



WorkSafe compliance policy

This document should be read in conjunction with the [WorkSafe Prosecution Policy](#).

SECTION 1 – GENERAL

1. Introduction

- 1.1 The WorkSafe Division of the Department of Commerce is committed to providing a transparent and consistent approach to its compliance activities.
- 1.2 The WorkSafe Compliance Policy ('the policy') supports the legislative framework established by the *Occupational Safety and Health Act 1984* ('the OSH Act').
- 1.3 The principal objective of the Western Australian occupational safety and health (OSH) laws is to promote and secure the safety and health of people at the workplace.
- 1.4 This policy sets out how WorkSafe carries out its compliance activities.
- 1.5 WorkSafe expects its inspectors to follow this policy when carrying out their duties.
- 1.6 This document supports the Department of Commerce's *Compliance strategy*, available at www.worksafe.wa.gov.au, and Safe Work Australia's *National compliance and enforcement policy*, available at <http://www.safeworkaustralia.gov.au>

Role of WorkSafe

- 1.7 WorkSafe's role is the regulation of workplace safety and health in accordance with the OSH Act.
- 1.8 In a practical sense, WorkSafe's role is the provision of assistance to the Western Australian workplace community in its endeavours to provide safe and healthy workplaces and compliance with the OSH legislation.
- 1.9 All inspectorate activities are designed to achieve our aim of making Western Australia's workplaces as safe and healthy as practicable.

- 1.10 WorkSafe believes compliance with the OSH laws is aided by having a presence in the community and visiting workplaces. This commonly occurs through WorkSafe inspectors undertaking workplace inspections.

Scope of WorkSafe's jurisdiction

- 1.11 The scope of the OSH Act does not include every incident or risk to the community's safety and health. Those relating to workplaces and work activities in general industry will normally be included, excepting for those on mine sites and connected to petroleum, pipelines and geothermal operations and those covered under the Federal Comcare jurisdiction.
- 1.12 The safety of workplaces on mines sites is covered by separate legislation, the *Mines Safety and Inspection Act 1994*.
- 1.13 The safety of petroleum, pipeline and geothermal activities, both onshore and offshore (in coastal waters to the three nautical mile limit), is covered by legislation administered by the Department of Mines and Petroleum. Beyond the three nautical mile limit, offshore activities are covered by the National Offshore Petroleum Safety and Environmental Management Authority.
- 1.14 Issues of public safety are usually the responsibility of other State Government agencies, such as the Department of Transport. In addition, some matters may fall within the scope of the Western Australia Police.
- 1.15 WorkSafe has a number of memoranda of understanding or co-agency agreements in place with other State Government agencies to facilitate investigations where there is potential for an overlap between different laws.
- 1.16 The OSH Act provides inspectors with the power to undertake workplace inspections. These can occur as a result of members of the community contacting WorkSafe about an OSH issue, notification of an injury or harm or as part of a WorkSafe initiated compliance activity.

SECTION 2 COMPLIANCE

Key principles

- 2.1 Inspectors are public officers and occupy a position of responsibility and trust in the community. They have a responsibility to promote and secure the safety and health of people at work within Western Australia. Inspectors must act ethically and treat people with tolerance and respect.
- 2.2 Inspectors follow key principles in all their compliance and enforcement activities, outlined in Table 1 below.
- 2.3 The key principles are based on WorkSafe's *Code of Behaviour* (July 2012), the Public Sector Commission's *Code of Ethics* (July 2012) and Safe Work Australia's *National Compliance and Enforcement Policy*.

