicate prosecution as the otherwise appropriate response if that is not in fact the case.
- include any relevant attachments such as guidance material (if applicable).

Process of issuing a formal warning

If the Board identifies conduct that may constitute an offence—whether through complaints, intelligence follow-ups, compliance visits, or other investigative processes—it will ensure that credible information is gathered to assess whether a regulatory response is warranted, and if so, determine the most appropriate response. At this stage, issuing a formal warning may be considered.

When a warning is used as an alternative to prosecution or a disciplinary hearing, the Board recognises that it may still have an adverse impact on the individual receiving it. Therefore, it is essential that the Board upholds the principles of natural justice and follows a clear and consistent process when issuing warnings

When collecting and assessing credible evidence in relation to conduct that may constitute an offence the goal is to meet the evidential test for prosecution, however there may be situations, particularly in the early stages of an investigation, where a formal warning is considered appropriate even if the available evidence is more limited.

The following factors will each need to be assessed and balanced on a case-by-case basis to determine if issuing a formal warning is appropriate:

- a. There is evidence of conduct or behaviour that would be an offence under the Act or relevant regulations.
- b. In the Board's view, such conduct or behaviour may amount to a specific offence and that if repeated in the future, a prosecution may be considered.
- c. Issuing a warning is in the public interest. In most cases, a warning will be the appropriate outcome where:
 - i. The conduct is serious enough to warrant a regulatory response; but
 - ii. The public interest does not require a prosecution because:
 1. the person has changed their behaviour or has indicated that they will change their behaviour
 2. the behaviour was accidental or based on a genuine misunderstanding of the law
 3. there was little or no actual public harm, or the person has remedied any harm that they caused
 4. a warning would be sufficient to deter similar conduct by others and set standards in the industry
 5. it would not be a good use of the Board's limited regulatory resources

6. there are special reasons why prosecuting the person would be a disproportionate response, e.g. they are seriously unwell or are a company that has been put into liquidation

7. the Board can achieve its regulatory objectives without a prosecution.

Where the Board sees it as appropriate to issue warnings on the basis of a limited body of evidence, such as at an earlier stage of an investigation, the Board will carefully consider whether it is appropriate to resolve the matter early, having regard to:

- the needs and interests of the person to be warned, their whānau and community (the person)
- the needs and interests of any person harmed or affected by the person's behaviour, their whānau and community (the harmed person)
- and the wider public interest.

The Board will also have regard to the purpose for issuing a warning in each particular case. The full assessment will recognise that issuing an early warning could work both for and against the interests of the person, the person harmed and the public.

The considerations for each warning will differ dependent on the type of offending and in any given case the Board needs to carefully consider if it is appropriate to issue a warning, having regard to the circumstances of the situation, including the behaviour, the purpose of the warning and the evidence available to support the warning.

The decision to use a warning will be made on a case-by-case basis, in line with the Board's Compliance Strategy and with regard to the Solicitors-General's [Prosecution Guidelines](#) and the Solicitor-General's [Guidelines for the Use of Warning](#).

The Board will, where appropriate, engage with those people who have been harmed by the conduct of the person as part of the process when determining if issuing a warning is appropriate. This will involve written correspondence providing the harmed person(s) the opportunity to provide their views.

The Board will consider a formal warning held on a person's file when investigating future conduct that may amount to an offence. This includes as a matter of compliance history when determining whether a prosecution is warranted. The Board will also consider any mitigating factors recorded on the formal warning including expressions of remorse and steps taken to rectify the impact of their conduct or behaviour.

Review Process

Individuals who receive a formal warning have the right to request a review within 20 working days from the date of issue. This period may be extended if there is good reason to do so, for instance, if the person is waiting for a response to a request for relevant personal information under the Privacy Act 2020.

The Board will undertake a review of the original decision to issue a formal warning, taking particular note of any new or additional information supplied.

When a review is undertaken:

- It will be conducted by a party within the Board independent of the enforcement function.
- General Counsel will be consulted

The Board will aim to respond within 20 working days of receiving the request for review, advising the person of the outcome of the review that has been undertaken.

Confidentiality and Record Keeping

Formal warnings will be kept confidential and stored securely in compliance with the Privacy Act 2020. Records of formal warnings will be retained for 3 years and may be considered for the duration of the retention period in future regulatory responses, applications, or assessments. Once a period of 3 years has passed, the formal warning should be deleted from the person's file and disregarded in any decision making if no further warnings have been issued.

Policy Review

This policy will be reviewed annually to ensure it remains effective and in alignment with any updates to the Solicitor-General's Guidelines or relevant legislation.

Version management

Date	Details
6 May 2025	Approved by Chief Executive
6 May 2027	Next review date