

Operational Policy – Formal Written Warning

WHO WE ARE

The Ministry of Business Innovation & Employment (MBIE) administers the Crown Minerals Act 1991 and the petroleum and minerals regulatory system. At MBIE, we perform this work using the New Zealand Petroleum & Minerals (NZP&M) brand.

PURPOSE OF THIS DOCUMENT

This policy sets out how we, as the regulator, decide whether to issue a formal written warning.

WHAT IS A FORMAL WRITTEN WARNING?

A formal written warning is a written letter or email identifying non-compliance with the Crown Minerals Act 1991 (CMA) and relevant regulations made under the CMA or the Energy Resource Levy Act 1976 (ERLA). We may issue a formal written warning as an alternative to prosecution or other enforcement action to address conduct that may, in our view, amount to a specific offence.

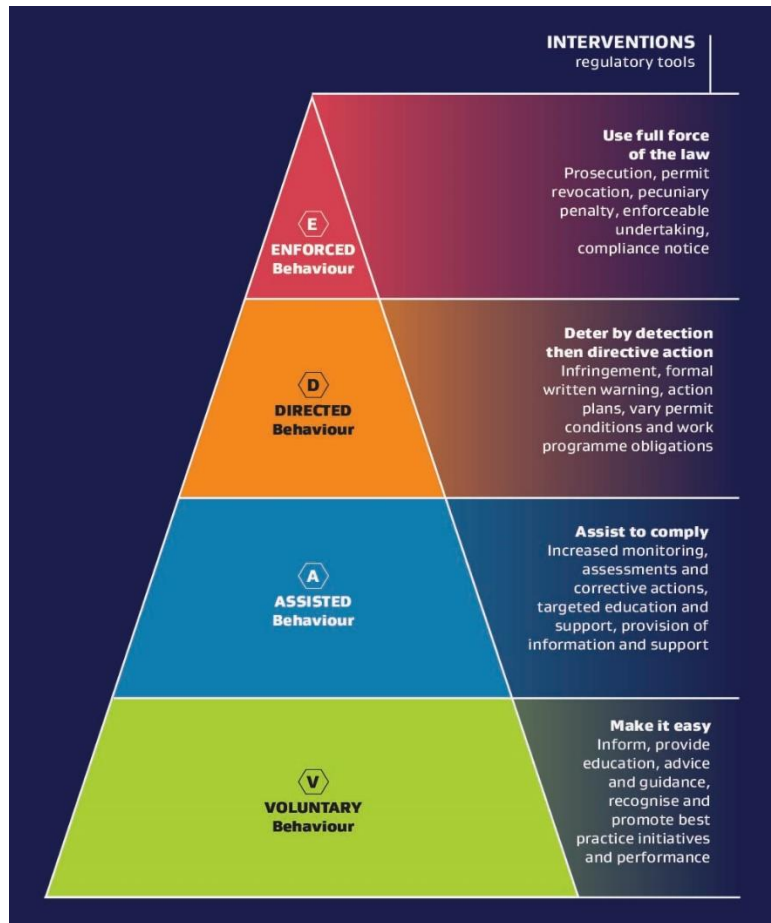
The purpose of the formal written warning is to prompt a change in behaviour and to encourage future compliance. It is also an opportunity to educate stakeholders about how they can meet their compliance obligations.

A formal written warning will outline what needs to be done to achieve compliance (if applicable) and give a summary of possible consequences if the non-compliance is not remedied or is repeated.

Decisions about issuing a formal written warning are made in line with the VADE (Voluntary, Assisted, Directed, Enforced) model. The VADE model is a regulatory tool developed by the Ministry for Primary Industries and commonly used by other regulatory agencies.

THE VADE MODEL

The diagram below shows the VADE model as it has been adapted for use by MBIE.



Further information about the VADE Model and how it is used by MBIE is available on our [website](#).

WHAT ARE THE OPERATIONAL OBJECTIVES OF A FORMAL WRITTEN WARNING?

The operational objectives of a formal written warning are to support progressively higher standards of sector compliance by:

- deterring others from non-compliance
- ensuring compliance with the law now and in the future
- giving the regulated party an opportunity to amend or address their behaviour to avoid the risk of prosecution for the offence.

