

May 2025

Our regulatory approach

This policy's purpose

This policy sets out how we carry out our main role as the primary work health and safety regulator. Its purpose is to be transparent about how we make decisions to intervene, and to guide our practice to be consistent and proportionate.

As the regulator, our main role is to influence duty holders – persons conducting a business or undertaking, officers, workers, and other persons at workplaces – to meet responsibilities to ensure work is healthy and safe. We deliver on this role by influencing in three ways:



ENGAGE

helping duty holders understand how to meet their responsibilities



ENFORCE

taking action against those who fail to meet their responsibilities



PERMIT

allowing businesses and individuals to carry out high-risk work activities that require permission to do so.

This policy focuses on how we carry out our engage and enforce functions under the Health and Safety at Work Act 2015 (HSWA) and its regulations. This includes how these functions operate to support the effective delivery of our permit function.

Where we intervene

We influence duty holders through our engagement and enforcement interventions. When we talk about an intervention, we mean an intentional action that:

- helps improve work health and safety practice
- addresses instances of noncompliance with HSWA and its regulations, or
- helps address inequitable outcomes, where some work is more dangerous and some kaimahi/workers, including Māori and Pasifika, are at greater risk of harm.

When we decide whether to intervene, we use the decision-making criteria in this policy. We prioritise specific high-risk sectors and high-risk work that are listed on our website worksafe.govt.nz

Regardless of where they occur, we also prioritise:

- deaths, severe harm, or catastrophic harm
- poorly managed extreme or substantial risk, and
- immediate risk of severe harm.

We find out about risk and harm through:

- events, incidents, and concerns reported to us
- workplace assessments, audits, and investigations
- information sharing with other agencies, such as ACC
- our research and analysis
- our people's knowledge and insights, and
- consultation with stakeholders, such as Iwi Māori and sector bodies.

We use the insights we develop to help identify where to intervene.

When we intervene – our intervention decision-making criteria

When we become aware of a risk or harm, we make an initial decision about whether to intervene by testing it against our four decision-making criteria. We use the criteria to guide our decisions about whether to take action in response to notifiable events and health and safety concerns in particular. We only intervene when all criteria are met.

1 The risk or harm sits within our responsibilities

The legislation we administer sets the parameters for our responsibilities and provides the mandate for us to intervene. Only risk and harm that's work-related is included in our HSWA responsibilities.

Other government agencies can be designated to carry out health and safety regulatory functions for certain work. For example:

- Maritime New Zealand is the designated agency for ships as workplaces, work aboard ships, and work on major ports.
- Civil Aviation Authority is the designated agency for work preparing aircraft for imminent flight and aircraft in operation.

A designated agency decides whether to respond to risk or harm within its designation.

2 We're best placed to intervene if there's an overlap with another agency's responsibilities

Sometimes our responsibilities overlap with other agencies that also have health and safety responsibilities. For example, the Ministry of Education is the regulator for health and safety of children enrolled in early childhood services and HSWA covers work activities and workers in these services.

When there's an overlap, we look at:

- the severity of the risk or harm
- whether the underlying issues are likely to involve work activities, and
- which agency has the most effective regulatory tools to ensure health and safety is improved.

When it's not clear to us which agency is best placed to intervene, we discuss this with the other agency, agree on an approach, and record our decision. If we have a Memorandum of Understanding with the other agency, we pass the information to it so that agency can decide whether to intervene. Otherwise, we'll tell the notifier which agency to contact, provide contact details, and record our decision. If the best placed agency is already investigating or has investigated a matter, we're unlikely to act unless that agency asks us to do so.

This criterion only needs to be met when there's an overlap with another agency's responsibilities.

3 The significance of the risk or harm means we should consider intervening

When we're considering whether to intervene, we assess the risk or harm's significance for WorkSafe New Zealand. The factors we consider include whether:

- it's one of our priorities, or
- it involves death, severe harm, or catastrophic harm, or
- it involves poorly managed extreme or substantial risk, or an immediate risk of severe harm, or
- there is a lower level of harm or risk, but multiple other factors - such as the duty holder's attitude to compliance and compliance history - indicate we should intervene.

4 Intervening is an effective use of our resources

We're likely to intervene when doing so will:

- allow us to make the biggest difference to work health and safety or address inequitable outcomes, or
- help ensure we manage regulatory risk,¹ and
- be the best use of our resources when considering the commitments we've already made for other work.

