Planning New Zealand

Guidance for the Use of Adverse Publicity Orders Under the Resource Management Act 1991

Ministry for Cities, Environment, Regions & Transport

New Zealand Government
Te Kāwanatanga o Aotearoa

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Executive summary

An adverse publicity order (APO) is a new compliance tool recently enabled by the Planning Act 2026 and made available under the Natural Environment Act 2026. Because the planning system's compliance and enforcement provisions do not commence until the specified transition date (likely to be 2029), the Planning Act has also introduced APOs into the Resource Management Act (RMA) so they will be available during the transition to the new planning system.

An APO is a regulatory publicity tool designed to make enforcement activity visible. An APO may require an offender to publicise non-compliance, and it may include information about the environmental consequences, any court-imposed penalties or orders and other specified information. During the transition period, a court can only issue an APO under the RMA once a person has been convicted of an offence. An APO must be applied for by a local authority or by the Environmental Protection Authority (EPA).

The principal regulatory value of an APO is to make the lessons from enforcement visible to people who can act on them. Publicising offending, its consequences and the court's response can help other regulated parties understand relevant risks and take action to avoid similar non-compliance. It can also strengthen general deterrence by demonstrating that offending is detected and enforced, and publication may specifically deter the offender from further non-compliance. As part of the sentencing response, an APO may also support public accountability and denunciation by communicating the seriousness of established offending and the court's response to it.

Central principle

An APO is a targeted, court-controlled communication intervention. It makes the circumstances, consequences and lessons from non-compliance visible to people who can act on that information, with the intention of promoting compliant behaviour and reducing the likelihood of similar offending.

Care must be taken to manage risks and unintended consequences that could arise from APOs. These may include disproportionate stigma, backfire effects, normalisation of non-compliant behaviour and collateral harm (to associated but non-culpable parties). Improper use of APOs risks undermining the regulator's legitimacy.

A regulator should seek an APO only where it can identify a legitimate purpose, a relevant audience and an order with a proportionate burden in the context of the total sentence. If behaviour change is an objective, there should also be a plausible pathway for the publicity to influence the offender or another identified audience. The regulator should provide an APO notice that proposes exact wording, method, timing, duration, prominence and proof of compliance. The notice should use verified facts, distinguish actual harm from risks, condemn conduct rather than identity and state any practical compliance lesson.

Five-question gateway

The following gateway tests may support the decision of whether to pursue an APO.

1. What lawful sentencing or regulatory purpose will publication advance?
2. If behaviour change is an objective, whose behaviour is the APO intended to influence?
3. How will the proposed audience receive, understand and act on the information?
4. What does the order add beyond conviction, sentence, ordinary reporting and existing publicity?
5. Are the proposed content, reach, duration and cost only as great as reasonably necessary?

If the answer to any of the above is materially uncertain, the local authority should consider refining the proposal, seeking a narrower order or not seeking an APO.

Introduction

Purpose

This document provides practical guidance for regulators considering applying for an adverse publicity order (APO). It describes the purposes an APO may serve, as well as how targeted publicity can support learning, deterrence and public accountability. The guide sets out the factors that regulators should consider when deciding whether to seek an APO and how an order should be designed. It includes concepts and principles that are not set out in law but are informed by good regulatory practice and relevant research.

Natural Environment Act 2026 and Planning Act 2026

The Natural Environment Act 2026 and the Planning Act 2026 received Royal assent on 30 September 2026. Section 2 of the Planning Act 2026 sets out that the compliance and enforcement provisions of both new Acts commence on the specified transition date, which is anticipated to be in 2029 after all regions have notified their regulatory plans.

Compliance with planning and environmental rules will continue to be enforced under the provisions of the Resource Management Act 1991 (RMA) during the transition to the new planning system (the RMA transition period).

Schedule 12 of the Planning Act 2026 amends the RMA compliance and enforcement system that remains in effect during the RMA transition period. One of these amendments introduces a new provision into the RMA that enables regulators to seek an APO in certain circumstances.

Commencement

The RMA APO provision commenced on 30 October 2026. Regulators should obtain legal advice before seeking an APO in relation to offending that occurred before commencement, having regard to the statutory principles against retrospective application, including section 12 of the Legislation Act 2019 and relevant sentencing principles.

Statutory basis

Part 2 of schedule 12 of the Planning Act 2026 inserts a new section 325C into the RMA as follows.

