

October 2021

What we mean by frivolous, vexatious, and malicious complaints

This policy's purpose

This policy clarification sets out what we mean by frivolous, vexatious, and malicious in the context of complaints about compliance certifiers or holders of compliance certificates.

Background

Under Part 6 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations), WorkSafe New Zealand may investigate complaints about the ability or conduct of compliance certifiers, or holders of compliance certificates.

Under regulations 6.15(2)(a) and 6.29(2)(a), WorkSafe may decide not to investigate a complaint if satisfied that the complaint is frivolous, vexatious, or malicious. The Regulations do not define these terms.

What we mean by 'frivolous'

A frivolous complaint is one about a minor or trivial matter, or an issue so vague or poorly explained that we cannot consider it meaningfully. It might also be about a matter that we consider we have already resolved, or a matter that is of so little value that investigating it would be disproportionate in terms of time and cost.

What we mean by 'vexatious'

A vexatious complaint is one that is made with the intention of, or has the effect of, being disruptive, and can show signs of escalating unreasonableness by the complainant. They might make contact on the same issue multiple times.

What we mean by 'malicious'

A malicious complaint is one that appears motivated by a purpose that is dishonest or is made with the intention of causing harm. The complainant may be unwilling to accept our response, deny receiving a response, or may become threatening in their attitude and behaviour.

What does this mean in practice?

It may be difficult at times to make a distinction between frivolous, vexatious, or malicious. Therefore, it's sufficient for a complaint to meet any or all the descriptions above for regulation 6.15(2)(a) or 6.29(2)(a) to apply.

When we consider whether or not a complaint is frivolous, vexatious, or malicious, we'll always consider each complaint on its own merits. Just because someone has made a frivolous, vexatious, or malicious complaint before, it doesn't mean their next complaint will be.

If we deem a complaint to be frivolous, vexatious, or malicious: we'll notify the complainant, giving this as the reason why we'll take no further action on their complaint.