

23 September 2024

Marie
fyi-request-28095-005528f1@requests.fyi.org.nz

Our ref: F35601
By email

Dear Marie,

Official Information Act request for information regarding investigation processes and statistics

Thank you for your email dated 18 August 2024 requesting the following information under the Official Information Act (the Act):

1. *Your latest triage document that came into force June or July 2024.*
2. *All policies and procedure documents referred to in your latest triage document.*
3. *MNZ investigation and prosecution standard operating procedures.*
4. *Template of the CIP recommendations document and the template of the prosecution decision makers decision memorandum.*
5. *What triage priority level was given to the Te Anau January 2022 incident and the Tairei bar fatality of 2021.*
6. *For each of the years 2021, 2022, 2023 - please provide:*
 - A. *how many incident (s31 notifications) for recreational incidents, including indicating how many reported injuries or deaths.*
 - B. *For each of the years: How many recreational incidents were investigated by MNZ and how many were deemed not meeting the “threshold” to investigate so were referred to the local council etc for them to decide if they want to investigate.*
 - C. *For each of the years, how many recreational Investigations files with the maritime officer’s recommendations were sent to the CIP, and how many of the investigations were ended before the investigation was completed?*
7. *Please provide the procedures and/or explanation of serious harm and how your maritime officers assess whether someone has “serious harm” injuries.*

Response

We have considered the above request under the Act. Some information has been withheld or refused under the following grounds:

- | | |
|------------|---|
| 9(2)(a) | to protect the privacy of natural persons |
| 9(2)(g)(i) | to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty |
| 9(2)(h) | to maintain legal professional privilege |
| 18(d) | the information requested is or will soon be publicly available |
| 18(f) | that the information cannot be made available without substantial collation or research |

1. *Your latest triage document that came into force June or July 2024.*

Documents 'Initial prioritisation of notifications' and 'Operations triage – process and procedure' are appended to this response. These documents are working drafts, and are currently in use whilst awaiting final formal review and adoption. Maritime NZ started the new triage process on 1 July 2024 to coincide with Maritime NZ becoming the HSWA regulator for New Zealand's 13 major ports. Through July and August we have been using the two process and procedure documents with immediate feedback loops to capture and address any improvement suggestions from the notifications and other frontline teams. These documents were designed to give effect to the relevant parts of the two policies provided below.

2. *All policies and procedure documents referred to in your latest triage document.*

We are refusing parts of this question under section 18(d) as the following operational policies referred to in the document are publicly available on our website:

1. [Operational Policy OP 03](#) – How we make decisions about when we will help to resolve a health and safety cessation of work or a work health and safety issue
2. [Operational Policy OP 05](#) – How we make decisions about the removal of a Health and Safety Representative from office
3. [Operational Policy OP 06](#) – How we make decisions about reviewing Provisional Improvement Notices (PINs)
4. Operational Policy OP 07 – How we make decisions on Protected Disclosures
5. [Operational Policy OP 09](#) – How we categorise, prioritise and initially respond to notifications
6. [Operational Policy OP 08](#) – How we make decisions to preserve and to release preserved sites.

Please note that Operational Policy OP 03, 05 and 06 are the Worker Engagement, Participation and Representation policies referred to on page 22 of document one. These have been split into three policies.

Operational Policy OP 07 has not yet been published on the website but will be shortly. The associated procedures for this policy are being reviewed by our Legal team, therefore this document is being withheld under s9(2)(h).

Worker engagement, participation and representation (WEPR) – Operational procedure and process is attached to this response. It is an internal document designed to support Maritime NZ's front-line decision makers.

The Assessment Tool (document four) is a WorkSafe document Maritime NZ refers to.

7. *MNZ investigation and prosecution standard operating procedures.*

We responded to your request for this document in our response provided to you on 5 July 2024. Our position has not changed – the document is being withheld in full under section 9(2)(h) to maintain legal professional privilege.

8. *Template of the CIP recommendations document and the template of the prosecution decision makers decision memorandum*

The CIP recommendations document was provided to you on 22 April 2024. The decision memo template is attached to this response (document five).

9. *What triage priority level was given to the Te Anau January 2022 incident and the Tairei bar fatality of 2021.*

Both of these incidents were given a priority level of high.

10. *For each of the years 2021, 2022, 2023 - please provide:*

A. *how many incident (s31 notifications) for recreational incidents, including indicating how many reported injuries or deaths.*

Please see the table below.

B. *For each of the years: How many recreational incidents were investigated by MNZ and how many were deemed not meeting the "threshold" to investigate so were referred to the local council etc for them to decide if they want to investigate.*

For the number of incidents investigated, see the table below. We are refusing the second part of your query under section 18(f) as it cannot be made available without substantial collation or research. This data is not captured in such a way that it can be easily or accurately retrieved.

C. *For each of the years, how many recreational Investigations files with the maritime officer's recommendations were sent to the CIP, and how many of the investigations were ended before the investigation was completed?*

Please see the table below for the number of investigations sent to CIP. Regarding the second part of your query, all investigations are completed. Please note however that completion can include a number of end results, including but not limited to, a decision taken as to the most appropriate outcomes (education, engagement, recommendation for prosecution etc) or a review during the investigation itself may decide it does not need to continue. This data is not captured in such a way that it can be easily or accurately retrieved therefore we are refusing the second part of your query under section 18(f) as it cannot be made available without substantial collation or research.

	Number of notifications	Number of injuries	Number of fatalities	Number of investigations	Number sent to CIP
2021	112	61	22	38	3
2022	132	54	19	33	6
2023	110	60	12	23	3

11. *Please provide the procedures and/or explanation of serious harm and how your maritime officers assess whether someone has “serious harm” injuries.*

We are refusing this question under section 18(d) as this information is publicly available on our website at the link below. You will also see that serious harm is discussed in the documents we are releasing to you.

https://www.maritimenz.govt.nz/commercial/safety/notifications/accident-reporting-definitions#serious_harm

With regard to the information that has been withheld under section 9 of the Act, I am satisfied that the reasons for withholding the information at this time are not outweighed by public interest considerations that would make it desirable to make the information available.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you wish to discuss this decision, please feel free to email us at ministerial.services@maritimenz.govt.nz.

Yours sincerely



Christine Ross
Manager, Communications and Ministerial Services

Document schedule

Doc #	Title of Document	Decision on request
1	Initial prioritisation of notifications – Process and procedure (MS638)	Some information withheld under s9(2)(a), s9(2)(g)(i)
2	Operations triage – process and procedure (MS639)	Some information withheld under s9(2)(a)
3	Health and Safety at Work Act 2015 (HSWA) – Worker engagement, participation and representation (WEPR) – Operational procedure and process	Some information withheld under s9(2)(a)
4	Assessment tool - Worker engagement, participation and representation (WEPR) [WorkSafe]	Released in full
5	Prosecution Decision memorandum	Released in full

Initial prioritisation of notifications

PROCESS AND PROCEDURE (MS638)

DRAFT
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DRAFT 03/09/2024
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DRAFT 03/09/2024
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Initial prioritisation of notifications process and procedure

Code	MS638 Version 1.0	Issue Date	dd/mm/yyyy
FileM8 Reference	D24/36515	Review Date	dd/mm/yyyy

1. Purpose

- 1.1 This document sets out the process and procedures for managing notifications received by Maritime NZ relating to the maritime domain and major ports.
- 1.2 The process and procedures will support the assessment of notifications so that they are prioritised and forwarded to the appropriate team and expertise within Maritime NZ for response.

2. Scope

- 2.1 This procedure applies to the initial assessment and prioritisation of notifications and does not apply to decision-making on the type of regulatory response we will take.
- 2.2 It applies primarily to the Notifications and Enquiries Team (NET) who manage the entry of notifications into Maritime NZ. It will also support other staff who during the course of their work, become the first point of contact for notifiers.
- 2.3 Notifications that apply under this procedure are made under the Maritime Transport Act 1994, the Health and Safety at Work Act 2015, and the Protected Disclosures (Protection of Whistleblowers) Act 2022.
- 2.4 Notifications made voluntarily also apply, such as concerns raised by workers or observations from the public.

3. Contents

- 3.1 This document is divided into three parts:
 - Part 1: Initial assessment and pre-checks
 - Part 2: Triage of harm notifications
 - Part 3: Managing other notifications

4. Notifications overview

- 4.1 Maritime NZ receives a range of notifications as the regulator for the maritime domain and major ports of New Zealand.
- 4.2 The notifications we receive can be about:
 - Harm or potential harm – to people, the environment, property or the security of ships and ports
 - Internal Review – PCBUs can request an internal review of certain decisions we make under HSWA
 - Worker Engagement, Participation and Representation (WEPR) – workers, PCBUs and Health and Safety Representatives can request assistance from us under specific circumstances
 - Planned activities – PCBUs and maritime operators have obligations under HSWA or the MTA to tell us about certain activities they are undertaking

- Administrative – under the MTA those that hold a maritime document or a marine protection document have an obligation to tell us about changes to their circumstances.
- 4.3 Notifications that outline harm or potential harm are prioritised over the other types of notifications because there is a need for a decision on how we respond operationally.
- 4.4 Harm notifications may require a response to support our harm-prevention approach or identify potential use of our corrective and enforcement tools.

Service level agreements

- 4.5 There are internal service level agreements (SLA) that the timely management of notifications will support. These relate primarily to how quickly we respond to notifiers about our operational response.

Response	Detail	Timeframe
Scene release Decision on whether to continue to hold or release a scene preserved under HSWA	Start – when notification is first received by Maritime NZ (not when received by NET) End – when notifier is advised of MNZ decision on scene release	Within 4 hours
High rated notifications <ul style="list-style-type: none"> • Verify the information we have been provided about the event and ensure the appropriate controls at the scene are in place to eliminate or mitigate further harm from occurring; and • make a decision on whether the scene needs to continue to be preserved; and • provide a timeframe for when Maritime NZ will attend the scene, where we will do so 	Start – when notification is first received by Maritime NZ (not when received by NET) End – when notifier is contacted by MNZ to: <ul style="list-style-type: none"> • verify information • advise decision on scene release • provide a timeframe for MNZ scene attendance 	Within 4 hours
Medium rated notifications <ul style="list-style-type: none"> • verify the details of the notified event; • make a decision on scene release; • provide a timeframe for scene attendance 	Start – when notification is first received by Maritime NZ (not when received by NET) End – when notifier is contacted by MNZ to: <ul style="list-style-type: none"> • verify information • scene decision • initiate a response 	Within 4 hours if scene decision required Within 5 working days on response, if no scene decision required
Low rated notifications Decisions to close a file relating to a low rated notification	Start – when notification is first received by Maritime NZ (not when received by NET) End – when notifier is advised of MNZ decision to close notification	Within 10 working days
Request to resolve cessation of work issues (s87 HSWA)	Start – when notification is first received by Maritime NZ (not when received by NET)	Within 4 hours

Response	Detail	Timeframe
We will respond within four hours of receiving a request and provide help as soon as practicable.	End – when notifier is responded to by MNZ	
Work health and safety issue (Part 3 HSWA) We will make a decision about whether we will help to resolve a work health and safety issue within seven days of receiving a request.	Start – when the request is first received by Maritime NZ (not received by NET) End – when the requester is responded to by MNZ	Within 7 days

Legislative timeframes

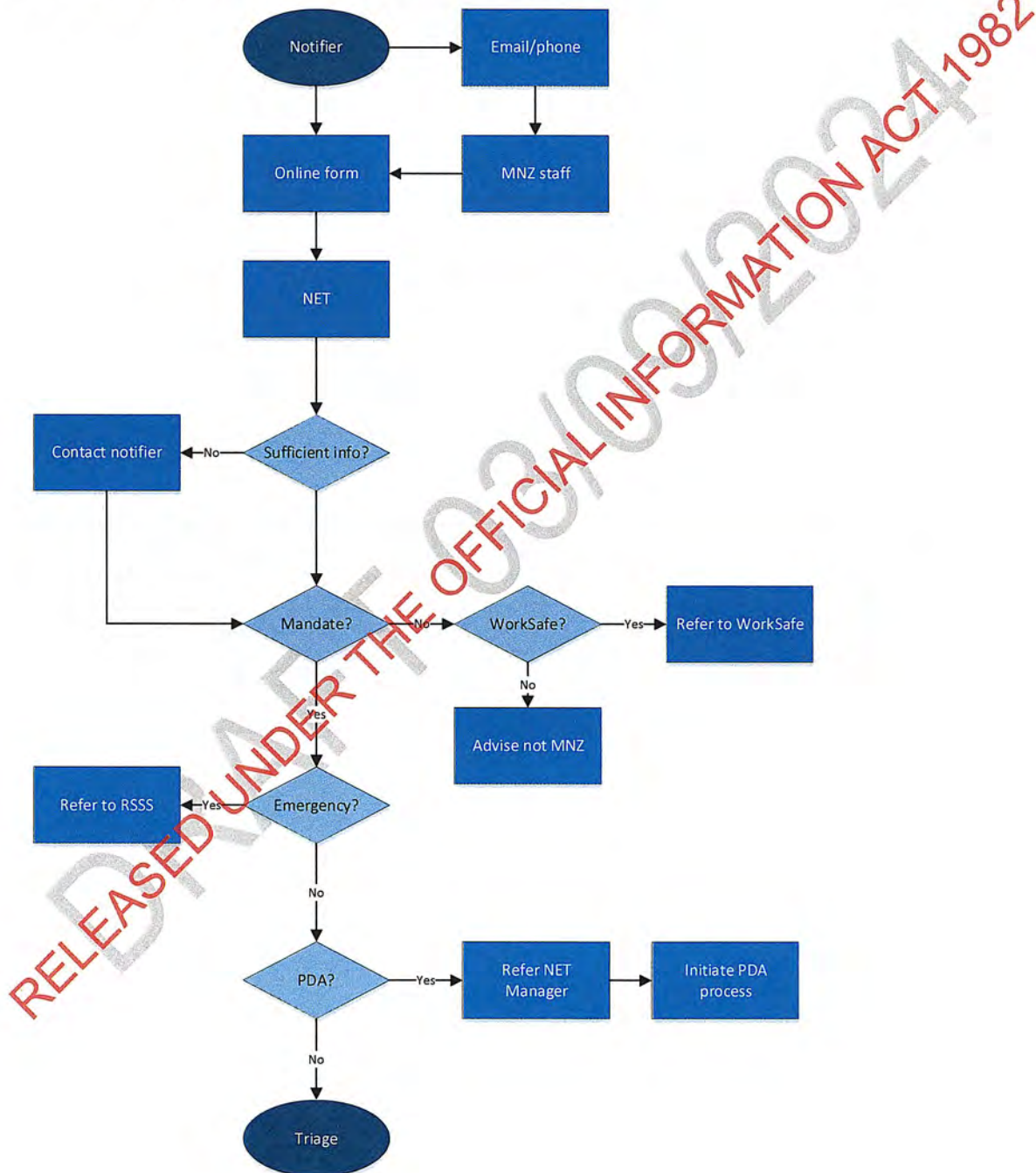
4.6 There are two notification types that we manage that are required under legislation to be responded to within a certain timeframe.

Internal review Section 132 HSWA – request for internal review of a reviewable decision	Start – when request for internal review received by MNZ End – when requestor advised of outcome of review or MNZ formally requests further information	Within 14 calendar days
Protected disclosures Section 13 of the Protected Disclosures (Protection of Whistleblowers) Act 2022	Start - when protected disclosure received by MNZ End – when the discloser is advised of what action MNZ will take in respect of the disclosure	Within 20 working days* *this timeframe is defined as a 'should' meet in the Act. However, it is prudent and good practice for MNZ to adhere to this guidance.

Part 1: Initial assessment and pre-checks

5. Initial assessment and pre-check process

5.1 High level overview of the initial assessment process:



6. Receipt of notifications

6.1 Maritime NZ can receive notifications outlining harm or potential harm in a number of ways. We will accept notifications:

- via the online form on our website
- by email
- by phone
- in-person

Identifying harm notifications

6.2 A harm notification is any notification that outlines:

- a person being hurt
- damage to the environment through the discharge of oil or a hazardous substance into the sea or waterways, and air pollution from vessels
- damage to property such as vessels, marine navigation infrastructure, or port infrastructure
- a risk of the above harms occurring

6.3 Issues or concerns from workers or health and safety representatives regarding a work place are also examples of potential harm.

6.4 It is important to note that when identifying whether a notification relates to harm, the level of harm is not relevant as this will be addressed through prioritisation (later in this procedure).

Harm criteria

- A person is dead
- A person has been physically injured regardless of how minor
- A person has experienced mental health harm as a result of work
- A person has been exposed to a hazardous substance
- A worker or health and safety representative ceases work due to unsafe work practices (see WEPR below)
- Property damage to vessels, port buildings, port infrastructure (e.g. cranes or the wharf), or aquaculture business
- Environmental damage to, or release of a hazardous substance into the marine environment
- A SOLAS vessel is unseaworthy
- Release of a hazardous substance on a port or vessel

In addition to events that have already occurred, harm-based notifications also include a risk or the potential of any of the above occurring.

Online form

6.5 Harm notifications have a dedicated channel on our website via an online form. The form has been designed to capture the key information (through compulsory fields) we require to make an informed decision on how we respond. Upon completion of the form by a notifier, the notification will be generated and received by the NET via Notifications@maritimenz.govt.nz

Email/Phone/In-person

6.6 As an organisation we encourage and promote the use of the online form to receive harm notifications, but it is not compulsory and we may receive them in other ways.

6.7 Notifications can be received by:

- email to any staff member within Maritime NZ

- phone to any staff member within Maritime NZ
 - in-person to any of our staff who engage directly with stakeholders or members of the public.
- 6.8 If a notification is received in any of the ways outlined above, the staff member who receives the notification will be responsible for capturing the required information and entering it directly into the online form for it to be processed by the NET.
- 6.9 For notifications received by phone or in-person, staff should use the online form to enter the information directly. The online form will serve as a guide/prompt to ensure we ask for the relevant information we require to support our decision-making.
- 6.10 Notifications received via email may be missing important information that will allow us to prioritise the notification effectively. If practical, what information has been provided will be entered into the online form and sent to the NET who will follow-up with the notifier to get the required information. If the notification indicates high risk/imminent harm, the notification should be referred to the operations team immediately.

7. Notification pre-checks

- 7.1 When a notification is received, there are pre-checks that need to be conducted as an initial assessment before prioritising.

Sufficient information

- 7.2 It is important to assess each notification to identify whether there is any key information missing that may make it difficult to prioritise the notification. This will primarily apply to notifications we receive by phone, email or in-person.

Criteria

We require enough information to be able to make an informed decision on what action we will take. Ideally we require:

- whether the scene has been held
- who the PCBU/operator is
- the date and approximate time of the event
- the location so that if necessary, we can attend the scene
- who is making the notification i.e. is the PCBU meeting its obligation to notify
- enough information about what has happened so that we can make an informed assessment:
 - is the harm sufficiently described
 - if vessels are involved, do we know what types of vessels (e.g. small fishing vessel or a SOLAS vessel)
 - if the event occurred on land, do we know if it happened within the port designation

Examples of unclear or absent information

- vague injury description e.g. "badly hurt", "leg injured"
- discharge of unknown substance and/or undescribed quantity into the sea
- location detail insufficient to determine where the event happened
- no date to indicate whether the event has just happened or it happened days/weeks ago

- 7.3 If upon assessment of the notification it cannot be prioritised because of missing information, the NET will contact the notifier by phone (if possible) and use the online form as a guide/prompt to ask for the missing information.
- 7.4 In some cases the notifier may have limited information to be able provide in the notification. Some examples of this are:

- Where a person has been injured to a degree where an ambulance is required to take them to hospital immediately. In this case, the type and severity of the injury may be unknown.
 - A member of the public observes an accident and does not have the knowledge to determine the type of vessel involved other than broad descriptions.
- 7.5 Where we are unable to obtain all the information we require, we will prioritise the notification as it is. Depending on its prioritisation, additional information may be obtained through operations teams initial inquiries.
- 7.6 In some cases the notifier may not be contactable or cannot be reached. Where this occurs, the notification will be processed as it is and prioritised based on the information available.

Maritime NZ's mandate

- 7.7 Upon receipt of a notification, we need to determine if it is within Maritime NZ's legal mandate to respond to. This is important because we don't want to begin looking into things we don't have the legal mandate to respond to, and we want to be clear with the notifier as early as possible so that they can get their matter to the right agency.

Criteria

It likely requires a MNZ regulatory response (including a decision to take no action) if it relates to:

- An accident or event on a port
- An accident or event involving a vessel in NZ's waterways (seas, harbours, lakes, rivers)
- Risk of potential harm on a port, vessel or waterways of NZ
- A security event on a port
- NZ's obligations under an international maritime agreement
- Maritime or search and rescue infrastructure

It may not be ours if:

- An accident or event occurs off the waterways and is not on a major port
- It is a personal dispute between individuals or a work-related dispute
- An assault on a vessel or major port

- 7.8 Where it is within our mandate, the notification will be managed within this process and its procedures.

Not within Maritime NZ's mandate

- 7.9 Some notifications will not fall within Maritime NZ's mandate. Where this is the case the notifier will be informed that it is not a matter for Maritime NZ and that we will not be actioning the notification because we are not the appropriate agency.

- 7.10 Where we know the appropriate agency to respond, we will assist in one of two ways:

- A health and safety event that has not occurred on a major port or on a vessel on NZ's waterways will be referred by us directly to WorkSafe's NET. The notifier will be informed of our action.

WorkSafe NET: Healthsafety.notification@worksafe.govt.nz

- Where the matter is for another agency, we will inform the notifier of who they should contact and take no further action.

- 7.11 The matters outside of Maritime NZ's mandate and the list of appropriate agencies can be found [here](#).

Emergencies

- 7.12 This procedure does not cover Maritime NZ's emergency responses by the Rescue Coordination Centre NZ (RCCNZ) or Maritime Readiness and Incident Response (MRIR). If

the notification relates to a request for an emergency response, it will be immediately referred to RCCNZ or MRIR.

It likely requires an emergency response if, for example:

- a vessel is unseaworthy and is in danger of capsizing, floundering, or stranding
- people are in danger and require immediate rescue
- significant discharge of oil or another hazardous substance occurs and emergency management is required to contain the spill.

7.13 If an emergency notification is received outside of established emergency channels:

- by phone: have the requestor contact emergency services or if they are unable we will do so on their behalf
- by email: refer the notification to RCCNZ or MRIR and advise the notifier that it has been forwarded on. The staff member will also phone RCCNZ and MRIR to ensure they are aware of the notification immediately following forwarding of the email.
- Via the online form: refer the notification to RCCNZ or MRIR and advise the notifier that it has been forwarded on. The staff member will also phone RCCNZ and MRIR to ensure they are aware of the notification immediately following forwarding of the form.

Emergency type	Team	Contact
Search and Rescue	Rescue Coordination Centre (RCCNZ)	RCCNZ1@maritimenz.govt.nz 0508 472 269
Marine pollution incident	Maritime Readiness and Incident Response	RCCNZ1@maritimenz.govt.nz 0508 472 269

7.14 After contacting RCCNZ or MRIR about an emergency notification, the NET will also phone the Manager Investigations to advise that an emergency notification has been received and referred.

Protected disclosures

7.15 There may be instances where a notifier wishes to use the Protected Disclosures Act 2022 (PDA) to 'blow the whistle' on the conduct of a PCBU.

7.16 The PDA allows for someone to notify a government agency about what they believe is serious wrongdoing occurring in an organisation and to be protected for doing so (so far as the PDA allows). It is important to note that a protected disclosure does not have to be related to the maritime or port sectors for us to receive the notification.

7.17 The PDA provides a whistle-blower with anonymity in most cases and our obligation is to ensure that the notifier's identify is confidential while we do our assessments. A whistle-blower may not be aware of these protections under the PDA but we are obliged to apply them.

7.18 Maritime NZ has a specific operational policy and procedures for managing protected disclosures.

7.19 It is important to note that the role of the initial assessor is not to determine whether it meets the legal criteria for a protected disclosure. What is important is that if a notification is possibly a protected disclosure, it is clearly identified so that our process is followed.

7.20 A protected disclosure is more straight-forward to manage where it is received via the dedicated protected disclosure channel on our website, but may also be received via a

notification. In some cases it may be obvious, for example the notifier may explicitly cite the PDA. In other cases it may be more subtle, for example outlining a PCBU breaking the law and requesting it be investigated, and stating that they wish to remain anonymous.

Criteria

- A notifier has expressly stated that they wish to make a protected disclosure under the Protected Disclosures and Whistleblowers Act 2022

We may need to consider initiating the protected disclosure process if:

- A notifier has stated that they wish to remain anonymous
- A notifier has expressed concern that their employer may retaliate against them for raising health and safety issues
- They use the term 'blow the whistle'
- They refer to serious wrongdoing in their organisation

- 7.21 If a protected disclosure is received via a notification, notify the Manager NET or the Principal Advisor NET immediately.
- 7.22 Refer the protected disclosure to the Chief Legal Advisor via phone and their email address.
- 7.23 If you are uncertain whether the PDA process should be initiated, discuss with the Manager NET or Principal Advisor NET.

PDA and harm notifications

- 7.24 If a possible PDA is identified, it is still important to assess whether the notification mentions harm within our mandate (maritime sector or major port).
- 7.25 If the harm notified is within our mandate, it could be ongoing or there may be an imminent risk of harm. In these instances, this needs to be identified so that as an organisation we can consider whether we need to respond.
- 7.26 Where there is harm identified in the notification, the Manager NET or Principal Advisor NET will notify the GM Investigations, GM GRO or GM MIT to coordinate how we respond to the risk of harm while maintaining the notifier's confidentiality.

Security notifications

- 7.27 Security notifications (commonly referred to as alerts) are not responded to by the frontline teams in Regulatory Operations. They are managed exclusively by the Security Team.
- 7.28 Most security alerts will be received directly by Security as they may include classified information that requires a security clearance to access.
- 7.29 If a security alert is received by the NET, forward it immediately to the Security Team email box and follow up with a phone call.

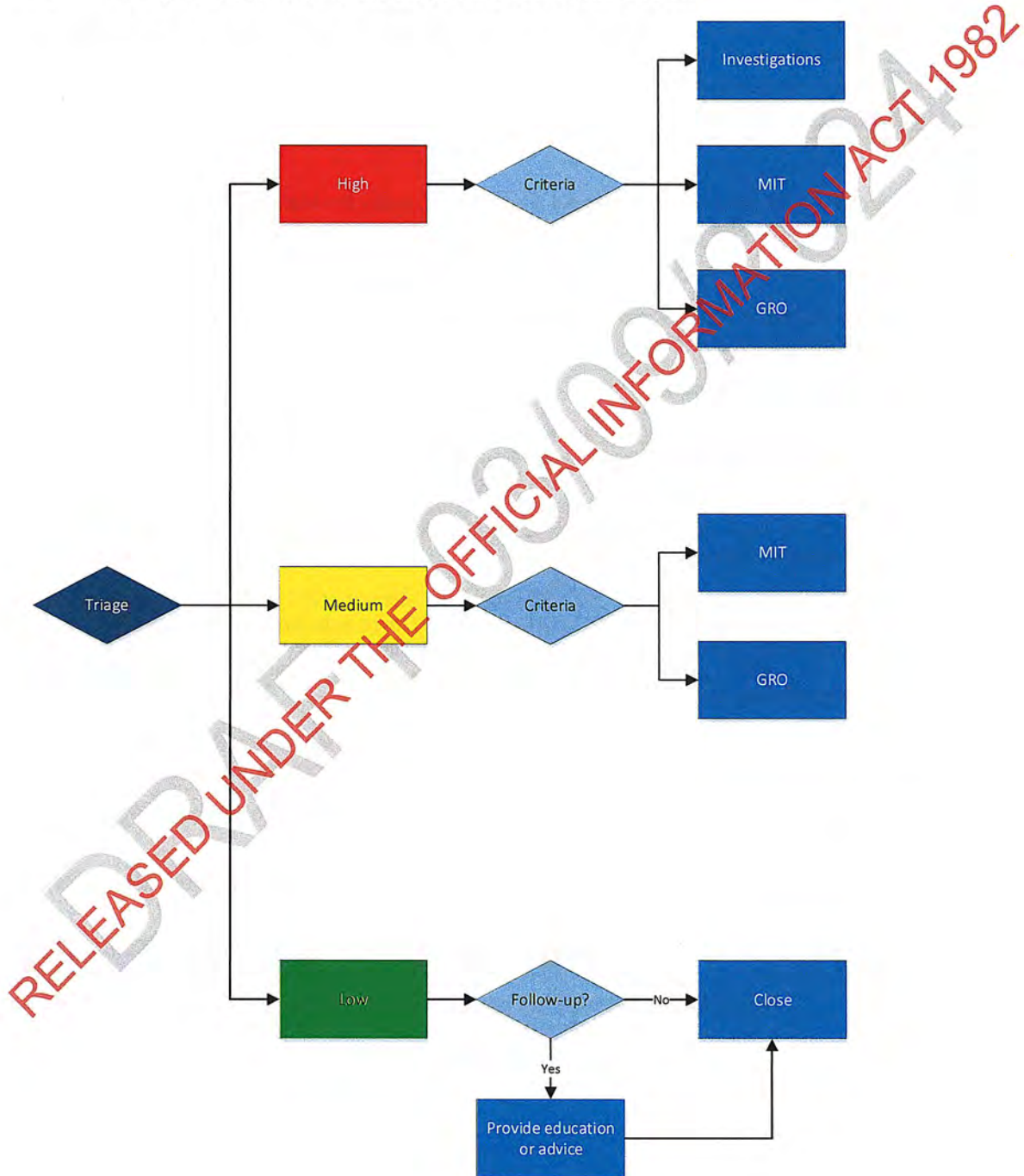
Team	Primary contact	Secondary
Security	s 9(2)(g)(i) Manager Maritime Security	Principal Advisor Security

Part two – triage and allocation

8. Triage

8.1 All notifications that mention harm or a risk of harm are triaged so that the level of harm is identified and the notification is forwarded to the right team within Maritime NZ to respond.

8.2 The high level overview of the triage process is outlined below:



- 8.3 The triage system prioritises notifications based on the level of harm outlined and/or the potential for harm to occur.
- 8.4 Depending on the severity of the harm and/or the risk of harm, notifications are given a category of High, Medium or Low. The broad outline of the criteria for each is outlined below:

High	Medium	Low
<ul style="list-style-type: none"> • Death • Serious injury – life threatening and/or potential permanent disability • Imminent risk of harm to people, environment, property • Malicious breach of security • Serious harm to the environment or property • Maritime Labour Convention complaints (MLC) on seafarer welfare 	<ul style="list-style-type: none"> • Moderate injury to people and chronic injury risk • Moderate damage to property or marine environment • Moderate risk to people, property and environment • Other MLC complaints 	<ul style="list-style-type: none"> • Incident is contained and managed • Minor injuries • Minor vessel incident • Minor environmental incident

- 8.5 These criteria are described in more detail below. The purpose of the initial NET prioritisation is not to determine what action we will take. Follow-up action will be determined through initial inquiries by operational teams.

9. High priority notifications

- 9.1 High priority notifications are those that need urgent consideration for a response.

- 9.2 High priority notifications are categorised into three types:

- Harm that has occurred
- High risk of serious harm
- Imminent risk of serious harm

Harm that has occurred

- 9.3 As the name indicates, this relates to things that have already happened. High priority harm that has occurred will in most cases be investigated or at least have a range of initial inquiries made to better understand what has happened. These types of notifications will be allocated to the investigations team in the first instance.

