

How we make decisions on issuing warnings

Operational Policy (OP 26)

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Introduction

As a risk-based regulator we prioritise taking action to prevent harm from occurring across the maritime domain.

When harm has occurred, or an unsafe situation or non-compliance is identified, we will first require that corrective action be taken to address the situation. When we are confident the required corrective action is substantively underway, we may consider if it is proportionate to hold people to account using our enforcement tools, which includes warnings.

This policy sets out when and how we issue warnings and should be read alongside our policies:

- When and how we use our corrective and enforcement tools (OP 12), and
- How we make decisions about and conduct prosecutions (OP 18) (Prosecution Policy).

Our approach to warnings

Warnings are one of the enforcement tools we use to hold a person or person conducting a business or undertaking (PCBU) to account. We issue warnings in situations where we are satisfied that there is evidential sufficiency of an offence to support a prosecution, but we do not consider it is proportionate and in the public interest to prosecute. Our Prosecution Policy sets out when we are satisfied it is proportionate and in the public interest to prosecute.

We issue warnings:

- to hold people to account in situations where we believe there has been criminal conduct, but have decided it is not proportionate or in the public interest to prosecute
- to incentivise behaviour change, that will mitigate the risk of the unsafe situation or non-compliance recurring in the future
- to recognise that the PCBU has investigated the harm that has occurred, or the unsafe situation or non-compliance, learnt from it and corrected the situation
- where it is in the public interest to do so.

We do not issue informal warnings.

How we decide to warn

When deciding to issue a warning we will consider:

- whether or not the person or PCBU's behaviour was wilful or reckless, and
- the response by the person or PCBU to the unsafe situation or non-compliance, for example if they have investigated and taken appropriate corrective action, and
- the person or PCBU's compliance history.

We will also take into account the seriousness of the harm that has occurred, or would likely to have occurred to people, property or the environment.

How we will issue the warning

Before we make a final decision to issue a warning, we will ensure the person or PCBU who is alleged to have committed an offence has an opportunity to respond to the allegations.

We will consider whether a warning is appropriate or we should take other action including a prosecution if the person or PCBU:

- denies the alleged conduct occurred or that the conduct amounted to an offence, or
- provides other relevant information about the situation.

In all cases warnings will be set out in writing.

All warnings outline:

- a summary of the key facts that led to the decision to issue a warning
- the reason(s) for issuing the warning
- the consequences of the warning, and
- any likely consequences if the person engages in similar behaviour in the future.

What we do with information

All warnings we issue are recorded on the person or PCBU's file with Maritime New Zealand (Maritime NZ) and are considered part of that person or PCBU's compliance history for a period of up to five years. After which we will no longer consider the warning relevant.

We may publicise that we have issued a warning to a person or PCBU and in some circumstances the content of the warning, if we believe there is a wider sector benefit in doing so. Where we warn an individual, we will not make the details of the warning public unless there is a public interest in doing so.

Before publishing any details about a warning we have issued, we will inform the person or PCBU that is the recipient of the warning that we intend to publish.

All information will be collected, stored, used, and disclosed in line with the Privacy Act 2020 and Public Records Act 2005.

Right to review our decision to issue a warning

Any person or PCBU who we have issued a warning to can seek a review of our decision to warn them.

Legislation that has informed this policy

The following Acts and guidance have informed the legislative basis for this policy:

- Solicitor-General's Guidelines for the use of Warnings
- Solicitor-General's Prosecution Guidelines
- Maritime Transport Act 1994, and
- Health and Safety at Work Act 2015.

Key terms

Corrective tools	for the purposes of this policy, means the tools we use to require a person or PCBU to take corrective action that rectifies unsafe situations or non-compliance. Corrective tools are not punitive and can be accompanied by education and guidance to support an entity to be clear on requirements.
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Enforcement tools	<p>for the purposes of this policy, means the tools we use to:</p> <ul style="list-style-type: none"> • incentivise behaviour change by imposing penalties • shine a light on health and safety issues that require a sector-wide focus, or • hold people to account through a legal process. <p>Most enforcement tools we use are specified in legislation and include:</p> <ul style="list-style-type: none"> • revoking maritime documents • enforceable undertakings • infringement notices, and • prosecution.
Individual	for the purposes of this policy, means a worker or employee.
Informal warning	for the purposes of this policy, an informal warning is a warning that is not recorded or is used in place of issuing an infringement notice or other enforcement tool.
Investigation	for the purposes of this policy, means a structured inquiry to build a picture of the action, inaction, or systematic failure that led to a serious harm or risk of serious harm occurring. Information is gathered of statutory non-compliance to a standard that enables enforcement action to be taken where it is proportionate to do so.
Maritime domain	for the purposes of this policy, refers to maritime activities related to maritime commercial operators, maritime security for ports and shipping, recreational boating, and national and Pacific search and rescue coordination within New Zealand's marine waters.
PCBU	means a person conducting a business or undertaking and is defined in detail in section 17 of HSWA. Most New Zealand businesses, whether large corporates, sole traders, or self-employed, are classed as PCBUs.
Substantively underway	for the purposes of this policy, means we are satisfied that corrective action is being undertaken by the person or PCBU that meets our expectations.



Disclaimer

This policy provides information about how Maritime NZ uses warnings. This document is not a substitute for legislation. This document may not be the most current version so please check the operational policy page on maritimenz.govt.nz to confirm that you are referring to the current version of this publication.

