

December 2025

How we use formal warnings

This policy's purpose

This policy describes how we use formal warnings as an alternative to prosecution and has been developed in line with the Solicitor-General's *Prosecution Guidelines on Warnings* (the Guidelines).

What a formal warning is

A formal warning (warning) is a deliberate action we take as an alternative to prosecution. It's a written document given in response to behaviour that may amount to an offence under the legislation we enforce. It's one option we have to hold duty holders accountable for their behaviour.

A warning is recorded as formal recognition of our decision, may be published on our website, and may be factored into future enforcement decisions. Having a warning on record could influence the likelihood of prosecution for similar behaviour in the future.

Why we use warnings

We use warnings:

- when we want to make a formal record of the behaviour and our decision on the matter
- to hold the duty holder accountable for behaviour that may amount to an offence under our legislation
- to ensure that our finite resources are directed to the most serious offences, and
- to protect the integrity of the legislation we enforce.

When we use warnings

We must have evidence that the behaviour may amount to an offence under the legislation we enforce.

When we consider the public interest in taking a prosecution or an alternative to prosecution, we use criteria to determine when a warning is an appropriate response.

The seriousness and nature of the behaviour

A warning may be an appropriate response where:

- the actual risk is minor, or where the risk is serious, the matter is rectified before any harm occurs
- the harm caused is minor or has only affected the duty holder we are considering issuing a warning to, or
- the behaviour could undermine the integrity of the legislation we enforce.

A warning is unlikely to be an appropriate response where the behaviour is reckless or shows negligent disregard.

The circumstances of the duty holder

We consider the level of influence and control, and the role of the duty holder involved (for example, worker, individual or PCBU). The more control held, the less likely a warning is the appropriate response.

We look at the duty holder's compliance history, including warnings and prosecution. Where a duty holder has been warned or prosecuted by us for similar conduct it is unlikely to be appropriate to issue a warning.

We consider the willingness and the ability of the duty holder to comply with the legislation. If they are willing and able to comply it is more likely to be appropriate to issue a warning.

The circumstances of the behaviour

We consider the needs and interests of any victims, their whānau and the community. This means assessing each warning on a case-by-case basis and when appropriate considering the opinions of affected parties.

Our policies and strategic priorities

The use of a warning must be in line with:

- *Our regulatory approach*
- *How we make prosecution decisions*, and
- our strategies and priorities.

How we issue warnings

We will discuss the alleged behaviour and consequences of a warning with the duty holder before we decide if issuing a warning is the appropriate action. Our decision to issue a warning will be determined on a case-by-case basis considering the requirements of natural justice in the specific circumstances.

Warnings take the form prescribed by the Guidelines.

Publication

Where appropriate we publish warnings on our website. Publication of warnings is considered on a case-by-case basis, when it is in the public interest and consistent with our strategic priorities.

We maintain records in line with our legal obligations.

Reviews

In rare circumstances, we may review and reconsider warnings if new evidence has been found. Reviews are undertaken independently of the original decision-maker, and we seek legal advice as part of the review process.

People can provide us with feedback, make a complaint or request a review of our decision to issue a warning via our website: worksafe.govt.nz