

# 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 (OP03)

## Operational Policy

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The Health and Safety at Work Act 2015 (HSWA) requires a person conducting a business or undertaking (PCBU) to have effective worker engagement, participation and representation (WEPR) practices to discuss work health and safety issues.

We can be asked to provide help to resolve a health and safety cessation of work or a work health and safety issue if:

- the issue cannot be resolved between the PCBU and its workers; or
- a PCBUs workers cease work due to a health and safety concern.

This policy sets out 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.

## **This policy applies to all requests for help to resolve a health and safety cessation of work or a work health and safety issue in the maritime sector**

This policy applies to requests for help at workplaces:

- on New Zealand vessels in any waters;
- on foreign vessels on demise charter to a New Zealand-based operator when it is operating in New Zealand waters;
- on foreign-flagged vessels as workplaces for New Zealand workers employed by a PCBU; and
- at designated ports.

This policy does not apply to:

- requests to review a Provisional Improvement Notice;
- requests to remove a Health and Safety Representative (HSR);

- matters that are subject to an investigation, corrective or enforcement action;
- PCBU's refusing to work on foreign-flagged vessels to protect their workers from harm due to the condition of the vessel or the equipment on the vessel;
- workplaces shut down due to an adverse event, such as a chemical spill, or natural disaster; or
- employment relations matters, such as the cessation of work for issues unrelated to health and safety.

## **Who can make a request for help**

A PCBU, HSR or worker can make a request for help to resolve a health and safety cessation of work issue.

Requests for help to resolve a work health and safety issue can be made by a worker, PCBU, HSR or other person.

## **We will always provide help to resolve a health and safety cessation of work issue**

We will always provide help with issues confirmed as relating to the cessation of unsafe work as they potentially involve immediate or imminent health and safety risks.

We will respond within four hours of receiving a request and provide help as soon as practicable.

## **How we decide if we will help to resolve a work health and safety issue**

We will provide help when a health and safety issue meets the following criteria:

- the issue is on or at a workplace in the Maritime sector;
- the issue is related to health and safety;
- the parties have made a reasonable effort to resolve the issue;
- the issue is not already being dealt with by Maritime NZ; and
- supporting evidence related to the issue and the efforts made to resolve the issue have been provided to us.

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.

## **What help will we provide**

When we have agreed to help, in most cases a site visit will be required. Our role is to help the parties reach a mutually agreed resolution and appropriate solution, not to solve the problem. To do this, as a neutral party we will facilitate a conversation between those involved.

If one or more of the parties involved is unwilling to resolve the issue, we will still provide help to resolve the issue.



## Health and safety cessation of work issues

It is often critical that health and safety cessation of work issues be resolved quickly and therefore it may be necessary to focus conversation on the most relevant factors. In time critical situations, we will prompt the parties to discuss:

- whether they have met the legislative requirements for ceasing work;
- 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 similar 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.

If the situation allows, we will prompt the parties to have discussions on a wider set of factors, such as how everyone at the workplace identifies hazards and manages risk.

We have no authority to direct a worker to return to work.

## Work health and safety issues

In facilitating conversations to resolve work health and safety issues will we prompt the parties to have discussions about:

- 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;
- the evidence of the issue;
- how any similar situations have been handled by the parties and what was achieved;
- how worker engagement, participation, and representation systems enable workers to be involved in identifying hazards and managing risks;
- 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.

We will also:

- prompt discussion about other relevant information, such as solutions that may have been found by other entities to similar issues; and
- provide the parties involved with information and guidance to help them improve their worker engagement, participation, and representation practices.



## **What happens if there is a strike on the grounds of safety or health while we are helping to resolve an issue**

Unions may call for a strike on the grounds of safety or health under section 84 of the Employment Relations Act 2000 (ERA).

If we are helping to resolve an issue when a strike is called, we can continue to help the parties reach an appropriate solution to that issue, regardless of whether the matter is related to the strike or not.

We will not get involved in any employment relations matters related to any strike action.

## **Further action may be required**

### **When the parties cannot agree to a resolution**

In some cases, the parties may not be able to reach an agreed resolution. We can provide parties with the relevant guidance and industry related material.

If we identify any non-compliance or potential non-compliance with the legislation we administer we may also consider use of our corrective or enforcement tools.

### **We may decide the membership of a Health and Safety Committee (HSC)**

If the health and safety issue relates to a Health and Safety Committee (HSC), we can decide the membership of an HSC. When making a decision on the membership of an HSC, we consider whether the requirements set out in HSWA regulations are met, including whether:

- one of the members has been authorised by the PCBU to make health and safety decisions on its behalf;
- at least half the members are workers from the workplace that have not been nominated by the PCBU; and
- the HSC and its members are able to meet:
  - regularly at least every three months; and
  - at any reasonable time on request of a simple majority of members of the HSC.

In deciding the membership of an HSC we also consider:

- an HSC member's or person's knowledge about company policy and its needs, technical matters, and worker representation;
- representation for different types of work arrangements, work groups, worksites and work roles; and
- the time available to an HSC member or person to carry out the functions of the HSC.



## Legislative basis for this policy

Requirements for requesting help and helping to resolve health and safety cessation of work and work health and safety issues are set out in HSWA and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

The following sections and regulations of HSWA and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 support this policy:

- sections 82 to 85 – the requirements related to a cessation of work;
- section 87 – a PCBU, HSR or worker may ask the regulator to help resolve a health and safety cessation of work issue. If the regulator agrees, they must provide help as soon as practicable;
- section 98 – parties to a work health and safety issue must make reasonable efforts to resolve the issue;
- section 99 – a party to a work health and safety issue can request that the regulator appoint an inspector to help resolve the issue. If the regulator agrees to help, the inspector may decide the issue if it is of a type specified in the regulations regarding an HSC;
- regulations 28 and 29 – the membership and meeting requirements of an HSC; and
- regulation 30 – inspector can decide under section 99(3) of HSWA an issue in relation to the membership of an HSC and offences for failing to comply with a decision of the inspector on the membership of an HSC.