¹ When we talk about 'regulatory risk' we mean the risk of us not achieving our objectives, which are set in legislation. This may happen if, for example: we make the wrong decision about when or how to intervene, our regulatory framework and tools are not fit for purpose, we don't oversee our permitting activities effectively, or we don't respond appropriately to changes in legislation. Where significant, this may lead to regulatory failure and a loss of social licence to operate.

How we intervene

We are a responsive risk-based regulator. This means we use the best intervention or combination of interventions to help improve work health and safety.

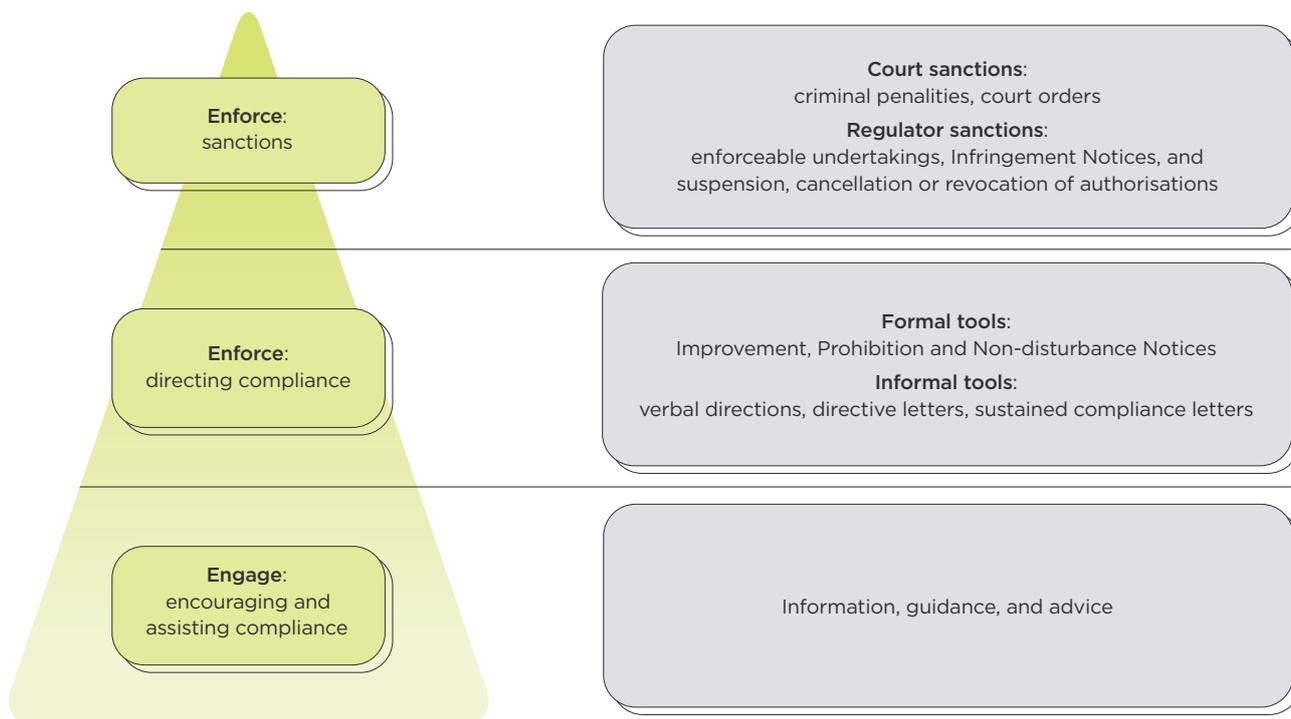


FIGURE 1: Our engagement and enforcement activities by how often they are used and how serious their penalty is

How we engage

We carry out engagement to influence for better work health and safety outcomes and to help duty holders understand and meet their HSWA responsibilities.

Engagement includes:

- education and training
- publishing information and resources
- workplace assessments
- marketing and campaigns
- advisory services, including Kaupapa Māori and Pasifika interventions, and
- consulting with other agencies about standards and legislation.

