

How we make decisions about reviewing Provisional Improvement Notices (PINs) (OP 06)

Operational Policy

Date issued November 2024

A Health and Safety Representative (HSR) may issue a Provisional Improvement Notice (PIN) when they reasonably believe that a person or person conducting a business or undertaking (PCBU) is breaching, or is likely to breach, a provision of the Health and Safety at Work Act 2015 (HSWA) or its regulations.

The person to whom a notice is issued, and if the person is a worker, their PCBU may request that we review the PIN.

This policy sets out how we make decisions when we receive a request to review a PIN.

This policy applies to all requests to review a PIN

This policy applies to all requests to review a PIN associated with the following workplaces:

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

This policy does not apply to requests for help to resolve a work health and safety issue or a health and safety cessation of work issue.

When will we review a PIN

We will review a PIN as requested if the following legislative criteria are met:

- a request is received within seven working days of the PIN being issued (excluding the day of issue); and
- the request is made by the person who was issued the notice or their PCBU.

We also expect requests to:

- be made in writing; and
- identify the breach or potential breach of HSWA or its regulations, as stated on the PIN.

What happens if a request for a review is withdrawn or we decline a request to review a PIN

If a person who has made a request for a PIN to be reviewed withdraws their request, we will not complete a review.

We will decline a request for a review of a PIN if the legislative criteria are not met. We will advise the requestor and the HSR in writing, providing the reason for our decision.

If a request for review is withdrawn or we decline a request we may still take action if we consider that there was or may have been a breach of HSWA or its regulations. Further information on what action we may take is provided in this policy in the section “We may take action” below.

What happens if we carry out a review

PINs are suspended until we make a decision on the review

While a review is being carried out, the requirement for the person or PCBU to comply with the PIN is suspended until we make a decision on the review.

This does not prevent workers taking strike action on the grounds of safety or health under section 84 of the Employment Relations Act 2000 (ERA).

What do we review

We check whether the PIN was issued in accordance with the legal requirements in HSWA and test the merits of the HSR’s decision to issue the PIN.

Legal requirements for a PIN

The HSR must:

- have completed training prescribed in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (Regulations);
- reasonably believe the person to whom the PIN is issued is breaching or is likely to breach HSWA or its regulations;
- have consulted with the person to whom the PIN will be issued, before issuing the PIN; and
- not issue a PIN if an Improvement notice or Prohibition notice for the same matter has been issued and is still active.

The PIN must:

- be made in writing with a copy of the PIN provided to the PCBU;
- set out the provision of HSWA or its regulations that the HSR reasonably believes is being or is likely to be breached;



- set out how the provision of HSWA or its regulations is being or is likely to be breached; and
- set a date, at least eight days after the notice is issued, by which the person is required to resolve the breach or prevent the likely breach.

A PIN will still be valid if:

- it has an omission, defect, or irregularity that is unlikely to cause substantial injustice;
- the name of the person to whom the notice was issued is incorrect, if the notice sufficiently identifies the person; or
- the HSR has made minor changes to the PIN after it was issued for clarification or to correct errors.

Testing the merits of the HSR's decision to issue a PIN

We consider the:

- evidence to support the HSR's belief that HSWA or its regulations are being breached or are likely to be breached;
- potential severity of harm and immediacy of the risk; and
- potential impact on workplace outcomes or operations.

In most cases, we will need to visit the workplace to establish whether the HSR had a reasonable belief that the person to whom the PIN was issued was, is or is likely to breach HSWA or its regulations.

On completion of a review we will confirm or cancel a PIN

When will we confirm a PIN

We will confirm a PIN if:

- it meets all the requirements of a PIN under the legislation including that;
 - we consider there is a reasonable belief that there is a breach, or likely to be a breach of HSWA or its regulations;
 - the PIN was issued by a trained HSR; and
 - the person or PCBU that received a PIN was consulted by the HSR before it was issued.

We will confirm a PIN with changes if there is a reasonable belief of a breach or potential breach of HSWA or its regulations but changes are required to:

- add or change the date that the person is required to resolve the breach or likely breach, to ensure the date is at least eight days after the notice was issued;
- ensure the PIN states that the HSR believes the person is breaching or is likely to breach a provision of HSWA or its regulations;
- ensure the PIN states the provision the HSR believes is being, or is likely to be, breached;
- ensure the PIN states how the provision is being, or is likely to be, breached; or
- ensure that recommended remedies and timeframes are reasonably practicable.



A confirmed PIN, with or without changes, is treated as an Improvement notice

When we confirm a PIN, with or without changes, it must be treated as an Improvement notice. We will then monitor compliance with the Improvement notice.

