

November 2025

Enforceable undertakings

This policy's purpose

This policy describes our framework for managing enforceable undertakings (EU) under the Health and Safety at Work Act 2015 (HSWA). It sets out our approach to:

- assessing EU applications, and
- administering accepted EUs.

Scope of this policy

This policy covers all EU applications that we receive. It doesn't cover court ordered EUs.

What an EU is

An EU is a formal agreement between WorkSafe New Zealand and a duty holder that's entered into voluntarily after a breach, or alleged breach, of HSWA. It sets out a series of actions that the duty holder will take to:

- address any systemic health and safety issues, and
- make improvements in response to the breach.

While entering into an EU is voluntary, once we've accepted it, it becomes legally binding.

The aim of an EU is to improve health and safety practices and prevent future harm. They're only used when it's considered to be a fair and proportionate response based on the circumstances.

An EU:

- sets conditions for a duty holder to make positive changes that will continuously improve work health and safety performance and standards
- is monitored for compliance to ensure that the duty holder meets agreed-upon deliverables and outcomes
- focuses on the purpose of HSWA.

EU pathways

A duty holder can apply for an EU at any stage during an investigation, or after charges have been filed. WorkSafe may also notify a duty holder where we consider we've identified a potential breach which may be suitable for an EU. WorkSafe may only approach a duty holder where we don't believe the alleged contravention would amount to an offence under section 47 of HSWA.

EU pathways fall into two categories:

- an EU that is accepted before any charges have been filed (**pre-charge EU**)
- an EU that is accepted after charges have been filed (**post-charge EU**).

The principles we use to consider the appropriateness of an EU

In considering whether an EU is appropriate, we'll apply the following guiding principles:

1 Proportionality

The EU must be a proportionate response to the severity of the breach. We balance the seriousness of the breach with the effectiveness of a remedial approach over prosecution. Where appropriate we consider what amends, whether financial or non-financial, are offered as part of the agreement to victims and whānau.

2 Effectiveness

The EU will effectively address root causes, support long-term behavioural change, and deliver tangible benefits. Activities will contribute meaningfully to HSWA objectives such as protecting people from harm, encouraging accountability, and fostering continual improvements in health and safety.

3 Breach history

A PCBU's history of breaches can be an indicator of its willingness and ability to improve. Where there's a previous pattern of non-compliance, or where previous enforcement hasn't led to sustained change, we expect an EU application to demonstrate a stronger and more credible commitment to improvement. The activities proposed in an EU should, where applicable, reflect and directly address the breach history.

4 Strategic intent

The EU will contribute to our strategic priorities, ensuring that duty-holder actions not only address their individual cases but also advance broader goals for systemic change and harm prevention. We regularly review the use of EUs to ensure they're effective and align with our strategic priorities.

What should and must not be included in an EU

This isn't an exhaustive list, but these are key factors we consider when assessing an EU.

An EU should:

- include appropriate amends to any victims
- include a commitment by the duty holder to share lessons learnt with their industry or peers through a recognised industry body, promoting wider health and safety improvements
- contribute to our strategic priorities by contributing to improved health and safety outcomes
- contain terms that are enforceable, clear, and structured (to prevent non-compliance).
- acknowledge the conduct or failure that led to the breach or alleged breach
- include a statement acknowledging the harm caused or the risk created by the alleged breach
- provide details of mitigation and remedial action already taken or planned, by the duty holder regarding both the breach and any person affected by it (including victims).

An EU must not:

- relate to an alleged breach that would amount to an offence under section 47 of HSWA
- contain any denial of responsibility for the alleged breach
- omit or downplay relevant details about the conduct that caused the breach or alleged breach
- include any terms that impose obligations on WorkSafe or any other party without prior consent
- include commitments that merely replicate the duty holder's existing obligations under HSWA or its regulations.

The process we use to assess an EU application

We consider each EU application in line with HSWA [Our regulatory approach](#) as well as the principles, and what should and shouldn't be included in an EU as set out above.

An EU application will only be assessed if it meets the following criteria:

- the duty holder has registered their interest in writing to us, and
- we're satisfied that the breach doesn't constitute an offence under section 47 of HSWA.

The EU process incorporates five key decision points. These are outlined in the following table:¹

Overview of decision points

DECISION POINT	DESCRIPTION
Legal threshold and s47 assessment (pre-charge EU)	Confirm that the evidential threshold is met, and there is no basis for belief that the alleged contravention would amount to a s47 HSWA offence.
s47 assessment (post-charge EU)	Where charges have been filed, confirm there is no basis for belief that the alleged contravention would amount to a s47 HSWA offence.
Application suitability assessment	Assess the application for suitability and prepare recommendation to a delegated decision maker for next steps.
Application decision	Assess whether the EU is a proportionate and effective response in the context of the breach.
Formal discharge	Confirm the EU has been completed. Notify the duty holder and update the EU Register.

How we manage non-compliance, variations and withdrawals

Once an EU is accepted, we actively monitor it to ensure the duty holder meets the requirements within the specified timelines. This is because not complying with an EU is an offence.

If a duty-holder doesn't do what they've committed to in the EU, we hold them to account and take action against them. This could include prosecution for the breach of the EU and/or a substantive offence. Payments made as part of the EU won't be refunded.

EUs may only be varied or withdrawn with our written agreement. Since this agreement must be in writing, we require the duty holder to make their request in writing. Each request will be considered on its own merits.

¹ For operational detail, workflows, and documentation standards, refer to guidance.

- **Variation:** Variations may be considered if they don't provide for a different alleged contravention.
- **Withdrawal:** We only approve a withdrawal in exceptional circumstances. If granted, the duty holder is no longer bound by the undertaking. If the withdrawal is denied, the duty holder must continue complying with the original terms.

We advise the duty holder of the outcome of their application in writing. We may also choose to advise the victim(s) of any variation to, or withdrawal of, the EU.

Reimbursement of costs

We may refuse to accept an EU if it doesn't provide for the reimbursement of our reasonable costs and expenses. These costs include those we may incur in relation to the EU itself and the breach or alleged breach – such as investigative, engagement, assessment, legal and monitoring costs.

We apply the principles in the [When we recover costs](#) policy when considering what is reasonable.

How we maintain a record of EUs

We maintain, and make public, a register of all current EUs. The register records:

- the details and status of the EU,
- the reasons it was accepted, and
- notice of any subsequent variation or withdrawal.

Records will be maintained in accordance with our legal obligations.