- 9.4 Examples of this type of harm are: death, limb amputations, high volumes of oil discharged into the ocean.

High risk of serious harm

- 9.5 High risk of serious harm relates to incidents that could have caused or could cause serious harm. This means, that if circumstances were different someone may have been killed or seriously injured or there may have been a significant environmental impact such as a large oil spill.

- 9.6 Examples are, large objects falling from height that narrowly miss hitting people, a near miss collision of large vessels, unsafe machinery that has a high likelihood of seriously injuring someone, or Maritime Labour Convention (MLC) complaints.

9.7 High risk notifications are allocated to one of two teams depending on the circumstances. If a SOLAS vessel is involved, the notification will be allocated to MIT. For any other notification not involving a SOLAS vessel, it is allocated to GRO.

Imminent risk of serious harm

9.8 Imminent risk of harm is similar to high risk of serious harm, but where it differs is that the harm could occur soon or in the very near future.

9.9 These types of notifications require an immediate response as we have a limited amount of time in which to respond and possibly prevent serious harm.

9.10 Examples of imminent harm are, people working at height with no or minimal safety equipment, a SOLAS vessel dragging anchor in a harbour, or a MLC complaint where the vessel will be leaving New Zealand waters very soon.

9.11 As with high risk notifications, they are allocated to MIT if there is a SOLAS vessel involved or to GRO for all other circumstances.

Category	Allocated team
Harm that has occurred	Investigations
High risk of serious harm	GRO MIT for SOLAS
Imminent risk of serious harm	GRO MIT for SOLAS

9.12 In most cases, high priority notifications will be received directly by operation teams via other organisations such as the Police, Harbour Masters, or PCBUs. They will also be received from Maritime NZ's RCCNZ.

9.13 Though the NET will not often receive high priority notifications directly, it is important to understand how they are actioned if received.

9.14 The below table outlines some examples of the types of high priority harm notifications we may receive and what team they need to be allocated to:

Harm	Description	Team
Fatality	All deaths: <ul style="list-style-type: none"> As a result of work Medical event Non-work accident (includes recreational) Work-place suicide 	Investigations
Serious injury	Life-threatening injuries Examples: <ul style="list-style-type: none"> Serious burns Serious lacerations to head and torso Crushing injury to head and torso Injuries causing potential permanent disability Examples: <ul style="list-style-type: none"> Limb amputation Serious head injury Eye injury causing blindness 	Investigations

Harm	Description	Team
	<ul style="list-style-type: none"> Spinal injury Skin separation 	
Serious harm to environment	<p>Widespread marine environmental harm</p> <p>Examples:</p> <ul style="list-style-type: none"> Tier 2-3 oil spill Uncontrolled discharge of ballast water close to shore or aquaculture/fisheries Release of highly toxic substances into waterways 	Investigations
Serious harm to property	<p>Temporary or permanent closure of a port or significant disruption to maritime transport</p> <p>Examples:</p> <ul style="list-style-type: none"> Large vessel collision with wharf (unusable) Large vessel damages critical infrastructure e.g. cranes, docking spaces Scene preserved as a result of serious event that closes access to critical infrastructure Toxin spill at port – areas unusable for long periods of time 	Non-SOLAS – GRO SOLAS - MIT
Serious risk of harm to people	<p>High risk of death or serious injury</p> <p>Examples:</p> <ul style="list-style-type: none"> Exposure of workers to hazardous substance Workers working at height with no or minimal safety equipment Unauthorised operator conducting high-risk activity with passengers e.g. bar crossing Vessel unseaworthy in open and poor conditions Maritime Labour Convention complaints 	Non-SOLAS – GRO SOLAS - MIT
Risk of harm environment	<p>High risk of serious harm to the marine environment</p> <p>Examples:</p> <ul style="list-style-type: none"> Ongoing uncontrolled discharge of ballast water, oil or other hazardous substance Vessel unseaworthy near shallow water/rocks/coastline etc. Vessel stranded 	Non-SOLAS – GRO SOLAS - MIT
Risk of harm property	<p>High risk of serious harm to vessel, port, wharf or aquaculture facility</p> <p>Examples:</p> <ul style="list-style-type: none"> Discharge of hazardous substances close to aquaculture facility Vessel unseaworthy in close vicinity to a port (not at dock) 	Non-SOLAS – GRO SOLAS - MIT

Allocating a high priority notification

- 9.15 The notification is assigned and allocated to the corresponding team using the criteria outlined in the above table.
- 9.16 High priority notifications must be phoned through to the relevant operations team point of contact. The purpose of the phone call is to ensure that the notification is picked up by operations as soon as possible so that a response can be considered.

Team	Primary contact	Secondary
Investigations	Manager Investigations (one of the two)	Principal Investigator then GM Investigations
GRO	Manager GRO (closest region)	Manager GRO (other regions) then GM GRO
MIT	Manager MIT (one of the two)	GM MIT

- 9.17 NET will also inform the operations point of contact whether the scene has been preserved and any other relevant information such as whether another agency is involved (Police for example).
- 9.18 Where the primary point of contact is unavailable or uncontactable, contact the secondary contact.
- 9.19 Where no one is contactable within a particular team, contact a manager within one of the other operations teams, and inform the Manager NET.

10. Medium Priority Notifications

- 10.1 Medium notifications will form the bulk of the notifications NET will assess. High priority notifications and low priority notifications (outlined further in this document) are relatively straightforward to identify. Medium priority on the other hand will encompass a wide range of events and harm types.
- 10.2 A medium priority notification will generally outline a:
- Moderate injury to people and chronic injury risk
 - Moderate damage to property or the marine environment
 - Moderate risk to people, property and environment
- 10.3 The term moderate can have a broad definition, and used in isolation is not particularly helpful to prioritise the notifications we receive. A helpful way to support our identification of medium notifications is that if it is not a high priority (needs urgent consideration of a regulatory response) or low priority (where injuries are minor, harm is contained or damage to vessels or property is superficial) it will fall into the medium category.
- 10.4 There is more complexity and factors to consider with medium notifications when they are allocated to our operations teams, but for the purposes of the NET's role and initial prioritisation, they just need to be identified as medium and allocated to the right team.
- 10.5 The type of harm outlined in the notification will determine which of the operations teams the notification will be referred to:

Harm	Description	Team
Moderate injury to people and chronic injury risk	Injuries that are not life-threatening. Injuries that are unlikely to result in permanent disability. Examples:	GRO

	<ul style="list-style-type: none"> Broken bones Amputation of finger <p>Will require professional medical treatment, likely hospital admission.</p>	
Moderate damage to the marine environment	<p>Examples:</p> <p>Oil and hazardous substance spills that are able to be controlled by Regional Council i.e. don't require MPRS.</p> <ul style="list-style-type: none"> Moderate discharge of hazardous substance into waterways 	GRO
Moderate damage to property	<p>Moderate damage to port infrastructure and/or vessels that may result in disruption to operations.</p> <p>Examples:</p> <ul style="list-style-type: none"> Vessel colliding with wharf resulting in parts of the wharf temporarily unusable. Collision between two fishing vessels resulting in them being inoperable for a short period of time. Wires on ship's own crane have snapped during loading or unloading. 	GRO
Moderate risk of harm people	<p>Moderate risk to people that if circumstances were different may have resulted in harm.</p> <p>Examples:</p> <ul style="list-style-type: none"> Poor safety controls in a workplace that may result in moderate injuries Near miss collision between two non-SOLAS vessels 	GRO MIT – involves SOLAS vessel
Moderate risk of harm environment	<ul style="list-style-type: none"> Non-SOLAS vessel stranded or damaged resulting in oil being spilled into waterways. Loss of fishing equipment Discharge of substance from SOLAS vessel 	GRO MIT – involves SOLAS vessel
Moderate risk of harm property	<ul style="list-style-type: none"> Near miss collision of non-SOLAS vessels. Near miss of collision with port infrastructure from large vessels. 	GRO MIT – involves SOLAS vessel

Allocating a medium priority notification

10.6 The notification is assigned and sent to the corresponding team using the criteria outlined in the above table.

Team	Primary contact	Secondary
GRO	Manager GRO (closest region)	Manager GRO (other regions) then GM GRO
MIT	Manager MIT (one of the two)	GM MIT

10.7 Medium notifications do not need to be phoned through to the relevant managers and will be referred through the Triton system, except for where a scene is preserved (see below).

Preserved scene for medium priority notifications

- 10.8 The exception to this is where the notifier has preserved the scene of the event. If the notifier has preserved the scene of a medium priority notification, NET must phone the relevant operations manager to inform them that a decision on scene release must be made.
- 10.9 The call to the operations manager must occur as soon as possible as a decision on whether or not to release a scene, and a timeframe for scene attendance, must be made within 4 hours of the notification being received, and communicated to the PCBU.

The HSWA team

- 10.10 It is noted that the HSWA team are not tasked as receiving prioritised notifications from NET. The reason for this is that the HSWA team are specialists that will provide support and advice to other operations teams. The other operations teams will coordinate with HSWA if appropriate when determining our regulatory response to a high or medium notification.

11. Low Priority Notifications

- 11.1 Notifications are assessed as low if they meet the following criteria:

- Minor injuries to people
- Minor vessel incident
- Minor damage to property
- An event/incident is managed and contained and:
 - There was no or minor harm to people
 - There is no further or ongoing risk of harm to people

Harm	Description	Team
Minor injuries to people	Injuries that are not life-threatening/will not cause permanent disability Can be managed with minor routine medical treatment or first aid Examples: <ul style="list-style-type: none"> • Broken/dislocated fingers • Minor cuts and abrasions • Sprains • Minor concussion 	NET
Minor vessel incident	Near miss of recreational/small commercial vessels Collisions between two small vessels or vessel collision with rocks that results in minor damage Speeding of recreational vessel	NET
Minor damage to property	Vessel collision with wharf resulting in minimal/no damage. Minor collision between vehicles on a port resulting in minor damage e.g. small dents, scrapes. Minor damage to port and/or vessel equipment that is able to be repaired and does not cause significant disruption to operations/business.	NET

Harm	Description	Team
Managed and contained	Faulty equipment that has been identified and made safe through repair or ceasing of use Minor injury caused by work where the PCBU has contained the cause of harm, preventing further harm or risk of harm. Small discharge of ballast water or oil and the discharge has ceased. Clean-up managed at the PCBU/operator level.	NET
Minor rule breach	Breach of maritime rules and/or marine protection rules that resulted in no harm or potential for harm to people, the environment or property.	NET

11.2 All notifications assessed as Low will not be forwarded to an operations team and will be managed by the NET.

Low priority responses

11.3 Before closing a low priority notification, we need to assess two things:

- most importantly, whether the notifier has preserved the scene under HSWA – if this is the case, we must make a decision on whether or not to release a scene within 4 hours of the notification being received; and
- whether any support can be provided to the notifier or if seeking some additional information may be required.

Preserved scenes for low priority notifications

11.4 If the notifier has preserved the scene of a low priority notification, the scene must be formally released by someone holding the appropriate delegation under HSWA.

11.5 Most low priority notifications are unlikely to have had the scene preserved under HSWA, but if they have, it must be escalated to a GRO manager¹ for the scene to be released.

11.6 If the notifier has provided an email address, we will email them the following:

To [name]

Subject: [notification number]

We have assessed the information you have provided in your notification and have decided that we will not be taking any further action at this time.

Your notification outlined that you have preserved the scene of the event under the Health and Safety at Work Act 2015.

This email is to also inform you that we do not require you to continue holding the scene and you may resume normal work activities.

Thank you again for your notification.

¹ As expertise is built within NET, NET advisors will be given the delegation to release the scene of low priority notifications.

[sign off]

- 11.7 If we do not have an email address for the notifier, then contact them by phone and advise that:
- We have assessed their notification and will be taking no further action at this time
 - We do not require the scene to be held any longer and they may resume normal work activities
- 11.8 When closing and releasing a scene verbally, request their email address so that we can provide a formal response to the scene release using the template in 11.6.

No further action (hard close)

- 11.9 The notifier is responded to acknowledging receipt of their notification and informed that MNZ will not be taking any action at this time regarding their notification.

To [name]

Subject: [notification number]

Thank you for your notification.

We have assessed the information you have provided in your notification and have decided that we will not be taking any further action at this time.

Please feel free to contact us if you have any questions.

[sign off]

Education (soft close)

- 11.10 Some low level notifications may need to be followed-up with education to remind the notifier of their obligations. Some examples:
- A PCBU has not preserved the scene
 - A PCBU/operator has not notified the accident/incident/event (we have been informed from another source e.g. public, media, emergency services)

Criteria

Hard close

We do not consider a need to request further information from the notifier or provide education. The notification is closed and the notifier informed. We take no further action.

- The notification indicates that the PCBU is aware of their obligations and there is nothing that identifies a need for guidance on a specific matter

Soft close

We consider it appropriate to follow-up with the notifier and provide education such as guidance to support improved practice in the future.

- There is no 'tick box' criteria for whether we provide education
- It is dependent on the type of notification received and the information it contained
- If the notification indicates that the notifier may need assistance of further information on a particular matter, include a link to the relevant information on our website with the closing email. For example:
 - MOSS audits
 - Maritime rules

- Watchkeeping
- Fatigue
- Other safety guidance

12. Notifying other key agencies

Notifying WorkSafe

- 12.1 Low priority notifications that outline a health and safety matter at a place of work must be notified to WorkSafe.
- 12.2 We must provide them a copy of the notification and inform them whether we intend to investigate. As it is a low priority notification, we will not be investigating.
- 12.3 Send the notification to WorkSafe at Healthsafety.notification@worksafe.govt.nz with the following:

Tēnā koe

We have received the attached notification under the Health and Safety at Work Act 2015.

We have assessed the event outlined in the notification and will not be investigating.

[sign off]

Notifying the Transport Accident Investigation Commission

- 12.4 Maritime NZ has an obligation to notify the Transport Accident Investigation Commission (TAIC) of certain types of notifications we receive. The criteria for these types of notifications TAIC is described below.

TAIC criteria

- an accident or incident involving a New Zealand commercial ship or a foreign commercial ship that was in New Zealand waters at the time of the accident or incident
- an accident involving a New Zealand ship where a person is seriously harmed
- an incident involving more than 1 ship, where at least 1 ship is a commercial ship and, in the opinion of the Authority (Maritime NZ?), it is likely that the occurrence would have, or will, become an accident
- an accident at the interface of the civil and military maritime systems

In addition to the above legislative criteria, TAIC also require notifications:

- In relation to SOLAS class vessels and domestic commercial vessels (including domestic passenger vessels):
 - Any loss, presumed loss or abandonment of vessel
 - Death, person missing and presumed dead, or person overboard
 - A serious injury on board
 - Collision, grounding or fire involving vessel
 - Complete or partial failure of machinery, equipment or vessel structure that affects vessel's seaworthiness
 - Serious structural failure of a major shipboard component (for example, relating to the gangway or ships crane)
 - Failure of a shipboard system that requires the ship to be assisted to a port of refuge (SOLAS ships)
 - Loss of, damage to, movement of, or change in the state of the ship's cargo

- In relation to recreational vessels:
 - Death or serious injury resulting from the operation of the vessel
 - Any severe damage to the environment caused through the operation of a vessel

12.5 Where a notification meets the above criteria, NET must inform TAIC immediately at

§ 9(2)(g)(i)

12.6 The NET must ensure that when notifying TAIC, the General Manager Investigations, Manager Investigations and Administrator Investigations (as relevant) are copied into the email.

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Part three – managing other notifications

13. Other notifications overview

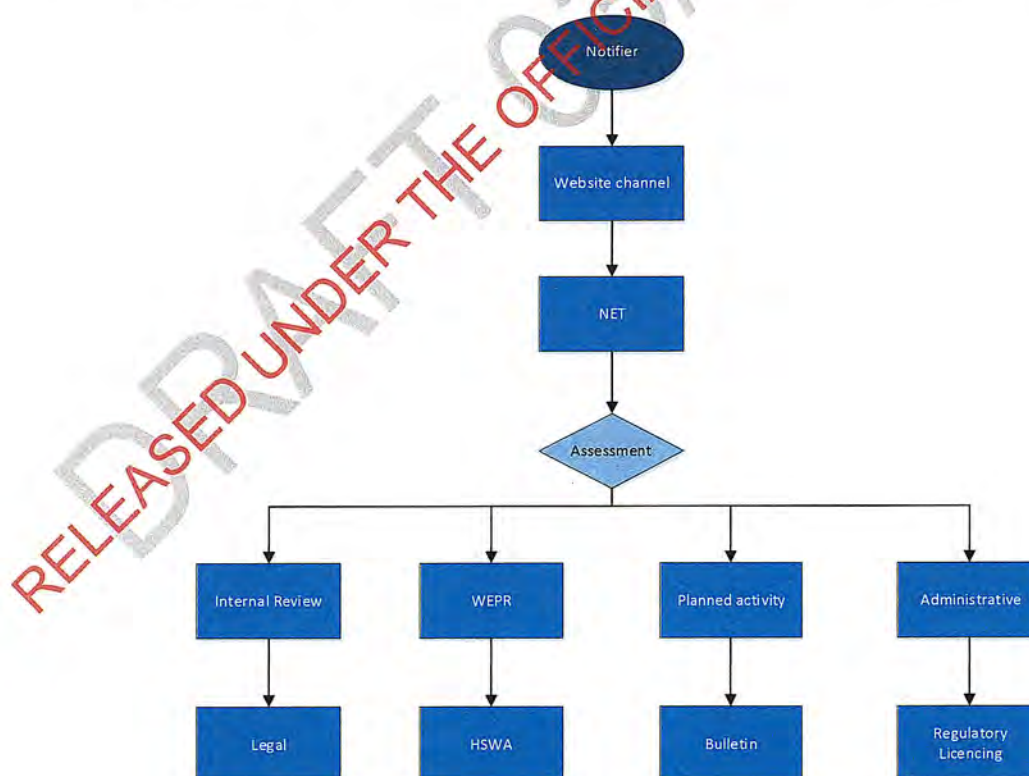
13.1 This part sets out the process and procedures for managing notifications that do not require triaging to support an operational response.

13.2 The other notifications we receive are:

- **Internal Review** – PCBUs can request an internal review of certain decisions we make under HSWA
- **Worker Engagement, Participation and Representation (WEPR)** – workers, PCBUs and Health and Safety Representatives can request assistance from us under specific circumstances
- **Planned activities** – PCBUs and maritime operators have obligations under HSWA or the MTA to tell us about certain activities they are undertaking
- **Administrative** – under the MTA those that hold a maritime document or a marine protection document have an obligation to tell us about changes to their circumstances.

14. Process overview for other notifications

14.1 High level overview of the process for managing other notifications received under the MTA and HSWA



15. Managing other notifications

WEPR notifications

- 15.1 PCBUs have obligations to ensure they have worker engagement, participation and representation practices in their workplace.
- 15.2 WEPR notifications are any notification that refers to matters captured under worker engagement, participation and representation matters in HSWA.
- 15.3 Refer to our WEPR operational policy and operational processes and procedures practice material for more information.
- 15.4 WEPR notifications refer to one of the following:

WEPR Criteria

- A request has been made to assist in resolving a health and safety issue
- A request has been made to review a Provisional Improvement Notice (PIN) by the relevant PCBU, a worker or the person to whom the notice was issued
- A cease work has been initiated and we have been asked to assist in resolving the issues relating to the cessation of work
- A complaint from a worker accusing a PCBU of adverse conduct or raising concerns with health and safety at a place of work

- 15.5 All WEPR notifications are referred to the Manager HSWA Regulatory Operations for action and response.
- 15.6 In the case of a request for assistance in resolving a cessation of work issue, we will respond to the request within 4 hours owing to the immediate or imminent health and safety risks.

Requests for an internal review

- 15.7 Under HSWA, certain decisions issued by inspectors allow for the recipient to request an internal review if they disagree with that decision. Decisions that can be reviewed relate to:
- An improvement notice
 - A prohibition notice
 - A non-disturbance notice
 - A decision in relation to a time extension to comply with an improvement notice
 - A decision in relation to our review of a provisional improvement notice issued by a Health and Safety Representative
- 15.8 Maritime NZ is required to review the decision and make a decision within 14 days after the application for internal review is received.
- 15.9 Maritime NZ has a specific operational policy and procedures on requests for internal review.
- 15.10 Requests for internal review are forwarded to the Manager, HSWA Regulatory Operations.
[Note – as per MS632]

Planned activity notifications

- 15.11 PCBUs and operators have obligations to notify Maritime NZ before they undertake certain activities. We refer to these as planned activities.
- 15.12 The reason why we must be notified of these activities is because they carry a degree of risk.

15.13 Most of these notifications don't require a regulatory response from MNZ however are important to receive so that we are aware if we are operating in the area or should anything go wrong.

15.14 There are a number of different planned activity notifications we receive:

Notification type	Detail
Notifiable work (Health and Safety in Employment Regulations)	<ul style="list-style-type: none"> • work in which a risk arises that any person may fall 5 metres or more, other than: <ul style="list-style-type: none"> ○ work in connection with a residential building up to and including 2 full storeys ○ work on overhead telecommunications lines and overhead electric power lines ○ work carried out from a ladder only ○ maintenance and repair work of a minor or routine nature • the erection or dismantling of scaffolding from which any person may fall 5 metres or more • work using a lifting appliance where the appliance has to lift a mass of 500 kilograms or more a vertical distance of 5 metres or more, other than work using an excavator, a fork-lift, or a self-propelled mobile crane • Work in any drive, excavation, or heading in which any person is required to work with a ground cover overhead • Work in any excavation in which any face has a vertical height of more than 5 metres and an average slope steeper than a ratio of 1 horizontal to 2 vertical • Work in any pit, shaft, trench, or other excavation in which any person is required to work in a space more than 1.5 metres deep and having a depth greater than the horizontal width at the top • Work involving the use of explosives, or storage of explosives for use at the worksite • Construction Diving Work in which a person breathes compressed air, or a respiratory medium other than air (diving) • Work in which a person breathes compressed air, or a respiratory medium other than air (not diving)
Notice of prospective arrival of ship carting oil or noxious liquid substance (MTA)	<ul style="list-style-type: none"> • The master or owner of a ship carrying oil or noxious liquid substance must notify MNZ prior to arriving in a New Zealand port
Notice of transfer of oil or noxious liquid substance to or from ships (MTA)	<ul style="list-style-type: none"> • Before oil or a noxious liquid substance is transferred to or from a ship, MNZ must be notified

15.15 When a planned activity notification is received it will be added to the PCBUs file in our Triton system. This can be accessed by operations teams when required to identify what activities are happening in their region.

Planned activity notifications via phone

15.16 Notifiable work can be notified by telephone. Where this is the case, the following template can be used to capture the required information.

PCBU	
PCBU contact	
Type of work	
Names of vessels (if applicable)	
Location of work	
Date work begins	
Date work ends	

Pleasure craft departing for overseas

15.17 Pleasure craft (such as yachts) that are intending to depart New Zealand cannot do so unless they notify Maritime NZ and we are then satisfied that it is safe for them to begin their voyage.

15.18 This process is managed by GRO and there is a dedicated email address for pleasure craft owners to submit their notifications. However, at times these notifications may come in through channels managed by NET.

15.19 Should this happen forward the email to:

RecreationalInternationalVoyage@maritimenz.govt.nz

15.20 There is no further action required by NET.

Administrative notifications

15.21 Holders of maritime documents or marine protection documents have an obligation to inform Maritime NZ if certain details have changed.

Administrative criteria

- In regards to a Maritime Document: a change to address, phone number or fax number
- In regards to a Marine Protection Document: a change to address, phone number or fax number.

15.22 The above criteria refer to changes that we must be notified of. We may also receive notifications referring to other changes of circumstances for our regulated parties.

15.23 Administrative notifications are referred to the Regulatory Licencing team:

Seafarers Seafarers@maritimenz.govt.nz, or

Operators Operators@maritimenz.govt.nz

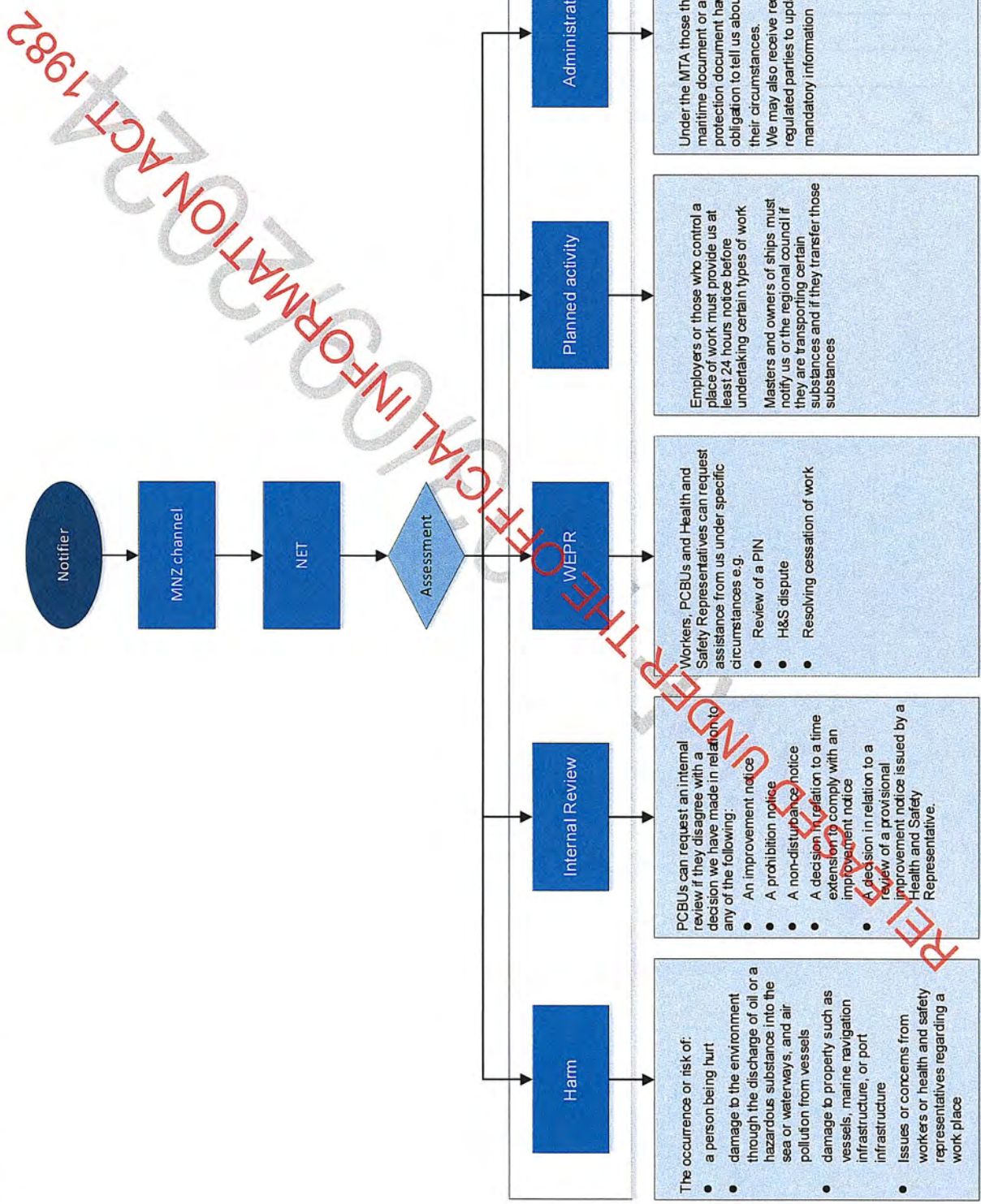
16. Version control

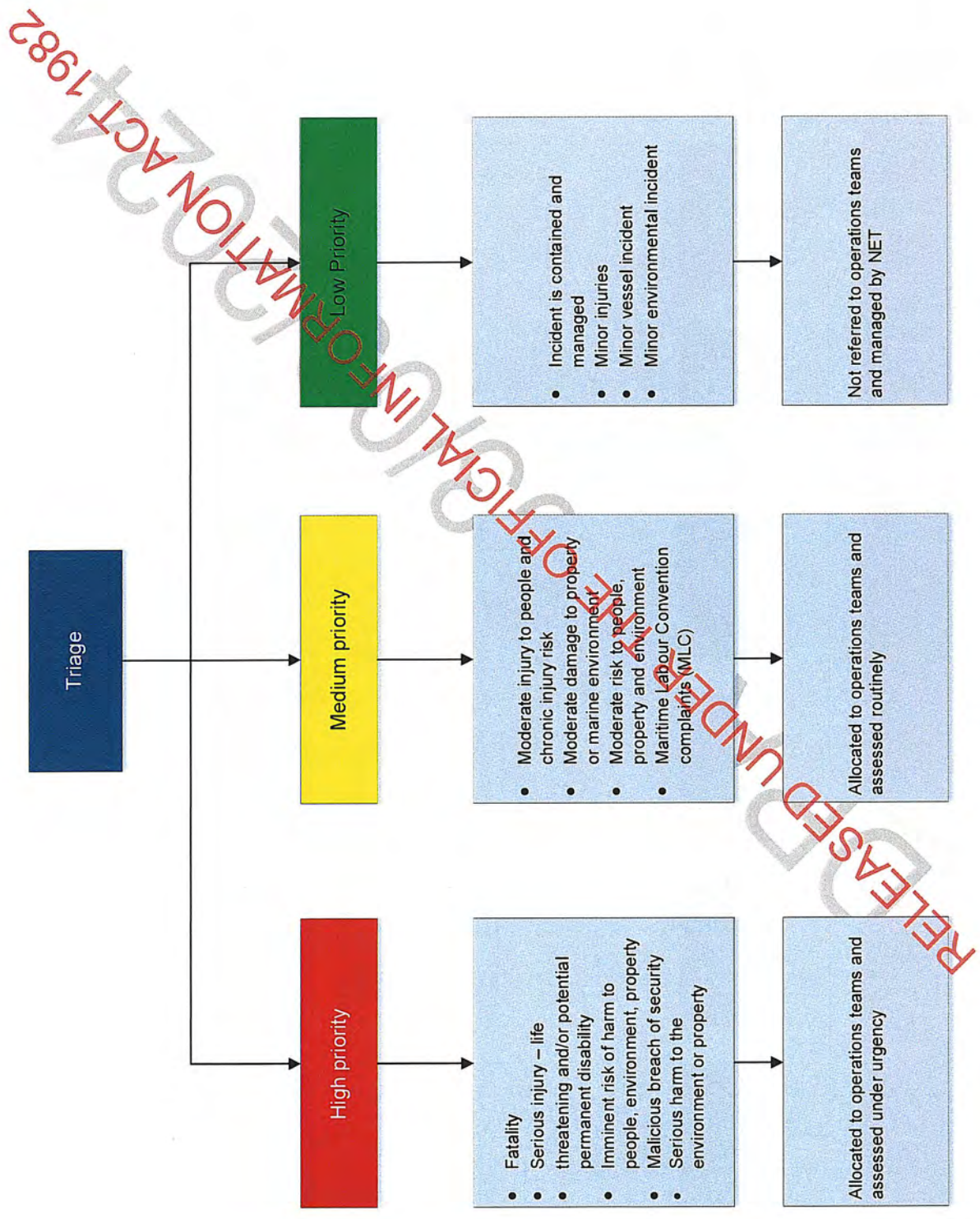
16.1 Changes made to this document are recorded in the table below.

