



Duty Holder Review

REGULATORY FUNCTION POLICY

December 2016

INTRODUCTION

The *Duty Holder Review Regulatory Function Policy* (DHR policy) sets out the principles and objectives for the operation of the Duty Holder Review (DHR) process.

BACKGROUND

WorkSafe was established as a Crown entity under the WorkSafe New Zealand Act 2013 and is New Zealand's primary health and safety regulator. WorkSafe's main objective is to promote and contribute to a balanced framework for securing the health and safety of workers and workplaces.

New Zealand has high rates of workplace fatalities, serious harm injuries, and work related illness compared to other OECD countries. WorkSafe is aiming to achieve at least a 25 percent reduction in workplace fatalities and serious injuries by 2020; and a 50 percent reduction in the incidence of pleural cancer (mesothelioma), asbestos related lung cancer and asbestosis by 2040. A DHR is one of a range of responses available to WorkSafe when an injury, illness, incident or event is notified under the Health and Safety at Work Act 2016 (HSWA).

DEFINITIONS

DUTY HOLDERS

A duty holder is a person upon whom a duty is imposed by HSWA, the Gas Act 1992, the Electricity Act 1992 and the Hazardous Substances and New Organisms Act 1996 (HSNO).

Duty holders under these Acts include, but are not limited to:

- > persons conducting a business or undertaking
- > persons who control places of work
- > employers
- > officers
- > self-employed persons
- > persons manufacturing, importing, selling or supplying (including hiring) things for use in a place of work.

DUTY HOLDER REVIEWS

A DHR is a structured self-review undertaken on a voluntary basis by a duty holder at the request of WorkSafe to ensure that the duty holder understands the cause of an event. A DHR identifies root or underlying causes, improvements and action plans to address them and prevent recurrence.

POLICY PURPOSE

The purpose of this policy is to set out the purpose and strategic approach to DHRs and what WorkSafe aims to achieve through this process. It establishes criteria for DHR referrals and documents the policy principles for carrying out DHRs.

The DHR policy is intended to guide DHR officers in their support of duty holders who are participating in the process. It explains how completed reviews will be used to further WorkSafe's functions and goals.

This policy is confined to WorkSafe's DHR process and is intended for internal operational use. It will guide WorkSafe's activities and the development of more detailed internal operational documentation. The policy will also be available externally to ensure transparency.

POLICY SCOPE

IN SCOPE

This policy applies to WorkSafe in respect of self-reviews undertaken by duty holders ('Duty Holder Reviews').

It covers activities and notifications that WorkSafe may investigate under the following legislation and supporting regulations:

- > Health and Safety at Work Act 2015 (HSWA)
- > Electricity Act 1992
- > Gas Act 1992
- > Hazardous Substances and New Organisms Act 1996 (HSNO Act).

OUT OF SCOPE

This policy does not cover WorkSafe's capacity to oversee DHRs, nor the allocation of resources to individual cases.

Also out of scope are WorkSafe's other regulatory activities that are not part of DHR, including in particular:

- > investigations into events subsequent to an event resulting in a DHR
- > proactive assurance and other assessment or inspection work
- > activities conducted to obtain evidence to prove the elements of an offence, where prosecution is contemplated outside the scope of an investigation
- > any activities relating to mediation or dispute resolution.

Information on the above regulatory activities is covered by other WorkSafe Regulatory Function Policies.

OBJECTIVES OF DUTY HOLDER REVIEWS

Where a worker has been, or could have been, subjected to harm or illness at work, the DHR process aims to help the duty holder to:

- > undertake a self-review
- > identify, together with workers:
 - direct and underlying (root) causes of an event and implement any improvements to the safety management system to prevent recurrence and implement them
 - any contributory factors
 - significant hazards and/or risks which may compromise work health and safety
 - any wider ramifications beyond the duty holder(s) concerned and consider ways of addressing such ramifications.

The Duty Holder Review process is not intended to apportion blame but is intended to add value to the duty holder and provide WorkSafe with assurance that the opportunity has been taken to learn from the incident and make improvements when it is practicable to do so.

WorkSafe uses the information obtained from DHRs to contribute to knowledge about the health and safety performance of industrial and business sectors as well as of individual PCBUs. WorkSafe's knowledge about health and safety performance is used to inform guidance material, strategic priorities and the development of strategies and interventions to address them.

Through participation in the DHR process, it is envisaged that duty holders will:

- > gain a better understanding of health and safety in their workplace and the factors that can improve it
- > provide WorkSafe with a written report outlining the details of the review and the actions which will be taken
- > improve their capacity to develop their own health and safety systems and undertake incident investigations, together with workers.

WORKSAFE'S INTERVENTION APPROACH

The Intervention Approach sets out the approach that WorkSafe will take in fulfilling its regulatory functions, and describes how WorkSafe sees its role as government's primary regulator for workplace health and safety. The Intervention Approach shapes WorkSafe's decision-making both at the system level and at the level of individual firms or events.

The duty holder review process reflects WorkSafe's Intervention Approach in the following ways:

- > Taking a high engagement approach with key agencies and stakeholders as well as with workplaces:
 - The duty holder review process involves WorkSafe working together with the duty holder to help them identify the causes of health and safety events, along with possible solutions.
- > Expanding WorkSafe's focus from hazards and incidents to underlying root causes:
 - The root causes of a notifiable event indicate failings in the underlying health and safety management system and influence all different levels of an organisation.
- > Progressively shifting from output driven activities to outcomes focused interventions:
 - If root causes are identified and dealt with, then sustainable compliance with the law is more likely and the risk of recurrence of a similar event is reduced.