325C Adverse publicity orders

*(1) An order under this section (an **adverse publicity order**) to address non-compliance with this Act may—*

(a) be made by the Environment Court in enforcement proceedings on application by the local authority or the EPA; or

(b) be made by the District Court in proceedings in that court for an offence under this Act on application by the prosecutor.

(2) An adverse publicity order may be made against a person only if the person—

(a) is convicted of an offence against this Act in relation to the non-compliance; or

(b) is ordered to pay a pecuniary penalty under this Act in relation to the non-compliance.

(3) An adverse publicity order may require the person to do 1 or more of the following:

(a) take any specified action to publicise—

(i) the non-compliance:

(ii) any impacts on the environment or other consequences arising or resulting from the non-compliance:

(iii) if applicable, any penalties imposed, or other orders made, by the court as a result of the non-compliance:

(iv) any specified additional information:

(b) take any specified action to notify a specified person or class of persons of the matters listed in paragraph (a).

(4) If an appeal is lodged against the conviction or pecuniary penalty in relation to the non-compliance to which the adverse publicity order relates, the order is stayed until the appeal is determined.

Although section 325C(1)(a) enables the Environment Court to make an APO in enforcement proceedings, section 325C(2) provides that an APO may only be made where the person has been convicted of an offence or ordered to pay a pecuniary penalty. The pecuniary penalty provisions of the new planning system have not been incorporated into the RMA. In practice, this means that during the RMA transition period an APO will only be available following conviction for an RMA offence in the District Court.

What is an adverse publicity order?

An APO is a court order requiring a person to publicise specified matters relating to an offence they have been convicted of. During the RMA transition period, an APO can only be imposed by a District Court after a person has been convicted of an offence. A local authority or the Environmental Protection Authority (EPA) may apply to the court for an APO, and the court will determine whether to make the order, and on what terms. Because an APO can only be made in relation to a conviction, an APO application would be made as part of sentencing.

In providing its sentence, a court must consider the matters set out in the Sentencing Act 2002. The Act identifies that the purposes of sentencing include accountability, responsibility, victims' interests, denunciation, deterrence of the offender and others, community protection and rehabilitation. It does not prescribe that one purpose always prevails, and sentencing commonly requires a court to balance potentially conflicting considerations.

Unlike a regular media release (the reach of which is dependent on media agency uptake), the person subject to an APO must publish the order, and the court can specify the content, prominence, timing, duration and method of publication (such as a website, newspaper, signage or social media).

Information ordered to be publicised may include details of the non-compliance, its environmental effects and any other consequences, penalties or other court orders resulting from the non-compliance and any specified additional information.

The purpose of an adverse publicity order

An APO may serve more than one purpose. Regulators should be clear about the relevant purpose or purposes in each particular case, as this will affect the appropriate audience, content and method of publication.

Legitimate purposes

Learning and prevention

- Helping other regulated parties understand what went wrong and take action to avoid similar non-compliance
- Informing people affected by the conduct or exposed to similar risks

- Reinforcing appropriate controls, monitoring, professional standards and expectations
- Correcting materially misleading impressions about the lawfulness or environmental acceptability of conduct

Deterrence

- Strengthening general deterrence by demonstrating to other regulated parties that non-compliance can be detected and enforced
- Deterring repetition by the offender where publicity is likely to increase management, governance or stakeholder attention

Public accountability and denunciation

- Holding the offender publicly accountable for established conduct
- Communicating the seriousness of the offending and the court's response to relevant audiences

These purposes may overlap. For example, a notice explaining how offending occurred may help similar operators avoid the same failure, while also demonstrating that the regulator takes enforcement action and publicly communicating the seriousness of the offending. The important point is that the regulator should be clear about what the proposed publicity is intended to achieve and design the APO accordingly.

Improper or inappropriate purposes

- Humiliating the offender
- Retaliating for defended proceedings, criticism or lack of cooperation beyond what is legally relevant
- Forcing an apology, remorse or endorsement of disputed values
- Replacing evidence-based compliance work with publicity
- Punishing a less culpable party because a more culpable party cannot be reached
- Generating unrestricted online attention without an identified target audience

How publicity can influence compliance

Publication of information does not in itself change behaviour. For an APO to influence future compliance, the right people need to receive the information, recognise its relevance to them, understand what they should do differently and have the ability and motivation to act.