Version	Effective Date	Author	Changes
V 1.0		§ 9(2)(a)	New document

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Practice materials





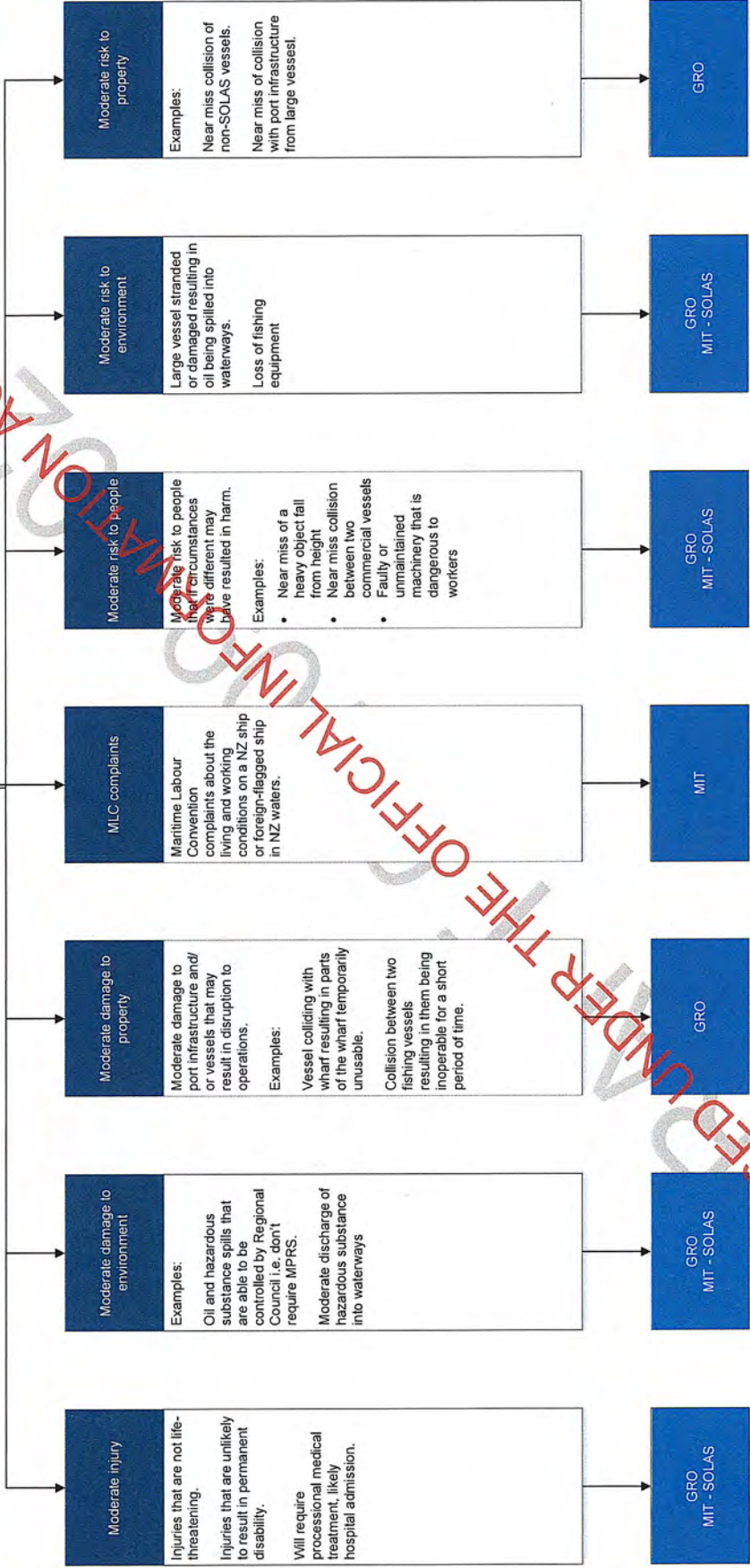
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High priority

<p>Fatality</p> <p>All fatalities:</p> <ul style="list-style-type: none"> As a result of work Medical event Non-work accident (includes recreational) Work-place suicide 	<p>Investigations</p>
<p>Serious injury</p> <p>Life-threatening injuries</p> <p>Examples:</p> <ul style="list-style-type: none"> Serious burns Serious lacerations to head and torso Crushing injury to head and torso <p>Injuries causing potential permanent disability</p> <p>Examples:</p> <ul style="list-style-type: none"> Limb amputation Serious head injury Eye injury causing blindness Spinal injury Skin separation 	<p>Investigations</p>
<p>Imminent harm People SOLAS / Non-SOLAS</p> <p>High risk of death or serious injury</p> <p>Examples:</p> <ul style="list-style-type: none"> Exposure of workers to hazardous substance Workers working at height with no or minimal safety equipment Unauthorised operator conducting high-risk activity Vessel unseaworthy in open and poor conditions 	<p>GRO MIT - SOLAS</p>
<p>Imminent harm Environment SOLAS / Non-SOLAS</p> <p>High risk of serious harm to the marine environment</p> <p>Examples:</p> <ul style="list-style-type: none"> Ongoing uncontrolled discharge of ballast water, oil or other hazardous substance Vessel unseaworthy near shallow water/rocks/coastline etc. Vessel stranded 	<p>GRO MIT - SOLAS</p>
<p>Imminent harm Property SOLAS / Non-SOLAS</p> <p>High risk of serious harm to vessel, port wharf or aquaculture facility</p> <p>Examples:</p> <ul style="list-style-type: none"> Discharge of hazardous substances close to aquaculture facility Vessel unseaworthy in close vicinity to a port or other maritime infrastructure 	<p>GRO MIT - SOLAS</p>
<p>Malicious breach of security</p> <p>Deliberate breach of security</p> <p>Caused or intent to cause significant harm to:</p> <ul style="list-style-type: none"> People Environment Port property Vessels 	<p>Security</p>
<p>Serious harm to marine environment</p> <p>Widespread marine environmental harm</p> <p>Examples:</p> <ul style="list-style-type: none"> Tier 2-3 oil spill Uncontrolled discharge of ballast water close to shore or aquaculture/ fisheries Release of highly toxic substances into waterways 	<p>Investigations</p>
<p>Serious harm to property</p> <p>Temporary or permanent closure of a port or significant disruption to maritime transport</p> <p>Examples:</p> <ul style="list-style-type: none"> Vessel collision with wharf (unusable) Vessel damages critical infrastructure e.g. cranes, docking spaces Toxin spill at port – areas unusable for long periods of time 	<p>GRO</p>

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Medium priority



Team	Primary contact	Secondary contact
Investigations	<p>[Redacted], Manager Investigations</p> <p>[Redacted]</p> <p>[Redacted], Manager Investigations</p> <p>[Redacted]</p>	<p>[Redacted], Principal Investigator</p> <p>[Redacted]</p> <p>[Redacted], GM Investigations</p> <p>[Redacted]</p>
General Regulatory Operations	<p>[Redacted], Manager GRO North 1</p> <p>[Redacted]</p> <p>[Redacted], Manager GRO North 2</p> <p>[Redacted]</p> <p>[Redacted], Manager GRO Central 1</p> <p>[Redacted]</p> <p>[Redacted], Manager GRO Central 2</p> <p>[Redacted]</p> <p>[Redacted], Manager GRO South 1</p> <p>[Redacted]</p> <p>[Redacted], Manager GRO South 2</p> <p>[Redacted]</p>	<p>Other GRO Managers in the first instance</p> <p>[Redacted], GM GRO</p> <p>[Redacted]</p> <p>[Redacted]</p>
Maritime Inspections	TBC	[Redacted], GM Maritime Inspections

All information on this page withheld under s9(2)(a)

Team	Primary contact	Secondary contact
Health and Safety at Work	[Redacted], Manager HSWA [Redacted] [Redacted]	[Redacted] [Redacted] [Redacted], Principal Advisor HSWA [Redacted] [Redacted]

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Identifying a harm notification

It is important that we identify a harm notification so that it can be prioritised and allocated to the right team in Maritime NZ.

What is harm?

1. People – an injury or illness, or both
2. The environment - contaminants released into the marine environment or emissions into the atmosphere
3. Property - damage to vessels, port buildings, port or marine infrastructure

People

- A person is dead
- A person has been physically injured
- A person has experienced mental health harm as a result of work
- A person has been exposed to a hazardous substance

Environment

- Oil is released into waterways (the sea, lakes, rivers, harbours)
- Emissions from vessels
- Garbage, fishing equipment, waste is disposed of into waterways
- A hazardous substance is released into waterways
- Uncontrolled release of ballast water into waterways

Property

- Damage to wharfs
- Damage to port infrastructure e.g. cranes, buildings
- Damage to vessels through collision (with other vessels, rocks, fixed objects such as wharfs)
- Wires on ship's own crane have snapped during loading or unloading.

All notifications that mention harm must be prioritised into High, Medium or Low.

When the notification is allocated to an operations team, they will make a decision on what course of action Maritime NZ will take.

Identifying risk of harm

Notifications that outline a risk of harm (harm that could occur), are just as important as those where harm has already happened.

Risk of harm

To people

- Work in dangerous situation without proper safety equipment e.g. workers at height
- Dangerous environments with a lack of safety systems/awareness e.g. enclosed spaces, working with hazardous substances
- Near misses with no changes to operation e.g. fall of heavy objects that narrowly miss people, unsafe machinery that could severely injure
- Vessel collisions
- A person falling overboard

To environment

A vessel is:

- Stranded (run aground)
- Foundered (filling with water and will sink)
- Capsized (turned upside down)
- Been in a collision

Damage, structural failure of machinery failure that effects the seaworthiness of the ship

Property

- Near miss vessel collision
- Near miss of large vessels with port infrastructure
- Loss of cargo from a vessel or cargo that has moved or changes that could cause a risk to ships

With risk it is important to note that some situations will cover various types of potential harm. For example, a vessel that is unseaworthy could cause harm to people, the environment and property. Likewise two large vessels that are involved in a near miss collision could cause a wide range of harms.

Required information for harm notifications

To be able to process a notification as effectively as possible, there is key information we need.

Key specifics

Do we know:

1. if the scene has been held?
2. the date and time of the event?
3. the name of the PCBU / vessel /master?
4. where the event occurred?
5. who is making the notification?

About the harm

1. Is the injury described to give us an idea of severity?
2. How many people are involved/impacted?
3. Did it occur on a vessel, on land, indoors or outdoors?
4. What is the size of the vessel/s involved?
5. If substances are involved, do we know what?
6. Is there a risk that further harm may occur?
7. Is the scene dangerous – a risk to safety of our staff attending?

Notification received in writing

If the notification is received via the online form or by email, we need to contact the notifier by phone to obtain the missing information.

Notification received by phone

If we receive a notification by phone, we use the online form to collect the information from the notifier. At a minimum we want to obtain the information in the table above.

Identifying a protected disclosure

A protected disclosure is when the discloser (can be an employee, contractor, volunteer among others):

- believes on reasonable grounds that there is, or has been, serious wrongdoing in or by their organisation.
- they disclose the information about the serious wrongdoing in accordance with the Protected Disclosures (protection of Whistleblowers) Act 2022; and
- they don't disclose the information in bad faith (bad faith means to have an intent to deceive and/or to be dishonest)

You aren't expected to manage a protected disclosure if it is received, but it is important that you can identify what may be one if it comes through our notification process.

Where it is clear the protected disclosure process is initiated

- The notifier states explicitly that they are making a protected disclosure under the Protected Disclosures (Protection of Whistleblowers) Act 2022
- They may do this by saying they are "making a protected disclosure" or refer to the Act

Where it is not clear

- A notifier has stated that they wish to remain anonymous
- A notifier has expressed concern that their employer may retaliate against them for raising health and safety issues
- They use the term 'blow the whistle'
- They refer to serious wrongdoing or breaking of the law in their organisation

What to do

If any of the above are outlined in a notification it is important that our protected disclosure process is initiated:

- Escalate to the Manager NET or Principal Advisor Net immediately
- Forward to Chief Legal Advisor
- Do not forward the notification to anyone else within Maritime NZ

If the disclosure mentions harm or potential harm

If the disclosure outlines harm or a risk of harm that we may need to respond to, inform the Manager Net or Principal Advisor Net.

The Manager NET will coordinate with the appropriate operations manager ensure that Maritime NZ responds to a harm notification while maintaining the discloser's confidentiality.

Identifying a WEPR notification

Worker engagement, participation and representation (WEPR) in health and safety is critical to managing work related risks. It involves PCBUs, workers and representatives communicating, sharing responsibility and actively collaborating to identify issues and find workable solutions to manage risks.

Under HSWA, PCBUs, Health and Safety Representatives (HSR) and workers can request Maritime NZ's assistance in a range of WEPR matters.

These requests should be triaged and referred to the Manager HSWA Regulatory Operations team for action.

Request for a review of a Provisional Improvement Notice (PIN)

A Provisional Improvement Notice (PIN) is a written notice issued by a Health and Safety Representative to a person or a PCBU asking them to address a health and safety concern in the workplace. The person or PCBU to whom the PIN was issued can, within seven days, ask Maritime NZ to review the PIN.

Request to resolve a workplace health and safety issue

If an issue about work health and safety happens at a workplace, those involved in the issue must make all reasonable efforts to resolve the issue. If the issue has not been resolved, they can ask Maritime NZ to assist.

Request to resolve cessation of work issues

A worker can stop or refuse to carry out work (or be directed to by a Health and Safety Representative) if they believe that the work is unsafe or would expose them to a serious health and safety risk. If attempts have been made and failed to resolve the issue, a worker, health and safety representative or PCBU can ask Maritime NZ to assist.

Request to remove a Health and Safety Representative (HSR)

A PCBU can request the removal or suspension of a HSR for unsatisfactory performance.

Request to decide the membership of a Health and Safety Committee

If requested by a party to the issue, Maritime NZ may decide an issue in relation to the membership of a health and safety committee.

What to do

If any of the above matters are outlined in a notification it is important that these are referred to the Manager HSWA Regulatory Operations for action.

In the case of a request to resolve a cessation of work issue, we will respond to the request within 4 hours owing to the likely immediate or imminent health and safety risks.

Emergency

We may receive a notification that outlines an emergency and needs a response from the Rescue Coordination Centre NZ or Maritime Response.

It likely requires an emergency response if, for example:

- a vessel is unseaworthy and is in danger of capsizing, floundering, or stranding
- people are in danger and require immediate rescue
- someone has fallen overboard and is lost
- significant discharge of oil or another hazardous substance occurs and emergency management is required to contain the spill.

If it is an emergency, immediately phone RCCNZ and email them through the notification

Emergency type	Team	Contact
Search and Rescue	Rescue Coordination Centre (RCCNZ)	RCCNZ1@maritimenz.govt.nz 0508 472 269
Marine pollution incident	Maritime Response	RCCNZ1@maritimenz.govt.nz 0508 472 269

Mandate

Is it something Maritime NZ can respond to?

It is likely to require a Maritime NZ regulatory response (including a decision to take no action) if it relates to:

- An accident or event on a port
- An accident or event involving a vessel in NZ's waterways (seas, harbours, lakes, rivers)
- Risk of potential harm on a port, vessel or waterways of NZ
- A security event on a port
- NZ's obligations under an international maritime agreement
- Maritime or search and rescue infrastructure

It may not be ours if:

- An accident or event occurs off the waterways or is not on a NZ Port
- It is a personal dispute between individuals or a work-related dispute
- An assault on a vessel or Port

Harm notification triage process

The high-level process for the initial prioritisation of harm notifications is outlined below.

Pre-checks

1. Identify that the notification relates to harm or potential harm
2. Check that we have the required information
 - a. If not, contact the notifier
3. Check whether it relates to an emergency
 - a. If so, refer to RCCNZ
4. Check whether it is within Maritime NZ's mandate
 - a. If WorkSafe, refer to them directly – close and advise notifier
 - b. If for another agency - close and advise notifier
5. Check whether the notification is a protected disclosure
 - a. If so, inform Manager NET or Principal Advisor NET

Triage

6. Prioritise the notification as High, Medium or Low
7. If assessed as High or Medium Determine what team is allocated the notification for response
8. Determine whether the scene has been held

High priority

9. Phone the relevant operations manager immediately and inform them that a high notification has been received. If known inform them of:
 - a. Other agencies involved
 - b. Safety of the scene
 - c. Whether the scene has been preserved
10. Email the notification through to the operations manager immediately
11. Enter the notification into Triton and allocate to the relevant operations manager

Medium priority

12. If the scene is held phone the operations manager and inform them that a medium priority notification requires a scene release decision
13. Forward the notification in email form to the operations manager
14. Enter the notification into Triton and allocate to the relevant operations manager
15. If the scene is not held, a phone call is not required. Just enter the notification into Triton and allocate to the relevant operations manager.

Low priority

16. Determine whether there is any need for us to provide education to the notifier
17. Close the notification:
 - a. Hard close (no further action)
 - b. Soft close (no further action with education)

Email templates

[To come]

DRAFT 03/09/2024
RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Operations triage

PROCESS AND PROCEDURE (MS639)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

DRAFT 03/09/2024
RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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Operations triage process and procedure

Code	MS639 Version 1.0	Issue Date	dd/mm/yyyy
FileM8 Reference	D24/49992	Review Date	dd/mm/yyyy

1. Purpose

- 1.1 This document sets out how operations teams respond to notifications that have been triaged and received an initial prioritisation.

2. Scope

- 2.1 This document relates to notifications that have outlined harm or a risk of harm to people, the marine environment and property.
- 2.2 It does not relate to other notifications such as planned activities, administrative, request for internal review or those related to WEPR.

3. Overview

- 3.1 Maritime NZ receives a range of notifications as the regulator for the maritime domain and ports of Aotearoa. Harm refers to harm to people, the environment, property or the security of ships and ports
- 3.2 Notifications that outline harm or potential harm are prioritised over the other types of notifications because there is a need for a decision on how we respond operationally. Harm notifications may require a response to support our harm-prevention approach or identify potential compliance action.

4. Triage approach

- 4.1 Our approach to regulating the maritime and ports sector is to prevent harm and/or to prevent further harm from occurring.
- 4.2 This means that when we receive a notification, our decision on how we respond is considered in line with this approach.
- 4.3 We choose which of our regulatory tools will be most effective in supporting harm prevention along with the use of any potential enforcement tools that may be used during or after a regulatory response.

5. Initial prioritisation

- 5.1 Initial prioritisation of notifications is primarily managed by the Notification and Enquiries Team (NET). NET's role is to categorise the harm-related notifications we receive into one of three categories; high, medium or low.
- 5.2 High and medium notifications will be allocated to operations teams to consider a regulatory response. Low notifications will not be allocated to operations teams and will remain with NET for recording and close off.
- 5.3 The criteria for the three categories is outlined at a high-level below:

High	Medium	Low
<ul style="list-style-type: none"> death serious injury or serious illness that is life-threatening where the person is likely to have a serious permanent disability or health effect serious damage to a vessel or port including equipment used for port operations serious harm to the environment through a pollution event that is widespread, or in a protected area, or poses a significant danger at a port, or the event results in the closure of fishers/aquaculture or significant fatalities to marine animals. Malicious breach of security Maritime Labour Convention (MLC) complaints related to seafarer welfare 	<ul style="list-style-type: none"> a moderate injury or illness, which is an injury that requires medical attention causing a temporary disability or health effect a chronic work related health matter moderate damage to a vessel a moderate pollution (not including oil pollution) event. This is an event that is localised or near shore that covers a moderate sized area or involves a highly toxic substance, or where environmental recovery is likely to take less than a year moderate damage that makes a navigational aid ineffective moderate damage where part of a port's operation is compromised or the event has caused moderate disruption to commerce, transport or the public. Other MLC complaints 	<ul style="list-style-type: none"> an incident that is contained and managed with no or minor harm to people, property, security or the marine environment, and a low potential for further harm to occur.

6. Team responsibilities

6.1 Our frontline teams have a range of experience and expertise suited to responding to certain types of notifications.

6.2 Once an initial category has been assigned to a notification, in the first instance it will be allocated to the following teams to consider our response:

Category	Details	Team
High	Harm that has occurred	Investigations
High	Risk of harm	GRO
High	Risk of harm (SOLAS)	MIT
Medium	Harm that has occurred and risk of harm	GRO
Medium	Harm that has occurred and risk of harm (SOLAS)	GRO

7. Direct notifications

- 7.1 We encourage those that need to make a notification to us to use the online form on our website. However this will not always happen and frontline staff will often receive notifications directly from the maritime sector, RCCNZ or other agencies (such as Police).
- 7.2 Direct notifications most often occur when something significant has happened (such as something we would categorise as high) or if a PCBU requires a timely decision on whether we should release a scene of an event or if the scene can be released.
- 7.3 Where a notification that outlines harm or risk of harm is received directly by frontline staff, their role will be to obtain the relevant information so that an initial prioritisation can be made.
- 7.4 If a notification is received directly, the staff member who receives the notification will be responsible for capturing the required information and entering it directly into the online form for it to be processed by the NET. It is recommended that the staff member fills out the form with the notifier while on the phone. This ensures that key information is obtained to support making a decision and that we have a record of the notification.
- 7.5 Once the information is obtained, the notification will need to be categorised into high, medium or low. Sometimes this will be straightforward, for example if a fatality occurs this will be categorised as high and assigned to the Investigations team. In other cases, the criteria will need to be worked through to make the initial categorisation:
- High – follow the procedure in section 8 below
 - Medium – follow the procedure in section 9 below
 - Low – the notification will be managed by NET

8. High notifications

Verification

- 8.1 The first step when receiving a high notification is to assess if it has been categorised correctly. The information in the table below, though not exhaustive can be used to guide decision-making:

Harm	Description	Team
Fatality	All fatalities: <ul style="list-style-type: none">• As a result of work• Medical event• Non-work accident (includes recreational)• Work-place suicide	Investigations Note: Investigations will generally only investigate work-related deaths. However, during the notification stage it may not be clear how the death occurred. Investigations will likely have to make initial inquiries to be able to confirm the circumstances.
Serious injury	Life-threatening injuries Examples: <ul style="list-style-type: none">• Serious burns• Serious lacerations to head and torso• Crushing injury to head and torso Injuries causing potential permanent disability Examples:	Investigations

Harm	Description	Team
	<ul style="list-style-type: none"> • Limb amputation • Serious head injury • Eye injury causing blindness • Spinal injury • Skin separation 	
Serious harm to environment	<p>Widespread marine environmental harm</p> <p>Examples:</p> <ul style="list-style-type: none"> • Tier 2-3 oil spill • Uncontrolled discharge of ballast water close to shore or aquaculture/fisheries • Release of highly toxic substances into waterways 	Investigations
Serious harm to property	<p>Temporary or permanent closure of a port or significant disruption to maritime transport</p> <p>Examples:</p> <ul style="list-style-type: none"> • Large vessel collision with wharf (unusable) • Large vessel damages critical infrastructure e.g. cranes, docking spaces • Scene preserved as a result of serious event that closes access to critical infrastructure • Toxin spill at port – areas unusable for long periods of time 	Non-SOLAS – GRO SOLAS - MIT
Serious risk of harm to people	<p>High risk of death or serious injury</p> <p>Examples:</p> <ul style="list-style-type: none"> • Exposure of workers to hazardous substance • Workers working at height with no or minimal safety equipment • Unauthorised operator conducting high-risk activity with passengers e.g. bar crossing • Vessel unseaworthy in open and poor conditions • Maritime Labour Convention complaints 	Non-SOLAS – GRO SOLAS - MIT
Risk of harm environment	<p>High risk of serious harm to the marine environment</p> <p>Examples:</p> <ul style="list-style-type: none"> • Ongoing uncontrolled discharge of ballast water, oil or other hazardous substance • Vessel unseaworthy near shallow water/rocks/coastline etc. • Vessel stranded 	Non-SOLAS – GRO SOLAS - MIT
Risk of harm property	<p>High risk of serious harm to vessel, port, wharf or aquaculture facility</p> <p>Examples:</p> <ul style="list-style-type: none"> • Discharge of hazardous substances close to aquaculture facility 	Non-SOLAS – GRO SOLAS - MIT

Harm	Description	Team
	<ul style="list-style-type: none"> Vessel unseaworthy in close vicinity to a port (not at dock) 	

Categorised incorrectly

- 8.2 If upon further assessment the notification does not meet the criteria for high and instead should be re-categorised as medium, the change will be made in our system and recorded with the rationale. The notification should then be re-allocated:
- If it was assigned to Investigations for harm that has occurred – reallocate to GRO
 - If categorised as high for risk of harm it will remain with the GRO or MIT (SOLAS related)

Contact the notifier

8.3 If a high rated notification is received we will contact (by phone where possible) the notifier or in the case of a HSWA notification, the PCBU as soon as possible, but within 4 hours of receiving the notification.

8.4 When speaking to the PCBU/notifier, we need to verify the information provided or if necessary obtain further detail:

- Location of event (we may need this to be more specific if it occurs on a large port or open water)
- Whether the scene is safe or whether there is the risk of further or ongoing harm occurring
- If the scene has been made safe, what controls have been put in place
- Whether there are any other agencies at the scene:
 - Police
 - Fire Service
 - Ambulance
 - TAIC
- Further detail on the harm (if necessary):
 - How many people have been harmed or are/were at risk
 - Information on injuries if known
 - If a discharge of hazardous substance has occurred do we know what substance, indication of volume, where the substance has been discharged
- Whether the scene has been preserved

8.5 Once sufficient information has been obtained about the event, a decision must be made on whether to:

- continue to hold or release the scene under HSWA
- direct the scene be held under the MTA

Scene preservation HSWA

8.6 Where harm has occurred and categorised as high, we are dealing with serious and significant harm to people. In these instances we are likely to begin conducting an investigation and therefore will require the scene to continue to be held.

8.7 If the PCBU has not preserved the scene under HSWA as they are required to do, we may need to consider issuing a non-disturbance notice. In addition to issuance of the notice, we should follow-up with the PCBU in writing (email) to remind them of their obligation.

8.8 When the scene is preserved remind the PCBU that this means:

- the work set-up must not be changed;

- any plant, vehicles, structures, substances or other things involved in the event must stay in place and not be moved; and
- the site should not be cleaned.

Scene preservation MTA

- 8.9 Where the notification does not fall under HSWA, we may need to consider whether the scene should be held under the MTA.
- 8.10 If there has been an event (accident, incident or mishap) or a pollution incident that we intend to investigate, inform the operator that we require the scene be preserved under section 235A of the MTA.
- 8.11 Inform the operator that the scene is not to be touched until authorised by Maritime NZ.

High risk of serious harm

- 8.12 In many cases where we are notified of high risk or serious harm or imminent risk of serious harm, there will likely not be a scene to preserve. Therefore it is important that a decision is made quickly on whether we deploy resource immediately to a site where the risk has been identified.
- 8.13 Consideration of immediate deployment:
- Following phone inquiries, you are not satisfied that the PCBU or operator has made the scene safe or the risk is not managed or contained
 - The likelihood of serious harm is high if we do not intervene

9. Medium notifications

Verification

- 9.1 The notification will be assessed against the categorisation criteria to determine whether it has been categorised correctly:

Harm	Description
Moderate injury to people and chronic injury risk	Injuries that are not life-threatening. Injuries that are unlikely to result in permanent disability. Examples: <ul style="list-style-type: none"> • Broken bones • Amputation of finger Will require professional medical treatment, likely hospital admission.
Moderate damage to the marine environment	Examples: Oil and hazardous substance spills that are able to be controlled by Regional Council i.e. don't require MPRS. <ul style="list-style-type: none"> • Moderate discharge of hazardous substance into waterways
Moderate damage to property	Moderate damage to port infrastructure and/or vessels that may result in disruption to operations. Examples: Vessel colliding with wharf resulting in parts of the wharf temporarily unusable. <ul style="list-style-type: none"> • Collision between two fishing vessels resulting in them being inoperable for a short period of time.

Harm	Description
	<ul style="list-style-type: none"> Wires on ship's own crane have snapped during loading or unloading.
Moderate risk of harm people	<p>Moderate risk to people that if circumstances were different may have resulted in harm.</p> <p>Examples:</p> <ul style="list-style-type: none"> Poor safety controls in a workplace that may result in moderate injuries Near miss collision between two non-SOLAS vessels
Moderate risk of harm environment	<ul style="list-style-type: none"> Non-SOLAS vessel stranded or damaged resulting in oil being spilled into waterways. Loss of fishing equipment Discharge of substance from SOLAS vessel
Moderate risk of harm property	<ul style="list-style-type: none"> Near miss collision of non-SOLAS vessels Near miss of collision with port infrastructure from large vessels.

9.2 If satisfied that the notification has been categorised correctly, it will follow the medium notification process outlined below.

Categorised incorrectly

9.3 If you assess the notification against the medium criteria and believe it should have been categorised as low, record this on the Triton record along with your rationale. The notification is then referred back to NET to manage and close off.

9.4 If you assess the notification against the medium criteria and believe it should have been categorised as high:

- Refer to Investigations if it is for an event that has already occurred
- If it is for an event that outlined a high risk of serious harm, follow the high notification procedure above and consider whether we need deploy resources immediately and whether the scene needs to be preserved under HSWA or MTA.

Initial information gathering

9.5 When assessing our response to a medium notification, we need to make a decision on whether we require the scene to be preserved or whether we should release it.

9.6 In most cases it is unlikely we will require a scene be preserved for a medium notification, however we need to speak with the notifier or PCBU to confirm the details of the event they have notified us of. Our decision on whether to hold or release the scene needs to be made within 4 hours, so give yourself enough time to gather the information and make an informed decision.

9.7 You may be able to make a decision on the scene during your initial engagement with the PCBU, so ensure that you have any relevant information on-hand that may impact your decision. For example:

- Compliance history of the PCBU
- Notes on file that indicate the PCBUs attitude toward compliance
- Whether we have any relevant areas of concern about the PCBU, identified in previous inspection or audits
- If there is any active investigation/enforcement action in respect of the PCBU

Contact the notifier

- 9.8 When speaking to the PCBU/notifier, we need to verify the information provided or if necessary obtain further detail:
- Location of event (we may need this to be more specific if it occurs on a large port or open water)
 - Whether the scene is safe or whether there is the risk of further or ongoing harm occurring
 - If the scene has been made safe, what controls have been put in place
 - Whether there are any other agencies at the scene:
 - Police
 - Fire Service
 - Ambulance
 - TAIC
 - Further detail on the harm (if necessary):
 - How many people have been harmed or are/were at risk
 - Information on injuries if known
 - If a discharge of hazardous substance has occurred do we know what substance, indication of volume, where the substance has been discharged
 - Whether the scene has been preserved

Scene preservation and response

- 9.9 The starting point for medium notifications is to consider a reactive inspection. The purpose of an inspection is to understand and observe the conditions that led to the harm or the risk of harm. Ultimately, we want to support improvements to health and safety conditions at places of work under our mandate. This can be achieved through the use of our corrective or enforcement tools or supporting the PCBU to take the necessary actions to improve their own workplace.
- 9.10 Because for most medium notifications we will conduct an inspection, it is unlikely that we will require the scene to be preserved. However it is still important that an assessment is made and to determine whether scene preservation is appropriate based on the specifics of the notification.