Our engagement is guided by five principles. When we engage, we are:

- **responsive** - using the right approach for the people we're working with and the outcome we want to achieve
- **respectful** - listening to people and learning from them
- **empowering** - supporting people to take leadership for improving health and safety outcomes for kaimahi
- **coordinated** - sharing information about our engagement activities across WorkSafe
- **consistent** - speaking as one voice.

We engage with a range of people, including:

- individual businesses, organisations, and their kaimahi
- groups of businesses, organisations, and their kaimahi
- sectors and industries (often through peak bodies or industry associations)
- professional bodies such as the Health and Safety Association of New Zealand (HASANZ)
- Iwi Māori and Pasifika communities
- victims and whānau
- unions, and
- local government.

How we monitor compliance

We monitor compliance in a number of ways, including through inspections, workplace assessments, investigations, and audits. Our monitoring may be proactive (planned) or reactive (in response to a notification). Monitoring may be done on-site or remotely.

When our inspectors visit a workplace, they may use a mix of engagement and enforcement. For example, they may provide guidance or information to assist duty holders to understand how to comply, and also use enforcement tools where there is non-compliance and enforcement is justified.

Under HSWA, our inspectors can have a range of powers, including:

- doing tests, inquiries, inspections, and examinations
- responding to imminent danger
- requiring people to provide information
- seizing samples, objects, and things
- taking photos, recordings and copies
- issuing formal notices, and
- requiring that certain places and things aren't disturbed.

How we enforce

Our regulatory tools include:

- **Improvement Notice** - directs that a work health and safety risk be addressed within a specified timeframe
- **Prohibition Notice** - requires activity to cease immediately if an inspector determines that a serious health or safety risk is occurring or could occur
- **Infringement Notice** - an 'on the spot fine' issued for certain types of straightforward offences
- **prosecution** - we file charges for alleged offences, which may result in the court imposing financial penalties or other sanctions, and
- **enforceable undertaking** - a voluntary agreement between WorkSafe and a duty holder that is legally binding and is generally used as an alternative to prosecution.

We have additional enforcement tools we use for workplaces or work activities that are permitted under an authorisation (such as a certificate of competence or safety case). This includes suspending or revoking an authorisation, or varying or imposing conditions on an authorisation. We have more information about our permit function, including our [permit compliance framework](#) on our website.

We also have informal tools we use to direct duty holders to address non-compliance with HSWA or its regulations:

- **verbal direction** - an onsite direction given by an inspector
- **directive letter** - a written direction from an inspector, and
- **sustained compliance letter** - provides a record to the duty holder that although they weren't compliant when the inspector visited the site, that the breach has now been rectified.

Our compliance and enforcement approach is guided by five principles. When we enforce, we are:

- **responsive** - matching our response to the seriousness of a HSWA breach, which means we don't automatically start with engagement then escalate if required
- **risk-based** - targeting our resources at the greatest risks to work health and safety
- **consistent** - in how we make compliance and enforcement decisions, which is not the same as making identical decisions
- **transparent** - in how we direct and enforce compliance and what duty holders can expect
- **accountable** - for our actions and our performance as a regulator.

How we decide which enforcement tools to use

We may need to use our enforcement tools when duty holders aren't meeting requirements. Where non-compliance creates unacceptable risk for workers and others, we assess the gap between how the work is being carried out and how it should be done to keep kaimahi and others healthy and safe - the risk gap.