People and organisations comply for different reasons. Some respond to the risk and consequences of enforcement. Others are influenced by professional standards, industry peers, relationships, reputation, environmental or community values, or confidence in the legitimacy of the regulator. An APO will be most useful when its design connects with the motivations of its intended audience.

Deterrence

Deterrence is influenced by the likelihood that non-compliance will be detected, by the likelihood and timeliness of an enforcement response and by potential consequences. Publicising enforcement actions resulting from harmful conduct can influence perceptions of these elements and increase deterrence. Publicity can also add expected stakeholder consequences (such as loss of custom or reputation) beyond a financial penalty imposed by a court. However, proportionality is key – if an audience perceives the regulatory action as excessive, this can weaken a regulator's legitimacy and undermine the deterrent value of the notice. An APO can contribute to deterrence by increasing awareness that offending is detected and acted upon, and by making visible the more widespread consequences of offending.

Specific deterrence

Specific deterrence relates to the future conduct of the person subject to the APO. Publicity of enforcement action may result in increased board or executive attention, greater compliance investment, governance changes, scrutiny by workers or customers and a desire for the offender to restore their community standing. In contrast, the specific deterrence effect may be weak if the offender has little reputation to protect, lacks the capacity to change, rejects the relevant norm (ie is unwilling to comply) or considers the regulator unfair.

General deterrence

General deterrence concerns the effect of enforcement activity on others. For an APO to contribute to general deterrence, sector peers need to not only see the publicity, but also identify with the circumstances of the case, understand how it applies to their situation and have the capacity to act.

The APO tool is based on the expectation that a sector peer will be influenced to change their behaviour when they become aware of a case concerning an entity similar to them, engaged in similar activity in a similar location, which involves recognisable available compliance controls, and where they perceive a credible risk that they themselves may face future enforcement action. It provides these sector peers with a clear compliance lesson that may have greater regulatory value than widespread publicity to an irrelevant audience, or one with little ability or reason to act.

Specific messaging and social learning

Publicity can provide a practical compliance lesson by showing other regulated parties what went wrong, what the law requires and what controls or actions could prevent similar non-compliance. A notice that says only that breaches are widespread may imply that non-compliance is common, which may inadvertently reduce the incentive to comply. Instead, the APO should provide a clear message about expectations for responsible operators, which should include appropriate controls, advice, monitoring and prompt action to address compliance risks.

Reputation and stakeholder action

Reputation operates as an economic asset, a source of respectability and a statement of duties attached to being a responsible operator. For reputation to drive organisational or individual behaviour, stakeholders must be able to observe and respond to changes in an entity's reputation, and customer-facing misconduct may produce a stronger market response than harm imposed on diffuse third parties. For some operators, a blow to reputation may generate more motivation to avoid future non-compliance than fines or convictions alone.

Procedural justice and legitimacy

Regulatory decisions are more easily accepted when processes are perceived as accurate, neutral and respectful. A procedurally careful APO can strengthen a message, but an overstated or humiliating notice can lead to resistance and grievance, and even to solidarity with the offender.

Public accountability and denunciation should focus on the offending conduct rather than defining the person or organisation as an offender. The APO should communicate that the conduct was unacceptable and that accountability is required, while recognising that future compliance is both possible and expected. The notice should avoid wording that permanently labels or stigmatises the offender.

Evidence limitations

Court-ordered self-publication is novel in New Zealand environmental law, and there is limited direct empirical evidence about the effectiveness of APOs in this particular context. The evidence base relied on in this guidance therefore draws principally on research and experience concerning regulatory publicity, deterrence, reputation and comparable APO regimes in New Zealand and overseas, including in the Health and Safety at Work regime in New Zealand,[1] and in Australian environmental jurisdictions such as Victoria[2] and New South Wales.

These limitations support selective use of APOs coupled with careful evaluation of their effectiveness.

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[1] Two New Zealand case studies are presented later in this guidance document.

[2] The APO provisions introduced into the RMA and referred to in this guide were based on section 330 of the Victorian Environmental Protection Act 2017.

When to seek an adverse publicity order

There are two key stages to determining whether to seek an APO.

Stage 1: Is there a legitimate and material need?

The strongest case for an APO will generally arise where publication has a clear additional purpose beyond the ordinary consequences of conviction and sentencing. Additional purposes may include an opportunity to help prevent similar offending, strengthen deterrence, inform affected people, correct misleading information or support public accountability and denunciation.