Decision is to release the scene

- 9.11 If the PCBU has preserved the scene under HSWA, authorise the release of the scene verbally and follow up with an email to provide a written record of the scene release.
- 9.12 Advise the PCBU of our intended response which will be to conduct an inspection of the system/area relating to the event notified. Advise that a MNZ inspector will be in touch within 7 days to organise the specifics such as time and date of the inspection.

Decision is to hold the scene

- 9.13 If there are risk factors that are identified while reviewing the PCBU and/or from the engagement with the notifier that lead you to believe that the scene should be held, then advise the PCBU to continue to preserve the scene.
- 9.14 If the PCBU has not preserved the scene under HSWA as they are required to do, we may need to consider issuing a non-disturbance notice. In addition to issuance of the notice, we should follow-up with the PCBU in writing (email) to remind them of their obligation.
- 9.15 When the scene is preserved remind the PCBU that this means:
- the work set-up must not be changed;
 - any plant, vehicles, structures, substances or other things involved in the event must stay in place and not be moved; and
 - the site should not be cleaned.

Triaging criteria

Risk of further harm	
High	<p>If we don't intervene:</p> <ul style="list-style-type: none"> It is likely that harm will occur in the future
Medium	<p>If we don't intervene:</p> <ul style="list-style-type: none"> It is possible that the harm will occur in the future
Low	<p>If we don't intervene:</p> <ul style="list-style-type: none"> It is unlikely that the harm will occur in the future
Harm prevention focus	
Strong alignment	<ul style="list-style-type: none"> The harm or risk of harm outlined in the notification directly relates to one of our harm prevention focus areas
Moderate	<ul style="list-style-type: none"> There is some correlation to one of our harm prevention focus areas
Weak	<ul style="list-style-type: none"> No clear relation to one of our harm prevention focus areas
Compliance history	
Poor	<ul style="list-style-type: none"> The PCBU has an extensive history of non-compliance for harm-related issues.
Inconsistent	<ul style="list-style-type: none"> There is a history of infrequent non-compliance along with examples of good compliance.
Good	<ul style="list-style-type: none"> The PCBU's compliance history is generally good with no significant matters brought to our attention. There may be some minor issues that have been addressed to our satisfaction.
Behaviour	
Poor	<ul style="list-style-type: none"> Has shown a disregard for meeting legal obligations History of exploiting and/or ignoring concerns raised by workers Putting economic advantage over meeting health and safety obligations
Mixed	<ul style="list-style-type: none"> Has exhibited a reluctance to meet legal obligations, however will when engaged by the regulator Has a mixed history of engaging with workers and addressing concerns
Good	<ul style="list-style-type: none"> Has fit-for-purpose safety systems in place Engages with workers and addresses concerns Generally has positive engagement with the regulator and works to address identified deficiencies in practice

9.16 If on assessment there are indications that the PCBUs compliance history and behaviour are poor, then we may need to consider an investigation. Our first step will still be to conduct an

inspection to gather additional information/evidence. The inspector on scene will make the inquiries and discuss with their manager.

- 9.17 If the inspection confirms indications of poor harm prevention systems or negligence toward legal obligations, alongside recent non-compliance or harm-related incident, then an investigation is likely required.
- 9.18 If upon inspection, the inspector considers that the harm or risk of harm outlined in the notification is more serious than initially notified, they may also need to consider an investigation. Depending on the severity of harm, the inspector will discuss this with their manager to consider referring the matter to the Investigations team.
- 9.19 If upon initial assessment, the PCBU has a good history of compliance and behaviour, we will likely choose to conduct a remote inquiry. The purpose of this is to verify the harm or risk of harm that has occurred and to verify what steps the PCBU has taken to address the harm notified.
- 9.20 If the inspector is satisfied that the harm was a one-off event and that the PCBU has addressed the matter notified, the inspector will note the conversations and follow up with an email outlining the nature of the discussion. The file will be closed and no further action taken at this time.

Investigation

- the event was as a result of the duty holder's wilful or reckless action, or their negligence; or
- the duty holder has a history of repeat offending, or where those involved have been in multiple harm related incidents; or
- there is a trend of high or moderate harm occurring from similar events across other duty holders in the same or similar industry; or
- If there is a high Public Interest

Remote inquiry

If we receive a medium rated notification where:

- the event wouldn't reasonably have been anticipated and there isn't clear guidance for the industry involved; or
- the injury appears disproportionately higher than would be anticipated for an event of that type and the duty holder is known to be effective in the way it manages risks;
- there is an inherent risk for which there is little the duty holder could do to reduce either the likelihood of the event or the consequences should the event occur again.

We will ensure the duty holder has any relevant information to support their health and safety performance and close the file.

How we assess risk

9.21 **Text to come**

Risk is assessed by using a risk matrix to inform

9.22 **Text to come**

Process

Receipt

1. Check details of the notification
2. Assess against categorisation criteria

Re-categorisation

- 3. If it should be high:
 - a. Event occurred – Investigations
 - b. Risk of harm – GRO or MIT (SOLAS)
- 4. If it should be Low:
 - a. Refer back to NET

Response

- 5. Assess the notification against triage criteria
- 6. Identify a preliminary response
- 7. Contact the notifier:
 - a. Confirm/collect key information
- 8. Confirm regulatory response
- 9. Make scene decision
- 10. Advise notifier PCBU of our response and indicative timeframe for attendance

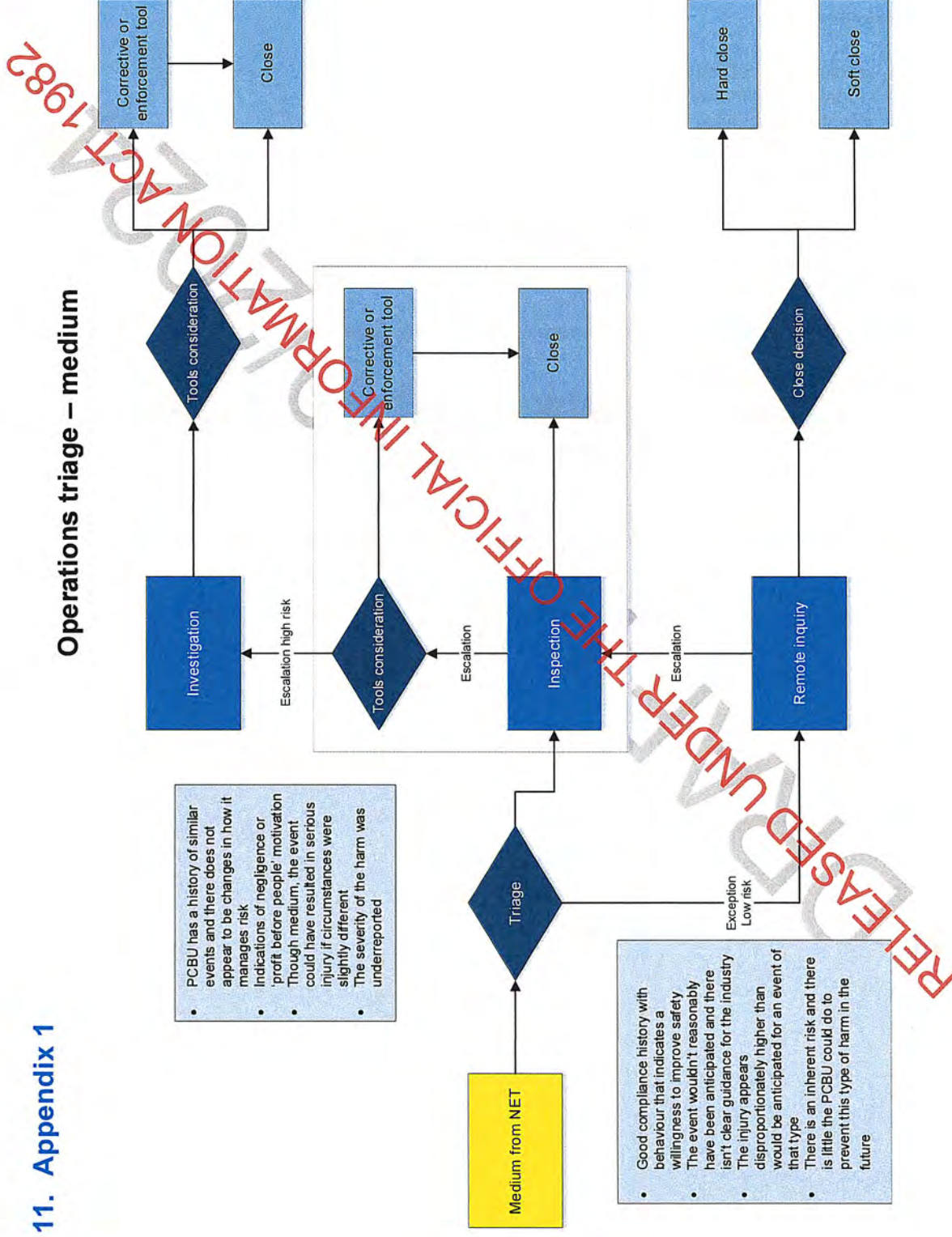
10. Version control

10.1 Changes made to this document are recorded in the table below:

Version	Effective Date	Author	Changes
V 1.0		s 9(2)(a)	New document

11. Appendix 1

Operations triage – medium



Health and Safety at Work Act 2015 (HSWA)

Worker engagement, participation and representation
(WEPR)

Operational procedure and process

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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1 Purpose

1.1 This document sets out Maritime New Zealand's (Maritime NZ) procedure and processes for inspectors and investigators who regulate worker engagement, participation and representation (WEPR) provisions of the Health and Safety at Work Act 2015 (HSWA) and Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (WEPR Regulations). The document comprises six sections detailing:

- duties and obligations of Person Conducting a Business or Undertaking (PCBU) in relation to WEPR
- Maritime NZ's expectations for PCBUs to meet their HSWA obligations
- benefits of worker engagement and participation in the workplace
- procedures and processes for managing WEPR related requests from PCBUs, Health and Safety Representatives (HSR) and workers
- guidance to support Maritime Officers (MO), HSWA Specialists (HS) and Specialist Investigators (SI) when conducting WEPR-related inspections and investigations
- WEPR-related enforcement actions

2 Context

2.1 Worker engagement, participation and representation in health and safety is critical to managing work related risks. It involves PCBUs, workers and representatives communicating, sharing responsibility and actively collaborating to identify issues and find workable solutions to manage risks. One key to the success of any health and safety system is that workers are given the opportunity to participate in health and safety, and can contribute to what good practice should look like. Workers are in the best position to know how a job is done and how it affects them and can provide practical solutions to improving work health and safety.

2.2 HSWA and WEPR Regulations place obligations on all PCBUs to seek and consider worker views on matters relating to work health and safety. They also:

- set out the powers and responsibilities of HSRs
- provide protection for workers who raise health and safety issues
- require that PCBUs must have effective worker participation practices appropriate to the business
- specify that a PCBU must initiate a HSR election if requested by a worker
- require PCBUs to establish a health and safety committee (HSC) if requested by a HSR, or five or more workers at the workplace
- ensure the worker participation system includes a general duty to involve and consult workers on health and safety matters.

3 Scope

3.1 This procedure and associated processes applies to staff appointed as Inspectors (inspector) under HSWA, including Maritime Officers, HSWA Specialists, Maritime Inspectors and Specialist Investigators who conduct HSWA general inspections, and/or engage with PCBUs on WEPR matters.

3.2 The procedure sets out the responsibilities of other Maritime NZ staff that have a role in the operational delivery of inspections (see Appendix 1).

4 Duties and obligations of PCBUs in relation to WEPR

4.1 PCBUs have a duty to engage with their workers and enable them to participate in improving health and safety. Sections 58 and 61 HSWA state that a PCBU must:

- engage with workers who carry out work for it who are, or are likely to be, directly affected by a matter relating to work health and safety, so far as reasonably practicable
 - have practices that provide reasonable opportunities for workers who carry out work for it to participate effectively and on an ongoing basis in improving health and safety.
- 4.2 The nature of engagement with workers by the PCBU is prescribed in s 59 HSWA including the requirements that relevant information is shared with workers in a timely manner and that workers be given reasonable opportunity to express their views, to raise work health and safety issues in relation to the matter and contribute to the decision making process. The PCBU is required to take the views of workers into account and that workers be advised of the outcome of the engagement in a timely manner.
- 4.3 HSWA further identifies eight specific circumstances when engagement with workers is required by the PCBU (s 60). This includes engaging with workers when identifying hazards and assessing risks to work health and safety, when making decisions about ways to eliminate or minimise those risks and when proposing changes that may affect the health or safety of workers.
- 4.4 Under s 61 HSWA, a PCBU must have practices that provide reasonable opportunities for its workers to participate in improving health and safety effectively and on an ongoing basis. 'Reasonable opportunity' means opportunities that are reasonable in the circumstances, taking into account relevant matters such as the number of workers working in the business or undertaking and the likely risks to work health and safety in the business or undertaking and the level of those risks.
- 4.5 The representation of workers is enabled through the election of HSRs and the establishment of HSCs prescribed in HSWA provisions ss 62 and 63 (election of HSRs), ss 64 and 65 (determining work groups and the number of HSRs per group) and s 66 (establishment of HSCs).
- 4.6 Schedule 2 of HSWA and WEPR Regulations contains further obligations and requirements of PCBUs to HSRs and HSCs. The Regulations include additional duties and responsibilities on PCBUs, including:
- how to establish and determine work groups
 - election, training, and information about HSRs
 - membership of HSCs.

5 Maritime NZ's expectations for PCBUs to meet their HSWA obligations

- 5.1 All businesses and undertakings must have worker engagement and participation practices regardless of their size, level of risk or the type of work they carry out. It is up to each PCBU to determine the best way to meet its worker engagement, participation and representation duties and obligations. A PCBU does not have to engage with all workers that their business or undertaking influences and directs, only with those workers that carry out work for the business or undertaking.
- 5.2 Our expectations for engagement by a PCBU include:
- sharing information and decisions in a timely way
 - giving reasonable opportunities for workers to express their views and to raise work health and safety issues in relation to the matter
 - allowing workers to contribute to the decision-making processes
 - taking into account the views of the workers when making health and safety decisions
 - advising workers of the outcome of the engagement in a timely manner.
- 5.3 Our expectations for worker participation by a PCBU include:
- giving people opportunities to raise issues or suggestions in a timely way

- ensuring workers know how to participate and have opportunities to do so
 - having decision makers who consider and respond to workers' issues or suggestions.
- 5.4 Our expectations of PCBU's in meeting their duties in worker representation include:

- initiating an election of workers to be HSRs when requested
- HSRs being well-established and supporting worker engagement
- establishing health and safety committees if requested by an HSR or 5 workers
- encouraging workers to have representation for health and safety.

6 Benefits of worker engagement and participation in health and safety

6.1 Effective worker engagement and participation leads to:

- greater recognition of workplace risks
- making sure health and safety controls are practical because of the input and experience of a range of people including those doing the task
- increased commitment to implementing decisions because workers have actively been involved in reaching them and
- people taking responsibility and making good choices to work in a healthy and safe way

7 Guidance to support MOs, HSs and SIs when reviewing WEPR related practices during inspections

- 7.1 Inspectors must be familiar with WEPR related provisions in HSWA including ss 58-66 and Schedule 2, Parts 1 and 2 and the WEPR Regulations. The following procedure sets out Maritime NZ's expectations for PCBUs in meeting their HSWA obligations and provides guidance when inspecting and assessing WEPR activities in the workplace. This should be applied in conjunction with WorkSafe's WEPR Assessment Tool.
- 7.2 The PCBU should be able to demonstrate established and effective good practice across all aspects of engagement, participation and representation which meet the requirements of HSWA and Maritime NZ's expectations as referenced in section 5 above.
- 7.3 The aide memoire for inspections, found in HSWA General Inspections Operational Procedure and Process D24/19713, contains WEPR-related topics for enquiry during an inspection.
- 7.4 WorkSafe's WEPR Assessment Tool and Maritime NZ's e-module on WEPR, provide material to assist inspectors in assessing WEPR in the workplace including what effective engagement, participation and representation looks like.
- 7.5 When assessing engagement, we look for a positive workplace culture. Both management and workers should be at ease and open about health and safety issues, their practices, and how changes to these are made. It should also be clear that both management and workers understand the health and safety risks and controls in the workplace. Examples of good practice includes workers observed speaking up and being actively involved in decisions on health and safety practices including the management of risks and ways to reduce the likelihood of harm from workplace activities.
- 7.6 In an assessment of participation, open two way communication between the PCBU, their workers and/or representatives that could affect health and safety should be evident. A PCBU's worker participation practices must provide reasonable opportunities for workers to effectively participate in improving health and safety on an ongoing basis. Examples of participation include documentation from meetings with workers that demonstrates that their suggestions on health and safety matters are being discussed and considered by the PCBU,

and workers being able to demonstrate the channels e.g. HSC meetings, toolbox talks, through which health and safety issues can be raised.

- 7.7 A PCBU should be able to demonstrate effective representation practices to an inspector. Examples of good representation practice include the initiation of the elections of HSRs by the PCBU where requested, PCBU's allowing HSRs reasonable time to liaise with workers and managers, regular meetings of HSCs (where one has been established) and workers knowing who their HSRs are.
- 7.8 Inspectors need to establish reasonable belief and confidence that the workers and PCBU:
- understand their legal duties under HSWA and WEPR Regulations
 - demonstrate engagement and effective participation practices
 - the PCBU is meeting its WEPR duties
- 7.9 If multiple or serious WEPR issues are identified in a HSWA general inspection, follow-up will be required to determine whether there are resulting health and safety risk-management issues. Issues that may prompt this response include workers having been nominated for election as an HSR by management and not by their peers, workers not knowing who their HSR is, an HSR who has not completed training within a reasonable time of being elected, and workers not knowing the process for raising a health and safety issue.

Procedure: HSWA General Inspections Operational Procedure and Process D24/19713

Assessment tool: Worker Engagement, Participation and Representation (WorkSafe) D24/417 (N.B WorkSafe's enforcement-decision making (EDM) tool is not applicable to Maritime NZ)

e-module: Safer Ports HSWA Capability Programme: Worker engagement, participation and representation (WEPR). Te Waka Ako

8 Engaging with health and safety representatives and workers

- 8.1 Having strong worker engagement, participation and representation leads to healthier and safer work. This is more likely to occur where workers have the opportunity to help to shape safer work systems by providing solutions. Being able to contribute and have an opinion that is considered in decision-making around work health and safety should be available to everyone at a place of work. PCBUs must have systems in place that enable their workers to contribute and be able to demonstrate that these are working effectively.
- 8.2 All parties must make reasonable efforts to achieve a timely, final and effective resolution of health and safety issues themselves before involving the regulator (ss 98 and 99 HSWA). 'Reasonable effort' must be determined by an inspector before agreeing to assist to resolve matters. This could include reviewing documentation of meetings between the PCBU and workers where solutions were considered and the reasons why agreement could not be reached are recorded.
- 8.3 Workers and HSRs should be aware of the mechanisms to request assistance from Maritime NZ e.g. helping to resolve a cessation of work issue. Inspectors should encourage the reporting of concerns and incidents and explain what information needs to be provided to Maritime NZ and where this can be done. Schedule 2, Part 1, clause 8 HSWA states that HSRs may consult the Regulator (Maritime NZ) or an inspector about any work health and safety issue.
- 8.4 If an individual requests anonymity, inspectors must follow the Protected Disclosures (Protection of Whistleblowers) Act 2022 and the Protected Disclosure Policy. The Act and policy set out the conditions when inspectors must ensure the confidentiality of the discloser's identity and how to ensure this remains secure.

- 8.5 Inspectors must have an understanding of the function of a HSR (Schedule 2, Part 1 HSWA), namely, that they:
- represent workers in a work group on health and safety matters
 - investigate worker's health and safety complaints
 - monitor health and safety measures
 - inquire into health and safety risks
 - make work health and safety recommendations
 - provide feedback to the PCBU about whether the requirements of HSWA or the regulations are being complied with
 - promote the interests of workers who have been harmed at work (including arrangements for rehabilitation and return to work).
- 8.6 HSRs powers under HSWA include the ability to issue a provisional improvement notice and direct unsafe work to cease. Inspectors must be aware of the HSRs powers and the circumstances under which they can be exercised, noting that a HSR must have received training and attained NZQA standard 29315 to be able to exercise the power to issue a Provisional Improvement Notice (PIN) and direct unsafe work to cease.
- 8.7 Under Schedule 2, Part 1, clause 7, HSWA, HSRs may accompany inspectors. Engagement with HSRs offers inspectors the opportunity to establish if PCBUs are meeting their legal duties under HSWA and regulations, and assess the effectiveness of workplace health and safety systems and how WEPR practices have been incorporated.
- 8.8 For planned, proactive inspections, inspectors will request through the PCBU, for HSRs to be made available to accompany an inspector and fully participate during the inspection. If an HSR is not present as requested (or worker representative, in the case where the workplace has no elected HSRs), enquiry should be made of the PCBU, as to why. Contact details of the HSR should be requested and subsequently followed up by email. Inspectors are encouraged to talk to both a HSR and worker representative if they are both available.
- 8.9 In reactive situations, where practicable and dependent on time frames and urgency, HSRs will be requested to participate in the inspection.
- 8.10 An inspector may refuse to allow a HSR to be present during any discussions or interviews where personal information may be disclosed (unless, the person has expressly consented to the HSR being present), or if the inspector believes that the presence of the HSR would prejudice the maintenance of the law, including the investigation and prosecution of offences.
- 8.11 An inspector will not assess a HSRs performance during an inspection. If any serious concerns relating to unsatisfactory performance of their powers or functions are found, the inspector should discuss this with their manager as further action may be required. This may include consideration of whether the HSR should be removed for a specified period or indefinitely (see section below on 'Removing a health and safety representative').
- 8.12 Inspectors will actively engage with workers during inspections (including when Maritime NZ has been requested to help resolve a work health and safety matter), to discuss how health and safety matters are managed in the workplace from a worker perspective.
- 8.13 Inspectors will work with representatives of the employees and unions (where they exist), noting that unions do not have any specific powers or the right to participate in inspections under HSWA. They do have some powers related to health and safety and access to workplaces under the Employment Relations Act 2000 (ss 18, 20-21) including the right to represent workers in relation to health and safety. In doing so they have the right to access a workplace for this purpose (including to monitor compliance with HSWA and to deal with matters concerning health and safety). They have to obtain consent to enter the workplace from the PCBU or their representative, are limited to entering at reasonable times and must comply with other conditions relating to access to the workplace as set out in the Employment Relations Act 2000.
- 8.14 Inspectors are entitled to be accompanied by any other person when carrying out an inspection e.g. specialist engineer. Although the union cannot insist on being present, an inspector can have a union representative accompany them under that provision (s 168(1)(b)).

- 8.15 Where discussion with the HSR and/or worker representative and workers indicates that education and guidance would be beneficial, discuss and direct them to where further information can be obtained (see Appendix 3 for educational resources).
- 8.16 Where Maritime NZ is requested to help resolve a cessation of work issue, Maritime NZ's actions and decisions must not affect the right of the worker to cease work, nor does Maritime NZ have the right or authority to direct a worker to return to work.
- 8.17 Maritime NZ will not engage in employment relations matters, that is, issues that directly relate to employment such as hours of work or staffing levels, except to the extent that they impact health and safety. In some situations, an employment relations matter may involve a risk of harm to workers or others. It is the risk of harm to workers and others that we will address; other matters should be addressed by the appropriate agency such as MBIE's Employment Mediation Service.
- 8.18 Note that PCBU's must not discriminate or take other negative steps (adverse conduct) against a worker because of their involvement in work health and safety. For example, a worker who:
- is a HSR
 - raises a health and safety issue or concern
 - takes part in resolving a health and safety issue
 - notifies the regulator
 - ceases work because they believe continuing it would put the health and safety of themselves or other people at risk.
- 8.19 Inspectors should seek guidance from the HSWA Regulatory Operations and Legal Teams if there are any concerns relating to Subpart 5 Prohibition of adverse, coercive or misleading conduct of HSWA.

9 Procedures and processes for managing WEPR related requests and notifications

- 9.1 WEPR related requests and notifications are reviewed and triaged by the Notifications and Enquiries Team (NET) and allocated to the Manager of the HSWA Regulatory Operations team. Triage will include a review of any acceptance criteria that is required before Maritime NZ will accept the request.
- 9.2 The following sections set out the procedure and process for responding to requests for assistance in regards to WEPR related issues.

Review a Provisional Improvement Notice (PIN)

The following procedure for reviewing a PIN should be read in conjunction with the Operational Policy, 'How we make decisions about reviewing Provisional Improvement Notices (PINs)'. A flow chart which describes the end-to-end process, from receipt of request to closure, can be found in Appendix 3.

<p>Relevant legislation or regulations</p>	<p><u>Health and Safety at Work Act 2015 (HSWA):</u></p> <ul style="list-style-type: none"> • section 69 – provisional improvement notices requirements including threshold for issuing a PIN, consultation required and not issuing a PIN if the regulator has issued an improvement notice for the same matter; • section 70 – HSR must have completed prescribed training before issuing a PIN; • section 71 – what the PIN must state; • section 74 – PIN must be issued in accordance with section 116; • section 75 – cancellation of a PIN must be notified in writing; • section 77 – irregularities or defects in the PIN that do not make it invalid; • section 78 – offences relating to breach of a PIN; • section 79 – a specified person can request the regulator to review the PIN within seven days after issue and the PIN is 'stayed' until an inspector appointed by the regulator has made a decision; • section 80 – an inspector must review the PIN and inquire into the circumstances that are subject to the PIN as soon as practicable after the request; • section 81 – decision of inspector following review, including confirmed PIN (with or without changes) being treated as an improvement notice issued by the inspector; • section 116 – requirements related to issuing of a notice • sections 130-135 review and appeal of an inspector's decision • section 144 – private prosecution allows a person other than the regulator to file a charging document <p><u>Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016</u></p> <ul style="list-style-type: none"> • regulations 21-26 – HSR training requirements
<p>Related policy</p>	<p>Maritime NZ Operational Policy: How we make decisions about reviewing Provisional Improvement Notices (PINs)</p>
<p>Related tools and guidance</p>	<p>The following WorkSafe guidance supports this process:</p> <ul style="list-style-type: none"> • <u>Worker representation through Health and Safety Representatives and Health and Safety Committees Interpretive Guide</u> • <u>Worker Engagement, Participation and Representation Good Practice Guidelines</u> • <u>Introduction to HSWA Special Guide</u> • <u>WEPR Assessment Tool</u>

PIN overview	<p>A trained HSR in the workplace can issue a PIN if they reasonably believe a person is or is likely to breach HSWA or its regulations. The recipient of the PIN may not agree.</p> <p>Within seven days of the PIN being issued to them (excluding the day of issue), the person to whom it was issued, or the PCBU of the worker if it was issued to a worker, can ask Maritime NZ to appoint an inspector to review the PIN (s 79 HSWA).</p> <p>A flowchart describing the process is provided in Appendix 3.</p>
Maritime NZ's involvement in the PIN review	<p>When a request to review a PIN is received, Maritime NZ becomes involved and will:</p> <ul style="list-style-type: none"> • decide if the request meets Maritime NZ's acceptance criteria (see below) • reach a common understanding of the issue under dispute with all parties involved by inquiring into the circumstances that are the subject of the PIN • consider whether the PIN is appropriate in the circumstances • decide the PIN (confirm, confirm with changes or cancel) • if required, educate all the parties on their duties and responsibilities under HSWA • discuss the risks with all parties • educate the parties on their relevant industry and legislative standards • where appropriate, ensure the PCBU understands the need to communicate, consult and involve workers in work health and safety matters • if required, leave the PCBU with the tools and techniques to improve their worker participation system so they can resolve any future issues.
Review of PIN request and acceptance criteria	<p>On receipt of a request to review a Provisional Improvement Notice (PIN), and in accordance with s 79 HSWA, the following acceptance criteria must be considered. Requests for review will be assessed by the HSWA Regulatory Operations Manager.</p> <p>Acceptance criteria:</p> <ul style="list-style-type: none"> • the review request was received within 7 days of the PIN being issued (which excludes the day the PIN was issued) • the applicant is either the person to whom the notice was issued or if the person is a worker, the PCBU at the workplace at which the worker carries out the work
Declining a request to review a PIN	<p>If the request for review does not meet the acceptance criteria as outlined above, the HSWA Regulatory Operations Manager must inform the person who requested the review, in writing, that the review cannot be completed and explain why.</p> <p>Letter template for requestor: Review of a PIN – criteria not met D24/27688</p> <p>The PCBU (if the request did not arise from them), and the HSR should also be informed in writing of the decision not to review the PIN.</p>
Declining a request to review, but there is cause for concern	<p>Where the acceptance criteria has not been met, but there is cause for concern, further enquiry or action should be undertaken. Factors to consider include:</p>

	<ul style="list-style-type: none"> the potential severity of harm and immediacy of the risk e.g. there is a serious risk to the health and safety of a person arising from an immediate or imminent exposure to a hazard which requires that a prohibition notice should be issued immediately compliance history of the parties impacts on workplace outcomes or operations
Allocation and review of a request by an inspector	<p>Where a request for review is accepted, it will be allocated by the HSWA Regulatory Operations Manager to an inspector.</p> <p>The 'Regulator' (Maritime NZ) must ensure an inspector reviews the notice as soon as practicable after a request has been made (s 80 HSWA).</p> <p>An inspector may review a PIN even if the period for compliance with the notice has expired (s 80(2) HSWA).</p>
Timeframe guidance	<ul style="list-style-type: none"> Triage of initial request and confirmation that Maritime NZ will either proceed with a review of the PIN, or decline the request (within five days of receipt) Review of PIN by an inspector (as soon as practicable following allocation by the HSWA Regulatory Operations Manager)
Instruction for Inspectors conducting a review of a PIN	
Inspector's review of the notice	<p>Section 80 states that the inspector must:</p> <ol style="list-style-type: none"> review the PIN and inquire into the circumstances that are the subject of the PIN.
Planning the review of the PIN	<p>Plan, gather and familiarise yourself with related resources and industry standards before conducting the review.</p> <p>Check Triton for any previous engagement that Maritime NZ has had with the PCBU. It may be appropriate to have additional support at the site visit (if required) given that the parties are in conflict. Discuss this with your manager.</p>
Contact the applicant	<p>You can attempt to resolve the matter by phone. However, in most cases a site visit will be required to ensure a fair review. Remember, this is a workplace where the HSR, worker, or PCBU are in conflict over the appropriateness of a PIN being issued.</p> <p>When you make the initial contact remind the applicant that:</p> <ul style="list-style-type: none"> the PIN is stayed until a decision is made, and while the PIN is stayed i.e. the PIN is in place but is suspended during the period of the review, the PCBU still has to maintain a safe working environment under HSWA.
Determine the merits of the case	<p>The purpose of the review is to test the merits of the HSR's decision. You need to consider whether the HSR had a reasonable belief that a person had contravened, or was likely to contravene, a provision in HSWA or the regulations at the time the PIN was issued. You also need to consider whether the PIN was issued in accordance with procedural requirements.</p>
Who to involve in the PIN review discussions	<p>Discuss the PIN with all the involved parties. This may include, but is not limited to, the:</p> <ul style="list-style-type: none"> HSR PCBU Workers (if applicable) Union representatives (if applicable).

