

Cost recovery

OPERATIONAL POLICY

April 2019



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Purpose

The purpose of this policy is to guide how we will recover, so far as is reasonably practical, the regulator's costs from parties where a breach has occurred, and where mandated under the *Health and Safety at Work Act 2015* (HSWA). This policy concerns section 152 of HSWA, which allows us to seek to recover costs for investigation and litigation.

It is informed by our Cost Recovery Principles, which are provided on page 3.

Scope of the document

IN SCOPE

- Recovering a debt or costs under HSWA.
- Section 152: recovery of regulator's costs in bringing a prosecution.

OUT OF SCOPE

- Other legislation for which WorkSafe is responsible including:
 - *Electricity Act 1992*
 - *Gas Act 1992*
 - Parts of the *Hazardous Substances and New Organisms Act 1996* (HSNO).
- Our ability to:
 - recover costs using a levy under section 201 of HSWA
 - charge a fee for services, such as creating and maintaining registers or undertaking audits.
- The process Operations, Legal, and Finance will use to recover costs.

Our mandate for cost recovery

This section outlines the sections of HSWA where we have a mandate to recover costs.

Section 121: costs of remedial or other action

We can recover costs when we've taken remedial action to make a situation safe.

Section 121 ties 'reasonable' to the remedial action we deem necessary to make the situation safe, and where a duty holder is unable, or unwilling, to take appropriate action. Reasonable costs in this context are the costs of remedying the health and safety issue.

Our approach to remedial action is covered in our *Remedial Action Policy*.

Section 127: contravention of enforceable undertaking

We can recover costs when we take proceedings against someone not fulfilling their enforceable undertakings (EUs).

Our approach to EUs is covered in our *Enforceable Undertakings Operational Policy* and *Enforceable Undertakings Practice Guide*.

Section 152: order for payment of regulator's costs in bringing a prosecution

We can recover all 'reasonable expenses' associated with bringing a prosecution. These costs include, but are not limited to:

- using expert witnesses
- preserving an incident scene, transport and storage of evidence, or forensic destruction

- remedial actions
- reports prepared by external experts
- disbursements (including travel) that we reasonably incur in relation to the investigation or prosecution, and
- higher court filing fees (when applicable).

We must be able to demonstrate to the court that our costs are fair and reasonable, given the circumstances of the case.

Section 153: adverse publicity orders

We can recover legal and other costs for pursuing an offender who has not complied with an adverse publicity order.

Our approach to cost recovery

We will only recover costs following a successful prosecution

Section 152 allows us to seek to recover costs for investigation and litigation. We will only do so following a successful prosecution. They will form part of our sentencing submission to a court.

We will recover investigation expenses over and above routine costs

In general, we will seek to recover costs for investigation expenses over and above routine costs.

Wherever possible, costs will be supported by invoices showing the amount to be recovered.

We will recover half our legal litigation costs

We will generally seek to recover half of our legal litigation costs. The courts have confirmed that this approach is appropriate.

Our cost recovery decisions will align with our cost recovery principles

We will use our cost recovery principles as a guide for decision-making.

We will record all costs that could potentially be recovered. The decision-maker will determine whether the costs align with our cost recovery principles and are recoverable.

We can choose not to recover costs

Under the Auditor-General's guidelines, 'while an entity may be able to recover its costs fully, it may choose not to'.¹

We will consider the circumstances of each case when deciding whether to seek costs, and how much. This may include the defendants' ability to pay.

¹ The Auditor-General's Charging fees for public sector goods and services (2008, paragraph 2.5)

Roles and responsibilities

Investigative groups

The investigator will record investigation expenses over and above routine costs incurred by the investigation from its beginning.

The Chief Inspector, or Deputy Chief Inspector, will decide which investigative costs should be recovered. If the total amount of investigative costs is significant, it may be appropriate the decision to recover them is endorsed by the relevant Head.

The legal group

The lawyers responsible for the prosecution will record legal prosecution costs that could potentially be recovered.

The Chief Legal Advisor will decide which legal costs should be recovered.

Finance

Finance will:

- record costs recovered for each investigation/prosecution to monitor compliance, and
- manage collection processes.

Cost recovery principles

PRINCIPLE	EXPLANATION
Authority	There is clear legal authority to recover costs in the circumstances.
Shared responsibility and clear accountability	We lead and influence to improve the health and safety system. Cost recovery assists in holding duty holders to account for their responsibilities.
Context specific and proportionate	Our cost recovery choices and decisions consider the particular circumstances of the case. They are proportionate to the impact of the infringement.
Outcome focused	We are constructive and purposeful in our choice of actions, including cost recovery, while being conscious of broader considerations. We prioritise on the basis of risk.
Consistent	Consistency is not the same as uniformity. Our decisions on cost recovery are consistent and specific to context.
Fair, just, and impartial	We act with integrity. Our cost recovery decisions are accurate, balanced, un-biased, and even handed.
Transparent	Duty holders know what to expect from us. We tell them why costs will be recovered, when they will be sought, and how they will be recovered.
Public interest	We consider the public interest when seeking cost recovery. Examples include: <ul style="list-style-type: none">- holding duty holders to account for health and safety breaches- our responsibilities to victims and social justice- placing the cost of a prosecution on those who can afford to pay.

Review of this policy

This policy is part of our Practice Framework and will be available externally.

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PO Box 165, Wellington 6140, New Zealand

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