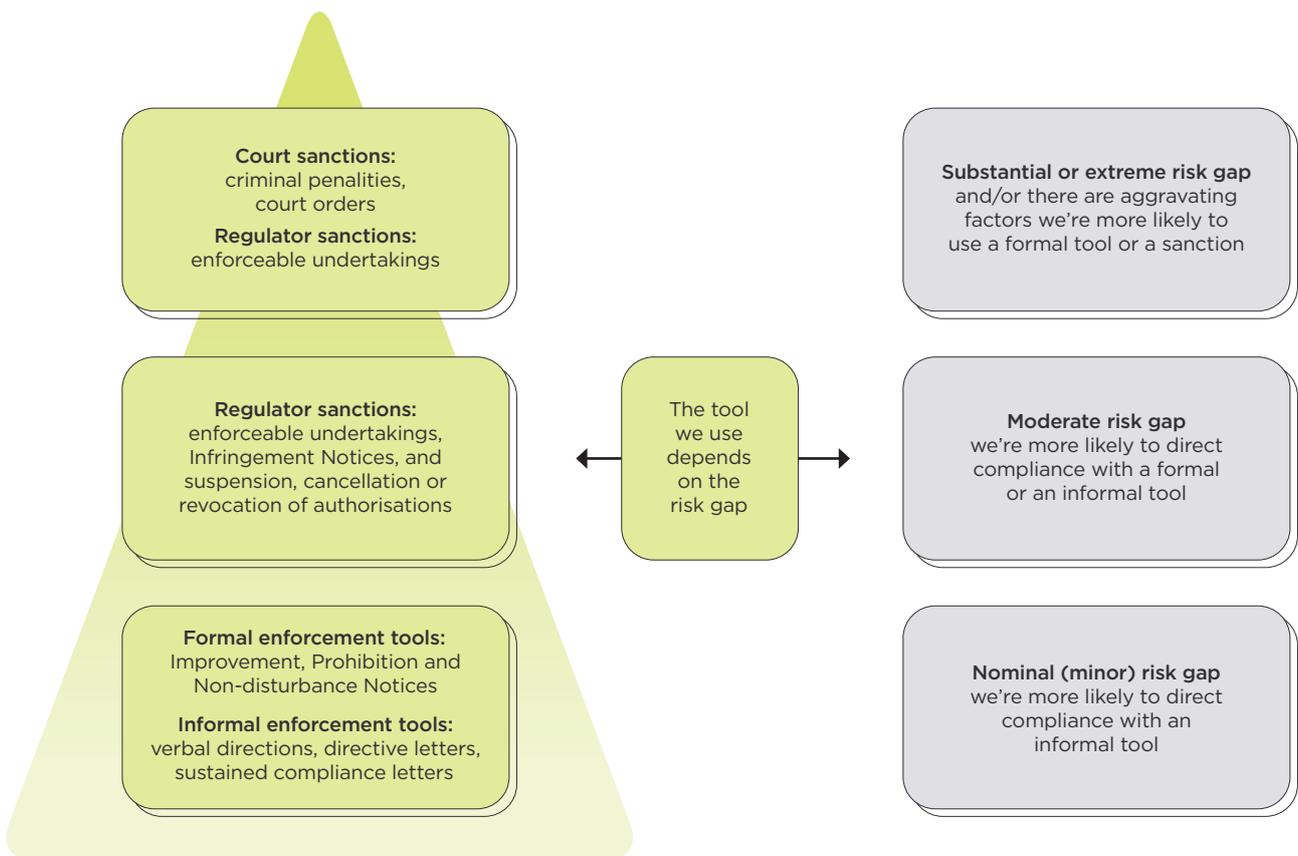


FIGURE 2: The relationship between our use of enforcement tools and the risk gap

Along with the risk gap, we also consider these factors:

- if there's a history of similar incidents or other non-compliance
- if vulnerable people, or worker groups at greater risk of harm, are put at risk
- if the duty holder appears to be avoiding meeting requirements for commercial gain
- the level of risk or harm that's occurred, and
- the overall standard of health and safety management.

This decision-making process is set out in our enforcement decision-making model, which our inspectors use when they have identified a breach of the law.

How we decide where to target our compliance and enforcement resources

Although most of our compliance and enforcement resources go to our priorities, we take a flexible approach when allocating resources. This is because we regulate in an unpredictable environment. Therefore, we don't have a set split for resource allocation between enforcement priorities and other areas, and sometimes we need to make trade-offs. In this situation we identify the greatest risks to work health and safety to decide how to intervene, in line with our principles.

Statutory decisions may be reviewed

A statutory decision is a decision based on our interpretation of the law, including decisions about notices. People can apply for a statutory decision to be reviewed. Our website has more information worksafe.govt.nz

More information about enforcement interventions

Decisions about prosecutions, and alternatives to prosecution are guided by our:

- *How we make prosecution decisions* policy
- *Enforceable undertakings* policy.

How we combine engagement and enforcement interventions

During workplace assessments we often carry out engagement activities and use enforcement tools at the same time. We do this in response to the circumstances.

If we identify a potential breach of HSWA while carrying out a different type of engagement activity, we may consider using enforcement tools, in line with our enforcement decision-making model. Depending on the circumstances, we may need to stop the engagement activity.

We may also begin an interaction with a duty holder by using enforcement tools and later introduce engagement activities.