What to consider when reviewing the PIN

When carrying out a PIN review as directed under s 80 you must inquire into the circumstances that are the subject of the PIN. Subpart 3, Sections 69-77 HSWA will guide your review. You must establish whether the HSR:

- 1) had grounds to form a reasonable belief that a person is contravening, or is likely to contravene, a provision in HSWA or the regulations
- 2) that the PIN was issued correctly.

The following must be considered to enable you to determine whether the PIN should be confirmed, confirmed with changes or cancelled:

- Was the PIN issued by the HSR without prior consultation with the person to whom it was issued as required in s 69(3)?
- Is the matter already covered in an active improvement or prohibition notice in Triton, in which case the PIN should not have been issued (s 69(4))?
- Does the PIN meet the requirements of s 71, for example does the PIN state the correct HSWA provision that is being, or likely to be, contravened?
- What information and evidence is available that supports the HSR's reasonable belief that at the time the PIN was issued that a provision of the Act or regulations was being contravened or is likely to be contravened?
- Is 'how' the provision is being contravened or likely to be contravened explained and is this correct?
- The HSR must not issue a PIN if they have not completed training as prescribed in WEPR Regulations or have previously completed that training when acting as an HSR for another work group (s 70). Confirm the HSR is trained by checking their training record.
- Discuss the content of the PIN with the HSR and PCBU to determine if there is any other information that is relevant
- Noting that it is not mandatory for the HSR to provide recommendations (s 72), however where the recommendations refer to an Approved Code of Practice (ACOP), is this the correct one?
- Consider any recommendations provided by the HSR on the measures that could remedy the contravention, or prevent a likely contravention (s 72 (2)(b) HSWA). Are they worded to convey that they are recommendations only? It is up to the PCBU or person to whom the PIN was issued to put measures or controls in place to ensure that they comply with the Act and regulations. The recommendations are just that - recommendations.
- Are there any minor errors which require correction? For example, the PCBU's address is incorrect.

Noting that:

- A PIN is not invalid because of an omission, defect or irregularity that is unlikely to cause substantial injustice or the use of an incorrect name of the person to whom the notice was issued, if the notice sufficiently identifies the person (s 115).
- The HSR may make minor changes to a PIN for clarification, to correct errors or references or to reflect changes of address or other circumstance (s 73)

	<ul style="list-style-type: none"> • If on site, check the placement of the PIN. The PIN must have been placed in a prominent place beside the issue to which it applies as soon as practicable after it was issued. N.B. it is an infringeable offence in failing to display the PIN (s 76(1)) <p>A PIN will be cancelled where:</p> <ul style="list-style-type: none"> • the HSR was not trained as required under HSWA and therefore did not hold the power to issue the PIN (s 70 HSWA) • the person who was issued the PIN was not consulted before the PIN was issued (s 69 HSWA) • the provision of the Act or regulations stated in the PIN have not been contravened nor are likely to be contravened • there is an existing improvement or prohibition notice in place for the same matter 														
<p>Decide the PIN review outcome</p>	<p>As this is a decision that can be reviewed on request and could be subject to an internal review process, confirm your decision with your manager. The PIN can be confirmed if it meets all the requirements of a PIN under the legislation.</p> <p>Use the table below to help decide on the outcome based on the considerations above:</p> <table border="1" data-bbox="507 896 1353 1944"> <thead> <tr> <th data-bbox="507 896 922 940">If the PIN...</th> <th data-bbox="922 896 1353 940">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="507 940 922 1041">there are reasonable grounds to believe that HSWA was, or is likely to be, contravened</td> <td data-bbox="922 940 1353 1041">confirm the PIN.</td> </tr> <tr> <td data-bbox="507 1041 922 1176">has been issued correctly, but there are some minor issues which need to be addressed e.g. missing information</td> <td data-bbox="922 1041 1353 1176">confirm the PIN with changes.</td> </tr> <tr> <td data-bbox="507 1176 922 1332">should not have been issued i.e. there are no reasonable grounds to believe that a HSWA or regulation provision has been, or is likely to be contravened</td> <td data-bbox="922 1176 1353 1332">cancel the PIN.</td> </tr> <tr> <td data-bbox="507 1332 922 1467">has been issued incorrectly e.g. HSR was not trained, but there is still an issue</td> <td data-bbox="922 1332 1353 1467">cancel the PIN and determine the appropriate action. This may include the issue of an improvement notice</td> </tr> <tr> <td data-bbox="507 1467 922 1736">was issued, the matter has since been resolved or the requester no longer requires a review</td> <td data-bbox="922 1467 1353 1736">close the file and record in Triton that the PIN has been complied with or that a review was not required. Ensure that no further action is required. The other party must be notified that the requestor has withdrawn the request (they may wish to submit a request for their own review)</td> </tr> <tr> <td data-bbox="507 1736 922 1944">was issued correctly but the matter has not been resolved and there is an immediate or imminent risk to the health and safety of a person</td> <td data-bbox="922 1736 1353 1944">issue a prohibition notice (this does not require the review to have been completed before doing so) and confirm the PIN N.B. the prohibition notice does not cancel the PIN.</td> </tr> </tbody> </table>	If the PIN...	then...	there are reasonable grounds to believe that HSWA was, or is likely to be, contravened	confirm the PIN.	has been issued correctly, but there are some minor issues which need to be addressed e.g. missing information	confirm the PIN with changes.	should not have been issued i.e. there are no reasonable grounds to believe that a HSWA or regulation provision has been, or is likely to be contravened	cancel the PIN.	has been issued incorrectly e.g. HSR was not trained, but there is still an issue	cancel the PIN and determine the appropriate action. This may include the issue of an improvement notice	was issued, the matter has since been resolved or the requester no longer requires a review	close the file and record in Triton that the PIN has been complied with or that a review was not required. Ensure that no further action is required. The other party must be notified that the requestor has withdrawn the request (they may wish to submit a request for their own review)	was issued correctly but the matter has not been resolved and there is an immediate or imminent risk to the health and safety of a person	issue a prohibition notice (this does not require the review to have been completed before doing so) and confirm the PIN N.B. the prohibition notice does not cancel the PIN.
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Advise your decision							
Confirm the PIN							
Confirm the PIN (with or without changes)	<p>Complete the following actions when confirming the PIN with or without changes:</p> <ul style="list-style-type: none"> • Discuss the confirmation with all the involved parties and the reasons for your decision and check that there are no further issues or further clarification required. • Consider including in your decision, the requirement that WEPR practices are strengthened and that education/training on the issuance of a PIN may be necessary (a further improvement notice could be issued for this purpose, but if you are confident the matter will be addressed voluntarily, this may not be necessary) • You may extend the compliance period (actioned as a PIN confirmed with changes) taking the following into account: <ul style="list-style-type: none"> ○ Genuine effort made by the PCBU to comply before the review request. ○ The cost and complexity of measures to achieve compliance. ○ The time taken by the inspector to make the review decision (which equals to time lost by PCBU to achieve compliance). • Issue the confirmation in writing (see below) 						
Confirmation is considered an improvement notice	Once the PIN is confirmed (with or without changes), it is considered an improvement notice issued by an inspector under HSWA and must be complied with by the specified date (s 81(3)).						
Issue confirmation letter	<p>Use the applicable letter templates:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">If the PIN is...</th> <th style="text-align: left;">then use the...</th> </tr> </thead> <tbody> <tr> <td>confirmed</td> <td> confirm PIN letter templates to formally notify the applicant who requested the review and the HSR that issued it: <ul style="list-style-type: none"> • Confirmation of PIN letter (applicant) D24/19823 • Confirmation of PIN letter (HSR) D24/19830 </td> </tr> <tr> <td>confirmed with changes</td> <td> confirm PIN with changes letter templates to formally notify the applicant who requested the review and the HSR that issued it: <ul style="list-style-type: none"> • Confirmation of PIN with changes letter (applicant) D24/19831 • Confirmation of PIN with changes letter (HSR) D24/27724 </td> </tr> </tbody> </table> <p>Note: Take care when stating the reasons for confirmation. Keep them short and to the point to ensure clear understanding. They should be focused on the grounds for issuing a PIN/improvement notice i.e. that there are reasonable grounds to believe that a person is contravening or is likely to contravene HSWA or its regulations.</p>	If the PIN is...	then use the...	confirmed	confirm PIN letter templates to formally notify the applicant who requested the review and the HSR that issued it: <ul style="list-style-type: none"> • Confirmation of PIN letter (applicant) D24/19823 • Confirmation of PIN letter (HSR) D24/19830 	confirmed with changes	confirm PIN with changes letter templates to formally notify the applicant who requested the review and the HSR that issued it: <ul style="list-style-type: none"> • Confirmation of PIN with changes letter (applicant) D24/19831 • Confirmation of PIN with changes letter (HSR) D24/27724
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What the PCBU should do	The PCBU should display the confirmation letter next to the original PIN. The confirmation letter states that the PIN is now treated as an improvement notice, and details any changes that have been made to the original PIN.						

Cancel the PIN	
Cancel the PIN and issue letter	<p>Complete the following when cancelling the PIN:</p> <ul style="list-style-type: none"> • Discuss the cancellation with all the involved parties to check there are no further issues, provide clarification, and ensure they understand the reason why it is cancelled. • Use the cancel PIN letter templates to confirm with the applicant who requested the review and the HSR that issued the PIN, that the PIN has been cancelled: <ul style="list-style-type: none"> ○ Cancellation of PIN letter (applicant) D24/27733 ○ Cancellation of PIN letter (HSR) D24/27739 <p>Note: Take care when stating the reasons for cancellation. Keep them short and to the point to ensure clear understanding.</p>
Cancellation result	<p>The PIN is no longer in effect.</p> <p>No further action is required unless you consider there is a need for further intervention e.g. there has been a breach of power by the HSR, legislative procedural requirements were not met e.g. HSR didn't consult with the PCBU, or the HSR had not completed the required training. (See 'Consider the need for further interventions' in the next section).</p>
Consider the need for further interventions	
What to determine	<p>Consider if further intervention is needed about the incident, workplace or HSR if there are concerns about the issues raised in the PIN, there are concerns about the HSR or there are concerns in addition to the matters raised in the PIN.</p> <p>If issues such as abuse of power by the HSR are identified, then discuss this with your manager to determine the next steps. This may initiate an assessment to determine whether the HSR needs to be removed from their position.</p>
Is there a need for further intervention?	<p>Use the information available to determine whether there is a need for further intervention.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • Is there a risk to ongoing health and safety? • Are there any additional provisions of HSWA or the regulations which are not being met? • Although the PIN has been compiled with, are there still concerns related to the issues raised in the PIN? • Are the parties now familiar with their duties and roles in ensuring health and safety? • Have there been any notifiable events? • Have there been ongoing issues with the HSR or PCBU? • What is the relationship like between the HSR and PCBU? • Has the HSR received the relevant training? • Are there concerns about the exercise of functions and powers by an HSR? • Did you notice anything that may require follow up while you were visiting the site? • Does the PCBU or HSR have a poor history of compliance with Maritime NZ or WorkSafe? • Has there been any adverse, coercive or misleading conduct by a third party?

	<ul style="list-style-type: none"> Are there concerns about worker engagement, representation or participation practices? 														
Decision on the next action	Where there are still concerns, decide what your next action will be, for instance:														
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Helping to resolve a workplace health and safety issue

An organisation with an effective worker engagement, participation and representation system will discuss and generally be able to resolve any issues. If they cannot resolve an issue, any of the parties (PCBU, worker, HSR or other person e.g. volunteer) can ask Maritime NZ to provide assistance. The following procedure and process describes how to assist when a request to help to resolve a work health and safety issue has been received.

Relevant legislation or regulations	<p>Health and Safety at Work Act 2015 (HSWA):</p> <ul style="list-style-type: none"> • Section 98: Resolution of work health and safety issues • Section 99: Regulator may appoint inspector to assist parties in resolving issue <p>Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (WEPR Regulations):</p> <ul style="list-style-type: none"> • Regulation 30: Issue that inspector may decide under section 99(3) of Act • Regulation 28: Membership of health and safety committees
Relevant policy	<p>Maritime NZ Operational Policy: How we make decisions about when we will help to resolve a health and safety cessation of work issue or a work health and safety issue (OP03)</p>
Related tools and guidance	<p>The following WorkSafe guidance support this process:</p> <ul style="list-style-type: none"> • Worker representation through Health and Safety Representatives and Health and Safety Committees Interpretive Guide • Good practice for worker engagement, participation and representation • Introduction to HSWA Special Guide • Reasonably practicable fact sheet
Overview	
Maritime NZ's involvement overview	<p>A request to help received from a PCBU, worker or HSR to resolve a work health and safety matter will be triaged by the NET team who will:</p> <ul style="list-style-type: none"> • decide if the request is a work health and safety issue that meets Maritime NZ's acceptance criteria (see below) • determine if the request: <ul style="list-style-type: none"> ○ can be resolved at triage stage ○ is a more complex issue that requires inspector involvement and requires referral to the HSWA Regulatory Operations Manager <p>The aim is to help the parties to resolve the issue and manage the risk themselves and leave them with the tools and guidance to improve their health and safety system if required. It is not the role of Maritime NZ to resolve the problem for them but rather help the parties reach a resolution and find an appropriate solution.</p> <p>Inspectors will:</p> <ul style="list-style-type: none"> • reach a common understanding of the issue under dispute

	<ul style="list-style-type: none"> educate, where necessary, all the parties on their relevant duties and responsibilities under HSWA if required, educate the parties on their relevant industry standards and other relevant legislative requirements discuss the risks and consequences (what could happen) assist to resolve the work health and safety issue (noting that an inspector is acting as a facilitator who enables the parties to solve the problem, rather than solving it for them) ensure the PCBU understands the need to communicate, consult and involve workers in work health and safety matters leave the organisation with the tools and techniques to improve their worker participation system so they can resolve any future issues determine if the issue relates to the membership of a health and safety committee. If so, follow the separate procedure below.
Further interventions	Maritime NZ may need to consider further intervention if there are still issues that need to be resolved. An inspection of their work health and safety system may be required.
Timeframe guidance	<ul style="list-style-type: none"> The request is to be cleared from NET triage inbox within one working day. HSWA Regulatory Operations Manager to review and assign a request to an inspector (or not), within a week of Maritime NZ receiving the request.
General requirements	<p>The following are mandatory due to statutory requirements or operational policy.</p> <ul style="list-style-type: none"> If the workplace has an HSR, they must be involved in the resolution process. Reasonable efforts must have been made to resolve the issue before making the request for help Maritime NZ is not already dealing with the issue An inspector must not engage in any employment relations matter and must instead provide the affected parties with information on other agencies, such as MBIE Employment Mediation Services. If Maritime NZ decides not to assist, then the parties must be notified of this decision. Inspectors must record details of the parties involved, any decisions they have made, or actions taken to attempt to resolve the work health and safety issue in Triton.
Check the acceptance criteria	
What to determine	HSWA Regulatory Operations Manager to decide if the request for help to resolve the work health and safety issue meets Maritime NZ's acceptance criteria.
Acceptance criteria	<p>The following criteria must be met before appointing an inspector:</p> <ul style="list-style-type: none"> The request is a work health and safety issue and not an employment relations issue or other matter.

	<ul style="list-style-type: none"> • The issue is within Maritime NZ's jurisdiction (rather than that of another workplace health and safety regulator or of another agency). • Maritime NZ is being asked to assist the parties. • 'Reasonable efforts' have been made by the parties to find their own resolution to the issue. <p>Note that an unwillingness by one of the parties involved to resolve the issue or an objection to Maritime NZ's assistance, does not prevent Maritime NZ from assisting.</p> <table border="1" data-bbox="571 600 1428 1366"> <thead> <tr> <th data-bbox="571 600 898 640">If the request...</th> <th data-bbox="898 600 1428 640">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="571 640 898 1099">is about employment relationship problems between an employee and an employer (e.g. unjustified dismissal or unpaid wages)</td> <td data-bbox="898 640 1428 1099"> Maritime NZ does not get involved. Note: The issue may be mixed, in which case Maritime NZ can assist the parties only to the extent the matters relate to work health and safety risks. For example, disputes about hours of work are employment disputes but due to fatigue may involve health and safety risks. For employee relations components of the dispute, the following information can be provided to the affected parties: <ul style="list-style-type: none"> • Employment New Zealand Mediation Services 0800 20 90 20 • Employment Relations Authority. </td> </tr> <tr> <td data-bbox="571 1099 898 1205">is the responsibility of another government agency</td> <td data-bbox="898 1099 1428 1205">decline the request and provide the parties with relevant contact details.</td> </tr> <tr> <td data-bbox="571 1205 898 1366">indicates that reasonable efforts have not been made by the parties (i.e. they have not met or tried to resolve the issue)</td> <td data-bbox="898 1205 1428 1366">you must decline assistance.</td> </tr> </tbody> </table>	If the request...	then...	is about employment relationship problems between an employee and an employer (e.g. unjustified dismissal or unpaid wages)	Maritime NZ does not get involved. Note: The issue may be mixed, in which case Maritime NZ can assist the parties only to the extent the matters relate to work health and safety risks. For example, disputes about hours of work are employment disputes but due to fatigue may involve health and safety risks. For employee relations components of the dispute, the following information can be provided to the affected parties: <ul style="list-style-type: none"> • Employment New Zealand Mediation Services 0800 20 90 20 • Employment Relations Authority. 	is the responsibility of another government agency	decline the request and provide the parties with relevant contact details.	indicates that reasonable efforts have not been made by the parties (i.e. they have not met or tried to resolve the issue)	you must decline assistance.
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Confirm or decline acceptance decision and identify actions	<p>Once the decision has been made whether or not to assist, the HSWA Regulatory Operations Manager must:</p> <table border="1" data-bbox="571 1458 1428 1758"> <thead> <tr> <th data-bbox="571 1458 879 1503">If you decide to...</th> <th data-bbox="879 1458 1428 1503">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="571 1503 879 1682">decline assistance</td> <td data-bbox="879 1503 1428 1682"> <ul style="list-style-type: none"> • get confirmation from your one-up manager • complete and send the 'Decline assistance to resolve a work health and safety issue letter' template D24/27793 • scan the letter and upload it into Triton. </td> </tr> <tr> <td data-bbox="571 1682 879 1758">provide assistance</td> <td data-bbox="879 1682 1428 1758">allocate an inspector to assist to resolve the work health and safety issue. (see next step)</td> </tr> </tbody> </table>	If you decide to...	then...	decline assistance	<ul style="list-style-type: none"> • get confirmation from your one-up manager • complete and send the 'Decline assistance to resolve a work health and safety issue letter' template D24/27793 • scan the letter and upload it into Triton. 	provide assistance	allocate an inspector to assist to resolve the work health and safety issue. (see next step)		
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provide assistance	allocate an inspector to assist to resolve the work health and safety issue. (see next step)								
Inspector provides assistance									
Purpose of providing assistance	<p>An inspector's aim is to help the parties to resolve the issue and leave them with the tools and guidance to improve their worker engagement, participation and representation practices. In this respect, an inspector is</p>								

	<p>acting as a facilitator who enables the parties to solve the problem, rather than solving it for them.</p>
Planning to assist	<p>Plan, gather and familiarise yourself with related resources, legislation and industry standards you will provide to the parties that will help them to resolve the issue.</p> <p>Check Triton for any previous engagement with Maritime NZ. It may be appropriate to have additional support at the site visit, given that the parties are in conflict.</p> <p>Discuss your approach with your manager.</p>
Contact the parties	<p>Identify all parties involved and make contact with them (including the HSR for the work group if there is one). Ensure they are aware that a request to help to resolve a work health and safety issue has been received by Maritime NZ.</p> <p>Discuss the issue with each party to gather background information to the issue and gain an understanding of their individual points of view.</p> <p>Schedule a meeting with all involved parties.</p> <p>In most cases a site visit will be required to provide assistance. Remember, this is a workplace where there is conflict over a work health and safety issue.</p>
What to consider when discussing the issue	<p>When meeting with the parties, consider the following to develop a common understanding of the issue:</p> <ul style="list-style-type: none"> • information that is relevant and available. • the industry standards related to the issue including any ACOPs. • consider the parties different points of view
Discuss the risks and consequences (what could happen)	<p>During discussions, direct the conversation away from the issue causing the conflict but rather focus on the effect the risk would have on workers or other parties if it were not addressed.</p> <p>Discuss what would happen if the risk was realised:</p> <ul style="list-style-type: none"> • Who would be affected? • What sort of injuries they would have? How severe could they be? • Would the worker or other person require treatment, what kind of treatment? • What would the likely impact be on the workers family, their community and the workplace? • Loss of productivity and sick days <p>Facilitate a discussion on:</p> <ul style="list-style-type: none"> • The controls which could be put in place to eliminate or minimise the risk. • Ways to reduce the chance of the risk happening.
Discuss and explore underlying problems of the WEPR practices	<p>Discuss and identify the cause of the issue that led to Maritime NZ being involved. Explore any underlying problems of the WEPR practices.</p>

	<p>Advise all parties of their duties and responsibilities under the relevant legislative framework, as detailed in guidance and codes of practice.</p> <p>Provide tools and guidance so the workplace can then improve their worker engagement and participation practices if necessary and resolve any health and safety issues in the future.</p>						
Potential outcomes and solutions							
Potential outcomes	<p>Once the issue has been defined and the risks identified, discuss and have the parties explore potential outcomes and solutions to help them in resolving the issue themselves. Identify the resolution outcome:</p> <table border="1"> <thead> <tr> <th>If the parties...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>Agree to a solution</td> <td> <ul style="list-style-type: none"> document the solution in your notebook provide the PCBU and HSR with a written summary of the matter raised, what was reviewed and discussed, the solution they agreed to the issue and any tools and guidance. <p>If applicable, remind the parties that if the issue is not resolved and an injury occurs, Maritime NZ will likely investigate the incident, which could lead to further action</p> <ul style="list-style-type: none"> update the Triton file. </td> </tr> <tr> <td>Cannot agree on a solution</td> <td> <p>If it is a matter of non-compliance with HSWA and regulations, you will need to consider whether further intervention is required (see next section).</p> <p>If it is not a matter of non-compliance with HSWA and regulations, take no further action but before doing so, consider if there is non-compliance with any other Acts or legislation that Maritime NZ administer such as the Marine Transport Act.</p> </td> </tr> </tbody> </table>	If the parties...	then...	Agree to a solution	<ul style="list-style-type: none"> document the solution in your notebook provide the PCBU and HSR with a written summary of the matter raised, what was reviewed and discussed, the solution they agreed to the issue and any tools and guidance. <p>If applicable, remind the parties that if the issue is not resolved and an injury occurs, Maritime NZ will likely investigate the incident, which could lead to further action</p> <ul style="list-style-type: none"> update the Triton file. 	Cannot agree on a solution	<p>If it is a matter of non-compliance with HSWA and regulations, you will need to consider whether further intervention is required (see next section).</p> <p>If it is not a matter of non-compliance with HSWA and regulations, take no further action but before doing so, consider if there is non-compliance with any other Acts or legislation that Maritime NZ administer such as the Marine Transport Act.</p>
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	<p>There are wider workplace health and safety issues</p>	<p>It may become apparent once an inspector is on site that there are other work health and safety issues that need to be addressed in the workplace. The inspector will need to:</p> <ul style="list-style-type: none"> • address any issues that may cause imminent or immediate risk of serious harm • discuss any wider issues with your manager • consider whether it may be necessary to carry out a reactive inspection.
	<p>It has become apparent during the onsite meeting that it is not a work health and safety matter or is not within Maritime NZ's jurisdiction</p>	<ul style="list-style-type: none"> • the inspector must excuse them self and confirm this decision with their manager as soon as possible • provide the parties with information on who to approach such as: <ul style="list-style-type: none"> ○ MBIE's Employment Mediation Service ○ the appropriate authority if it is outside Maritime NZ's jurisdiction.
	<p>a matter relating to other legislation that Maritime NZ administers</p>	<ul style="list-style-type: none"> • consider what further action is required

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Assisting to resolve a cessation of work issue

The following procedure describes how to assist in resolving issues relating to the cessation of work.

Relevant legislation or regulations	<p>Health and Safety at Work Act 2015 (HSWA):</p> <ul style="list-style-type: none"> • Section 82: Meaning of cease work • Section 83: Right of worker to cease or refuse to carry out unsafe work • Section 84: Health and safety representative may direct unsafe work to cease • Section 85: Training requirements relating to giving direction to cease work • Section 86: Alternative work • Section 87: Regulator may assist to resolve issues relating to cessation of work
Related tools and guidance	<p>Maritime NZ Operational Policy: Assisting to resolve a cessation of work issue</p> <p>The following WorkSafe guidance supports this process:</p> <ul style="list-style-type: none"> • Worker representation through Health and Safety Representatives and Health and Safety Committees Interpretive Guide • Worker Engagement, Participation and Representation Good Practice Guidelines • Introduction to HSWA Special Guide • Reasonably practicable fact sheet • WEPR Assessment Tool
Overview	
Cessation of work issue overview	<p>A worker may cease, or refuse to carry out work, if they believe that the work would, now or in the future, expose them or others to a serious health and safety risk arising from an immediate or imminent exposure to a hazard. A worker who ceases work must inform the PCBU as soon as practicable.</p> <p>A trained HSR may also direct a worker they represent to cease work if they believe that the work would, now or in the future, expose the worker or others to a serious health and safety risk arising from an immediate or imminent exposure to a hazard. An HSR must consult with a PCBU before issuing a direction to cease work unless the risk is so serious and immediate that consultation is not reasonable. The HSR must inform the PCBU of the cease work action.</p> <p>Once a worker has ceased work, a PCBU can assign appropriate alternative work at the same or another workplace.</p> <p>An organisation with an effective worker engagement, participation and representation system is more likely to discuss and resolve issues.</p> <p>If they cannot resolve an issue, any of the parties (workers, PCBU or HSR) can ask Maritime NZ to provide assistance (s 87 HSWA).</p>
Mandatory standards	
Requirements	<p>The following are mandatory due to statutory requirements or operational policy:</p> <ul style="list-style-type: none"> • Maritime NZ will always assist with a confirmed cessation of unsafe work issues, as they potentially involve serious health and safety risks. • Managers must prioritise this work above other planned inspections, due to the potential or perceived serious risk to the health and safety of a worker or other persons. • If the workplace has an HSR, they must be involved in the resolution process

	<ul style="list-style-type: none"> • An inspector must not engage in any employment relations matter and must provide the affected parties with information on other agencies, such as MBIE's Employment Mediation Services. • In rare instances where Maritime NZ decides not to assist in resolving the issue then the requestor must be notified of this decision. • Inspectors must record in Triton the details of the parties involved and any decisions they have made or actions to try and assist in resolving the cessation of work issue. 				
Timeframe guidance	<ul style="list-style-type: none"> • The request must be cleared from NET triage inbox, reviewed by the HSWA Regulatory Operations Manager and an inspector appointed to assist with the matter within 4 hours of its receipt. • Assistance must be provided as soon as practicable taking into account: <ul style="list-style-type: none"> ○ The seriousness of the issue ○ The severity and likelihood of harm or potential harm ○ Any damage that has occurred ○ The impact on port or vessel operations ○ The availability of inspectors 				
Check the acceptance criteria					
Who reviews the request?	HSWA Regulatory Operations Manager ('manager')				
What to determine	Decide if the request for assistance to resolve the cessation of work issue meets Maritime NZ's acceptance criteria below.				
Acceptance criteria	<p>The following acceptance criteria must be met before providing assistance:</p> <ul style="list-style-type: none"> • The request is not an employment relations issue • The issue is within Maritime NZ's designation (rather than that of another workplace health and safety regulator or of another agency). <p>Note that an unwillingness by one of the parties involved to resolve the issue or an objection to Maritime NZ's assistance, does not prevent Maritime NZ from assisting.</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If the request is...</th> <th style="text-align: left;">then...</th> </tr> </thead> <tbody> <tr> <td>about employment relationship problems between an employee and an employer (e.g. unjustified dismissal, hours of work, staffing levels or unpaid wages)</td> <td> <p>Maritime NZ does not get involved.</p> <p>Note: The issue may be mixed, in which case Maritime NZ can assist the parties only to the extent the matters relate to work health and safety risks. For example, disputes about hours of work are employment disputes but due to fatigue may involve health and safety risks.</p> <p>For employee relations components of the dispute, the following information may be provided to the affected parties:</p> <ul style="list-style-type: none"> • MBIE's Employment New Zealand Mediation Services, contact number 0800 20 90 20 • Employment Relations Authority </td> </tr> </tbody> </table>	If the request is...	then...	about employment relationship problems between an employee and an employer (e.g. unjustified dismissal, hours of work, staffing levels or unpaid wages)	<p>Maritime NZ does not get involved.</p> <p>Note: The issue may be mixed, in which case Maritime NZ can assist the parties only to the extent the matters relate to work health and safety risks. For example, disputes about hours of work are employment disputes but due to fatigue may involve health and safety risks.</p> <p>For employee relations components of the dispute, the following information may be provided to the affected parties:</p> <ul style="list-style-type: none"> • MBIE's Employment New Zealand Mediation Services, contact number 0800 20 90 20 • Employment Relations Authority
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	the responsibility of another government agency (e.g. for work concerning major hazard facilities, WorkSafe would be the lead regulator)	the manager must decline and provide the parties with relevant contact details.
	not a cessation of unsafe work issue (i.e. work has not stopped)	determine if it is a work health and safety issue. If so, follow the procedure above 'Provide help to parties to resolve a work health and safety issue'
Confirm accept/decline decision and identify actions	Once the manager has decided whether or not to assist, the following actions must be taken:	
	If the decision is to...	then...
	decline assistance	<ul style="list-style-type: none"> complete and send the 'Decline assistance resolve a cessation of work issue' letter D24/27808 to the requestor and where relevant, provide details on: <ul style="list-style-type: none"> MBIE's Employment Mediation Services, or the applicable government agency inform other party of decision to decline using the same letter template upload the letter into Triton.
	provide assistance for the cessation of work issue	Assign the case to an inspector (see next section)
	provide help for a work health and safety issue	See procedure above 'Provide help to parties to resolve a work health and safety issue'
Inspector to provide assistance to parties		
Who provides assistance?	Inspector under HSWA (Maritime Officer, HSWA Specialist)	
Aim of providing assistance	Your aim is to help the parties to resolve the issue and manage the risk themselves and leave them with the tools and guidance to improve their WEPR system if required. It is not the role of Maritime NZ to resolve the problem for them but rather help the parties reach a resolution and find an appropriate solution.	
Planning to assist	<p>Plan, gather and familiarise yourself with related resources, legislation and industry standards you will provide to the parties that will help them to resolve the issue.</p> <p>Check Triton for any previous engagement with Maritime NZ. It may be appropriate to have additional support at the site visit e.g. accompanied by a colleague, given that the parties are in conflict and work has stopped. Discuss your approach with your manager.</p> <p>Keep in mind:</p> <ul style="list-style-type: none"> Maritime NZ's actions and decisions do not affect the right of the worker to cease work, and Maritime NZ has no right or authority to direct a worker to return to work. 	