When will we cancel a PIN

We will cancel a PIN if:

- it was not issued by a trained HSR;
- the person, to whom the PIN was issued, was not consulted before the PIN was issued;
- there is no breach or likely breach of HSWA or its regulations; or
- there is an active Improvement notice or Prohibition notice for the same issue, breach, or potential breach.

We will inform the person to whom the PIN was issued and the HSR in writing that the PIN has been cancelled and explain why it has been cancelled.

We will review our decision on request

Decisions we make about a PIN are reviewable. This means the HSR, or the person to whom a PIN is issued or PCBU of the person to whom a PIN was issued, can request we undertake a review of our decision.

We may take action

If, while working through a PIN request and review, we identify a serious risk to health and safety of a person arising from an immediate or imminent exposure to a hazard we will take action to prevent harm. If we issue a Prohibition notice, it will not cancel the PIN.

We may also take action following our review, if, among other things:

- a PIN has been resolved but we still have concerns related to the issues raised in the PIN;
- a PIN did not meet the legal requirements for issue and was cancelled, but the breach, potential breach, or health and safety issue remains;
- we identify a breach or a potential breach of HSWA or its regulations that was not identified in a PIN;
- a notifiable event has been identified under any legislation we administer;
- we have additional concerns to those raised in the PIN;
- we consider that an HSR needs advice or training, including in the use of PINs;
- we have concerns about the exercise of functions or powers by an HSR; or
- we consider there may have been adverse, coercive, or misleading conduct by a third party.



What happens if there is a strike on the grounds of safety or health while we are reviewing a PIN?

If strike action is called on the grounds of safety or health under section 84 of the ERA, we will not become involved in any employment relations matters related to the strike. A PIN review can continue regardless of the strike action.

Legislative basis for this policy

The following sections of HSWA support this policy:

- sections 69 to 77 – provisional Improvement notice requirements including that a PIN is not invalid due to irregularities or defects;
- section 78 – offences relating to breach of a PIN;
- sections 79 to 81 – provisions related to the review of a PIN;
- sections 101 to 104 – provisions related to Improvement notices;
- sections 105 to 107 – provisions related to Prohibition notices;
- section 116 – requirements related to issuing of a notice;
- sections 130 to 135 – provisions related to the ability to review and appeal a decision; and
- section 144 – private prosecution allows a person other than the regulator to file a charging document which applies if the regulator does not take enforcement or prosecution action.

The Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016, regulations 21 to 26 set out the training for HSRs.

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.

Maritime NZ's role as a health and safety regulator is provided in the Health and Safety at Work (Maritime New Zealand) Agency Designation 2023.

Key Terms

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 connection 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.

Improvement notice

means a notice that requires a person to remedy a contravention, or prevent a contravention from occurring, or remedy the things or activities causing the contravention or likely to cause a contravention of HSWA or its regulations.

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.

Person

for the purposes of this policy person includes, an individual, a corporation sole, and a body of persons, whether corporate or unincorporated.

Prescribed training

Section 70 of HSWA requires that HSRs have completed training under the regulations before they can issue a PIN. Regulation 21 of the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 specifies the training required to have completed initial training.



Prohibition Notice	means a notice issued under HSWA that prohibits a work activity entirely or in a specific way when there is an immediate or imminent serious risk to the health and safety of workers or others.
Provisional Improvement Notice (PIN)	means a written notice issued by a Health and Safety Representative (HSR) to a person requiring them to: <ul style="list-style-type: none"> • resolve a breach of HSWA or its regulations; or • prevent a likely breach of HSWA or its regulations from occurring; or • remedy the things or activities causing or likely to cause the breach of HSWA or its regulations.
Reasonable belief	for the purposes of this policy means a belief based on specified information, which another person who reviewed the information would find to be reasonable (i.e. they would also hold this belief or think it is not unreasonable to hold). A belief is more than a suspicion, or thinking that something is possible. The information should be credible and sources verified, and given weight appropriate to the specific information concerned.
Reasonably practicable	is defined in detail in section 22 of HSWA. It refers to something that is, or was, reasonably able to be done in relation to ensuring health and safety.
Strike on the grounds of safety or health	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.
Worker	for the purposes of this policy, a worker is a person who carries out work in any capacity for a PCBU, including as a subcontractor.

Disclaimer

This policy provides information on and sets out Maritime NZ's approach to the review of Provisional Improvement Notices under HSWA and its relevant regulations. It is not a substitute for legislation.

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

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