STRATEGIC APPROACH

The DHR process is intended to support the following strategic priorities:

- > Working together by building and maintaining effective relationships with PCBUs and duty holders and by helping them to:
 - better understand good health and safety management practices
 - identify the causes of incidents in their workplaces and
 - improve their health and safety systems to eliminate or minimise risks in their workplaces.

- > Targeting risk by offering an effective, proportionate alternative to investigation, inspection or assessment when prosecution is unlikely, but health and safety improvements are still possible or required.
- > Working smarter by:
 - using resources wisely where attendance in person is not necessary to effect change in a specific workplace
 - incorporating the knowledge gained through DHRs into policy development and risk management strategies.

WorkSafe seeks to achieve the following strategic objectives from the DHR function:

- > meet or exceed the performance indicators in the *Statement of Performance Expectations 2016-17* regarding the extent to which the people directly engaged with think WorkSafe is educative, fair, consistent, and performing effectively
- > the objectives and functions set out in the WorkSafe New Zealand Act 2013 and WorkSafe's organisational strategy, including:
 - providing guidance, advice, and information on work health and safety to persons who have duties under the relevant health and safety legislation
 - fostering a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety
 - identifying the direct and underlying causes of events which may have caused harm
 - identifying any actions that may prevent recurrence and implementing them and
 - making improvements to the health and safety management system.

WorkSafe will influence system change by using the DHR process as an appropriate intervention to:

- > engage with those who influence workplace health and safety and
- > educate on effective health and safety practices.

PRINCIPLES OF DUTY HOLDER REVIEWS

TRANSPARENCY

The basis for WorkSafe's decisions and the reasons for its actions are clear to the public and the regulated community, both before and after it makes them. WorkSafe is open about what it does and why, and it stands by and is accountable for its actions.

WorkSafe will apply the principle of transparency to the management of duty holder reviews so that duty holders know what to expect when they agree to participate in the DHR process.

Transparency will mean that duty holders will be able to understand:

- > the basis for WorkSafe's decision to invite the duty holder to participate in a DHR
- > how the DHR report will be used
- > why a DHR is appropriate for some matters and not others
- > what actions WorkSafe may take on completion of a DHR, and why.

CONSISTENCY

WorkSafe will take a similar approach in similar circumstances. This will ensure that WorkSafe's decisions are consistent across the same or similar situations.

Consistent decision-making is vital to duty holders, as this enables them to make an informed decision about participating in a DHR. Consistency means that duty holders will be able to reasonably expect that:

- > different DHR officers will generally make the same responses to similar report outcomes
- > quality and content standards for DHR reports will be the same across their industry and between individual reports
- > the reasons for any inconsistency will be made clear and justifiable, in the event that a duty holder questions the basis of any actions taken by WorkSafe.

DUTY HOLDER REVIEWS ARE VOLUNTARY

The DHR process is not provided for in legislation and duty holders cannot be compelled to take part.

To encourage voluntary participation, an investigation into a notifiable event reviewed by the duty holder is unlikely, *unless* incorrect information has been provided. This effectively means that a WorkSafe prosecution or enforceable undertaking is unlikely to result from a DHR.

A private prosecution will remain an option for workers and others affected by the notifiable event.

MANAGEMENT OF DUTY HOLDER REVIEWS**WHEN THE DUTY HOLDER REVIEW PROCESS MAY BE USED**

DHR may be considered when:

- > a notifiable event has caused, or may have caused, serious harm
- > WorkSafe determines that the event is too serious for 'no immediate action' but enforcement action is not appropriate
- > participating in the DHR process will add value for the duty holder
- > the process would provide WorkSafe with assurance that the duty holder has taken the event seriously and made, or planned to make, improvements to prevent a future recurrence of a similar event and
- > the duty holder voluntarily accepts an opportunity to participate in the DHR process.

The DHR process may also be used:

- > where incidents are subject to separate investigation by another agency or
- > in relation to notifiable events involving gas and electricity.

WORKER PARTICIPATION

Worker participation results in healthier, safer and more productive workplaces. Duty holders are therefore expected to seek input from workers and encourage worker participation in the DHR process.

USE OF THE DUTY HOLDER REVIEW REPORT BY WORKSAFE

A proportion of duty holders who have undertaken a self-review will be visited by Inspectors to provide further assurance to WorkSafe that the duty holder has taken their responsibilities seriously and they have made changes/improvements as they have said they would do. Inspectors may take compliance action if an inspection indicates that the improvements identified by a DHR and required under HSWA have not been implemented.

The DHR report becomes part of the duty holder's record, and WorkSafe may refer to the DHR Report in any subsequent investigation should another incident occur, particularly if the incident is the same as or similar to previous incident(s).

OUTCOMES OF DUTY HOLDER REVIEWS

On completion of the DHR, WorkSafe may act to:

- > follow-up with the duty holders involved to help them understand good practice ways to meet legal requirements
- > carry out other interventions (eg, assessments, inspections, audits) to examine wider issues that have emerged during the course of a DHR
- > refer an event to another regulatory body, authority or agency
- > initiate a general public information campaign about a wider problem or issue
- > publish safety alerts and bulletins, and media releases
- > make recommendations to relevant duty holders in the supply chain (eg importers, suppliers, designers, manufacturers, installers etc), relevant industry associations or to the public
- > recommend new publications or changes to existing approved codes of practice, guidance and standards (whether published by WorkSafe, industry groups, or standard-setting bodies)
- > introduce a safe work instrument (SWI), where there is a relevant legislative provision for such a SWI, and the DHR report indicates:
 - that an SWI is necessary to target a significant risk to health and safety
 - a requirement for mandatory compliance
 - the need to influence behaviour in a prescribed and enforceable manner
- > draw attention to matters that raise legislative issues with the Ministry of Business, Innovation or Employment and the Minister as necessary.

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