



# Regulatory Relationships

## REGULATORY FUNCTION POLICY

December 2016



## INTRODUCTION

This policy sets out the approach WorkSafe takes to formalising the terms of regulatory relationships with designated and regulatory agencies involved in the work-related health and safety system.

## 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 work.

The WorkSafe New Zealand Act also sets out WorkSafe's functions, which include promoting collaborative and consultative relationships with the Environmental Protection Agency and other persons involved in the work-related health and safety system.

## DEFINITIONS

The Health and Safety at Work Act 2015 (HSWA) provides definitions of the following:

- > Designated agencies – these are the government agencies, other than WorkSafe, which have been designated to carry out certain health and safety functions under the Health and Safety at Work Act 2015 (HSWA). The Civil Aviation Authority (CAA) and Maritime New Zealand are examples of designated agencies.
- > Regulator – the regulator is WorkSafe or another designated agency.
- > Regulatory agency – refers to the regulator (WorkSafe), the CAA, the New Zealand Police, the New Zealand Transport Agency, Maritime New Zealand, the EPA, a local authority, the New Zealand Fire Service, a medical officer of health, the Ministry of Health, ACC, the Ministry of Business, Innovation and Employment, or a prescribed agency.

## POLICY PURPOSE

The purpose of the *Regulatory Relationships Policy* is to provide a framework to guide decision-making in relation to formalising regulatory relationships with designated and regulatory agencies. The policy is also intended to guide selection of the appropriate relationship instrument, with a view to ensuring consistency across WorkSafe's regulatory relationships.

## RELATED DOCUMENTS

This policy should be read in conjunction with the following document:

- > WorkSafe Position: *When will WorkSafe intervene*.

## POLICY SCOPE

### IN SCOPE

This policy applies to WorkSafe's regulatory relationships with designated and regulatory agencies and covers circumstances in which WorkSafe:

- > would formalise a relationship
- > would not formalise a relationship.

## OUT OF SCOPE

This policy does not apply to:

- > non-regulatory relationships with individuals and organisations in the health and safety sector
- > strategies and activities describing how WorkSafe connects with users, customers, stakeholders and the wider public.

## 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 and the safe supply and use of electricity and gas. The intervention approach shapes WorkSafe's decision-making both at the system level and at the level of individual firms or events.

The *Regulatory Relationships* policy supports the intervention approach by taking a high engagement approach to designated and regulatory agencies. High engagement will enable WorkSafe to leverage off the understanding, goodwill and influence of other parties in the health and safety system to make its own interventions, along with those of designated and regulatory agencies, more effective.

## STRATEGIC APPROACH

WorkSafe's strategic goals are 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.

The *Regulatory Relationships* policy supports these strategic goals by providing a framework for working with others to improve the effectiveness of all health and safety regulators. This includes:

- > promoting clearer and more effective operational arrangements with designated and regulatory agencies
- > selecting an appropriate relationship instrument through which WorkSafe can contribute to nation-wide strategies and action plans.

## PRINCIPLES OF REGULATORY RELATIONSHIPS

### SHARED RESPONSIBILITY

WorkSafe shares the responsibility for promoting work health and safety with designated and regulatory agencies.

Although WorkSafe is the lead regulator and has a range of unique functions in the health and safety system, it cannot be solely responsible for ensuring that everyone who goes to work comes home healthy and safe. WorkSafe will establish collaborative working relationships with designated and regulatory agencies in a manner that recognises each regulator's jurisdiction and reflects clear lines of accountability.

**TRANSPARENCY**

The basis for WorkSafe's strategic and operational decisions and the reasons for its actions are clear, 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.

Designated and regulatory agencies in the health and safety system need to be able to understand the basis on which strategic and operational decisions are made by WorkSafe. WorkSafe will apply the principle of transparency to its relationships with designated and regulatory agencies so that these agencies can understand WorkSafe's strategic direction and work collaboratively with WorkSafe to achieve shared system-wide goals.

**CONSISTENCY**

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

A consistent intervention approach is important to WorkSafe's relationships with designated and regulatory agencies. Consistency will encourage designated and regulatory agencies to view WorkSafe's approach and what it does as a regulator as reliable and trustworthy across the country, across its functions and over time. Nevertheless, WorkSafe will retain the flexibility to do different things to achieve the same end in circumstances where this is justified. The reasons for any inconsistency will be clear and justifiable.