An APO should be actively considered where one or more of the following is present.

- The offending reflects a risk, practice or misconception shared by an identifiable audience.
- Others can realistically learn from the case and change their conduct.
- The offender has meaningful visibility, reputational capital, commercial relationships, professional standing or social licence with people for whom the offending conduct would otherwise remain materially invisible.
- The offence resulted in or risked significant environmental, cultural, community or human-health consequences.
- The conduct was deliberate, commercially motivated, repeated, prolonged, concealed or dismissive of prior intervention.
- There is a need to correct misleading impressions created by the offender about the lawfulness or environmental acceptability of its conduct.
- Direct notification is needed so affected customers, contractors, landowners, resource users, tangata whenua, professional advisers or industry participants understand what occurred and what compliance requires.

The above criteria should not be considered a checklist to automatically justify an application – rather, they should support making an evaluative judgement.

Stage 2: Would the proposed order add sufficient value?

Building on the five-question gateway, before applying for an APO, the regulator should consider the following further questions.

- What is the intended purpose of the proposed order?
- If learning or deterrence is an objective, what behaviour is the order intended to influence?
- Who needs to receive or notice the information for its purpose to be achieved – who is the audience?

- What does that audience need to understand?
- Is that audience realistically reachable?
- Is the information already so widely and accurately publicised that the order would add little?
- Would another approach achieve the purpose as effectively with less burden?
- Does the likely benefit justify the punitive and collateral impacts?

Situations to avoid

In some cases, an APO may be unsuitable, or care may be needed to avoid unintended or disproportionate consequences. APOs should generally not be sought, or should be narrowly framed, where:

- offending is genuinely low-level, technical, promptly corrected and unlikely to produce a useful wider lesson
- the offender is an individual with little connection to a wider regulated audience
- publication would predominantly expose innocent family members, employees, tenants, franchisees, suppliers or community organisations
- identification could reveal protected, suppressed, confidential, commercially sensitive or culturally sensitive information
- publicity risks identifying victims, complainants, children or vulnerable people
- the alleged environmental effect is disputed or cannot safely be expressed as a sentencing fact
- the publicity would duplicate already extensive and accurate coverage without adding a material compliance message
- the practical cost is out of proportion to the offending or the offender's resources
- the proposed audience is effectively 'everyone', without a defensible explanation.

Particular care should be taken when considering seeking an APO for sole traders, small farms, clubs, trusts, marae, charities and small family companies. The same publicity requirement may impose very different levels of practical punishment on different offenders.

Identifying the audience

Adopt an ‘audience first’ principle and identify the intended audience before selecting the publication method. The audience will not be simply ‘the public’, but the person or group whose knowledge, expectations or decisions are relevant to the purpose of the order. Where learning or deterrence is the objective, this will usually be people who can take action that influences future compliance. Ensuring a clear connection between the offending, the purpose of the order and the selected audience will increase the effectiveness of the order and reduce the risk of unintended consequences.

Audience categories

Audience	Potential mechanism
Industry peers	Comparable operators can recognise the failure and adopt controls.
Directors and managers	Governance attention can change resourcing, systems and accountability.
Workers and contractors	They can identify risk, raise concerns and follow required controls.
Customers and purchasers	They may demand assurance or change purchasing decisions.
Investors, lenders and insurers	They may require governance, risk and compliance improvements.
Professional advisers	Planners, engineers, consultants, auditors and lawyers can pass learning on to others.
Affected communities	People in the community may protect interests, report recurrence or understand remediation.
Consent holders in a place or sector	A defined regulatory population can receive a precise compliance message.

Selecting publication methods

The method and timing of publishing an APO should be aimed at the intended audience, and the notice should be accessible and prominent enough to achieve the identified purpose. Selection of the publication method should consider:

- audience reach and relevance
- credibility and authority
- accessibility to the person subject to the order
- accessibility and readability
- cost and proportionality
- duration and persistence
- ability to independently verify publication compliance
- risk of uncontrolled amplification or hostile interaction.

Potential communication channels

When designing a proposed APO, consider the appropriate practical requirements, which will depend on the purpose of the order, the intended audience, the offender's circumstances and the court's determination.