When deciding how to respond to non-compliance, the regulator will go through an internal process and make a recommendation on what action to take for an offence under the CMA. During this process, the regulator must have regard to the principles of The Treaty of Waitangi/Te Tiriti o Waitangi, the Solicitor-General's [Prosecution Guidelines](#) and the Solicitor-General's [Guidelines for the Use of Warnings](#).

WHEN TO USE A FORMAL WRITTEN WARNING

Formal written warnings are only appropriate when low-level offending has happened.

The regulator may issue a formal written warning when:

- we are satisfied that there is credible evidence an offence has occurred, whether or not it has since been remedied
- there has been a standalone action that is not suitable to pursue for prosecution (eg the nature of the non-compliance is low level, however a repeated failure to comply may lead to a different outcome)
- an audit or visit has identified an offence.

We will carefully consider if it is appropriate to issue a formal written warning, having regard to the circumstances of the situation, including the behaviour, the purposes of the warning and the evidence available to support the warning.

THE PROCESS FOR ISSUING A FORMAL WRITTEN WARNING

Where an investigation has concluded and there is sufficient evidence to prosecute, a formal written warning may be considered as an alternative to prosecution. Formal written warnings are issued in accordance with the Solicitor-General's [Guidelines for the Use of Warnings](#).

We will follow our internal processes and policies to give effect to natural justice, and to ensure a consistent approach is taken and that formal written warnings are appropriately issued. The collection and use of information will be guided by our [privacy statement](#).

INDIVIDUAL RIGHT FOR REVIEW

The regulated party has the right to have the formal written warning internally reviewed by an independent person within 20 working days from the date the formal warning was issued. This is done by submitting a complaint [here](#), or if they prefer, by sending their complaint or feedback by email to nzpam@mbie.govt.nz.

FORM AND CONTENT OF A FORMAL WRITTEN WARNING

A formal written warning should:

- provide an accurate summary of the key facts that led to the formal written warning being issued
- state the reason for issuing the formal written warning
- describe possible consequences related to the formal written warning
- set out the actions or omission that has resulted in non-compliance
- identify what needs to be done to achieve compliance, if applicable (eg an Annual Summary Report should still be submitted even if it is late)
- acknowledge any steps the recipient of the formal written warning has taken to remedy the breach
- be signed and dated
- indicate that information, subject to privacy issues, about the formal written warning may be published

- not assert or imply that an offence has been committed or is proven beyond reasonable doubt. However, a warning may set out that, in MBIE’s view, such conduct or behaviour may amount to a specific offence, and that, if repeated in the future, a prosecution may be considered
- include any relevant attachments such as guidance material (if applicable).

The formal written warning is recorded in MBIE’s internal databases, where it will be kept for seven years as part of a person’s compliance history before being archived.

The warning may be taken into consideration when assessing a future permit application or further enforcement action.

PUBLISHING A FORMAL WRITTEN WARNING

To encourage progressively higher standards of sector compliance and to promote the benefits of compliance within the sector (eg by sharing best practice), the regulator will generally publish information about the formal written warning. Publication will require consideration of potential privacy issues, and in rare circumstances it may not be appropriate to publish information about the formal written warning.

GLOSSARY

Term	Definition
Breach	A failure to do something that must be done by law (eg breach of obligations) and in this document includes “contravene” which means to do something that is not allowed by a law or rule
CMA	The Crown Minerals Act 1991
ERLA	The Energy Resource Levy Act 1976
Compliance	The continuous process of acting in accordance with any of the legislation and/or regulations administered by MBIE
Solicitor-General’s Guidelines for the Use of Warnings	Guidelines that ensure agencies are using warnings in the appropriate circumstances and are meeting the requirements of natural justice when they administer warnings
Solicitor-General’s Prosecution Guidelines	Guidelines that provide some generic illustrative factors that could be considered in a particular case when determining whether it is in the public interest to proceed with prosecution
The regulator	Chief Executive, delegated decision-maker or enforcement officer
Regulated party	Includes the permit holder, licence holder, permit participant, licence participant or anyone else undertaking an activity regulated by the CMA