

# Pre-charge warnings

## Summary

### Purpose of this chapter

This chapter:

- explains the purpose and expected practice standards for issuing of a pre-charge warning after arrest
- ensures that constables understand the reasons for issuing a pre-charge warning and apply consistent practice in a manner that contributes to the overall priorities of Police
- sets out the standards and principles for establishing evidential sufficiency and public interest as well as defining the criteria around the use of pre-charge warnings
- should be read in conjunction with the 'National Pre-charge Warnings: NIA Entry & Auditing' technical specifications:



[national-pre-charge-warnings-nia-entry-and-auditing.doc](#)

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### What is a pre-charge warning?

A pre-charge warning is a lawful alternative to prosecution for some minor offenders. A pre-charge warning is issued in writing at the Police station after a person has been arrested for a qualifying offence and meets the criteria for a pre-charge warning. The ability to warn is derived from the Police common law power of discretion and there is no impediment to releasing them with a warning from the Police station as long as due process is followed.

The decision to exercise discretion and issue a pre-charge warning to a person arrested on a qualifying offence must be treated seriously with the final decision to warn always being made by a permanent Custody Supervisor or a substantive sergeant or senior sergeant.

### Benefits of pre-charge warnings

The benefits of pre-charge warning include:

- reduction in court appearances
- faster processing time
- less requirement for prosecution files

- swifter redeployment of staff
- better outcomes for the Justice system.

## What is the purpose of a pre-charge warning?

A pre-charge warning is an effective tool for resolving some qualifying offences that require Police intervention and arrest but, based on public interest, do not warrant prosecution.

A pre-charge warning is intended to hold the offender to account and to deter them from further offending behaviour. The issuing of a pre-charge warning informs the offender that the offence(s) committed by them has been treated seriously and has been recorded in the National Intelligence Application (NIA ()).

The pre-charge warning concept is a process in two parts, both occurring within the custody suite at a Police station. The first part is the role of the Custody Supervisor to assess arrests for evidential sufficiency and public interest. This requirement has always existed but is seldom properly exercised. This part of the process is about engineering good practices. The second part relates to issuing pre-charge warnings for qualifying offences after arrest.

## Principles

The principles guiding operational good practice for the issuing of a pre-charge warning are:

- **Consistency** - adhering to the processes and criteria outlined in this chapter to ensure consistency around the issuing of pre-charge warnings; and the 'National Pre-charge Warnings: NIA Entry & Auditing' (PDF below) technical specifications to ensure consistency around the entering of pre-charge warnings into the National Intelligence Application (NIA).



[national-pre-charge-warnings-nia-entry-and-auditing.doc](#)

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- **Transparency** - The pre-charge warnings process must be communicated to the prisoner receiving the warning in a language and manner they understand, and the prisoner must sign and receive a copy of the 'Pre-charge Warning & Release Notice':



[pre-charge-warning-and-release-notice.doc](#)

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- **Integrity** - ensuring that the test for evidential sufficiency is carried out in all cases and the threshold is met prior to issuing a pre-charge warning, will guarantee the process is operated with integrity and will avoid unlawful arrest and detention.

## Eligibility criteria for pre-charge warnings

### Who is eligible for pre-charge warnings?

To be eligible to be considered for, or receive, a pre-charge warning the following criteria must be satisfied (see Initial decision making step [4d](#)):

- The offender **must** be 17 years or over.
- The offence **must** carry 6 months imprisonment or less.
- The offence **must not** have arisen out of a family violence incident.
- The offence **must not** involve the possession of methamphetamine.

### Additional factors to be considered

Other than the general eligibility criteria above, Custody Supervisors must decide on an offender's suitability for a pre-charge warning by considering these additional factors:

Factor to be considered	Process step
Validity of the arrest	<a href="#">4a</a>
Evidential sufficiency	<a href="#">4b</a>
Public interest	<a href="#">4c</a>
Victim considerations	<a href="#">4e</a>
Reparation considerations	
Criminal history or previous pre-charge warnings	

### Does the use of force affect eligibility?

Use of force which requires the submission of a Tactical Options Report (TOR ()) will not necessarily exclude the option of releasing a prisoner with a pre-charge warning.

