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# How we make enforcement decisions

## About this policy

This policy sets out our approach to enforcing work health and safety and energy safety legislation.<sup>1</sup>

It should be read alongside these policies:

- [How we regulate](#)
- [When we intervene](#)
- [How we intervene](#)

The policy guides our [Enforcement Decision-Making Model \(EDM\)](#).

## What we want to achieve through enforcement

We intervene by enforcement to make sure persons with responsibilities<sup>2</sup> under our legislation:

- manage risk effectively
- address breaches, and
- are held to account when necessary.

Enforcement also helps us achieve:

- public confidence in how we regulate, and
- our strategic outcomes.

## What enforcement is

Under our legislation we have a range of enforcement tools we can use, including:

- notices (HSWA)
- written notices (Electricity Act and Gas Act)
- compliance orders (HSNO)
- infringement notices, and
- prosecution (under all legislation we enforce).

We also use non-legislative options to encourage compliance, such as sustained compliance letters, directive letters, and verbal directions.

The type of enforcement we take depends on the legislation that is breached and the circumstances of the breach.

## What we consider when we make decisions about enforcement

Our regulatory approach, really responsive risk-based regulation, provides us a framework to help make enforcement decisions.

### The risk to workers and others

First, we think about the risk and harm to workers and others that arises from work and workplaces. Or, when applicable, the risk and harm to people involved in the supply and use of electricity and gas.

<sup>1</sup> The legislation we enforce includes Health and Safety at Work 2015 (HSWA), Electricity Act 1992, Gas Act 1992, and work-related requirements in Hazardous Substances and New Organisms Act 1996 (HSNO). Together, these responsibilities form our health and safety system.

<sup>2</sup> This includes duty holders such as PCBUs (persons conducting a business or undertaking) under HSWA, and a natural person or body corporate in the case of electricity and gas legislation.



What we consider includes:

- how likely is it that the risk, including risk to health, will occur?
- what are the potential consequences if the risk is realised?

We also consider whether:

- it's part of a pattern of harm or poorly managed risk
- it's in a sector or industry where Māori, Pacific Peoples, migrant workers, or other vulnerable worker groups are at greater risk of harm
- vulnerable people, such as children, the elderly, pregnant people, or disabled people have been exposed to risk or harmed.

## The context for enforcement

Next, we consider:

- the attitudes and behaviours about health and safety that exist in a work culture, in a sector or industry, and across our health and safety system
- the health and safety outcomes we want to achieve and the resources we have to achieve them, and
- how enforcement works in combination with other types of interventions.

## We understand our regulated community

We need to understand people's motivations and capacity to either comply or not comply with legislation. To do this, we consider the attitudes, behaviours, and work culture that a PCBU (person conducting a business or undertaking), other duty holder, or other person with responsibilities has toward health and safety. We assess this in our interactions with them and by their compliance history.

## We're aware of our operating environment

As a regulator we need to be aware of the constraints and opportunities in our operating environment. For enforcement decisions this means keeping the 'bigger picture' in mind.

This includes considering:

- what's reasonable to expect of PCBUs, duty holders, and other persons with responsibilities
- how best to reduce risk and prevent harm in any situation
- public expectations about how we perform our role, and
- any regulatory risk created by the trade-offs we have to make because we have finite resources.

## We decide whether enforcement is an effective use of resources

Finally, we need to think about whether enforcement is the best intervention for our finite resources.

Before deciding to enforce we consider whether doing so will:

- contribute to our strategic outcomes of safe and healthy work for workers and those affected by work
- contribute to the safe supply and use of electricity and gas
- help us achieve equitable health and safety outcomes for workers at greater risk of harm, including Māori, Pacific Peoples, migrant workers, and other vulnerable worker groups
- be the best use of our resources when considering commitments we've already made for other work, or
- help maintain public confidence in how we manage our regulatory responsibilities.

We revisit enforcement decisions when appropriate to see whether enforcement remains the best approach or another intervention may be more effective.

## We meet our obligations for natural justice

We follow the principles of natural justice when making enforcement decisions. These include being:

- consistent
- fair and reasonable
- evidence-based and proportionate
- timely, and
- transparent.

## We document our decisions

We document our decisions and the reasons for them when we decide to:

- enforce
- use an alternative intervention, or
- not enforce (including when we have evidence of breaches but decide enforcement isn't the best way to intervene).

## How we apply our enforcement principles

We use our EDM to decide what enforcement action to take. The EDM sets out a guided process for making enforcement decisions that align with this policy.

## Review of enforcement decisions

People affected by an enforcement notice or a compliance order may apply for the decision to be reviewed internally. We may suspend the action that's required by the original enforcement decision until an internal reviewer reaches a decision.

If Māori believe we haven't met our responsibilities under Te Tiriti o Waitangi for an enforcement decision, they're entitled to submit a claim to the Waitangi Tribunal.