
A GUIDE TO WORKSAFE NEW ZEALAND'S ENFORCEMENT DECISION-MAKING MODEL (EDM)

INTRODUCTION

WorkSafe New Zealand has a range of levers to secure the health and safety of the worker and workplaces. Broadly, these are education, engagement and enforcement.

When using the enforcement lever, WorkSafe's Enforcement Decision-making Model (EDM) assists inspectors when they are considering what enforcement, if any, is suitable for their situation. It aims to ensure that inspectors take a consistent approach when making enforcement decisions, and drives enforcement action that is proportionate to the risk.

EDM can also be used when reviewing an inspector's decision, or as a coaching and training tool.

HOW DO INSPECTORS USE EDM?

You will not see inspectors referring to EDM tables and flowcharts during a site visit. EDM was designed to mirror the decision-making process of an experienced inspector. In certain circumstances the enforcement decision must be recorded on a record form, otherwise EDM can be used to guide the inspector's judgement and decision-making process. If the inspector does need to complete a record form this will usually be completed once the inspector returns to the office.

WHAT EDM IS AND WHAT EDM IS NOT

EDM is a decision-making model that is used by inspectors to aid their judgement when deciding on what enforcement, if any, is necessary in a particular situation. The model does not influence what is investigated by WorkSafe or what issues an inspector considers in any given situation.

Enforcement decisions are complex, requiring the consideration of many issues and variables associated with the specific circumstances of the case. As a model, EDM cannot truly capture all the nuances and complexities of discretionary decision-making in all circumstances.

The model is designed to assist inspectors to make decisions that are in line with WorkSafe's [Enforcement Policy](#). WorkSafe's enforcement decisions must be measured against the Enforcement Policy and not against EDM.

Inspectors are expected to use their judgement when considering enforcement. Whilst EDM provides a framework for ensuring that matters in WorkSafe's Enforcement Policy are considered, it is not, and cannot be, a definitive absolute decision-making device.

EDM requires judgement at each step through the model. It is possible that duty holders or others with particular interests might make a judgement that is different to that made by the inspector, who is an independent regulator.

AN OVERVIEW OF EDM

The actual model is split into six steps.

In step one, an inspector is asked to consider if the issue they have identified is a risk-based one or a compliance issue. A compliance issue is one that does not directly create a health and safety risk but is still a breach of the Act or regulations, for example the failure to keep records of a notifiable event.

In step two, which is applicable only to risk-based issues, an inspector is asked to consider the 'risk gap'. This is the difference between the actual risk that they have observed on site compared to how risky the situation would be if the duty holder had been compliant with the legislation, for example if they were taking the reasonably practicable steps specified in guidance.

In step three, applicable only to risk-based issues, the inspector is asked to consider if there is a serious risk and an immediate or imminent exposure to a hazard. If this is the case then the inspector is expected to address this, either with a prohibition notice or by ensuring it is rectified while the inspector is still onsite.

In step four, applicable to compliance-based issues and risk-based issues not dealt with in step three, an inspector reaches an 'initial enforcement expectation'. For compliance-based issues the inspector is asked to consider the strength of the standard and the frequency that the duty holder complies with this standard. For risk-based issues the inspector is asked to consider the strength of the standard and the size of the risk gap

previously identified. The model considers the following to be the strongest standards; the Health & Safety at Work Act itself, regulations made under the Act and WorkSafe published Approved Codes of Practice, Safe Work Instruments and Good Practice Guidelines.

Step five is applicable to all issues. The initial enforcement expectation can be aggravated or mitigated depending on 'duty holder factors' that are relevant to that particular duty holder. For example, if the duty holder in question has an extensive previous history of non-compliance and notices have been issued in the past then WorkSafe may consider a prosecution as well as issuing another notice. If, on the other hand, the duty holder has previously had a good record and has a good health and safety system, then the inspector may consider a non-statutory letter to be appropriate instead of a notice.

Step six asks the inspector to consider the level, focus and overall impact of the enforcement recommended by the model. If the inspector feels that the enforcement expectation is not appropriate then they are asked to discuss the expectation with their manager, who may approve enforcement that is different from the model's expectation.

Flowchart 1: Overview of the EDM process