When force has been used, and particularly when additional offences have been committed such as 'resists Police', then careful consideration needs to be made as to whether the use of a pre-charge warning is appropriate, or whether the prisoner has met the 'public interest' test for prosecution (as per section 4C Initial Decision Making



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- Apprehension**      1      A constable may continue to and commence the process of applying discretion in the field at the time apprehension is being considered (there may be no need to arrest). Where discretion is applied the constable must consider:
- the nature and seriousness of offence
  - the necessity to maintain public order, i.e. potential breach of the peace
  - evidential sufficiency - Solicitor-General's Prosecution Guidelines
  - the public interest - Solicitor General's Prosecution Guidelines
  - the suspect's behaviour and circumstances
  - any victim considerations.

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- Investigation and arrest**      2      The arresting constable must:
- carry out a thorough investigation where an offence has been observed or reported to them to obtain best evidence
  - use appropriate discretion when faced with the option of arrest or warning and consider all the circumstances of the offender/offending - see 'Arrest and detention' chapter
  - consult with a supervisor if unsure whether to arrest or warn
  - gather and prepare all evidence including any that supports or rebuts the alleged offending
  - complete all relevant documentation.

**After an arrest, at the custody suite**      3      The arresting constable must:

- search and secure the prisoner
- report to the Custody Supervisor and provide a full briefing on grounds for the arrest, and evidence to support the charge(s) if appropriate.

**Initial decision-making**      4a      The Custody Supervisor's key role is to ensure the pre-charge warning process is operated with professionalism and integrity, and does not become a tool for unlawful arrest or a means of avoiding putting appropriate matters before the court.

The Custody Supervisor must ensure the **validity of the arrest** by confirming that:

- there is good cause to suspect that the prisoner has committed an arrestable offence, or
- the prisoner is being lawfully detained under the provisions of:

section 42, Crimes Act 1961 (breach of the peace); or section 36, Policing Act 2008 (care and protection of intoxicated persons).

**Caution:** If the arrest is unlawful, the prisoner must be released immediately.

**4b** Once it has been ascertained under 4a that the arrest is lawful, the Custody Supervisor must examine the **evidential sufficiency** and determine the appropriate course of action with reference to the Solicitor General's Prosecution Guidelines. If evidential sufficiency does not exist, the evidential shortfalls must be remedied, or the prisoner must be released immediately.

**Important:** Where the Custody Supervisor releases a prisoner without charge or without a pre-charge warning due to evidential insufficiency the incident/occurrence must be documented thoroughly and a NIA occurrence entered.

**4c** If evidential sufficiency under 4b is deemed to exist, the Custody Supervisor must then determine whether or not it is in the **public interest** to prosecute or release with a pre-charge warning (refer Solicitor General's Prosecution Guidelines).

**4d** If public interest considerations under 4c do not preclude a pre-charge warning, check if the offender is eligible for a pre-charge warning under the general criteria, e.g.:

- The offender **must** be 17 years or over.
- The offence **must** carry 6 months imprisonment or less.
- The offence **must not** have arisen out of a family violence incident.
- The offence **must not** involve the possession of methamphetamine.

**4e** If the general criteria under 4d demonstrates eligibility for a pre-charge warning, always ensure these factors are also taken into account:

- **victim considerations** (noting that the issuing of a pre-charge warning is not contingent on the victim being agreeable)
  - **reparation considerations** (noting that the issuing of a pre-charge warning is not contingent on reparation being paid)
  - **criminal history or previous pre-charge warnings** (noting that these do not automatically exclude a prisoner from receiving a second or subsequent pre-charge warning).
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**Fingerprinting  
and  
photographing**

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Prior to the Custody Supervisor making their final decision as to whether a prisoner should be charged or warned the prisoner must first be fingerprinted and photographed pursuant to section 32 of the Policing Act 2008. Section 34 requires that when a decision is made not to bring about proceedings, the identifying images (fingerprints and photographs) must be destroyed.