**WORKING COLLABORATIVELY**

To promote collaboration, WorkSafe will meet all statutory requirements which require WorkSafe to establish collaborative and consultative relationships with designated and regulatory agencies in the health and safety sector.

These statutory requirements are specified in the:

- > WorkSafe New Zealand Act 2013:
  - Section 10(i) which requires WorkSafe to engage in, promote, and co-ordinate the sharing of information with other agencies that contribute to work-related health and safety.
  - Section 10(j) which requires WorkSafe to foster a co-operative and consultative relationship with the EPA.
  - Section 10(k) which requires WorkSafe to promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies in a coherent, efficient, and effective way.
- > Health and Safety at Work Act 2015 (HSWA):
  - Section 195 which requires WorkSafe to jointly develop, with the Minister in charge of the administration of the Act, the Health and Safety at Work Strategy.
  - Section 197, which allows for the sharing of information between WorkSafe and other regulatory agencies.

- Section 198, which requires a regulator other than WorkSafe to notify WorkSafe of a notifiable event, and whether or not it intends to investigate the event.
- Section 199, which requires medical officers of health to notify WorkSafe of work-related notifiable disease or hazardous substances injury.
- > Accident Compensation Act 2001
  - Section 264B, which requires WorkSafe to enter into written agreements with ACC about injury prevention measures that are jointly undertaken by ACC and WorkSafe or undertaken by WorkSafe and partly or wholly funded by ACC.
  - Section 264A, which requires WorkSafe and the ACC to have at all times a workplace injury prevention action plan.

In accordance with a 'whole of government' approach, WorkSafe will work collaboratively across the work-related health and safety sector.

Some of the requirements to work collaboratively with designated and regulatory agencies include performance standards or measures such as timeframes for responding to requests for information. Where specified, WorkSafe will manage its regulatory relationships in accordance with these standards or measures.

Where there are opportunities to assist another designated or regulatory agency in the performance of its functions, WorkSafe may assist if it is lawful, practicable and cost-effective to do so and such assistance would advance WorkSafe's aims.

When considering an opportunity to assist a designated or regulatory agency in the performance of its functions, WorkSafe will consider whether accountability for decision-making could become unclear. To prevent this, WorkSafe will agree with the particular designated or regulatory agency on processes for identifying such situations and how they will be resolved.

#### **SHARING AND PROVIDING INFORMATION**

WorkSafe will share and provide the information specified in the Electricity Act 1992, Gas Act 1992, Crown Minerals Act 1991 and HSWA in accordance with those provisions. WorkSafe will also comply with the provisions of the Official Information Act 1987, Privacy Act 1993 and the Public Records Act 2005.

In accordance with this legislation, WorkSafe must:

- > share information with the Ministry for Business, Employment and Innovation in carrying out its functions as the regulator of energy safety under the Electricity Act 1992 and the Gas Act 1992
- > on request, give the Coroner a written report of an investigation that the regulator has carried out, or is carrying out (s200, HSWA).

The Minister of Energy and Resources (or their delegate) must seek the views of WorkSafe in relation to considering an application for a Crown minerals permit in accordance with section 29A(3)(b) of the Crown Minerals Act 1991 in respect of permit applications.

WorkSafe will also meet the requirements of the:

- > Official Information Act 1987 regarding the provision and withholding of public information collected and held by WorkSafe or obtained from another regulator

- > Privacy Act 1993 in relation to the collection, use, sharing and withholding of personal information
- > Public Records Act 2005 concerning the retention and storage of information obtained by WorkSafe.

WorkSafe will consider requests for personal information (both to and from designated and regulatory agencies) on a case by case basis in accordance with:

- > the Privacy Act 1993
- > the circumstances in which WorkSafe is lawfully exempt from following those principles.

Automated information-sharing processes involving personal information require approval from the Privacy Commissioner. Where there are firm grounds for establishing such a system, WorkSafe may apply to the Privacy Commissioner for approval of an information sharing agreement.