<p>Contact the parties</p>	<p>Identify all parties involved (including any HSR for the work group) and make contact with them as soon as possible. Ensure they are aware that a request to assist to resolve a cessation of work issue has been received by Maritime NZ.</p> <p>Discuss the issue with each party to gather background information and gain an understanding of the individual points of view. All parties should have an opportunity to put forward their viewpoint.</p> <p>Schedule a meeting with all involved parties.</p> <p>A site visit will most likely be required to provide assistance. Remember, this is a workplace where there is conflict over a cessation of work issue.</p>
<p>What to consider when discussing the issue</p>	<p>When meeting with the parties, consider the following:</p> <ul style="list-style-type: none"> • whether they have met the legislative requirements for ceasing work including the duties and responsibilities of the parties under s 83 (rights of worker to cease or refuse to carry out unsafe work), s 84 (HSR may direct unsafe work to cease), s 85 (training requirements relating to giving direction to cease work) and s 86 (alternative work) HSWA • understand why the HSR or worker believes that the work activity exposes or would expose them, or another person to a serious risk arising from an immediate or imminent exposure to a hazard, and any evidence of that • the severity or potential severity of harm • the likelihood of risk to a workers health or safety arising from exposure to hazards; • the immediacy of the risk; • how any related situations have been handled by the parties or other entities; • the applicable legislation to ensure the parties understand and can meet their obligations; and • any industry standards, guidance, codes of practice, and approved codes of practice • the steps taken before contacting Maritime NZ.
<p>Discuss the risks and consequences (what could happen)</p>	<p>During discussions, direct the conversation away from the stop work issue causing the conflict. Focus the discussions on the effect the risk would have on workers or other parties if it were not addressed and what would happen if the risk were realised i.e. potential for severity of harm. Suggested questions and topics for discussion include:</p> <ul style="list-style-type: none"> • What is the level of risk to a workers health and safety arising from exposure to the hazards? • Who would be affected? • What sort of injuries they would have? How severely could they be affected? • Would the worker or other person require treatment, what kind of treatment? • What would the likely impact be on the workers family, their community and the workplace? • Loss of productivity and sick days. • The solutions to eliminate or minimise the risk.
<p>Discuss and explore underlying problems of the WEPR system</p>	<p>Discuss and identify the cause of the issue that led to Maritime NZ being involved. Explore any underlying problems of the WEPR system and determine if there are systems in place to enable workers to be involved in identifying hazards and managing risks.</p>

Potential outcomes and solutions											
<p>Providing assistance</p>	<p>Any advice should be kept at a high level and general. The assistance will not be a determination unless specifically allowed for in regulations. An inspector's role is to facilitate a conversation as a neutral party and to provide guidance. You are bringing an understanding of the industry standards, legislative knowledge and experience to assist the parties to resolve the issue and manage the risks.</p> <p>To supplement the discussions held with the PCBU and workers, it may be beneficial to provide tools and guidance to enable them to improve their worker engagement and participation practices if required and to help resolve any health and safety issues in the future.</p> <p>Recommended tools and guidance include:</p> <ul style="list-style-type: none"> • WEPR (various). Maritime NZ website • Worker representation through Health and Safety Representatives and Health and Safety Committees Interpretive Guide (WorkSafe) • Worker Engagement, Participation and Representation Good Practice Guidelines (WorkSafe) 										
<p>Potential outcomes</p>	<p>When assisting the parties to resolve the issue, consider the following:</p> <table border="1" data-bbox="486 907 1348 1904"> <thead> <tr> <th>If the parties...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>agree there is a risk, that stopping work was the correct action, and on how to manage the risk</td> <td> <ul style="list-style-type: none"> • providing there are no outstanding issues, document the agreement (i.e. Maritime NZ has provided assistance to resolve the cessation of work issue) • send a follow-up email summarising the risk and agreed actions. </td> </tr> <tr> <td>still disagree on managing the risk but agree there is a risk and stopping work was the correct action</td> <td> <ul style="list-style-type: none"> • unsafe work remains ceased • consider what compliance actions can be applied • monitor any issued notices. </td> </tr> <tr> <td>agree there is a risk but work should not have stopped</td> <td> <ul style="list-style-type: none"> • educate on legislative requirements • consider what compliance actions can be applied • discuss with the HSR whether the issue of a PIN may have been more appropriate • monitor any issued notices • identify ways to educate workers on industry standards and regulations • discuss HSR training requirements with both the HSR and PCBU. </td> </tr> <tr> <td>agree there is minimal or no risk (work should not have stopped)</td> <td> <ul style="list-style-type: none"> • no enforcement is required • identify ways to educate workers on industry standards and regulations • discuss HSR training requirements with both the HSR and PCBU. </td> </tr> </tbody> </table> <p>In all cases you will update your inspector's notebook and Triton.</p>	If the parties...	then...	agree there is a risk, that stopping work was the correct action, and on how to manage the risk	<ul style="list-style-type: none"> • providing there are no outstanding issues, document the agreement (i.e. Maritime NZ has provided assistance to resolve the cessation of work issue) • send a follow-up email summarising the risk and agreed actions. 	still disagree on managing the risk but agree there is a risk and stopping work was the correct action	<ul style="list-style-type: none"> • unsafe work remains ceased • consider what compliance actions can be applied • monitor any issued notices. 	agree there is a risk but work should not have stopped	<ul style="list-style-type: none"> • educate on legislative requirements • consider what compliance actions can be applied • discuss with the HSR whether the issue of a PIN may have been more appropriate • monitor any issued notices • identify ways to educate workers on industry standards and regulations • discuss HSR training requirements with both the HSR and PCBU. 	agree there is minimal or no risk (work should not have stopped)	<ul style="list-style-type: none"> • no enforcement is required • identify ways to educate workers on industry standards and regulations • discuss HSR training requirements with both the HSR and PCBU.
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Further interventions	Identify any further interventions required. This could be one or more of the following:	
	if...	then...
	engagement and education is required	<ul style="list-style-type: none"> ask questions to determine what external guidance the parties have accessed identify and provide the parties with relevant external guidance and industry related material understand why they were unable to resolve the cessation of work issue identify the failures/weaknesses in their processes identify what they could put in place to ensure that they are able to resolve future issues.
	there are wider workplace health and safety issues	<p>it may become apparent that there are other work health and safety issues that need to be addressed. You need to:</p> <ul style="list-style-type: none"> address any serious risk to work health and safety arising from an immediate or imminent exposure to a hazard discuss any wider issues with the duty holder discuss the issues with your manager and consider the need for an inspection
	if...	then...
	it is identified that the HSR needs advice or training	<ul style="list-style-type: none"> let the HSR know about any minor issues and give them advice on how to deal with them direct them to additional guidance discuss training needs with the HSR and where they can find information on available courses discuss the HSR's training needs with the PCBU and remind them of their training responsibilities under HSWA.

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Removing a health and safety representative

This procedure will assist in the decision-making process to determine whether to remove an HSR from their health and safety role. This should be read in conjunction with Maritime NZ Operational Policy 'How we make decisions about the removal of a Health and Safety Representative from office (OP 05)

<p>Relevant legislation, regulations, policy</p>	<p>Provisions relevant to removal of an HSR are contained in Schedule 2, Part 1 of the Health and Safety at Work Act 2015 (HSWA), and include the following:</p> <ul style="list-style-type: none"> • HSWA clauses 1-9 of Schedule 2 • HSWA clause 13 of Schedule 2 • HSWA clause 14 of Schedule 2 • HSWA clause 17 of Schedule 2 • HSWA clause 18 of Schedule 2 • HSWA clause 19 of Schedule 2 <p>HSWA provisions related to a PCBU taking action against an HSR are:</p> <ul style="list-style-type: none"> • Sections 88 to 89 state the meaning of adverse conduct and prohibited health and safety reason in relation to adverse conduct. • Sections 90 to 92 provide for the prohibition of adverse conduct, requesting, instructing, inducing, encouraging, authorising, or assisting adverse conduct, and the prohibition of coercion or inducement. • Sections 93 to 94 details misrepresentation and associated offences and proof of adverse conduct by the prosecution for the purposes of sections 90 and 91.
<p>Related policy</p>	<p>Maritime NZ Operational Policy: How we make decisions about the removal of a Health and Safety Representative from office (OP 05)</p>
<p>Related tools and guidance</p>	<p>Refer to the following WorkSafe guidance documents:</p> <ul style="list-style-type: none"> • Good Practice Guide – Working Engagement, Participation, and Representation • Interpretive Guide – WEPR • WEPR Assessment Tool
<p>General information</p>	<p>A PCBU may request Maritime NZ to exercise its discretion to remove a health and safety representative (HSWA Clause 19, Schedule 2).</p> <p>Maritime NZ may receive notification from another person where it is alleged the HSR has not performed their functions or exercised their powers satisfactorily, including improperly using their powers. Although not a request for removal, further enquiry may be required by an inspector.</p> <p>Where an inspector has reason for concern that an HSR has not performed their functions or has not exercised their powers satisfactorily, or used them improperly, this must be discussed with their manager before proceeding further.</p>

Consultation requirements

An email or letter must be sent to the HSR advising that Maritime NZ has received a request of removal from the PCBU or that Maritime NZ has a concern. The email or letter must advise the following:

- That Maritime NZ has received the request for removal, or Maritime NZ has concerns
- State the reason for concern
- That Maritime NZ will assess the request and concerns
- Ask the HSR to make a submission responding to the concerns and identifying whether other parties might hold relevant information
- Inform the HSR of the possible outcomes
- That Maritime NZ will seek additional information from other parties
- That Maritime NZ will give the HSR an opportunity to comment on any adverse information received.

Reviewing the request**Allocation of review request**

Where the request for removal has been received from a PCBU it will be allocated via triage by NET to the HSWA Regulatory Operations Manager and allocated to an inspector for assessment.

Where an inspector has concerns based on their own observations during an inspection, that inspector will undertake the review having first discussed this course of action with the HSWA Regulatory Operations Manager.

Establishing the facts

An inspector will contact the relevant parties and establish the facts ensuring these are supported by evidence.

Consider all circumstances relevant to determining whether the HSR has not performed their functions or exercised their powers satisfactorily including where they have improperly used or disclosed information they have acquired. These circumstances include but are not limited to whether:

- the HSR has received adequate training
- the HSR is carrying out the role in accordance with the training received
- the HSR has a clear understanding of the health and safety risks arising from the work carried out for the PCBU
- the HSR understands disclosure of information and when and how the information that they have obtained is used, for example, it may only be used for health and safety purposes
- the HSR has had sufficient time to develop a satisfactory level of performance
- the PCBU has allowed the time reasonably necessary to perform the HSR's functions alongside their existing role
- the HSR has acted in good faith
- the HSR is raising health and safety issues with the PCBU in a timely fashion
- there is adequate engagement with the PCBU by the HSR
- the impact on workers, the PCBU and the workplace
- the views of the workers the HSR represents, including whether they feel represented by the HSR
- previous performance or misuse of power by the HSR i.e. is this an isolated incident or a repeated pattern of behaviour?

	<ul style="list-style-type: none"> the seriousness of any alleged abuse of power, including intention the behaviour, actions or influence of third parties the wider health and safety culture of the workplace.
Assessment of evidence	<p>The assessment will take into account all relevant information provided by the requester and the HSR (or their representative), and any other relevant information necessary to form a view as to whether or not, on the balance of probabilities, the HSR has performed or exercised his or her functions and/or powers satisfactorily (as below).</p> <p>The following summarises the HSR's functions and powers, and how the HSR can use information they obtain in that role. If you conclude that the HSR has not performed or exercised these functions or powers satisfactorily, you need to determine whether or not the HSR should be removed from office and, if so, whether the removal should be for a specified period or indefinitely.</p>
HSR's functions and powers	
Use of functions and powers	<p>HSRs must not perform a function or exercise a power under HSWA for a purpose other than health and safety.</p> <p>For a regulator to exercise their discretion to remove a health and safety representative there must be evidence that the HSR has not performed or exercised his or her functions or powers satisfactorily.</p> <p>Unsatisfactory performance includes:</p> <ul style="list-style-type: none"> performing a function or exercising a power as an HSR for an improper purpose using or disclosing information they have acquired as an HSR in breach of the restrictions imposed by clause 14 failing to exercise their powers or functions where there was a clear desire for them to do so e.g. workers requested their assistance but they refuse to participate using a power for which they had not completed prescribed training in which would allow them to exercise that power e.g. direct unsafe work to cease, issuing a PIN
Functions	<ul style="list-style-type: none"> Represent workers in the HSR's work group on any health and safety matters. Investigate health and safety complaints from workers in that work group. Represent a worker on a health and safety matter (including a complaint) if a worker asks for representation. Monitor any health and safety measures taken by the PCBU. Look into anything that appears to be a risk to the health or safety of workers in the HSR's work group arising from the conduct of the business or undertaking. Make recommendations relating to work health and safety. Provide feedback to the PCBU about whether the requirements of HSWA or the regulations under the Act are being met. Promote interests of workers in that work group who have been harmed at work, including arrangements for rehabilitation and return to work.
Powers	<ul style="list-style-type: none"> Attend interviews concerning health and safety with consent of the worker(s) concerned. Enter and inspect the workplace to perform HSR functions or exercise HSR powers.

- Request information needed to perform HSR functions or powers.
- Be accompanied or assisted by another person when performing HSR functions or exercising HSR powers.
- Assist, or act in the capacity of, a HSR that is in another work group.
- Accompany an inspector who has entered the workplace.
- Consult the regulator or an inspector on a work health and safety issue.
- Issue Provisional Improvement Notices (PIN) if the HSR has completed the prescribed training.
- Direct unsafe work to cease if HSR has completed the prescribed training.

Restrictions on the use or disclosure of information

Information obtained by an HSR in the performance of their functions or exercise of their powers under HSWA may only be used or disclosed by the HSR in the following circumstances:

- If the information is about a person, that person has consented to the disclosure or use of the information.
- The information is used or disclosed only to the extent needed to carry out their HSR role.
- The information is disclosed to the regulator (or a person authorised by the regulator) because the HSR reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with relevant health and safety legislation.
- The disclosure of the information is authorised or required by law.

Limits on HSR functions and powers

An HSR for a work group can only perform a function or exercise a power under HSWA for matters that affect the health and safety of workers in the HSR's work group. Unless:

- there is a serious health and safety risk from immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or
- the circumstances outlined in HSWA clause 6(3) of Schedule 2 apply.

An HSR can only perform a function or exercise a power under HSWA for a health and safety purpose, and not for any other reason.

An HSR can only use any information they obtain through their position to the extent necessary to perform or exercise their functions and powers.

Making the decision

Decision making

When making decisions on the removal or suspension of an HSR, an inspector will:

- apply the principles of natural justice
- make the decision in a timely manner
- not become involved in employment relations matters
- support the principles of effective worker engagement, participation and representation
- be fair, consistent and proportionate
- make decisions based on evidence and relevant circumstances

If there is evidence that an HSR's unsatisfactory performance has been influenced by adverse conduct, coercion, inducement or misrepresentation of any person, the matter should be referred to the HSWA Regulatory Operations Manager for further investigation. These circumstances may result in the prosecution of the person who improperly influenced the HSR.

Where a suspension is recommended, the actions required to remedy the concerns

	<p>must be determined.</p>
<p>Removal for a specified period or indefinitely</p>	<p>There is no clear distinction in HSWA for the removal of an HSR for a specified period or indefinitely. In this instance the principles of natural justice and reasonableness should be applied.</p> <p>Where the HSR has made a simple error of judgement and has the ability to improve for example, with a recommendation for further training, removal would be unlikely. Education and guidance material should be provided to the HSR to help improve their performance.</p> <p>A HSR is likely to be removed where:</p> <ul style="list-style-type: none"> • there is a risk of repeated misuse of power or unsatisfactory performance; • the circumstances indicate that the behaviour was intentional, and the HSR was not acting in good faith; • there is more than a minimal impact on workers, the PCBU, and the workplace • the HSR was knowingly influenced by the behaviour or actions of a third party <p>Removal for a <u>specified period</u> may be appropriate where:</p> <ul style="list-style-type: none"> • the length of time the person has been in the role of HSR is relatively short e.g. the HSR has only recently been appointed • the severity of the misuse of power or unsatisfactory performance is low • the views of workers in their confidence and trust levels in the HSR to represent them following further training and education, is satisfactory.\ • where there is a low risk of repeated misuse of power or unsatisfactory performance <p>During the specified period, the HSR may need to undertake further training and education to ensure that they understand their functions and powers and the use of those functions and powers.</p> <p><u>Indefinite</u> removal may be appropriate where:</p> <ul style="list-style-type: none"> • there is a repeated pattern of behaviour; • the unsatisfactory performance of function or exercise of power is intentional; • the severity of the unsatisfactory performance is high and has serious implications for the PCBU and/or workers • there is a loss of confidence and level of trust in the HSR to perform their functions from the workers they represent and the PCBU
<p>Decisions</p>	<p>The inspector's recommended decision must be reviewed by the Legal Team and HSWA Regulatory Operations Manager.</p> <p>The final decision to remove an HSR sits with the Regulator and is made by a person who has the appropriate delegation.</p> <p>All decisions must be documented, including the reasons, in Triton.</p>
<p>Informing the PCBU and HSR</p>	<p>The findings and result may be discussed with the HSR and the PCBU.</p> <p>A written notice (as a letter) must be sent to the HSR and PCBU to confirm the decision, the reasons for the removal and whether the removal from office is for a specified period or indefinitely.</p>

Where Maritime NZ determines it will not exercise its discretion to remove a HSR, the PCBU and HSR must be provided with the following written notice:

- To PCBU: Request to remove an HSR declined [D24/28067](#)
- To HSR: Request to remove an HSR declined [D24/28075](#)

Where the decision has been made to remove the HSR for a specified or indefinite period, the following written notices must be issued:

- To HSR: Decision to remove a HSR for a specified period or indefinite [D24/28131](#)
- To PCBU: Decision to remove a HSR for a specified period or indefinite (where the request for removal originated from the PCBU) [D24/28134](#), or
- To PCBU: Decision to remove a HSR for a specified period or indefinite (where the review arose from a Maritime NZ concern) [D24/28135](#)

Appeal against removal	
Appeal by HSR	A HSR may appeal to the District Court against a decision of Maritime NZ to remove them from office. An appeal must be made within 28 days of Maritime NZ's written notice of the decision.
Appeal against decision not to remove an HSR	
Appeal by PCBU	The PCBU has the ability to appeal Maritime NZ's decision not to remove the HSR to the District Court. Any appeal must be brought within 28 days of the date of the written notice issued by Maritime NZ.
Monitoring of removal (if for a specified time)	
Follow up	<p>The inspector must follow up with the HSR to determine whether the required actions for completion by the end date of the specified period of removal, have been achieved.</p> <p>If the actions have not been completed by the end date, a further review may be required. The option to extend the specified period may be considered.</p>

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Decide an issue in relation to the membership of a Health and Safety Committee

<p>What to determine</p>	<p>If requested under s 99 HSWA, an inspector has the power under regulation 30 WEPR Regulations, to decide the membership of a Health and Safety Committee (HSC). The membership requirements are set out in regulation 28.</p>
<p>Background</p>	<p>There is a clear and agreed process for how HSCs operate and what the PCBU must do to provide support to allow the role of the committee to be effectively fulfilled. Section 62 and section 66 of the Health and Safety at Work Act 2015 (HSWA) provide that all PCBUs:</p> <ul style="list-style-type: none"> • must initiate a health and safety representative election if requested by a worker (for the work group that the worker belongs). • must establish a health and safety committee if requested by an HSR or by five or more workers. <p>Although there is no specified timeframe for establishing an HSC, there is a requirement under section 66(2) of HSWA that a PCBU must, as soon as practicable after receiving a request, establish a HSC for the business or undertaking or part of the business or undertaking.</p> <p>Note: HSRs or HSCs are not mandatory. PCBUs are only required to initiate an election for representatives, or establish a committee where workers request them (or if the PCBU wishes to on their own initiative).</p> <p>A PCBU must make time available to each member to attend meetings and carry out the functions as a member of an HSC as set out in Schedule 2, Part 2, clause 21(1)(b) HSWA.</p> <p>The HSC should have the necessary level of decision-making, knowledge and expertise about company policy, production needs, technical matters and worker representation.</p> <p>There should be representation for different types of work arrangements and work groups, work sites and work roles.</p>
<p>HSC membership requirements to be considered</p>	<p>The requirements for membership of a HSC are set out in regulation 28 WEPR Regulations. When deciding on the membership of the HSC, an inspector must consider whether these are being met:</p> <ol style="list-style-type: none"> 1) the PCBU and the workers (or their representatives) at the workplace must agree on the membership of the committee (regulation 28(1)) 2) one of the members appointed by the PCBU to the committee must be authorised by the PCBU to make decisions on behalf of the PCBU on health and safety issues (regulation 28(2)(a)); and 3) at least half of the members on the committee must be workers and must represent workers at the workplace (regulation 28(2)(b)(i)); and 4) must not have been nominated by the PCBU? (regulation 28(2)(b)(ii)) 5) Each HSR is eligible to be a member of the HSC. Consider if this is the case. (regulation 28(3)) <p>You will engage with the PCBU, workers and HSRs to determine whether the requirements are being met. Examination of documentation such as meeting minutes and records of HSR elections may be necessary to verify these conversations.</p>

<p>Inspector's decision</p>	<p>Confirm your decision on the determination of the membership of the HSC with your manager. The decision may be to issue an improvement notice to address any failings. Generally, the parties will be provided with educational and guidance material.</p> <p>The inspector's decision is enforceable under regulation 30 WEPR Regulations.</p> <p>Communicate the decision to the involved parties in writing and upload this to Triton.</p>
<p>Follow up</p>	
<p>Offence under Regulation 30</p>	<p>A PCBU who fails to comply with the decision of the inspector commits an offence (regulation 30(2)) and is liable to conviction (as a fine).</p> <p>For this reason, it is important that the inspector follow up with the PCBU to ensure that the identified issue(s) have been resolved.</p>

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10 WEPR related compliance and enforcement actions

10.1 Compliance or enforcement action may be considered where a failure has been established under HSWA or WEPR Regulations such as:

- a PCBU does not have deliberate, planned ways to engage with workers or support worker participation
- workers do not have formal and informal ways to engage and participate, and there is no worker representation
- worker engagement and participation is not working effectively, and the PCBU shows no evidence of tackling the problem effectively
- or any other breach of HSWA or WEPR Regulations.

10.2 Inspectors must follow Maritime NZ's Regulatory Approach and associated policy when choosing an action to deal with a non-compliance matter.

10.3 Four infringement offences (offences which do not result in a criminal conviction) are specific to WEPR:

Section 76(1) HSWA	Failing to display a provisional improvement notice
Regulation 20(1) HSWA (WEPR) Regulations 2016	Failing to have an up to date list of health and safety representatives readily accessible to workers
HSWA Schedule 2, clause 10(2)	Failing to adopt or to explain why not adopting HSR's recommendation
HSWA Schedule 2, clause 21(2)	Failing to adopt or to explain why not adopting HSC recommendation

10.4 There are several other offences relating to WEPR including:

- a duty to engage with workers s 58 HSWA
- duty to have worker participation practices s 61 HSWA
- elections of HSR s 62 HSWA
- obligations of PCBU to HSR clause 10(1), Schedule 2, HSWA
- exceptions to clauses 4(1) and 10(1), clause 11, Schedule 2, HSWA
- requirements to allow HSR to attend certain training, clause 12, Schedule 2 HSWA
- duty in relation to election (HSWA (WEPR) Regulations, reg 16)
- prohibition on unreasonable delay of election and interfering with or influencing workers voting in election (HSWA (WEPR) Regulations, reg 17)
- issue that inspector may decide under section 99(3) of Act (HSWA (WEPR) Regulations, reg 30)
- PCBU must not levy workers e.g. provision of personal protective equipment by worker cannot be a term of condition of employment s 27 HSWA.
- damage of a PIN s 76(2) HSWA
- offence relating a breach of a PIN s 78 HSWA
- request for an HSC s 66 HSWA
- obligations in relation to an HSC clause 21(1) and (4), Schedule 2, HSWA

- prohibition on adverse conduct s 90 HSWA
- prohibition on requesting, instructing, inducing, encouraging, authorising or assisting adverse conduct s 91 HSWA
- prohibition on coercion or inducement s 92 HSWA
- misrepresentation s 93 HSWA

11 Definitions

11.1 The following terms and acronyms have been used in this procedure:

Employment relations matter – an issue that directly relates to employment, such as wages or misconduct. For more information, on employment relations matters and employment issues see Employment New Zealand and Employment Relations Authority

Engagement - how a PCBU involves workers in health and safety matters and decisions in the workplace. This includes sharing information and decisions in a timely way, giving workers reasonable opportunities to share their views, raise work health and safety issues and contribute to decision making processes.

Good faith – the use of honest and best efforts to deal fairly with others. It includes an absence of intent to harm other individuals or parties when carrying out an action. The person believes they are acting honestly, fairly and transparently when carrying out actions, functions or powers.

Health and Safety Representative (HSR) - a worker elected by the members of their work group to represent them in health and safety matters. HSWA and WEPR Regulations determine how an HSR is elected and describes their powers. Schedule 2, Part 1 HSWA sets out the functions of HSRs.

Health and Safety Committee (HSC) supports the ongoing improvement of health and safety at work. An HSC enables PCBU representatives, workers and other HSC members to meet regularly and work cooperatively to ensure workers' health and safety. One of an HSC's main functions is to assist in developing standards, rules, and policies or procedures relating to work health and safety. An HSC can also perform other functions that are agreed between the PCBU and the HSC, or specified by the Regulations. Schedule 2, Part 2 of HSWA sets out the functions of the HSC.

Participation - ways for workers to raise health and safety concerns, to suggest ways to improve health and safety, and help make decisions that affect work health and safety on an ongoing basis

Person conducting a business or undertaking (PCBU) – a person conducting a business or undertaking and is defined in detail in s 17 HSWA. Most New Zealand businesses, whether large corporates, sole traders, or self-employed, are classed as PCBUs.

So far as reasonably practicable - when considering what is 'reasonably practicable' for worker engagement, participation and representation duties, consider the:

- nature of the work that is carried out;
- nature and severity of a particular hazard or risk;
- ease of teaching workers who will be affected by a health and safety matter;
- work arrangements, such as staff work and remote work, or temporary workers;
- languages workers speak, and their reading and writing skills;
- availability of HSRs or other worker representatives;
- nature of the decision or action required, including how urgent it is to make a decision or take action;
- size and structure of the business or undertaking.

Worker - an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homemaker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. Part 3 of HSWA does not apply to volunteer workers. Workers can be at any level (for example, managers are workers too).

Worker representation – is someone (other than an HSR or union) who workers can approach about health and safety issues and will raise the issues with the PCBU on their behalf. Workers can also choose other representatives, such as community church leaders, whanau, respected members of ethnic communities, or representatives for specific projects.

12 References

12.1 The following documents are referred to or have informed this procedure.

- Health and Safety at Work Act 2015 – particularly sections 58-66, and Schedule 2
- Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016
- HSWA General Inspections. Operational Procedure and Process. Maritime NZ
- Operational Policy. Corrective and Enforcement Tools. Maritime NZ
- Operational Policies (various) on worker engagement, participation, and representation. Maritime NZ
- Guidance on worker engagement, participation and representation (various). Maritime NZ website
- Health and Safety. [A guide for mariners](#). Maritime NZ
- [Good Practice Guide – Working Engagement, Participation, and Representation](#) (WorkSafe)
- [Interpretive Guide – WEPR](#) (WorkSafe)
- [WEPR Assessment Tool](#) (WorkSafe)

13 Responsibility and authority

13.1 Under the Operational Policy and Practice Framework, this procedure is authorised by the Deputy Chief Executive Regulatory Operations and Deputy Chief Executive Regulatory Frameworks.

13.2 Position titles as listed in Appendix 1 are responsible for ensuring the process, as defined in this procedure is carried out.

13.3 Variations from requirements of this document will be the exception rather than the norm, and legal requirements are compulsory. Tier 3 managers, or higher, are authorised to approve variations and are accountable for those decisions. They are required to use their judgement and to seek advice, or to escalate when in doubt. All such decisions should be documented.

13.4 Where amendments to this document are required, these must be referred to and discussed with the Regulatory Practice Team Manager either by email regulatorypractice@maritimenz.govt.nz or by submitting a Regulatory Operations Work Request via Stingray.

14 Version control

14.1 Changes made to this document are recorded in the table below.

Version	Effective Date	Author	Changes
V 1.0	21/06/2024	s 9(2)(a)	New document
V 2.0			
V 3.0			

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Appendix 1 – Roles and responsibilities of Maritime NZ staff in relation to WEPR

Responsibilities' means a person/position has a role to complete a task, take an action or make a decision.