Channel	Considerations
Websites	Specify the domain, page, navigation path, prominence, duration and whether a direct link must remain functional. A buried PDF is unlikely to achieve the same effect as a visible notice. Consider whether comments should be disabled if interaction would create harassment or moderation risks, unless comments are integral and manageable.
Social media	Use only where the offender uses the platform to communicate with the relevant audience. Specify account, text, image or link, pinning, duration and whether reposting is required. Consider the high risk of uncontrolled spread, hostile commentary and loss of context.
Trade and professional publications	These may provide high relevance with restrained reach. Confirm editorial acceptance and placement feasibility before proposing an order. The order should not require a third-party publisher to accept content.
Direct notification	Direct email, letter or portal notification may be appropriate for customers, contractors, consent holders, affected landowners or members. Define the class objectively and address any privacy or contact-data use issues.

Channel	Considerations
Physical notices and site signage	These may suit site-specific risks or local audiences. Specify location, dimensions, visibility, duration, language and maintenance. Avoid signage that creates unrelated safety risks, trespass issues or disproportionate ongoing stigma.
Newspapers and general media	These can support local visibility but may be costly and poorly targeted. Specify publication, placement and number of insertions. Do not assume editorial coverage can be compelled through an order against the offender.
Combined methods	Multiple channels should be used only where each serves a distinct audience or function. Repetition across channels can rapidly increase punitive impact. Consider the cumulative effect of syndication, which may lead to rapid and widespread distribution of a notice. Explain the incremental purpose of each channel.

Applying for an adverse publicity order

The prosecutor should give the defendant reasonable written notice that an APO will be sought, as well as alerting the court to the proposed APO application at an appropriate time during case management conferences. The timing and form of notice should be confirmed with the prosecutor's legal adviser and the applicable court timetable.

The application to the court should address:

- the intended audience and why that audience is relevant
- the proposed publication method and why it is suitable
- the anticipated reach of the publication(s)
- the proposed prominence, including placement, size and format
- the timing, duration and frequency of publication
- the likely financial cost to the offender of publishing the notice
- draft content for the notice (see Branding and wording guidance below)
- a date by which evidence must be supplied to the prosecutor confirming compliance with the order.

The notice

Where practicable, the prosecutor should provide proposed wording in time for the defendant to comment before the sentencing hearing. Agreement on wording may assist the court but is not essential. Ultimately, the content and terms of the APO are matters for the court.

The obligation to publish the notice is imposed on the offender, who is also required to meet publication costs. Where appropriate, the notice should be written in the first person and in the voice of the offender. It must be accurate and must be consistent with any agreed summary of facts and the court's findings, and it should not contain any qualifications that could undermine the purpose of the APO.

The notice may include:

- the details of the non-compliance
- any effects on the environment or people, or other consequences arising from the non-compliance
- any penalties imposed or other orders made by the court as a result of the non-compliance
- any specified additional information, such as:
  - details of the charges
  - measures that could have avoided, remedied or mitigated the environmental effects
  - photographs, maps or other images.

For model APO wording, see Branding and wording guidance below.

Statements of remorse or apology

An APO may support denunciation by publicly communicating established offending and the court's response to it. However, denunciation does not require the offender to express remorse, contrition, or moral acceptance of fault or agreement with the court's judgment, and an APO should avoid trying to compel any such statement from the offender. There is an important distinction between requiring publication of established facts (for example, "The company was convicted of X offence and fined $Y") and compelling the offender to express feelings or beliefs (for example, "The company deeply regrets its conduct"). Remorse is already and more appropriately considered by the court as part of its sentencing decision.

Notice principles

Condemn conduct, not identity

The notice should describe what the person did or failed to do. If denunciation is a purpose of the order, the APO should denounce the offending conduct, not the inherent character or identity of the offender. Avoid language implying permanent unfitness, inherent dishonesty or a general character judgement unless a court finding makes this necessary and relevant.

A credible pathway forward

Where appropriate, the notice should identify controls, governance changes, remediation or monitoring that demonstrate lawful future conduct. The notice should communicate that compliance is expected and achievable.

Respect and voice

The notice process should remain respectful, and the defendant should be given a reasonable opportunity to comment on proposed wording and practical publication requirements. Procedural fairness supports the legitimacy and quality of the APO, so avoid unnecessary surprise at sentencing.

Community and victim perspectives

Where affected people have legally relevant interests, consider how the notice informs them, with a view to avoiding further harm. Do not place responsibility on victims or communities to publicly engage with the offender.

Branding and wording guidance

The following principles should guide the presentation and branding of an APO notice.

