

November 2022

## When we recover costs

### This policy's purpose

This policy sets out our approach to seeking costs under the Health and Safety at Work Act 2015 (HSWA), the Electricity Act 1992, the Gas Act 1992 or the Hazardous Substances and New Organisms Act 1996 (HSNO).

It outlines what costs we can seek to recover and the principles we apply when deciding whether to seek costs.

This policy should be read alongside the [How we delegate regulatory functions and powers](#) policy.

### Why we might choose to seek costs

Our investigations and prosecutions are funded by public money. By seeking to recover costs we can:

- look to have those who have been investigated or prosecuted contribute to our costs, when we think this is fair, and it's within limits set in legislation
- maximise our impact and do more to prevent harm.

### There are a range of costs we can seek to recover

We may seek to recover our:

- legal costs (this can include external counsel)
- investigation-related costs
- costs associated with using external experts, and
- costs from carrying out a remedial action.

We can seek these costs under section 152 of HSWA, section 4 of the Costs in Criminal Cases Act 1967 (CCCA), or section 121 of HSWA. When we seek costs under HSWA, we can't also seek costs under the CCCA.

The table below sets out what costs can be recovered under these Acts.

SENTENCING OPTIONS	LEGAL COSTS	INVESTIGATION-RELATED COSTS	COSTS ASSOCIATED WITH USING AN EXTERNAL EXPERT	COSTS OF CARRYING OUT A REMEDIAL ACTION
Section 152 of HSWA HSWA Prosecutions	✓	✓	✓	
Section 4 CCCA Electricity, Gas and HSNO Act Prosecutions	✓	✓	✓	
Section 121 HSWA Remedial Action	✓	✓	✓	✓

We ask our Legal Group for advice when we're unsure whether we're able to seek recovery of particular costs.

We won't seek costs for alternative sentences<sup>1</sup> or Enforceable Undertakings (Under Part 4, Subsection 4 of HSWA), as these are non-financial sentences and seeking costs would contradict the intent of using these.

## The principles we apply when considering seeking costs

When we consider seeking to recover costs, we:

- use a fair and consistent process
- consider each situation on a case-by-case basis
- use our discretion, taking into account:
  - the circumstances and context of the duty holder
  - the potential impacts on the duty holder, local communities, any relevant Māori-Crown relationships, local iwi and hapū, and the duty holder's ability to pay costs, and
  - whether seeking to recover costs in the particular circumstances is fair.
- make sure we have records, such as invoices and/or timesheets, to show the costs we have incurred
- record our decisions so we can show how we've decided what costs we seek to recover
- ensure we make good decisions in line with our [How we delegate regulatory functions and powers](#) policy.

<sup>1</sup> Adverse Publicity Orders, Orders for Restoration, Work Health and Safety Project Orders, Court-ordered Enforceable Undertaking, Injunctions, and Training Orders.