Position	Key responsibilities
Maritime New Zealand "the Authority"	Delegates its functions and powers (HSWA and HSWA (WEPR) Regulations) to the Chief Executive Officer ("the Director") Instrument of delegation
Director/Chief Executive	Delegates functions and powers under HSWA and appoints Inspectors
Deputy Chief Executive, Regulatory Operations	Authorises this Procedure Decision maker for the issuance of HSWA infringement notices and prosecutions
Deputy Chief Executive, Technical Advice and Support	Holds delegations under HSWA
General Manager, Regulatory Planning, Practice & Notifications	Ensures this Procedure enables the effective delivery of MNZ's HSWA designation, reflects best practice, is quality assured, is reviewed periodically and is accessible to all relevant staff and understood.
General Manager, General Regulatory Operations	Holds delegations under HSWA Provides opportunities for continued training to uplift HSWA capability across MNZ
General Manager, Investigations	Reviews and prioritises serious investigations including escalation/de-escalation of cases Manages serious/complex HSWA investigations (delegated to Manager, Investigations) Leads the review of prosecutions through Compliance Intervention Panel (CIP)
Manager, Investigations	Reviews serious/complex HSWA investigations triaged to the Investigations Team Assigns investigations to Specialist Investigators
Manager, HSWA Regulatory Operations	Responsible for the effectiveness and efficiency of the HSWA inspections function Leads the delivery of complex health and safety compliance monitoring activities Leads the targeting, triaging and scheduling of HSWA operational activities

	<p>Reviews WEPR related requests for review and where applicable, assigns to inspectors</p> <p>Provides opportunities to uplift HSWA capability across MNZ by encouraging and supporting coaching and mentoring</p>
Manager, Regulatory Practice	Responsible for the ongoing maintenance and review of this Procedure
HSWA Specialist (HS)	<p>Leads multiple PCBU inspections, with assistance from MOs and carries out system assessments</p> <p>Provides specialist HSWA advice, coaching and mentoring to MOs</p> <p>Leads or assists with complex HSWA investigations and requests for review</p> <p>Plans and coordinates delivery of HSWA related activities</p>
Maritime Officer (MO)	<p>Undertakes general inspections</p> <p>Assists HS with multiple PCBU inspections</p> <p>Provides guidance to PCBUs and workers and advises them of their responsibilities and rights under HSWA and its regulations</p> <p>Leads or supports HSWA investigations</p>
Maritime Inspector (MI)	<p>Undertakes HSWA inspections on flag-state and port-state ships (the latter, where a NZ PCBU is present)</p> <p>Supports HSWA general inspections when necessary (does not lead them)</p>
Maritime New Zealand staff	Ensures the processes and practice as defined in this procedure, are carried out in full and in accordance with MNZ values, principles and Service Charter

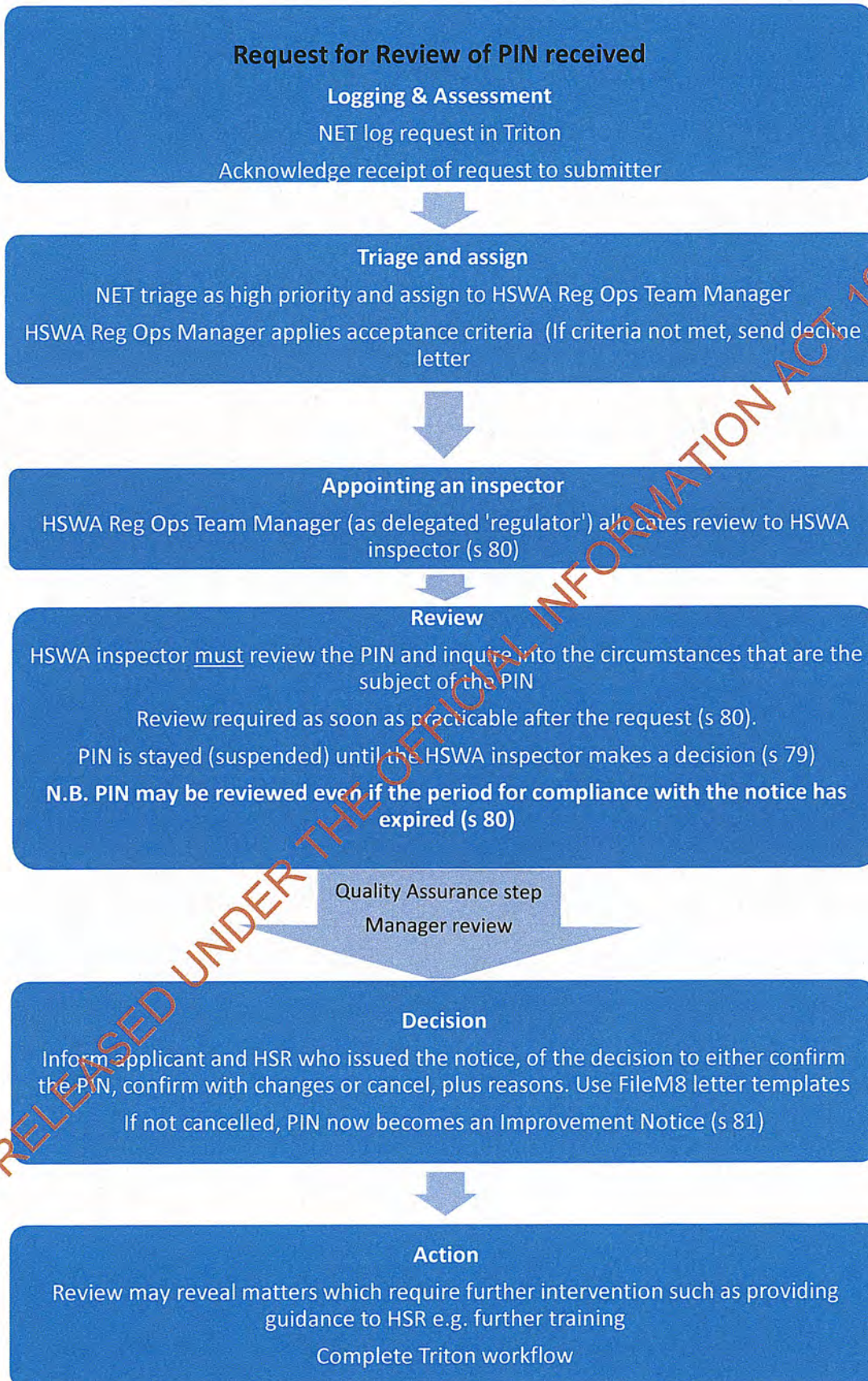
Appendix 2 WEPR educational and guidance material

- Worker engagement, participation and representation external guidance (various as listed) (Maritime NZ website)
 - ❖ Key concepts of WEPR (factsheet)
 - ❖ PCBU duties for worker engagement and participation (factsheet)
 - ❖ Reviewing your WEPR practices (factsheet)
 - ❖ Worker engagement (quick guide)
 - ❖ Worker participation practices (quick guide)
 - ❖ Health and safety representatives and committees (factsheet)
 - ❖ Your rights as a worker around health and safety EPR (factsheet)
 - ❖ What you can expect from the people you work for when they engage with you (factsheet)
- Good Practice Guidelines for worker engagement, participation and representation. (WorkSafe website)
- Worker representation through Health and Safety Representatives and Health and Safety Committees. Interpretative Guide. (WorkSafe website)
- Health & Safety Representative Hub. HSR tools and resources. Government Health & Safety Lead www.healthandsafety.govt.nz

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Appendix 3 Process flow for review of a provisional improvement notice (PIN)

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Document 4

Assessment tool

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**WORKER ENGAGEMENT,
PARTICIPATION AND
REPRESENTATION (WEPR)**

August 2023



Te Kāwanatanga o Aotearoa
New Zealand Government

WORKSAFE
Mahi Haumarū Aotearoa



This assessment tool describes guidance for WorkSafe New Zealand health and safety inspectors when assessing how well the legislative requirements for worker engagement, participation and representation are being met.

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This tool should be read in conjunction with the following WEPR collateral that can be accessed directly through your mobile device.

WorkSafe New Zealand Practice Framework

The Practice Framework provides Links to external guidance under the Health and Safety at Work Act 2015 and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

Case studies

These [case studies](#) provide examples of what some businesses are doing to work smarter by managing workplace health and safety, including WEPR.



Enforcement Decision-making Model

EDM provides a framework that guides WorkSafe's inspectors through the necessary thought process to decide on an enforcement response appropriate to the circumstances.

This assessment tool has three parts:

- Part 1 covers assessment – planning and assessment approach
- Part 2 covers legislative requirements
- Part 3 covers EDM
- quick reference.

KEY REFERENCES

HSWA	Health and Safety at Work Act 2015 Identifies the relevant law in HSWA
Regulations	Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 Identifies the relevant law in the Regulations
Guidance	Good practice guidelines How WorkSafe interprets the legislation
Interpretive guidelines	Explains the requirements under the HSWA and WEPR Regulations
Enforcement Decision Making Model (EDM)	Inspectors will use the compliance (non-risk based) path in EDM

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Introduction

IN THIS SECTION:

About this assessment tool

Key concepts

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About this assessment tool

Helping strengthen worker engagement, participation and representation in health and safety is a priority for WorkSafe. It's essential to growing a positive health and safety culture in New Zealand workplaces.

What is worker engagement and participation?

Worker engagement and participation in health and safety is critical to managing work related risks. It involves PCBUs, workers and representatives communicating, sharing responsibility and actively collaborating. Engagement and participation harness the power of the whole team to improve health and safety.

Under HSWA all businesses must have worker engagement and participation practices, regardless of size, level of risk or the type of work carried out.

A business must:

- ensure workers' views on matters that could affect their health and safety are asked for and taken into account when decisions are made (**engagement**)
- have clear ways and reasonable opportunities for workers to effectively raise concerns or suggest improvements on a day-to day basis (**participation**).

Both engagement and participation duties involve two-way communication in a 'conversation' about health and safety.

HSWA strengthens the legal framework for worker participation by:

placing obligations on all PCBUs to seek and consider worker views on a specific list of matters relating to work health and safety

- expanding the powers and responsibilities of HSRs (HSRs)
- providing protection for workers who raise health and safety issues
- requiring that PCBUs must have effective worker participation practices appropriate to the business
- specifying that a PCBU must initiate a HSR election if requested by a worker.
- Requiring PCBUs to establish an health and safety committee (HSC) if requested by an HSR or by five or more workers.

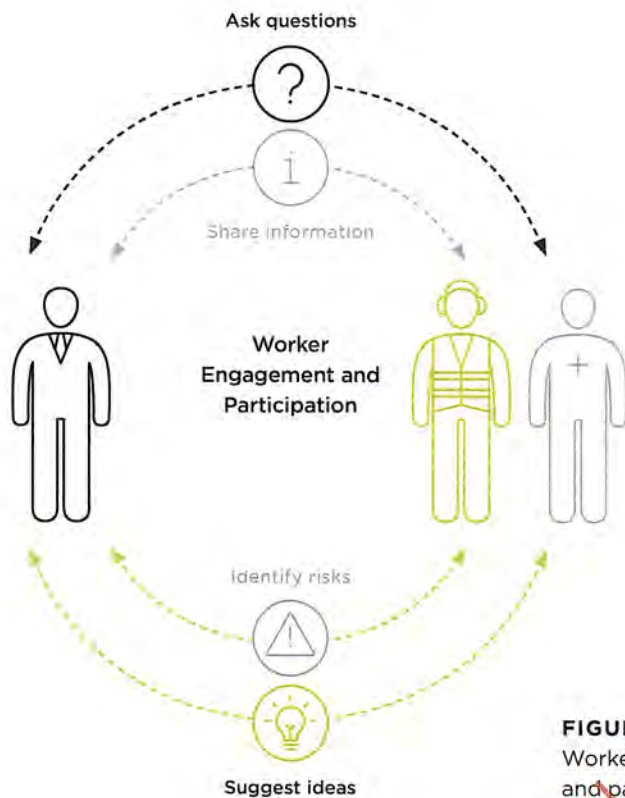
How a PCBU decides to engage with workers and ensure their participation in health and safety will depend on the views and needs of workers, the size of the business, the nature of the risks, and how, when and where work is carried out.

The focus needs to be on effective practices rather than whether any particular practices or processes are in place.

Benefits of worker engagement and participation in health and safety

Effective worker engagement and participation leads to:

- greater recognition of workplace risks
- making sure health and safety controls are practical because of the input and experience of a range of people including those doing the task
- increased commitment to implementing decisions because workers have actively been involved in reaching them and
- people taking responsibility and making good choices to work in a healthy and safe way.



What is worker representation?

Worker representation means that workers choose one or more people to act on health and safety matters on their behalf. Workers can share health and safety questions, concerns and suggestions with HSRs, HSC, unions or other worker representatives who can then raise these with the PCBU.

Worker representation is about having one or more people representing workers on health and safety matters to support worker engagement and participation. There are several well-established ways to do this, including HSRs, HSCs and unions. Other types of worker representatives can include lawyers, or community leaders.

Worker representation combined with direct worker engagement and participation can be an effective way of obtaining worker views and involving workers in health and safety.

HSRs are nominated by their peers to represent them in matters relating to health and safety. They have special powers, functions and entitlements under HSWA.

Worker representatives may also be trade union representatives. Unions have a specific statutory role under the Employment Relations Act 2004 to represent their members' health and safety interests, and to support their members by advocating on their behalf. A union is entitled to represent members' employment interests, including health and safety matters. Unions have legal powers to access a workplace to deal with matters concerning the health and safety of union members. Union representatives must seek permission beforehand, which an employer cannot unreasonably withhold.

Requirements regarding worker representation

- Any business can choose to have an HSR or HSC.
- All persons conducting a business or Undertaking (PCBUs) must initiate a HSR election if requested by a worker.
- PCBUs will only be required to initiate an election for representatives, or establish a committee where workers request them (or if the PCBU wishes to on their own initiative).
- If a worker asks for an HSR, the business must initiate an election.
- If an HSR or five or more workers ask for an HSC, the business must establish one.

In all other ways, these businesses have the same engagement and participation duties as other businesses. If HSRs and/or HSCs are part of a business' worker participation practice(s), [the Act](#) and [Regulations](#) set out how they will work, including their functions and powers, and the PCBU obligation to provide support.

Key concepts

Engaging with workers

A PCBU - whether small or large - must engage with its workers on matters of health and safety that will, or are likely to, affect workers, so far as is reasonably practicable. HSWA specifies the situations when a PCBU must engage.

This allows workers to have opportunities to contribute to improving health and safety at work - including when changes are being considered to how their work is done and their working environment. Worker engagement can be direct (for example, PCBU asking workers individually for feedback) or through worker representation, including HSRs and HSCs.

Who is a worker?

A worker is broadly defined to mean an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. Part 3 of HSWA does not apply to volunteer workers. Workers can be at any level (for example, managers are workers too).

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1.0 Assessment

IN THIS SECTION:

- 1.1 When would you complete a WEPR assessment?
- 1.2 Red flags that may prompt a detailed WEPR assessment
- 1.3 Planning the visit
- 1.4 What does a 'good' WEPR assessment look like?
- 1.5 Overarching questions for WEPR consideration

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1.1 When would you complete a WEPR assessment?

WEPR assessments should be a core component of all assessments:

- WEPR assessments are a 'Start Point' and should be integrated into all assessments.
- Use the 'General duties under HSWA, section 36: Primary duty of care' as a start/focus for assessing how health and safety is integrated into everyone's roles.
- A comprehensive WEPR assessment should occur when an assessment has alerted the inspector to possible WEPR deficiencies that indicate further investigation is required.

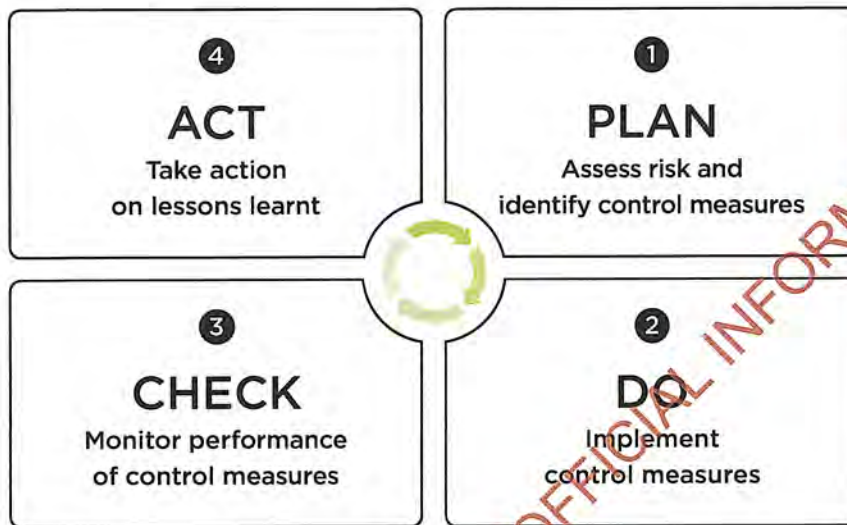


FIGURE 2:
Managing health and safety risks

The Plan, Do, Check, Act approach means that the effectiveness of any controls to manage health and safety risks are monitored, reviewed, and continuously improved. This includes WEPR arrangements. It also treats health and safety management as an integral part of good management generally, rather than as a stand-alone system. When taken together, the HSWA duties on PCBUs to engage and have effective participation practices mean that the PCBU should be asking for and taking into account worker input at each of these four stages.

1.2 Red flags that may prompt a detailed WEPR assessment

When to 'drill down' following an assessment

- As a result of a general assessment identifying specific WEPR issues that need further investigation and follow-up. Non-WEPR compliance will generally indicate there are other health and safety management issues that need further assessment (for example, inadequate risk management systems).
- If the workers or managers say something in the assessment that might trigger the need for further follow-up.
- When discussing overlapping duties.

Intelligence

- Company Risk Model intelligence/risk profile indicates there may be WEPR issues (for example, continued non-compliance, or when workforce includes vulnerable or seasonal workers).

- Operational intelligence identifies WEPR issues for further follow-up.
- Local knowledge.

Referral

Any of the following could also indicate that a WEPR assessment is required:

- PCBU relying on inspector to engage and help with change in the workplace
- local knowledge
- request for issue resolution
- review of Provisional Improvement Notice indicates breakdown in WEPR arrangements
- labour inspectorate tip-offs/referrals
- union referrals
- concerns received via 0800 number.

1.3 Planning the visit

- If the assessment is an announced visit let the PCBU know in advance that the assessment will include a WEPR component and ask for the HSRs and other worker representatives (for example, HSC members not appointed by management), union delegates to be available.
- Set clear expectations with the PCBU of what components are assessed as part of a WEPR assessment.
- Review Company Risk Model (CRM) profile.
- Check Guardian history for history of non-compliance with WEPR-related issues.
- Take WEPR specific guidance and industry guidance information and resources to share during your visit.

1.4 What does a 'good' WEPR assessment look like?

A 'good' WEPR assessment will be based on assessing the three WEPR components; worker engagement, participation and representation. It will allow the inspector to establish reasonable belief and confidence that the PCBU and workers:

- understand their legal duties under the HSWA 2015 and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016
- demonstrate WEPR engagement and effective participation practices
- support and enable HSRs and HSC to be effective (if in use as a participation practice).

Focus on practice and effectiveness rather than process

The assessment will get past 'what looks good'. It will test the validity and application of the workplace health and safety management system with regard to how workers are engaged and participating effectively in risk management as a matter of practice rather than considering the businesses process on paper.

Focus on lifting WEPR performance

Even when a PCBU has good WEPR practices, a good assessment creates the opportunity to lift WEPR performance by suggesting further improvements, or add value (for example, mentioning option of multiple PCBU work groups).

Be clear with the PCBU that strong WEPR can further improve their risk management, and also have benefits for morale and productivity.

Obtain views from both the PCBU and workers - include the perspectives of management, workers and/or union representatives

- Inspectors should ask to speak to an HSR at the workplace at every assessment. If an HSR is not available, request to speak to any other worker(s) to discuss how health and safety matters are managed in the workplace from a worker perspective.
- If it is possible, talk to both an HSR and a worker(s) representative if they are available.
- Talk to as many workers as practicable to get a feel for how things are working:
 - HSRs have a statutory power to accompany inspectors on their assessment. However, inspectors can refuse to allow an HSR to be present if:
 - › during a discussion personal information may be disclosed (unless the person whose information may be disclosed has expressly given consent to having an HSR present)
 - › the inspector considers there is a risk that the HSR presence would get in the way, including in the way of a potential investigation or prosecution.

Red flags when completing the assessment

- If the HSR or a worker representative is not available when the onsite assessment is completed, this may indicate there are underlying WEMP issues that need further follow-up. Ask for the HSR's contact details and follow-up by email.
- If the HSR or PCBU do not wish to meet together, explore the option of having separate meetings with the HSR or HSC.
- If you discover the HSR has not completed training, this is likely to indicate that the worker engagement participation practices need further investigation.
- If the HSR has not been nominated by their peers (for example, has been appointed by management).

How to conduct the assessment: Use the 'CODE' approach

A mix of Conversation, Observation, Documentation, and Examination will allow an assessment of:

- arrangements and processes
- behavioural factors that support the health and safety culture of the workplace.

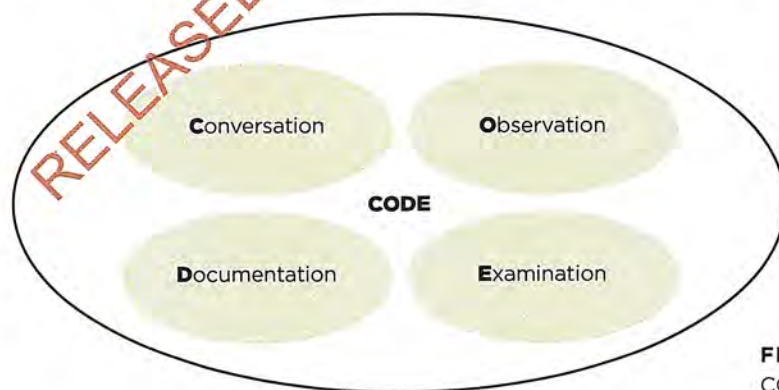


FIGURE 3:
CODE

1.5 Overarching questions for WEPR consideration

Note: These align with TLM WEPR questions.

Plan	<p>What practices or processes has the PCBU considered for engaging with workers, and for worker participation including the formation of HSCs and election of HSRs?</p> <p>Does the PCBU have planned, deliberate ways to engage and ensure reasonable opportunities for effective participation?</p>
Do	<p>What informal or formal ways are there for workers to contribute towards health and safety – both on specific matters and on an ongoing basis?</p>
Check	<p>What PCBU behaviours demonstrate the effectiveness of worker engagement and participation in health and safety risk management? What worker behaviours demonstrate reasonable care for their own and others health and safety, and effectiveness of worker contributions to risk management (consider both communication and other actions)?</p> <p>What PCBU and worker behaviours demonstrate that worker representation (if any) is functioning effectively?</p>
Act	<p>How are recommendations that improve WEPR acted on?</p>

Conversation

Ask open questions ('Tell me...', 'How do you?...') and use scenarios specific to the workplace being assessed (for example, 'If Nick or Nicole had an issue with x, what would you do?').

- How do you:
 - identify workplace health and safety hazards assess risk
 - develop controls
 - develop health and safety information and training
 - develop health and environment monitoring
 - review elements above
 - review policies and procedures.
- What do you talk about when discussing health and safety?
- Tell me how you manage risk?
- Tell me how your workers can suggest improvements or raise concerns on a day to day basis? How do they know whether the idea has been considered and what the result was?
- When would you discuss health and safety matters (for example, at smoko or on the job)?
- Tell me about the last time you were considering a significant change in the business. How did you people identify and manage the health and safety impacts of the proposed changes?
 - Establish if the workplace has an emphasis on formal or informal approaches (for example, what health and safety information do you keep)?
 - What time is built in (to work planning, to change processes) for discussing health and safety?
 - Is a HSR/and or HSC in place?
 - Are any issues identified primarily employment relations related not health and safety related?
 - How do officers fulfil their duty of due diligence with respect to WEPR in the business?

Observation

- Do managers and workers talk openly about their workplace and what is happening?
- Is there a positive feel and attitude in the workplace that reflects positive interactions – do things 'look and feel good'?
- Do workers know 'what's going on' and demonstrate they know how to get their jobs done in a healthy and safe way?
- Do managers and workers demonstrate an understanding of hazards and risks, and controls?
- How is the workplace organised – is it tidy, a noticeboard? If so, what's written on it? What health and safety information is on display?
- What PPE do the workers have? Is it compatible with other equipment or personal items (for example, glasses. Are they using the PPE they have correctly)?

Documentation

- What training records are kept?
- Documented and known systems for recording and updating hazards and risks (and sharing updates with workers).
- Documented and known systems for recording health and safety decisions (for example, meeting agendas and minutes and sharing these with workers).
- Documented recording of toolbox meetings and follow up actions.
- Diary notes.
- Actions register for near misses, accidents, resolutions.
- List of HSR contact details which is readily accessible to workers.
- Documented and known systems for raising concerns or suggestions.

Examination

- Roles and responsibilities are clear for planning, coordinating and sharing health and safety information, tracking and following up on actions.
- Examine the documentation that is available. For example, closer consideration of HSC minutes and actions could provide an indication of what actions are recorded, whether they are being actioned and followed-up within a reasonable time, and whether the focus of the HSC is on the key health and safety risks for the business.
- Review the accident register to see if there are trends being considered and recorded.

PROVISION OF INFORMATION

- Ensure information is provided to both the PCBU and workers.
- Provide verbal information at the visit on how WEPR practices could be improved or confirmation of what is working well.
- Provide written information and resources to assist the PCBU, workers and HSRs.

TAKE TIME

- Assessing systems, process and behavioural indicators takes time so the visit shouldn't have the feel of needing to 'wrap it up' in a certain time.
- A good, quality assessment is the main objective.

FEEDBACK

- Feedback should be provided at the time of the visit to both the PCBU and workers, including HSRs (if any).
- If feedback occurs after leaving the assessment, then it should also be sent to HSRs and workers.
- Where you consider things are working well, and the PCBU and workers have good WEPR processes in place, provide positive feedback.
- If a follow-up phone call or visit is considered necessary it should be explained why you think this is necessary, and when it will occur.

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2.0 Legislative requirements

IN THIS SECTION:

- 2.1 General duties under HSWA
- 2.2 Engagement
- 2.3 Worker participation duties
- 2.4 Representation

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The following section provides key legislative references under the Health and Safety at Work Act 2015 and associated Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 to apply when assessing WEPB.

More detailed information can be found in the good practice guidelines and the interpretive guidelines.

2.1 General duties under HSWA

The primary duty of care requires the PCBU, workers and worker representatives to work together to reduce risks in the workplace.

If the general duties under HSWA are being met, it will set a foundation for promoting an open and positive culture in which health and safety is integrated into everyone's roles.

AS A STARTING POINT HSWA SECTION 36: PRIMARY DUTY OF CARE

HSWA 36	Primary duty of care
Section 36(1)	A PCBU must ensure, so far as is reasonably practicable, the health and safety of: <ol style="list-style-type: none"> workers who work for the PCBU, while the workers are at work in the business or undertaking, and workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.
Section 36(2)	A PCBU must ensure, so far as reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
HSWA 44	Duty of officers
Section 44(1)	If a PCBU has a duty or an obligation under this Act, an officer must exercise due diligence to ensure that the PCBU complies with that duty or obligation.

Under HSWA, a business or undertaking (PCBU) must look after the health and safety of its workers and any other workers it influences or directs. The business or undertaking is also responsible for the health and safety of other people at risk from its work including customers, visitors, or the general public.

2.2 Engagement

Engagement under HSWA is a two-way conversation about a matter which may affect health and safety. The HSWA sets out the steps of proper engagement. This is a duty on the PCBU.

STEP 1: BEFORE STARTING

HSWA Section and 58(2) and 59(2)	Engagement must involve the HSR and be consistent with agreed procedures for engagement
Section 58(2)	If the PCBU and the workers have agreed to procedures for engagement, the engagement must be in accordance with those procedures.
Section 59(2)	If the workers are represented by a HSR, the engagement must involve that representative.

STEP 2: GIVING INFORMATION

HSWA Section 59(1)a	Relevant information must be shared with workers in a timely manner Engagement with workers under this subpart requires: a. that relevant information about the matter be shared with workers in a timely manner.
This means	<ul style="list-style-type: none"> - PCBUs cannot wait until the last minute to consult and seek worker views on a matter which may affect their health and safety. - PCBUs cannot withhold relevant information (this is backed up by good faith obligations in relation to employees and unions). - The information should be provided to workers in a manner that they can understand. - Workers should be able to ask for more detail if needed.

STEP 3: WORKER'S OPPORTUNITY TO RESPOND

HSWA Section 59(1)b	Workers must be given a reasonable opportunity to express their views, raise issues and contribute to the decision-making process That workers be given a reasonable opportunity: i. to express their views and to raise work health or safety issues in relation to the matter, and ii. to contribute to the decision-making process relating to the matter.
This means	<ul style="list-style-type: none"> - Workers must be given a chance to seek advice on the information if needed (including by involving unions, lawyers or Health and Safety experts). - Reasonable time and facilities should be given for workers to consider, discuss and make a response to the information or proposal provided. - Workers should be part of the decision-making wherever possible and not just told about the outcome.

STEP 4: TAKING WORKERS' VIEWS INTO ACCOUNT

HSWA Section 59(1)c	The view of workers must be taken into account That the views of workers be taken into account by the PCBU.
This means	The PCBU needs to have an open mind and genuinely consider the worker feedback when deciding the matter (for example, willing to adjust to meet concerns, or even to go back to the drawing board if necessary).

STEP 5: ADVISING WORKERS OF THE OUTCOME

HSWA Section 59(1)d	Workers must be advised of the outcome in a timely manner That the workers be advised of the outcome of the engagement in a timely manner.
This means	<ul style="list-style-type: none"> - The PCBU will need to think about how best to communicate the outcome of the engagement and the decisions made to workers. - The PCBU should explain its reasoning and how work input was taken into account.

There is a general duty to engage on health and safety matters but also specific matters where engagement is mandatory.

ASSESSING ENGAGEMENT

Observations	<ul style="list-style-type: none"> - There is a positive workplace culture. - Both management and workers are at ease and open in talking about health and safety issues and what practices they have in place, and how changes to these are made. - Both management and workers understand the health and safety risks and controls in the workplace.
Examples of evidence	<ul style="list-style-type: none"> - Organisational processes demonstrate health and safety is a priority within the business structure and built into the business model. - There is a culture of collaboration and an attitude of shared responsibility for health and safety. - Commitment evident in a documented Health and Safety Plan. - Workers have received a basic level of health and safety training. - Collaboration and joint problem solving: Induction, toolbox talks, site meetings. - Time is built in for discussing health and safety issues.
Assessment focus PCBU	<p>Are you satisfied that the PCBU is/has:</p> <ul style="list-style-type: none"> - engaged with workers (for example, contractors, temps) - engaged when reviewing or developing its health and safety management overall (plan, do, check, act), as well as on specific topics listed in s60 - demonstrated an understanding of the health and safety risks in their workplace - identified the potential health and safety risks - using both informal and formal ways for engaging with workers - providing reasonable opportunities for workers to provide feedback on health and safety issues - listened and responded to worker feedback - encouraged workers to request or suggest improvements to health and safety - keeping workers informed about what is happening, what will happen and why - considering whether its WEPR is effective and how it could be improved - per s60, worker input must be sought when developing/updating engagement practices.
Workers	<p>Are you satisfied workers:</p> <ul style="list-style-type: none"> - know the ways PCBU seeks their input on health and safety matters, and what their opportunities are to contribute - do contribute to decision making on matters which affect their health and safety, and see results - have the opportunity to raise issues about 'what really matters to you' for managing health and safety risks related to upcoming changes in the business (for example, rosters, the selection of tools, work equipment before they are purchased) - can describe how decisions get made on health and safety issues?
HSR and HSC	HSR and HSC Are fully informed and Involved in engagement process and are given adequate time and resources to contribute.

2.3 Worker participation duties

The PCBU has a duty to have effective participation practices.

WORKER PARTICIPATION PRACTICES

HSWA 61 Section 61(1)	<p>Duty to have worker participation practices</p> <p>A PCBU must have practices that provide reasonable opportunities for workers who carry out work for the business or undertaking to participate effectively in improving work health and safety in the business or undertaking on an ongoing basis.</p>
Section 61(2)	<p>In complying with subsection (1), the PCBU, must:</p> <ol style="list-style-type: none"> a. comply with prescribed requirements relating to worker participation, including requirements relating to a particular industry, sector, or kind or workplace b. take into account any relevant approved code of practice.

WORKER PARTICIPATION PRACTICES

<p>HSWA 61 Section 61(3)</p>	<p>Duty to have worker participation practices In this section, reasonable opportunities means opportunities that are reasonable in the circumstances, having regard to relevant matters, including:</p> <ul style="list-style-type: none"> a. the number of workers working in the business or undertaking b. the number of different workplaces of the business or undertaking, and the distance between them, and c. the likely risks to work health and safety in the business or undertaking and the level of those risks, and d. the nature of the work that is performed and the way that it is arranged or managed, and e. the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers, and f. the willingness of workers and their representatives to develop worker participation practices, and g. in relation to employers and employees, the duty to act in good faith as required by section 4 of the Employment Relations Act 2000.
<p>This means</p>	<ul style="list-style-type: none"> - Workers and their representatives are able to raise issues and concerns quickly and have them responded to within a reasonable time. - Opportunities are suited to the needs and preferences of the workers. - Per s60, worker input must be sought when developing/updating participation practices.