Branding and attribution principles

Principle	Details
Identify the publisher	The offender should be clearly identified as publishing the APO notice.
Identify the legal basis	The APO notice should state prominently that publication is required by court order and should identify the prosecuting agency.
Maintain institutional separation	The APO notice should not be presented as jointly authored or regulator-endorsed unless that is genuinely the case. Avoid regulator branding if it would imply joint authorship or endorsement.

Model publication wording

[OFFENDER LOGO, IF USED]

COURT-ORDERED PUBLICATION

Notice published pursuant to an Adverse Publicity Order made by the [court name] on [date].

Offender: [Full legal name of offender]

Offence: On [date], [offender] was convicted of [briefly describe offence, legislation and provision].

Summary of offending: [Set out a concise and accurate factual summary consistent with the charging document, admitted summary of facts and findings of the court.]

Effects or consequences: [Describe established environmental, human-health or other consequences where relevant and supported by the court record.]

Penalty and orders: The court-imposed [fine, reparation, costs and any other orders].

Prosecuting agency: The prosecution was brought by [full name of prosecuting agency].

Further information: [Provide an approved source for the judgment or further factual information, if required by the order.]

Optional corrective-action section

The order may require publication of corrective actions where this supports accountability, learning or risk reduction. The section should contain objective information capable of verification.

Optional wording

Following the offending, [offender] has undertaken the following corrective actions:

- [action]
- [action]
- [action].

Avoid wording that implies regulator endorsement of corrective actions. A statement that the offender has taken an action is different from a statement that the prosecuting agency considers that action adequate.

Appeals

The RMA does not provide a specific right of appeal against an APO. Because an APO under the RMA is imposed following conviction, as part of the sentencing process, a person may challenge the making or terms of the order through the applicable appeal against their sentence.

Section 325C(4) of the RMA provides that, where an appeal is lodged against the conviction to which the APO relates, the APO is stayed until the appeal is determined. The section does not expressly provide that an appeal against sentence has the same effect. However, because compliance with an APO is likely to involve publication that cannot practically be reversed, a person appealing the making or terms of an APO may seek a stay of the order pending determination of the sentence appeal. Legal advice should be obtained about the appropriate process in the circumstances.

Risks and unintended consequences

Publicity can contribute to learning, deterrence and public accountability, but its effects are context-specific, and it can also produce unintended consequences. Regulators considering seeking an APO should carefully consider the circumstances of the offending, the intended audience and the likely effects of publication. Particular care is required where publicity may produce stigma, disproportionate reputational consequences or harm to people who were not responsible for the offending.

Stigma and lasting identity harm

Search engines, archives and republication can remain discoverable indefinitely and may outlast any court-ordered publication duration.

Careful consideration should be applied before internet publication – particularly if the offender is a natural person or small community-connected entity. Limit the use of unnecessary personal details and consider whether the purpose of the APO can be achieved through wording that focuses on the organisation or activity.

Backfire and negative reaction

An audience may perceive the offender as being unfairly targeted, which may have a backfire effect and lead people to reject the regulator's message. That risk increases if an APO uses moralising language, inconsistent selection or unresolved facts, or if it has an excessive reach.

The risk of negative reaction can be mitigated by robust audience selection criteria for the APO, as well as neutral wording, transparency, strong evidence of relevance and a clear outline of how compliance is achievable.

Normalisation

Publicity focused on prevalence, which suggests offending is common, creates a risk that an audience will normalise the conduct and have less motivation to comply with regulatory requirements.

Pair descriptions of non-compliance with clear expectations and examples of the required control or response, along with clear descriptions of harm arising from the conduct.

Defensive compliance and reduced cooperation

Fear of publicity may lead system users to become defensive, which discourages early disclosure, candid engagement or innovation.

Where lawful, clear policies should be in place that recognise cooperation, self-reporting and remediation. Do not seek APOs automatically after voluntary disclosure – instead, make decisions appropriate to specific circumstances.

Market distortion and collateral harm

An APO may have consequences beyond those intended by the order, including harm to employees, suppliers, customers or others who were not responsible for the offending. In some cases, reputational or commercial effects may also threaten business viability, essential services or competition.

Consider likely impacts on non-culpable third parties, insolvency risk, successor ownership, essential services and market concentration. Where appropriate, narrow the content, audience, method or duration of publication to achieve the purpose of the APO with less collateral harm. The objective is compliance and accountability, not the destruction of viable lawful activity.

