

Who can be an inspector?

- The regulator can appoint a public servant, an employee of a public authority, a holder of statutory office, an inspector appointed under a corresponding work health and safety law, or any other class of person that has been prescribed by the regulations.
- Inspectors are subject to the directions of the regulator when exercising their compliance powers and their powers are subject to any conditions specified in the instrument of the inspector's appointment.
- Inspectors will be issued with identification cards and must produce their identification cards on request when exercising their compliance powers. Identification cards must be returned if a person ceases to be an inspector.

Functions and powers

- The model WHS Act allows inspectors to:
 - provide information and advice about compliance with the model WHS Act
 - assist in the resolution of work health and safety issues at workplaces, including issues relating to the right of entry of WHS entry permit holders, negotiation of work groups and training of Health and Safety Representatives (HSR)
 - issue improvement notices, prohibition notices and non-disturbance notices where necessary to ensure compliance with the model WHS Act
 - review a disputed provisional improvement notice (PIN)
 - investigate contraventions of the model WHS Act
 - assist in the prosecution of offences, and
 - attend coronial inquests.
- Inspectors may enter any place they reasonably suspect is a workplace at any time and without prior notice to exercise their powers.
- As soon as reasonably practicable after entry, an inspector must provide notification of entry: to a person conducting the business or undertaking; a person with management or control of the workplace; and any HSR. However, an inspector is not required to provide notification if that would defeat the purpose of entry or would cause delay in investigating the suspected contravention.

- Upon entry to a workplace an inspector may undertake a number of actions, including:
 - inspecting, examining and making enquiries
 - taking measurements, conducting tests and making sketches or recordings
 - taking and removing samples for analysis
 - requiring the production of documents
 - asking questions and conducting interviews
 - seizing any thing as evidence
 - requesting a person's name and address
 - taking affidavits, and
 - exercising any other power that is reasonably necessary for the purposes of the model WHS Act.
- An inspector cannot enter a place that is used only for residential purposes unless they have: the consent of the person with management and control of the premises; or the inspector has authority under a search warrant; or the inspector believes there is no reasonable alternative means of accessing a suspected workplace.
- An inspector may apply to a magistrate to obtain a search warrant for any place. A magistrate will issue a search warrant if they believe that there may be evidence of an offence against the model WHS Act at the place. If a warrant is granted it will expire seven days after it is issued.
- It is an offence to hinder or obstruct, impersonate, assault, threaten or intimidate an inspector.

Enforcement measures

- Inspectors can secure compliance with the model WHS Act by issuing improvement notices, prohibition notices or non-disturbance notices. Where necessary, the regulator may take direct remedial action or seek court-ordered injunctions.
- Where an improvement, prohibition or non-disturbance notice is issued, the person to whom it is issued must display a copy of the notice in a prominent position at or near the workplace, or part of the workplace, affected by the notice.

Improvement notices

- An inspector can issue an improvement notice if they reasonably believe that a person is contravening the model WHS Act or has contravened the model WHS Act in circumstances that make it likely that the contravention will continue or be repeated.
- The improvement notice will state which provision of the model WHS Act the inspector believes is being or was contravened, how the provision is or was contravened and when the person is required to remedy the contravention or likely contravention. The improvement notice may also include directions concerning measures to be taken to remedy the contravention or prevent the likely contravention.
- The person to whom the improvement notice is issued must comply with it within the time specified in the notice. The deadline set by the inspector for compliance must be reasonable in the circumstances. However, an inspector may extend the improvement notice if the time has not yet elapsed.
- Failure to comply with the improvement notice within the specified timeframe is an offence.

Prohibition notices

- An inspector can issue a prohibition notice if he or she reasonably believes that an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person, resulting from an immediate or imminent exposure to a hazard. A prohibition notice may also be issued if there is the potential for such an activity to occur.
- Directions prohibiting the activity or directions prohibiting the way the activity is carried out may be initially given orally, but must be confirmed in writing as soon as practicable. The inspector can refer to a Code of Practice and give the person options to remedy the contravention.
- A prohibition notice must state the grounds on which the inspector issued the prohibition notice and the activity or matter that the inspector believes involves a serious risk to a person's health or safety. The prohibition notice must also set out the provision of the model WHS Act that the inspector believes is being, or is likely to be, contravened.
- The prohibition notice may specify a workplace or part of a workplace where the activity cannot

be carried out, any things that are not to be used or any procedure that is not to be followed in connection with the activity.

- It is an offence for a person to fail or refuse to comply with a prohibition notice.

Non-disturbance notices

- A non-disturbance notice may be issued if an inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers.
- A non-disturbance notice may require a person to preserve a site where a notifiable incident has occurred, or prevent the disturbance of a particular site in other circumstances.
- The notice must specify the period for which it applies and the obligations of the person to whom the notice is issued, the measures to be taken and the penalty for contravening the notice.
- An inspector may issue one or more subsequent non-disturbance notices, either before or after the expiry of the original notice, if the inspector considers it necessary.
- A non-disturbance notice does not affect the person's ability to assist an injured person, remove a deceased person, make the site safe or assist in a police investigation.
- It is an offence for a person to fail or refuse to comply with a non-disturbance notice without reasonable excuse.

Remedial action and injunctions

- If a person issued with a prohibition notice fails to take reasonable steps to comply with the notice, the regulator may take reasonable remedial action to make the workplace or situation safe. The regulator must give the person notice of its intention to take the action, and the person's liability for the costs of that action, before taking remedial action in these circumstances.
- If a prohibition notice would be issued but the person with management or control of the workplace cannot be found, the regulator may take any remedial action necessary to make the workplace safe.
- The regulator may also apply to a court for an injunction compelling a person to comply with, or restraining them from contravening, a notice issued by an inspector.

Model Work Health and Safety Laws

LEGISLATIVE FACT SHEET SERIES

- Codes of Practice
- Consultation obligations
- Health and Safety Committees
- Health and Safety Representatives
- Incident notification
- Issue resolution
- Legal proceedings
- Protection from discrimination, coercion and misrepresentation
- Review of decisions
- Right of Entry
- Role of inspectors in compliance and enforcement
- Role of the regulator in compliance and enforcement
- Work health and safety duties

Contact Us

General Enquiries	(02) 6121 5317
Email	info@safeworkaustralia.gov.au
Postal Address	GPO Box 641 Canberra ACT 2601
Media Enquiries	0434 664 294