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Key principles for inspectors' compliance & enforcement activity	
Personal integrity	Inspectors act with care and diligence and make decisions that are honest, fair, impartial, and timely, and consider all relevant information. (From the Public Sector Commission's <i>Code of Ethics</i>)
Targeted	Inspectors' activities are focused on WorkSafe's 'priority areas' and industry-specific hazards. Specialist inspectors (eg plant inspectors) will also focus on hazards in relation to their specialty. For more information on the 'priority areas', go to www.worksafe.wa.gov.au and look under 'About WorkSafe'.
Firm but fair	The enforcement option chosen is appropriate to the seriousness of the matter and the particular circumstances of the duty holder and the workplace.
Consistency	Inspectors endeavour to ensure that similar circumstances at workplaces lead to similar approaches being taken, providing greater protection and certainty in workplaces and industry. The approaches taken are consistent with the policies and information provided on the WorkSafe website.
Transparency and accountability	Inspectors are willing to explain their decisions and inform people about how complaints can be made or reviews of notices and decisions can be requested. For complaints and feedback, go to www.commerce.wa.gov.au and, for requests for review, go to www.worksafe.wa.gov.au and click on 'Forms'. Inspectors also record their operational activities using the appropriate WorkSafe record keeping tool(s).
Responsive	Inspectors provide appropriate advice and information to relevant parties and conduct operational work within a reasonable amount of time.
Respect	Inspectors recognize that all persons (including themselves) deserve to be treated in a courteous and respectful manner. They respect the rights of others to express their opinions, contributions and concerns.

Table 1 Key principles for inspectors' compliance and enforcement

Activity

2.4 WorkSafe's collaborative approach with industry, employers and the workforce is focused on:

- influencing the commercial environment in Western Australia to ensure the achievement of best safety and health outcomes in the workplace;
- empowering business and community partners to lead in the reduction of workplace hazards and associated risks to health;
- developing a modern, world class regulatory environment;
- enforcing the law; and
- strengthening organisational capacity to assist business operators and workers to manage OSH effectively.

- 2.5 As mentioned above, this policy supports the Department of Commerce’s *Compliance Strategy*. The strategy recognises the different factors that influence compliance and the need for a range of approaches to ensure compliance occurs.
- 2.6 WorkSafe recognises that it is not appropriate to respond to all compliance issues in the same way and consequently its approach is tailored depending on the circumstances that are encountered.
- 2.7 A key platform for ensuring compliance with the law is to ensure that businesses, employers and organisations are fully aware of their OSH obligations and how they can meet them.
- 2.8 WorkSafe’s strategy is to provide information to industry and workers in a variety of formats to assist them to make their workplaces safe and healthy. This is reinforced through a range of compliance activities designed to assist in the delivery of workplace safety and health.
- 2.9 WorkSafe works from the assumption that the majority of people want to get things right and have a safe and healthy workplace – this is the foundation of the strategy.
- 2.10 The starting point is educational and it is through this approach that we aim to influence the behaviour of industry and workers toward the delivery of safer workplaces.
- 2.11 When inspectors visit a workplace they have a number of enforcement approaches they can choose to use, which are outlined in Table 2. These are dependent on the particular circumstances of the workplace and the OSH issue.

WorkSafe inspectors

- 2.12 WorkSafe inspectors are OSH professionals appointed under the OSH Act to enforce that Act, assist in resolving issues at workplaces and provide advice to employers, persons who control businesses or undertakings and workers on how best to improve OSH performance and achieve compliance with OSH legislation.
- 2.13 Inspectors are organised into industry based teams and a hazard team and plant team.
- 2.14 Inspectors conduct compliance campaigns in industries or in relation to specific hazards to raise awareness of risks. They also carry out reactive activity including investigations of work-related injuries and disease and high risk situations brought to WorkSafe’s attention, requests to attend and resolution of issues.
- 2.15 Inspectors respond, as soon as possible, to investigate workplace fatalities and serious injuries or incidents. The response times are prioritised according to the risk to the safety and health of people at the workplace. For more details, see the document, *Criteria for investigation*, outlined in part in Sections 2.25-2.27.

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Enforcement policy

- 2.16 This section should be read in conjunction with WorkSafe's *Prosecution Policy*, available at www.worksafe.wa.gov.au
- 2.17 All provisions of the OSH Act and *Occupational Safety and Health Regulations 1996* (the OSH regulations) are important in regard to requirements for compliance, and will be appropriately enforced by the inspectorate.
- 2.18 The enforcement action that is warranted will depend on the circumstances of the case and the seriousness of the breach.
- 2.19 Non-compliance will be addressed by improvement notice, prohibition notice, prosecution action, or verbal direction or any combination thereof.