Misinformation and media distortion

Once an APO is published, its content may be reported, reposted or discussed without its full context, and inaccurate or misleading claims may develop around the offending, its environmental effects or the regulatory response.

Use a concise, factual notice that clearly identifies the offending, its established effects and the court's response, and, where appropriate, links to the judgment or another authoritative source. Correct material factual errors where necessary, but do not attempt to control independent reporting or amplify speculation through unnecessary official commentary.

Regulator legitimacy

Inconsistent or publicity-driven applications may undermine trust across the regulatory community.

Separate prosecutorial judgement from communications planning, document reasons for pursuing an APO and record reasons for departing from national guidelines and criteria.

NZ case studies

New Zealand examples under the Health and Safety at Work Act 2015 illustrate the use of APOs following serious offending and provide useful examples of how courts and prosecutors have approached the content and method of publication.

The following examples reproduce the wording of two APOs made under the Health and Safety at Work Act 2015.[3] They are included to illustrate the range of content and level of detail that an APO may contain. They should not be treated as templates. The appropriate content of an APO will depend on the offending, the purpose of the order, the intended audience and the circumstances of the particular case.

Maritime New Zealand v Port of Auckland Ltd

Procedurally, in the Port of Auckland case, both prosecutor and defendant proposed wording and the District Court determined the publication requirements, including where the notice was to appear and for how long. This illustrates the value of providing precise proposed wording and measurable publication terms. The downloadable APO notice remains on the Port of Auckland website.

Note that the Port of Auckland notice displays both the offender's and the regulator's logo. This gives the impression of a joint statement, which is not consistent with the recommended approach in this guidance.

[3] *Maritime New Zealand v Port of Auckland Ltd* [2023] NZDC 26957 and *Maritime New Zealand v Lyttelton Port Company Ltd* [2024] NZDC 18193.

Adverse Publicity Notice

Port of Auckland Limited

Section 153 Health and Safety at Work Act 2015

Port of Auckland Limited was convicted and sentenced in the Auckland District Court on 1 December 2023 for two offences against sections 36(1)(a), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015. Each charge has a maximum fine of $1.5 million. The charges arose from an investigation into an incident where a worker was tragically crushed and killed when a container fell from an operating crane.

Port of Auckland Limited operates the port on the Waitematā Harbour in Auckland. On the night of the incident, 30 August 2020, the victim was working as a "lasher" aboard a container ship. A lasher prepares containers on board container ships to be secured or removed.

In the past, lashers had reported to a "lash leading hand" who communicated by radio with the worker in charge of supervising the crane operator. However, Port of Auckland Limited had disestablished the lash leading hand role as part of forming "bubbles" in its response to the COVID-19 pandemic.

In the bay next to where the victim was working, a crane was lifting pairs of containers off the vessel. This type of lifting was permitted by Port of Auckland Limited's policies and procedures. The crane operator did not know that the victim, and his work partner, were working in the bay over.

As the crane was lifting a pair of containers, a third container was accidentally lifted as well. The third container detached and fell, striking and killing the victim.

Through its guilty plea Port of Auckland Limited accepts it failed to:

- provide and maintain a safe system of work by developing effective exclusion zones around operating cranes;
- effectively train workers on working safely around operating cranes;
- carry out effective supervision, monitoring and audits to ensure that workers were complying with safe systems of work;
- conduct an appropriate risk assessment relating to the removal of the "lash leading hand" role in response to the COVID-19 pandemic; and
- provide effective training to ship leading hands and crane operators when requiring them to assume the responsibility of "lash leading hand".

Judge Sharp stated that the culpability of Port of Auckland Limited was high and that an appropriate fine was $561,000. Due to the assistance already provided to the family of the victim, the Judge ordered that no further reparation be paid. Costs of $90,000 were ordered to be paid to Maritime New Zealand.

In addition, Maritime New Zealand sought an adverse publicity order due to Port of Auckland Limited's past history of not complying with health and safety legislation which was granted.

Accordingly, this notice is published and paid for by Port of Auckland Limited in accordance with the Order of the District Court of Auckland made on 1 December 2023.

Nō te rere moana Aotearoa
MARITIME NEW ZEALAND

PORT OF AUCKLAND
TĀMAKI HERENGA WAKA

Maritime New Zealand v Lyttelton Port Company Ltd

The APO notice in this case remains published on the Lyttelton Port Company website. This example illustrates how an APO can serve more than one purpose. Publication communicates the consequences of the particular offending, while also drawing attention to the underlying risk and controls so that others undertaking comparable activities can learn from the case and reduce the risk of similar offending.