## **FORMALISING REGULATORY RELATIONSHIPS**

### **ENTERING INTO FORMAL ARRANGEMENTS**

WorkSafe will seek to establish a formal regulatory relationship instrument with designated and regulatory agencies if all of the following apply:

- > both parties will derive benefit in carrying out their statutory functions from formalising the terms of a relationship or agreed operating arrangements
- > the instrument is in accordance with WorkSafe's strategic priorities, policy commitments or organisational values
- > the particular regulatory scheme or the operational engagement is ongoing and warrants the development of a formal instrument that defines the relationship by:
  - clarifying the respective roles of the parties
  - providing a mechanism for facilitating co-ordination, cooperation and collaboration between the parties
  - facilitating the pursuit of government policy objectives in the energy safety and work health and safety sectors.

WorkSafe may also pursue a formal relationship agreement if:

- > an agreement with another Crown agency would otherwise need to take the form of a contract for services
- > procedural consistency in a multi-agency matter needs to be agreed and documented.

Formal relationship agreements will not be entered into if:

- > the matter:
  - is a one-off multi-agency investigation and/or prosecution of a particular matter
  - is of a commercial nature requiring a contract or service level agreement
  - may contravene WorkSafe policy
  - is inconsistent with WorkSafe values
- > the instrument would impose disproportionate costs or compliance requirements on another party who is not a signatory
- > either party does not have authority to enter into the arrangement.

### **INSTRUMENTS FOR FORMALISING REGULATORY RELATIONSHIPS**

The following instruments may be used:

- > Memoranda of understanding (MOU), which:
  - are documents that record the common intent of two or more parties where the parties do not wish to assume legally binding obligations
  - provide a framework and a set of principles to guide the parties in undertaking a project or working arrangement.
- > Operational agreements (often called schedules) made under MOUs detailing the roles and responsibilities of the parties in relation to specific and discrete areas of policy or operations.
- > Letters of Agreement, which set out the terms of a working relationship, generally in a more informal and less specific way than a contract. If the signatories agree, Letters of Agreement may be legally binding and enforceable by the courts.
- > Operational Partnership Agreements, which provide for a durable working relationship with regards to specified areas of cooperation to maximise complementarity.
- > Protocols - in this context, protocol refers to a set of rules that describe the standard way to perform an activity or activities in a specified area:
  - in accordance with legislative requirements (eg, Underground Mines Emergency Protocol, issued under s19 of the Mines Rescue Act 2013), or
  - to ensure that processes are consistent in matters involving multiple organisations or sectors (eg Asbestos Liaison Protocol)
- > Approved information sharing agreements, which authorise the sharing of personal information between or within agencies for the purpose of delivering public services.

### **SELECTING A REGULATORY RELATIONSHIP INSTRUMENT**

WorkSafe will choose the appropriate relationship instrument based on the following principles:

- > If the intention is to create legally enforceable obligations between WorkSafe and the other party, a legally binding instrument (such as a Letter of Agreement) may be entered into.
- > Where a legally binding instrument is not required, a MoU or an Operational Partnership Agreement may be entered into. The instrument chosen will be based on the nature of the relationship. Two or more parties may enter into the arrangement, but MOUs and Operational Agreements entered into by WorkSafe generally only involve one other party:
  - an Operational Partnership Agreement may be appropriate where the relationship is based on a discrete set of issues or activities
  - a MoU may be suitable for documenting the broader parameters of a regulatory relationship.
- > If an up to date MoU exists, an operational agreement may be pursued with the designated or regulatory agency and attached as a schedule to the MoU.
- > A protocol may be used where one or more of the following apply:
  - a legally binding arrangement is not required
  - three or more agencies have a role in a particular process
  - a MOU is not appropriate, but practical cooperation needs to be documented

- the document is intended to cover a single operational issue or topic
  - a clear process to ensure consistent procedural interaction in a specified area is required
  - a number of individual protocols covering specific regions or areas is preferable to a single centralised arrangement such as a MoU.
- > An approved information sharing agreement may be sought if there is a clear public policy justification for departing from the privacy principles (except for principles 6 and 7) and the privacy risks of doing so can be managed appropriately.



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