Enforcement approach	
Verbal direction	This is an instruction given to a duty holder about the need to correct a safety and health issue. The required changes must be made while the inspector is at the workplace and will be inspected prior to the inspector leaving the workplace.
Improvement notice	This notice is a written direction issued by a WorkSafe inspector requiring a person to fix something which is believed to not be in compliance with the OSH legislative requirements. An improvement notice states the reasons for the inspector issuing the notice and will include a reference to a specific regulation or provision of the Act that applies.
Prohibition notice	A prohibition notice will be issued where the inspector is of the opinion that there is a risk of imminent and serious injury or harm to the health of a person. This is a written direction that prohibits the relevant activity from continuing. When a prohibition notice is issued, the inspector remains at the workplace until the employer is advised of the notice and the prohibited activity has ceased.
Prosecution	Prosecutions are only commenced, instead of or in addition to the above enforcement actions, where an inspector obtains sufficient evidence to establish a prima facie case, there is a reasonable prospect of a conviction and it is in the public interest. For further details see below and refer also to the <i>Prosecution policy</i> .

Table 2 WorkSafe inspectorate enforcement approach

- 2.20 Verbal directions only relate to situations where a minor breach can be immediately rectified and inspected prior to the inspector leaving the site.
- 2.21 Action taken by the inspector, including verbal directions, will be conveyed to the person in control of the business or undertaking, safety and health representatives or any other relevant party while the inspector is at the workplace.

2.22 WorkSafe's *Prosecution Policy* details the relevant considerations associated with decisions relating to instituting and continuing a prosecution, and also covers considerations relating to appeals. Prosecutions are commenced in circumstances including:

- where the issue of notices is not considered sufficient for ensuring compliance with the OSH Act or OSH regulations;
- where an alleged breach of the OSH Act or OSH regulations either has resulted, or could have resulted, in a fatality or serious injury;
- alleged failure to comply with an improvement or a prohibition notice;
- where an inspector alleges a person has repeated the same offence;
- in cases of discrimination against an employee for any action in relation to OSH;
- breaches of the consultative provisions of the OSH Act; and
- obstruction of an inspector.

2.23 Circumstances may arise in the process of investigating a serious injury or fatality where WorkSafe and the Western Australia Police both have an interest in investigating a fatal or serious incident. In these circumstances, WorkSafe and the Western Australia Police will both investigate and not interfere with each other's investigation.

Criteria for investigation

2.24 As mentioned above, investigations are undertaken for a range of reasons, such as to determine the causes of an incident, assess compliance with OSH laws and/or determine what action may be needed to prevent a further occurrence and enforce OSH laws. Lessons learnt from investigations inform development of inspectorate policy and campaigns.

2.25 WorkSafe must make appropriate choices on how it can best apply its resources to improve safety and health at workplaces and therefore a risk management approach is applied to the inspectors' activities.

2.26 WorkSafe exercises discretion in deciding whether incidents, cases of ill health, or complaints should be investigated.

2.27 Refer to the WorkSafe document, *Criteria for investigation*, for further explanation on the criteria used to determine when an investigation will take place. This is available at www.worksafe.wa.gov.au

When an inspector visits a workplace

2.28 Inspectors have the legal right to enter, at any time, any workplace including aircraft, ships and vehicles where employees work or are likely to be in the course of their work. This right to enter a workplace means that inspectors have unrestricted access to workplaces, excepting where there is a statutory restriction.