Adverse Publicity Notice

Lyttelton Port Company Ltd was convicted and sentenced in the Christchurch District Court on 31 July 2024 for one offence against sections 36(1)(a) and (2), 38(1) and 48 of the Health and Safety at Work Act 2015. The charge attracts a maximum fine of $1.5 million. The charge arose from an incident where a worker was struck and killed by coal being loaded into a hatch using a jet-slinger.

Lyttelton Port Company Ltd exports 1.2 million tonnes of coal each year. After it arrives at the port, the coal is loaded onto coal ships prior to being exported. It is loaded onto the ships by conveyors to a ship-loader. It then travels up the boom of the ship-loader on conveyor belts before dropping down chutes and onto the jet-slinger, a conveyor belt which fires the coal into the hold of a ship.

On the morning of the incident, the victim was working as a “hatchman”. A hatchman is stationed on the deck of the ship and gives directions via radio to the operator of the ship-loader as to placement of the coal within a hatch. The ship-loader operator, who controlled the jet-slinger from a cabin attached to the shiploader, could not see the loading zone from his position, and did not have any cameras to provide a visual of the loading area. There was no separate radio channel for their communication or an emergency stop control available to the hatchman.

The ship-loader operator controlled the direction of the jet-slinger, the angle of fire of the coal, and the feed-rate of the coal. The jet-slinger could also be controlled from five other computers in the port. As coal filled the hatch, the jet- slinger was required to operate higher firing coal nearer to the edge of the hatch. There were no engineering controls to prevent the coal from firing outside the hatch.

On the day of the incident, the jet-slinger was operating near the very top of the hatch and the jet-slinger belt was tilted up so that the coal would be thrown far enough to reach the seaward (opposite) side of the hatch. The feed rate of the coal conveyor system was increased by someone other than the ship-loader operator from 1,200 tonnes/hour to 1,500 tonnes an hour without warning to the victim. Lyttelton Port Company Ltd had not imposed any limits on the feed-rate.

The victim was standing at the proper viewing station, the furthest away from the line of fire of the coal directing its movements. Without instruction from the victim or knowledge of the ship loader operator, the jet-slinger began to rotate clockwise approximately 45 degrees towards him. Due to the height that the jet-slinger was operating in the hatch, in combination with the tilted angle, when it rotated the coal began shooting onto the deck at a rate of 1,500 tonnes/hour.

The victim was killed when the jet-slinger stopped rotating when the stream of coal was directed exactly where the victim was standing, striking him and causing him to fall from his viewing area. Because the ship-loader operator could not see the victim, the jet-slinger continued to fire coal in his direction for a further two and a half minutes burying him in coal.

An investigation by Maritime New Zealand found that Lyttelton Port Company Ltd failed to ensure the health and safety of its workers and ships' crew by:

- removing the need for the hatchman to be stationed within the range of the jet-slinger while it was operating;
- implementing engineering controls to prevent the jet-slinger from firing coal outside the hatch;
- providing effective emergency stop controls for the coal loading operations;
- effectively monitoring the risk posed by the jet-slinger and the controls in place to address that risk;
- providing effective safe systems of work for the coal loading operation;
- effectively restricting access to the controls for the ship-loader and jet-slinger;
- ensuring the ship-loader and jet-slinger operating system provided accurate information and precise control to the operator;
- providing workers with appropriate PPE and ensuring it was worn;
- providing effective training and supervision about the risks posed by the jet-slinger and the controls in place to address that risk;
- providing ships' crews with information and instruction about the risks posed by the jet-slinger and the controls in place to address that risk.

Judge Kellar stated that the culpability of Lyttelton Port Ltd was high and that an appropriate fine was $480,000. The Judge ordered $35,000 to be paid to Maritime New Zealand.

In addition, Maritime New Zealand sought an adverse publicity order to deter Lyttelton Port Company Ltd from further offending and to raise awareness of the risks of exposing workers to high-risk plant with inadequate controls and safe systems of work.

Accordingly, this notice is published by Lyttelton Port Company Ltd in accordance with the Order of the District Court of Christchurch made on 31 July 2024 in the proceedings taken by Maritime New Zealand.

Sources

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