When a prisoner is fingerprinted using LiveScan a TCN number, unique to each set of fingerprints, is produced. When entering a pre-charge warning into NIA data entry staff must **not** enter the TCN number when prompted to do so.

After a period of 28 days National Fingerprint Section will receive a notification that a set of prints have been taken and were not associated to a charge. They in turn will complete a check on the prisoner, see that they were the recipient of a pre-charge warning and destroy the fingerprints.

Where a prisoner is fingerprinted using the traditional ink method the fingerprints must be sent to National Fingerprint Section with the preformatted 'Destruction of Fingerprint form' (see PDF below) covering the date of arrest, offenders details, arresting officers details and a request for confirmation of identification and destruction of the fingerprints.



**pre-charge-warnings-destruction-of-fingerprints-and-photographs-form.doc**

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**Final decision-making**

- 6 Once satisfied with the prisoner's identity, the Custody Supervisor can make a final assessment and authorise the prisoners release on a pre-charge warning. This must occur at the earliest opportunity after completing the 'Pre-charge Warning & Release Notice (see below)'. (**Note:** There may be justification to hold a prisoner for up to 2 hours under section 42, Crimes Act 1961 or up to 12 hours under section 36, Policing Act 2008.)



**pre-charge-warning-and-release-notice.doc**

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**Provincial and rural variation**

If a Custody Supervisor or Field Supervisor is not working (as opposed to not available) the arresting constable must assess the prisoner's eligibility and then make phone contact with a supervisor at the nearest 24 hour station for approval. The approving supervisor's name must be on recorded on the notice.

**Issuing pre-charge warnings**      7      The arresting constable or watchhouse keeper complete the 'Pre-charge Warning & Release Notice' (see DOC above) in triplicate and have it signed by the prisoner and the Custody Supervisor. A copy is given to the prisoner on release. A second copy is attached to the prisoner's charge sheet along with a copy of the offence and offender report.

**Note:** The Offender Report (POL () 24 COM) must be completed in accordance with the National Recording Standard, section 4.6.

The Offence Report (POL 23 COM), and if required a Supplementary Sheet (Pol 24A COM), should include a brief set of circumstances in relation to the offence and the rationale behind issuing a pre-charge warning (for example mitigating factors such as remorse, victim's views or reparation paid).

**Important:** If the prisoner refuses to sign the document or does not admit their involvement in the alleged offending, the pre-charge warning cannot be issued and prosecution action under step 9 below must continue as normal.

**Entering pre-charge warnings in NIA**      8      The arresting constable, watchhouse keeper or data entry staff must enter the pre-charge warning in to NIA () by following the steps outlined in the 'National Pre-charge Warnings: NIA Entry & Auditing':



[national-pre-charge-warnings-nia-entry-and-auditing.doc](#)

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<b>Proceeding with charges</b>	9	If the decision is made to charge, the arrest and charge process continues as outlined in the ' <u>Arrest and detention</u> ' chapter.
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## DNA

Section 24J of the Criminal Investigations (Bodily Samples) Act 2005 provides Police with the ability to require a DNA sample from any person 17 years or older who has been arrested or who Police intend charging with a relevant offence. Section 60A however requires the sample to be destroyed where the intended charge is not filed, it is withdrawn or the person is acquitted.

For the purposes of pre-charge warnings it is recommended that DNA is **not** taken in accordance with section 24J of the Criminal Investigations (Bodily Samples) Amendment Act 2009 due to the requirements for destruction. However, a voluntary sample can still be requested and obtained if deemed appropriate by the Custody Supervisor.

## Audit process

A Business Objects search under 'NIA () Charges' will provide a count of charges resolved by way of pre-charge warning. District Subject Matter Experts will be given the Business Objects search to complete on a fortnightly bases. The data obtained will be forwarded to <sup>s9(2)(a)</sup> [REDACTED] for National reporting.