- 2.29 Inspectors generally do not advise beforehand when they are to inspect a workplace. When an inspector is planning to visit a regional workplace, it may be necessary to confirm with the workplace that the visit is to take place.
- 2.30 For investigations of bullying complaints, an inspector will make contact with the enquirer to gain agreement to contact the employer before visiting a workplace.
- 2.31 When an inspector visits a workplace, they carry out an inspection for WorkSafe's seven 'priority areas' in most instances and where they are relevant. They will also consider other hazards observed during an inspection.
- 2.32 With reactive activity, there are set circumstances where an inspector uses their discretion not to inspect for priority areas. These are where an investigation involves multiple visits to workplace, a fatality or serious injury or disease, a high level of tension associated with a situation or all the priority areas were covered by an inspection in the preceding twelve months or there is limited time.
- 2.33 For injury and disease investigations, inspectors are likely to focus on hazards relating to the injury or harm, as well as other hazards.
- 2.34 For investigations as part of a specific campaign focused on a specific priority area, investigations will look at all priority areas and may look at other industry-specific hazards.
- 2.35 For investigations as part of a specific campaign not focused on a specific priority area, investigations will look at the priority areas where they are relevant as well as industry specific hazards.
- 2.36 For most campaigns, specific industry checklists will be developed to ensure all relevant areas are covered.
- 2.37 Inspections following a fatal incident at a workplace will involve a detailed investigation, including an inspection of the incident site and an investigation into the circumstances leading to the fatality. Inspectors may take evidence from the incident site and photographs, recordings and measurements, inspect documents and interview relevant people. For more information on what happens following a workplace death, see the WorkSafe document, *When Your Partner or Relative Dies in a Workplace Accident*, available at www.worksafe.wa.gov.au
- 2.38 WorkSafe's 'priority areas' are:
- electricity;
 - working at heights;
 - hazardous substances;
 - manual tasks (particularly lifting);
 - machine guarding;
 - mobile plant; and
 - slips, trips and falls.
- Refer to www.worksafe.wa.gov.au for more information on the 'priority areas' – look under 'About WorkSafe'.

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- 2.39 On entering a workplace, an inspector will take all reasonable steps to notify the employer or person in control of the business or undertaking of his or her presence. The employer or person in control of the business or undertaking must then notify safety and health representatives (if there are any) at the workplace.
- 2.40 An inspector may take into the workplace any equipment, materials or persons to assist in the inspection, and may also require from the employer or person in control of the business or undertaking any assistance considered necessary by the inspector.
- 2.41 The assistance that an inspector may request at the workplace includes being accompanied by the employer or person in control of the business or undertaking, safety and health representatives or an employee (where there is no safety and health representative) during the inspection.
- 2.42 The inspector conducts examinations and inquiries as are necessary for the purpose of the OSH Act. This may include examining or taking possession of any plant, substance or thing and taking photos, measurements, sketches or recordings.
- 2.43 Under the OSH Act, the inspector has the power to require that the workplace, or any part of it, be left undisturbed for as long as specified by the inspector.
- 2.44 When leaving a workplace, the inspector will inform the employer, person in control of the business or undertaking and safety and health representative (if there are any) of any action the inspector has taken or will be taking.
- 2.45 The fact that an inspector has inspected a particular workplace is not a representation by WorkSafe that the particular workplace is in any way approved or free of hazards.
- 2.46 WorkSafe inspectors visit some workplaces previously issued with a notice to confirm that compliance with the notice directions has occurred.

After an inspector visits a workplace

- 2.47 Inspectors provide feedback to people who have raised a work-related fatality with WorkSafe. In addition, inspectors provide feedback to the person who raised a matter where the investigation involved regular contact with them or the matter was complex.
- 2.48 People raising issues with WorkSafe are provided with a reference number and they are welcome to call WorkSafe and cite the number to receive verbal feedback on their enquiry.
- 2.49 A person wishing to receive documents relating to an investigation will generally need to follow the Department of Commerce's Freedom of Information processes. For more information, go to <http://www.commerce.wa.gov.au/Corporate/Services>

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Obstruction

2.50 It is an offence to obstruct, threaten or interfere with an inspector who is undertaking duties in accordance with the OSH Act.

National Compliance and Enforcement Policy

2.51 All Australian OSH regulators are signatories to the National Compliance and Enforcement Policy (NCEP).

2.52 The NCEP is intended to support consistency in approaches and outcomes by OSH authorities in all Australian jurisdictions. It promotes a mix of positive motivators and strong deterrents to achieve compliance with the law and improve OSH. The NCEP specifies nationally agreed:

- aims of compliance and enforcement;
- key principles underpinning compliance and enforcement activities;
- strategic enforcement priorities;
- monitoring and compliance;
- compliance and enforcement tools; and
- information about guidance, enforcement, investigation and prosecution criteria.

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