The following sections of the ERA inform this policy:

- section 84 – provides that a strike on the grounds of safety or health is lawful if there are reasonable grounds for believing that the action is justified on the grounds of safety or health; and
- section 86A – provides the requirements for a notice of strike, which includes a requirement that the notice be signed by a representative of the employees' union on the employees' behalf.

## Key Terms

**Appropriate solution** for the purposes of this policy, an appropriate solution is often an action plan or agreed steps and could include, among other things, an agreement to:

- follow standards set out in approved codes of practice;
- upgrade equipment;
- install additional safety measures; or
- improve worker engagement, participation, and representation practices to identify health and safety issues sooner.



**As soon as practicable**

means as soon as reasonably achievable taking into account:

- 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; and
- the availability of inspectors.

**Cease or refuse to carry out work**

means ceasing or refusing to carry out a particular work task or action. For example, workers loading and unloading a vessel may refuse to use a particular crane due to safety concerns, but continue to use other equipment or other cranes to carry out the work.

It does not include:

- a PCBU refusing to carry out work on a vessel due to the condition of the vessel or the equipment on the vessel to protect their workers from harm;
- a situation where a workplace is shut down due to an adverse event, such as a gas leak, or natural disaster; or
- strike action on the grounds of safety or health under section 84 of the Employment Relations Act 2000.

**Cessation of work issue**

means an issue where a worker has ceased or refused to carry out work because they believe that carrying out the work would expose them, or any other person, to a serious health and safety risk. A Health and Safety Representative may also direct unsafe work to cease.

It does not include:

- a PCBU refusing to carry out work on a vessel due to the condition of the vessel or the equipment on the vessel to protect their workers from harm;
- a situation where a workplace is shut down due to an adverse event, such as a gas leak, or natural disaster; or
- strike action on the grounds of safety or health under section 84 of the Employment Relations Act 2000.



### Designated ports

for the purposes of this policy, means a port operated by a port company within the meaning of the Port Companies Act 1988 and includes the following ports:

- Northport
- Ports of Auckland
- Port of Tauranga
- Eastland Port
- Port Taranaki
- Port of Napier
- CentrePort Wellington
- Port Marlborough
- Port Nelson
- Lyttelton Port
- PrimePort Timaru
- Port Otago
- South Port
- Ports used in connection with the Cook Strait inter-island ferries.

The definition also includes:

- any area within the securely fenced boundaries of a port listed above, whether or not that area is operated by a port company; and
- the buildings, installations, other structures or equipment on or adjacent to a port listed above and used in conjunction with that port's operation or administration.

### Employment relations matter

means 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
- Employment Relations Authority.



### **Health and safety committee (HSC)**

an HSC's function is to:

- facilitate co-operation between the PCBU and workers by instigating, developing, and carrying out measures designed to ensure the health and safety of workers at work;
- assist in developing any standards, rules, policies, or procedures relating to health and safety that are to be followed or complied with at the workplace;
- make recommendations relating to work health and safety; and
- perform any other functions that are—
  - agreed between the PCBU and the HSC; or
  - prescribed by the regulations.

### **Health and Safety Representative (HSR)**

an HSR is a worker elected to represent the members of a work group on health and safety matters within a PCBU.

### **Legislation we administer**

for the purposes of this policy, this includes legislation we have responsibilities under:

- Maritime Transport Act 1994 and its associated rules and regulations;
- Maritime Security Act 2004 and its associated regulations;
- Ship Registration Act 1992;
- Submarine Cables and Pipelines Protection Act 1996;
- Health and Safety at Work Act 2015 and its associated regulations; and
- Hazardous Substances and New Organisms Act 1996.

### **Parties**

means the persons, workers, PCBUs, and their representatives who are directly involved and affected by a health and safety cessation of work issue or a work health and safety issue.

### **Provisional Improvement Notice (PIN)**

means a written notice issued by a Health and Safety Representative (HSR) to a person requiring them to:

- resolve a breach of HSWA or its regulations; or
- prevent a likely breach of HSWA from occurring; or
- remedy the things or activities causing or likely to cause the breach of HSWA or its regulations.





<b>Reasonable efforts</b>	means affected parties must have made reasonable attempts to work through the issue on at least one occasion. Reasonable efforts may include, but is not limited to: <ul style="list-style-type: none"> <li>• trying to access, read and understand relevant guidance, and other published information to resolve the issue;</li> <li>• regular meetings to resolve the issue; and</li> <li>• looking into what others have done to resolve a similar issue.</li> </ul>
<b>Strike on the grounds of safety or health</b>	for the purposes of this policy, means a strike under section 84 of the Employment Relations Act 2000 where employees of a workplace have reasonable grounds for believing that a strike is justified on the grounds of safety or health.
<b>Vessel</b>	for the purposes of this policy means a vessel, ship, or boat and is a generic term that is not associated with the size of the craft.
<b>Work health and safety issue</b>	means an issue that arises in the workplace about health and safety. It may include issues related to membership of a health and safety committee.

## Disclaimer

This policy provides information on and sets out Maritime NZ's approach to the helping with health and safety cessation of work and work health and safety issues under HSWA and its relevant regulations. It is not a substitute for legislation and regulations.

Health and Safety Representatives, PCBUs, and workers must make sure they are operating to the latest legislation and regulations and obtain legal advice where appropriate. This document may not be the most current version of the policy available so please check our website to confirm that you are referring to the current document.

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