ASSESSING PARTICIPATION

<p>Observations</p>	<ul style="list-style-type: none"> - PCBU enables open, two-way communication with workers and /or their representatives on matters which could affect health and safety.
<p>Examples of evidence</p>	<ul style="list-style-type: none"> - Workers able to participate effectively in improving work health and safety on an ongoing basis. - Workers know and are aware they can stop unsafe work. - A combination of participation arrangements, both formal and informal are in place. - Health and safety is integrated into all roles. <p>Communication</p> <ul style="list-style-type: none"> - Workers can give examples of a time when a worker suggestion was adopted (or got a good explanation of why it wasn't). <p>Action</p> <ul style="list-style-type: none"> - Workers know they can take five or stop work if they have health and safety concerns. - Workers are comfortable to stop themselves or a colleague who is working in an unsafe or unhealthy way. - Workers feel comfortable and find it easy to raise health and safety issues with management (is there an open culture and willingness to discuss health and safety issues rather than a culture of blame). - Workers can give examples of a time when they or a colleague stopped work.
<p>Assessment focus PCBU</p>	<p>Are you satisfied that the PCBU:</p> <ul style="list-style-type: none"> - knows what its risks and potential risks are, and appropriate controls - has practices that allow workers to participate directly or indirectly in decision making that affects their health and safety - has clear two-way processes for communicating health and safety information - has well known practices for capturing and responding to health and safety issues raised by workers and worker representatives - can describe the sorts of things it consults with workers on, and how it makes sure worker feedback is responded to.
<p>Workers</p>	<p>Are you satisfied that the workers:</p> <ul style="list-style-type: none"> - can identify health and safety hazards, assess risks and appropriate controls - can describe how to raise an issue or suggestion on the spot and later the same day/week - can describe how it will be considered, and how they will hear back - can describe how to report accidents and near misses - raise issues and make suggestions with management? – is there open, two-way communication - are aware of the risks and hazards that are reported by others.

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2.4 Representation

HSRs and HSCs

HSWA SCHEDULE 2, PART 1: HEALTH AND SAFETY REPRESENTATIVES

(1)	Functions of HSRs.
(2)	HSR may attend interview.
(3)	HSR may enter and inspect workplace.
(4)	HSR may request information.
(5)	HSR may be assisted by another person.
(6)	HSR in one work group may assist, or act in the capacity of, HSR in another work group.
(7)	HSR may accompany inspector.
(8)	HSR may consult regulator or inspector.
(9)	Functions and powers of HSR generally limited to particular work group.
(10)	Obligations of PCBU to HSR.
(11)	Exceptions to clauses 4(1) and 10(1).
(12)	Requirement to allow HSRs to attend certain training.
(13)	Functions and powers for health and safety purposes only.
(14)	Information to be used by HSR for health and safety purposes only.
(15)	No duty on HSR.
(16)	Immunity of HSRs.
(17)	Regulator may remove HSR.
(18)	Appeal against removal from office.
(19)	PCBU may request regulator to exercise discretion to remove HSR.

This means	<ul style="list-style-type: none"> - The functions for HSR may include representing individual workers (on request) and work group members in health and safety matters, investigating complaints made by workers, identifying risks, and making recommendations to the PCBU to reduce harms. - How and whether the HSR exercises their functions or carries out their powers is up to them (it is not a duty). <p>There are clear statutory authorisation for HSRs to attend interviews with inspectors.</p>
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HSWA SCHEDULE 2, PART 2: HEALTH AND SAFETY COMMITTEES

(20)	Functions of HSCs.
(21)	Obligations of PCBU in relation to HSCs.
(22)	Information to be used by HSC for health and safety purposes only.

This means	<p>The HSC members are involved with:</p> <ul style="list-style-type: none"> - facilitating cooperation between the business and workers in instigating, developing and carrying out measures designed to ensure workers' health and safety at work - assist in developing any standards, rules, policies, or procedures relating to health and safety - make recommendations relating to work health and safety - perform any other functions that are agreed between the business and the committee. <p>An HSC must meet:</p> <ul style="list-style-type: none"> - regularly, at the times agreed by the members of the committee, but at least once every three months, and - at any other reasonable time, on the request of a simple majority of members of the committee.
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Election of HSRs

- A worker can request that an HSR be elected, or a PCBU can decide to run an election for HSRs on their own initiative.
- All PCBUs must initiate a HSR election if requested by a worker. PCBUs will only be required to initiate an election for representatives, or establish a committee where workers request them (or if the PCBU wishes to on their own initiative).

HSWA SECTION 62: ELECTION OF HEALTH AND SAFETY REPRESENTATIVES

HSWA Section 62	Election of health and safety representatives <ol style="list-style-type: none">1. A worker who carries out work for a business or undertaking may request the PCBU to initiate the election of 1 or more HSRs to represent workers who carry out work for that business or undertaking.2. If a PCBU receives a request under subsection (1), the PCBU must, within the time prescribed by regulations, initiate the election of 1 or more HSRs to represent workers who carry out work for that business or undertaking.3. The PCBU's obligation to initiate an election in response to a worker's request applies only in relation to an election for the work group to which the worker belongs.4. A PCBU may, on the PCBU's own initiative, initiate the election of 1 or more HSRs to represent workers who carry out work for that business or undertaking.5. A person who contravenes subsection (2) commits an offence and is liable on conviction:<ol style="list-style-type: none">a. for an individual, to a fine not exceeding \$5,000b. for any other person, to a fine not exceeding \$25,000
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HSWA SECTION 66: HEALTH AND SAFETY COMMITTEES

HSWA Section 66	Health and safety committees <ol style="list-style-type: none">1. The following persons may request the PCBU at a workplace to establish a HSC for the business or undertaking or part of the business or undertaking:<ol style="list-style-type: none">a. a HSR for a work group of workers carrying out work at that workplace, orb. 5 or more workers at that workplace.2. The PCBU must, as soon as practicable after receiving a request under subsection (1), establish a HSC for the business or undertaking or part of the business or undertaking.3. A PCBU at a workplace may establish a HSC for the workplace or part of the workplace on the PCBU's own initiative.4. A person who contravenes subsection (2) commits an offence and is liable on conviction:<ol style="list-style-type: none">a. for an individual, to a fine not exceeding \$5,000b. for any other person, to a fine not exceeding \$25,000. <ul style="list-style-type: none">- Any worker can ask a PCBU to run an election.- Workers can be at any level (for example, apprentice, employee, contractor, manager or other worker). <p>Any PCBU can decide to run an election for HSRs of its own initiative. The first step is to get peer nominations for the role of HSR. An election does not need to be held if the spots are not contested (that is, you only need to hold an election if the number of nominees is greater than the number of HSR roles).</p>
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Determination of work groups

HEALTH AND SAFETY AT WORK (WORKER ENGAGEMENT PARTICIPATION, AND REPRESENTATION) REGULATIONS 2016 SUBPART 2 - WORK GROUPS

Regulation 6	Default ratio of HSRs to workers in work group.
Regulation 7	Duty in relation to determination of work groups and number of HSRs if work group does not comprise all workers in business or undertaking.
Regulation 8	Withdrawal from and variation of agreements concerning multiple PCBU work group arrangements.
This means	<p>The PCBU must engage when one or more work groups are being set up.</p> <p>The PCBU can decide:</p> <ul style="list-style-type: none"> - what constitutes and adequate work group - processes for when a PCBU withdraws from a multi PCBU work group (for example, what constitutes reasonable notice but must take worker input into account when doing so) - the 1:19 minimum ratio only applies if there is one default work group for the whole business. Otherwise, the PCUB sets the ratio (having taken into account worker feedback on the matter).

Eligibility

HEALTH AND SAFETY AT WORK (WORKER ENGAGEMENT PARTICIPATION, AND REPRESENTATION) REGULATIONS 2016 SUBPART 3 - HEALTH AND SAFETY REPRESENTATIVES

Regulation 9	Eligibility to nominate candidates.
Regulation 10	Eligibility to stand for election.
Regulation 12	Duty in relation to timing of election requested by worker.
Regulation 13	Elections.
Regulation 14	Secret ballots.
Regulations 15	Candidates elected if nominations fewer than or equal to vacancies.
Regulation 16	Duty in relation to election.
Regulation 17	Prohibition on unreasonable delay of election and interfering with or influencing workers voting in election.
This means	<ul style="list-style-type: none"> - An HSR must be nominated by members of their work group. - An HSR can nominate themselves. - The nomination and election must follow the due process. - If there is only one nomination for the role, the HSR is considered 'elected'. - An HSR cannot be appointed by the PCBU. - An HSR gains their status from nomination and election (rather than from training).

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Office of health and safety representatives

HEALTH AND SAFETY AT WORK (WORKER ENGAGEMENT PARTICIPATION, AND REPRESENTATION) REGULATIONS 2016 SUBPART 3

Regulation 18	Term of office for HSRs.
Regulation 19	Resignation and removal from office of HSRs.
Regulation 20	Duty to maintain list of HSRs and their contact details which is readily accessible to workers.
This means	<ul style="list-style-type: none"> - There is a clear and agreed process for the election and term of office for the HSRs. - Workers and WorkSafe can easily find out who their HSRs are how to contact them.

Training

HEALTH AND SAFETY AT WORK (WORKER ENGAGEMENT PARTICIPATION, AND REPRESENTATION) REGULATIONS 2016

Regulation 21	Training required for purposes of sections 70(a) and 85(a) of Act.
Regulation 22	Types of HSR training.
Regulation 23	Choice of training.
Regulation 24	Duty in relation to access to training for HSRs.
Regulation 25	Sharing of costs for training in multiple PCBU arrangements.
Regulation 26	Duty in relation to maximum total number of day's paid leave to be allowed to health and safety training.
This means	<ul style="list-style-type: none"> - There is technically no obligation on the PCBU to send the HSR to training. - However there is a requirement to give the HSR paid leave to attend training, pay cost of training and reasonable expenses incurred. - HSRs should be able to demonstrate they have attended and completed training that has been prescribed by or under regulations (NZQA unit standard 29315) or previously completed training for another work group. - If they have not done so this may limit their effectiveness as a worker participation practice.

Health and safety committees

HEALTH AND SAFETY AT WORK (WORKER ENGAGEMENT PARTICIPATION, AND REPRESENTATION) REGULATIONS 2016 SUBPART 4 - HEALTH AND SAFETY COMMITTEES

Regulation 28	Membership of HSCs.
Regulation 29	Meeting requirements for HSCs.
Regulation 30	Issues that inspector may decide under section 99 (30 of the Act).
Schedule 1, Part 1	Transitional provision regarding training.
Schedule 2, Part 1	Requirement to allow HSRs to attend certain training.
This means	<ul style="list-style-type: none"> - There is a clear and agreed process for the how HSCs operate. - The PCBU has clear rules for how the HSC operates, and provides support to allow the role to be effectively fulfilled.

Assessing representation

ASSESSING REPRESENTATION	
Observations	<ul style="list-style-type: none"> - PCBU consults HSRs and HSC and/or involves them in making decisions about health and safety.
Examples of evidence	<ul style="list-style-type: none"> - HSRs have completed or are scheduled to take initial or further training. - HSRs are provided with reasonable resources such as paid time to liaise with workers and managers, and information about health and safety risks, incidents etc. - Other worker representatives (for example, union reps) are acknowledged, informed and involved in health and safety matters. - Unelected safety roles are clearly distinguished from HSRs by the PCBU and workers. - Election processes for the HSR and HSC are based on worker choices and reflect democratic process, rather than appointments being made by management. - Worker training records. - Provisional Improvement Notices or other health and safety notices issued and addressed. - HSRs/worker representatives are valued for their contribution, problem-solving, leadership role and mana as representatives. - HSRs and the HSC are involved in problem solving, and regularly focus on key risks in the PCBU. - List of HSRs other reps are clearly displayed and kept up to date (requirement).
Assessment focus	<p>Overall, are you satisfied:</p> <ul style="list-style-type: none"> - The PCBU is meeting its legal requirements in relation to HSR and HSC.
PCBU	<p>Are you satisfied that the PCBU:</p> <ul style="list-style-type: none"> - can tell you requirements for how workers are represented via HSR or HSC - can tell you who the HSR or HSC members are and how they work with the PCBU - can describe how the HSR or HSC raise health and safety concerns and involved in resolving them - can describe any changes that may have occurred over the last six months as a result of workers raising issues via worker representatives - has determined work groups which enable accessibility of HSRs to their work group.
Health and Safety Representatives or Committee	<p>Are you satisfied that the HSR or HSC:</p> <ul style="list-style-type: none"> - are involved in developing the health and safety procedures - have their views taken into account - have time for their role - have completed training - know how to and feel comfortable being involved with resolution processes (for example, issuing a Health and Safety Notice or Provisional Improvement Notices).
Workers	<p>Are you satisfied that workers:</p> <ul style="list-style-type: none"> - Know who their HSR or HSC representatives are and what the purpose of the HSR or HSC role is. - Workers understand that if there are unelected safety roles or functions, these are different to elected HSRs (which can be asked for).

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3.0 Enforcement

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When enforcing WEPR requirements, inspectors should use the same considerations as when enforcing other requirements in the regulations of the Act.

The Enforcement Decision-making Model (EDM) version 2 provides a framework that guides WorkSafe's inspectors through the necessary thought process to decide on an enforcement response appropriate to the circumstances. EDM is designed to promote enforcement decisions that are consistent with WorkSafe's Enforcement policy and are proportionate, transparent and targeted.

As WEPR requirements do not directly involve, or give rise to, risk to any person's health or safety, inspectors will use the compliance (non-risk based) path in EDM.

The compliance path in EDM involves inspectors considering the strength of the benchmark standard (defined, established or interpretive) and how well the standards are being complied with (absent or never, inadequate or occasional, or minor or short term lapse). Table 3.2 (from EDM) will then guide an inspector to an initial enforcement expectation.

DESCRIPTOR	STANDARD	INITIAL ENFORCEMENT EXPECTATIONS	CONSIDER PROSECUTION
Absent or never	Defined	Improvement Notice	Yes ¹ potentially for offences specified in policy/position statements
	Established	Improvement Notice	
	Interpretative	Directive letter	
Inadequate or occasional	Defined	Improvement Notice	
	Established	Directive letter	
	Interpretative	Verbal direction	
Minor or short term lapse	Defined	Verbal direction	
	Established	Verbal direction	
	Interpretative	Verbal direction	

¹ There may be very exceptional circumstances where prosecution may be considered (subject to meeting the evidential sufficiency and public interest tests set out in the Solicitor-General's Prosecution Guidelines) without applying the duty holder factors. This is restricted to circumstances where the risk gap is extreme and there has been failure to meet an explicit standard that is very well known and obvious. See section 4.4 for general guidance about these circumstances.

For compliance based issues there are three enforcement measures that may be used; improvement notices, directive letters and verbal directions.

There is also the option of considering prosecution or issuing an infringement notice, when guided to do so by the improvement notice duty holder factors flowchart. WEPR related infringement offences include:

- Section 76(1) of HSWA: Failing to display provisional improvement notice
- Schedule 2, clause 10(2) of HSWA: Failing to adopt, or to explain why not adopting, HSR's recommendation
- Schedule 2, clause 21(2) of HSWA: Failing to adopt, or to explain why not adopting, HSC's recommendation
- Regulation 20(1) of the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016: Failing to have an up-to-date list of HSRs readily accessible to workers.

ENFORCEMENT DECISION Scenario 1

These scenarios are to provide examples of how EDM could be applied to common WEPR situations. They are not intended to provide a prescriptive template for inspectors to follow when they are in the field.

A single-site PCBU, with about 30 workers, does not have any HSRs. This is despite a request several months ago from two of the workers to hold an election.

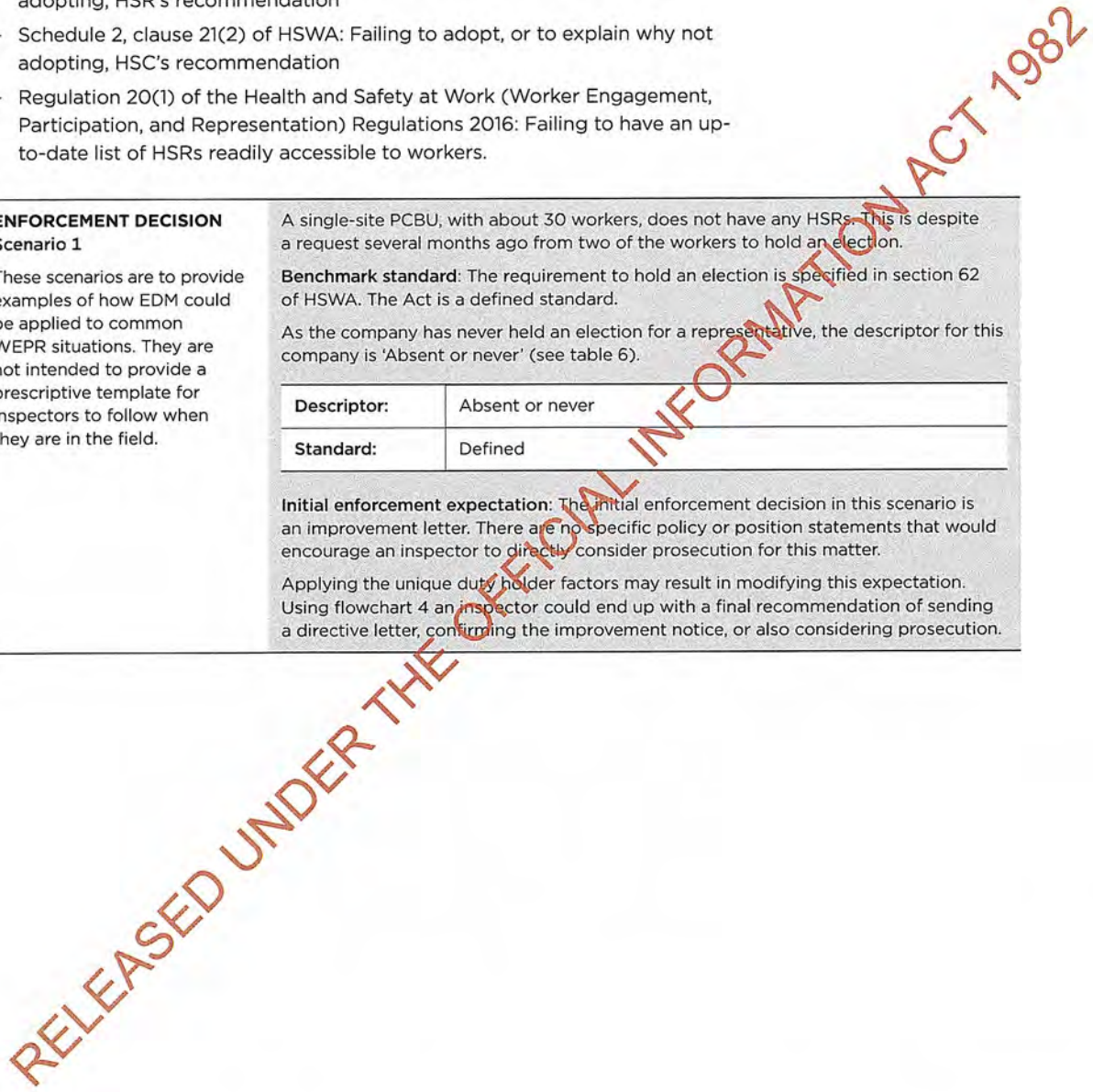
Benchmark standard: The requirement to hold an election is specified in section 62 of HSWA. The Act is a defined standard.

As the company has never held an election for a representative, the descriptor for this company is 'Absent or never' (see table 6).

Descriptor:	Absent or never
Standard:	Defined

Initial enforcement expectation: The initial enforcement decision in this scenario is an improvement letter. There are no specific policy or position statements that would encourage an inspector to directly consider prosecution for this matter.

Applying the unique duty holder factors may result in modifying this expectation. Using flowchart 4 an inspector could end up with a final recommendation of sending a directive letter, confirming the improvement notice, or also considering prosecution.



Quick reference

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KEY	LEGISLATION AND GUIDANCE
s	Health and Safety at Work Act 2015
r	Health and Safety at Work (WEPR) Regulations 2016
g	WEPR good practice guidelines
g	WEPR interpretive guidelines

ELEMENTS FOR ASSESSMENT	REF	EVIDENCE
<p>1. Primary duty of care and risk management</p> <p>Are you satisfied that the PCBU is maintaining a safe work environment?</p> <ul style="list-style-type: none"> - Open and positive workplace culture - Health and safety integrated into all roles - Upkeep of the environment - Facilities available for staff - Emergency procedures 	s36	<ul style="list-style-type: none"> - Tidy workplace - Verbal explanation - Documented procedures - Workers are able to explain procedures - Observation (for example, noticeboard, relevance of information)
<p>2. Engagement</p> <p>Are you satisfied that the PCBU has effective worker engagement practices?</p> <ul style="list-style-type: none"> - Shares information with workers in a timely way. - Workers are given a reasonable opportunity to express their views, raise issues and contribute to decision making. - The range of ways to engage reflect the needs of the workforce (for example, engaging with workers who may be less likely to question health and safety practices or speak up if they are unsure). - The views of workers are taken into account in decision-making. - Workers are advised of the outcome in a timely manner. - There are issue resolution procedures in place, if needed, to resolve health and safety issues. 	s58 s59	<ul style="list-style-type: none"> - Documented system of agreed procedures - Documentation of matters raised and decisions reached - Verbal explanation - Both the PCBU and workers can describe what is in place - Observation
<p>3. Participation</p> <p>Are you satisfied that the PCBU provides reasonable opportunities for workers to participate effectively in improving work health and safety in the business on an ongoing basis?</p> <ul style="list-style-type: none"> - There is open communication with workers/and or their representatives. - Workers have opportunities to raise issues/suggestions quickly. - Workers know how to participate, and use opportunities to do so (including by taking responsibility and making good choices). - Decision makers in the PCBU consider and respond to workers' contributions. 	s60 s61	<ul style="list-style-type: none"> - Documented system - Verbal explanation - Both the PCBU and workers can describe what is in place - Observation
<p>4. Representation</p> <p>Are you satisfied that the workers are effectively represented by a HSR (if required or in place) or HSC (if one is in place)?</p> <ul style="list-style-type: none"> - Workers know who their representative is, and what their role is. - The PCBU consults workers and /or their representatives and involves them in making decisions about health and safety. - Has the HSR been elected by the workers? If there is a HSC, are at least 50% of the members elected by the workers? - Worker representatives have adequate time, resources and training to carry out their roles. 	HSWA Schedule Part 2	<ul style="list-style-type: none"> - Verbal explanation - Observation

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Memorandum

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Document 5

TO	[Name] Deputy Chief Executive – Regulatory Operations
FROM	[Name] Senior Solicitor
COPIES	[Name], General Manager Investigations [Name], Manager Legal Services – Litigation and Operations
DATE	[dd Month yyyy] TOTAL PAGES: [XX]
ATTACHMENTS	Investigation Memo and Evidential Sufficiency
SUBJECT	Prosecution Decision - [Investigation Number: VESSEL NAME - Company, Master]

1 Introduction

- 1.1 The purpose of this memorandum is to seek your decision as to whether or not criminal proceedings should be taken as a result of an incident involving [summary of facts] at/in [location] on [date].
- 1.2 The facts of the matter are set out in the attached Memorandum to the Compliance Intervention Panel (CIP) dated [date] regarding [Subject of Investigation Memo] (Investigation Memo).
- 1.3 The limitation date for commencing proceedings in this matter is [date]. [Note potential difference for the test for limitation date under MTA / HSWA].

2 The Prosecution Test

- 2.1 According to the Solicitor-General's Prosecution Guidelines¹ (Prosecution Guidelines), prosecutions ought to be initiated only where the Prosecution Test is met, which includes:
 - a) The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of a conviction (The Evidence Test), AND
 - b) Prosecution is required in the public interest (The Public Interest Test).

3 The Evidence Test

- 3.1 Legal advice (Evidential Sufficiency) has been obtained from [Crown Solicitor firm engaged] (attached) advising that there [is/is not] sufficient evidence to file the following:
 - A charge against [name] for a breach of sXX of the Health and Safety at Work Act 2015 (HSWA) in that s/he had a duty as a [worker/PCBU] under sXX of HSWA, namely that they:
 - [particulars of charge]
 - A charge against [name] for a breach of sXX of the Maritime Transport Act 1994 (MTA), namely that they:
 - [particulars of charge]
- 3.2 [Crown Solicitor firm engaged] advises there is insufficient evidence to file the following:
 - A charge against [Name/Company] under HSWA

¹ <https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf>

- A charge against [Name/Company] under MTA
- 3.3 The Evidential Sufficiency from [Crown Solicitor firm engaged] [satisfies/does not satisfy] the Evidence Test, which is the first limb of the Prosecution Test.

[Note, where the evidence test is not made out, then skip to the final heading – Legal Advice].

4 The Public Interest Test

- 4.1 Particular consideration will need to be given to the Public Interest Test, which is the second limb of the Prosecution Test.
- 4.2 In general, once it is established that there has been a contravention of the criminal law there is a presumption that the public interest favours prosecution. The predominant consideration is the seriousness of the offence. Further, the gravity of the maximum sentence and the anticipated penalty is likely to be a strong factor in determining the seriousness of the offence.

A. Public Interest Considerations

[Note duplicate this section below when considering the Public Interest Test for multiple parties].

- 4.3 The public interest considerations are summarised below².

4.3.1 The following considerations favouring prosecution are:

- [factors for prosecution]

4.3.2 The following considerations against prosecution are:

- [factors against prosecution]

[Note when drafting the above considerations the public interest considerations below are not meant to be an exhaustive list of what are relevant public interest considerations. The Solicitor General Guidelines merely mentions them to advise they may be relevant and require consideration, the list is illustrative only (see page 8 of SG Guidelines 2013).

As above, the predominant considerations should be discussed first: the seriousness of the offence, including the gravity of the maximum sentence and the anticipated penalty and if it favours or does not favour prosecution

Identify the relevant public interest considerations for prosecution from the Prosecution Guidelines below.

- a) Seriousness of the offence (the gravity of the offending and anticipated penalty)
- b) Grounds to believe offence is likely to be repeated (history of recurring conduct)
- c) The more vulnerable the victim, the greater the aggravation
- d) Previous convictions or cautions
- e) Created serious risk of harm
- f) Resulted in financial loss
- g) Motivated by hostility

As set out in the Prosecution Guidelines, public interest considerations against prosecution, which are relevant to maritime incidents, are:

- a) Court is likely to impose a small or nominal penalty
- b) Loss or harm is minor and caused by an error of judgment or genuine mistake
- c) Offending is not serious in nature and unlikely to be repeated
- d) Prosecution is likely to have a detrimental impact on a victim or witness
- e) Defendant is elderly or youth or suffering significant mental or physical ill-health

² They include those set out in the Prosecution Guidelines and those relevant considerations identified by the MNZ Solicitor and the Crown Solicitors.

- f) No previous convictions
- g) Victim accepts Defendant has rectified the loss or harm caused.]

B. CIP Discussion on MNZ Compliance Operating Model

[Note duplicate this section below when considering the Public Interest Test for multiple parties].

4.4 Another consideration is the application of MNZ's Compliance Operating Model. This is a matter for you to consider, as the person within Maritime New Zealand who has delegated authority to make compliance decisions. Nonetheless, CIP held a discussion regarding the application of the MNZ Compliance Operating Model.

4.5 The CIP met and discussed [Set out a summary of discussion at CIP of (a) – (d) below.

- a) The extent of harm or risk
- b) Conduct
- c) Public Interest
- d) Attitude towards Compliance]

4.6 The voting members agreed by [consensus/majority] that...

[Note: If it was agreed at CIP that the matter should not proceed to prosecution, mention what the CIP agreed was the appropriate course of action to propose to the decision maker.]

C. Sentencing Considerations

4.7 Section 7 of the Sentencing Act 2002 sets out relevant considerations that assist with the decision as to whether prosecution is in the public interest.

4.8 The first consideration in sentencing is given to reparation where this is relevant. This is consistent with the purposes in the Sentencing Act to provide for the interests of the victim(s) of the offence and to provide reparation for harm done by the offending.

4.9 The purposes also include holding the offender to account and promoting a sense of responsibility for the harm.

[In this case, having regard to the seriousness of the offending, prosecution is/is not considered to be the appropriate means to achieve this].

4.10 In addition sentencing purposes include denunciation and deterrence. Deterrence has two aspects – general deterrence and specific deterrence. General deterrence constitutes a warning to those considering committing similar offences; whereas specific deterrence is designed to deter the particular offender from reoffending in the same way in the future. [Prosecution would/would not achieve this].

D. [Victim's/Victims'] Interests

4.11 As you are aware, Maritime NZ must comply with the *Victims' Rights Act 2002* when conducting an investigation and/or a prosecution.

4.12 The views and interests of the victim(s) are relevant public interest factors for the decision whether or not to prosecute. In this case, the victim has expressed the following views ...

4.13 The [victim's/victims'] in this case, have expressed the following views: [Set out views of the victim/s]

[Note: Victim Liaison Officer should input into this section, especially if s/he has not had the opportunity to input in the Investigation Memo.]

E. Alternatives to Prosecution

- 4.14 Another factor that is relevant to the decision whether or not to prosecute is whether there are proper alternatives to prosecution. [Set out any alternatives here]

5 Legal Analysis

[Note duplicate this section when considering the Public Interest Test for multiple parties.]

- 5.1 To come to a decision on whether or not to commence criminal proceedings, Maritime New Zealand must consider:
- The Prosecution Test as set out in the Prosecution Guidelines,
 - The application of the MNZ Compliance Operating Model,
 - Any applicable considerations under the Sentencing Act 2002, and
 - The victims' rights in accordance with the Victims' Rights Act 2002.
- 5.2 I consider that weight should be given to the following factors [set out matters to give weight to and if they are for/against prosecution]:

[Note: again, that seriousness of the offence is the predominant consideration. Further, the gravity of the maximum sentence and the anticipated penalty is likely to be a strong factor in determining the seriousness of the offence.]

6 Legal Advice

[Note, where there is not sufficient evidence, please state the following]

- 6.1 As above, there is not sufficient evidence to support a prosecution. Therefore, I advise not to proceed to prosecution.

[Note, where there is sufficient evidence, please state the following;]

- 6.2 [Crown Solicitor firm engaged] have advised that there is evidential sufficiency to file various charges. If a decision is made to charge [who] then Maritime NZ will need to consider the choice between the potential charges.

[Note: Discussion here about choice of appropriate charges under HSWA and MTA and factors to consider and include the Crown and your recommendation and justify your reasoning.]

7 Summary

[Note duplicate this section when considering the Public Interest Test for multiple parties.]

- 7.1 On balance, weighing up the discussion at CIP regarding the application of the MNZ Compliance Operating Model and the legal advice of [Crown Solicitor firm engaged] regarding the factors for and against the Public Interest Test, the applicable considerations under the Sentencing Act, and the views of the victim/s, the factors [favour/are against or are finely balanced] prosecution.

[Sender name]
[Sender role]

Prosecution Decision

After full consideration of the Investigation Memo, the Evidential Sufficiency and the legal advice contained in the Memorandum above setting out an analysis of the Public Interest Test, the MNZ Compliance Operating Model, the considerations under the Sentencing Act 2002 and the victim's interests in accordance with the Victims' Rights Act 2002, I have decided:

1) To / Not proceed with a prosecution

<i>Proceed</i>	<i>Not Proceed</i>
<input type="checkbox"/>	<input type="checkbox"/>

2) To file the following charges:

<i>Party</i>	<i>Charge</i>	<i>Maximum</i>	<i>Yes</i>	<i>No</i>
[Name]	Section XX HSWA	\$XXX,000 fine	<input type="checkbox"/>	<input type="checkbox"/>

OR

[Name]	Section XX MTA	Imprisonment for term not exceeding XX months / \$XX,000 fine	<input type="checkbox"/>	<input type="checkbox"/>
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Comments: [DCE Regulatory Operations comments to be inserted here]

SIGNED at Wellington on this day of)
 2023)
 by [Name])
 Deputy Chief Executive – Regulatory Operations)

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