

National Compliance and Enforcement Policy /

June 2024

safe work australia

Disclaimer

Safe Work Australia is an Australian Government statutory agency established in 2009. Safe Work Australia includes Members from the Commonwealth, and each state and territory, Members representing the interests of workers and Members representing the interests of employers.

Safe Work Australia works with the Commonwealth, state and territory governments to improve work health and safety and workers' compensation arrangements. Safe Work Australia is a national policy body, not a regulator of work health and safety. The Commonwealth, states and territories have responsibility for regulating and enforcing work health and safety laws in their jurisdiction.

Creative Commons

With the exception of the Safe Work Australia logo, this copyright work is licensed under a Creative Commons Attribution 4.0 International licence. To view a copy of this licence, visit creativecommons.org/licenses In essence, you are free to copy, communicate and adapt the work, even commercially, as long as you attribute the work to Safe Work Australia and abide by the other licence terms.

Contact information

Safe Work Australia | info@swa.gov.au | www.swa.gov.au



Contents

1. The purpose of the National Compliance and Enforcement Policy	4
2. Key principles	5
3. Strategic enforcement priorities	6
4. Monitoring compliance	6
5. Investigations	7
6. Compliance and enforcement action	8
7. Notification of enforcement decisions	13
8. Challenging decisions	14
9. Providing for fair and effective workplace representation	14
10. Periodic review	15
11. Australian WHS regulators	15

All Australian jurisdictions are committed to preventing workplace deaths, injuries and illness. To achieve this the Commonwealth, state and territory governments have agreed to maintain harmonised work health and safety (WHS) laws.

To fully realise the benefits of harmonised WHS laws, governments have recognised the need for them to be complemented by a nationally consistent approach to compliance and enforcement¹.

Achieving a nationally consistent approach to compliance and enforcement also supports and gives effect to the object of the model WHS Act.² The object of the model WHS Act is to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces and sets out a range of ways in which the object is achieved.³

The purpose of the National Compliance and Enforcement Policy

The National Compliance and Enforcement Policy (the Policy) seeks to ensure a consistent approach to compliance and enforcement by setting out principles which underpin how regulators approach monitoring and enforcing compliance with the WHS Act and Regulations. The Policy includes information on how regulators may monitor compliance, investigate possible breaches, decide on compliance and enforcement action and some of the tools available to regulators. The Policy also demonstrates how regulators' compliance and enforcement activities gives effect to the object of the model WHS Act.

The Policy is principles based. It does not deal with, or prescribe, how regulators' functions or powers are operationalised. Instead, this policy operates alongside other national and jurisdictional policies and procedures governing the use of regulatory tools, and policies specific to each regulator (e.g. how the regulator interacts with the criminal justice system in their jurisdiction). It is also important to acknowledge that worker and employer representatives have a role in promoting improvements in WHS practices and assisting to achieve healthier and safer working environments.⁴

¹ Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety made on 3 July 2008.

² Maintaining and strengthening national harmonisation of WHS laws and facilitating a consistent national approach to WHS supports the object of the model WHS Act s3(1)(h).

³ Model WHS Act s(3)(1), the main object of the Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces.

⁴ Encouraging unions and employer organisations to take a constructive role in promoting improvements in WHS practices, and assisting PCBU's and workers to achieve a healthier and safer working environment supports the model WHS Act s3(1)(c).

2. Key principles

The following principles, alongside the object of the model WHS Act, guide regulators and underpin WHS compliance and enforcement activities:



Consistency

Regulators endeavour to ensure that similar circumstances at workplaces lead to similar approaches being taken, providing greater protection and certainty for workers, duty holders, and employer and worker representatives. For example, an investigation will generally be undertaken following a work-related death unless there is a compelling reason not to do so.



Constructiveness

Regulators provide support, advice and guidance to assist compliance with WHS laws and build capability. This may be done through the provision of support, advice or guidance to reinforce existing legislative requirements and help duty holders understand and improve WHS practices. For example, publishing guidance on compliance, providing advice on due diligence to officers, supporting HSRs, and publicising lessons learned from recent incidents or prosecutions. It may also be provided through the use of tools which direct compliance (e.g. improvement or prohibition notices) or enforceable undertakings which deliver tangible benefits to the workplace, industry or broader community.⁵



Transparency

Regulators demonstrate impartiality, balance and integrity. For example, decisions are guided by relevant factors such as the level of risk and the practicality of achieving outcomes across Australian workplaces, and regulators are accountable for their actions and decisions. Decisions are made according to relevant internal policies and procedures, and communicated subject to release under privacy and information laws.⁶



Accountability

Regulators make evidence-based decisions that they are willing to explain and can withstand scrutiny. Regulators make available avenues of complaint or appeal. For example, inspectors may provide some information about their workplace inspections to the person who raised the matter. More information about notification of decisions and available avenues to challenge decisions is available in sections 7 and 8, and on regulator websites.



Proportionality

Compliance and enforcement responses are proportionate to the seriousness of the conduct. This is guided by the considerations outlined in section 6. For example, regulators may take into account how far short of acceptable standards the conduct falls, the duty holders compliance history and the extent to which the duty holder either contributed to or attempted to control the risks.



Responsiveness

Compliance and enforcement measures are responsive to the particular risks and circumstances of the duty holder or workplace. For example, as set out in section 6 of this Policy, regulators consider the breach, the duty holder, the public interest and the available tools.



Targeted

Activities are focussed on the areas of highest risk or the regulators' strategic enforcement priorities. As set out in sections 3, 5 and 6, regulators target their different activities for example, targeting emerging national issues to deter widespread non-compliance and increase workplace parties' capabilities.

⁵ The principle of constructiveness supports the object of the Act as it promotes the provision of advice, information, education and training for WHS, and a framework of continuous improvement s 3(d),(g).

⁶ The principle of transparency and accountability support the object of the model WHS Act as it ensures appropriate scrutiny and review of actions taken under the Act, s3(f)).

3. Strategic enforcement priorities

Regulators set strategic priorities for compliance and enforcement activities. Strategic priorities change over time and are determined both nationally and locally. For example, to focus on the most serious or emerging WHS risks.

Regulators work collaboratively on national priorities to achieve consistency, responsiveness and the efficient use of resources. This includes sharing information and intelligence, sharing tools and strategic initiatives, and working together to develop and implement national campaigns to:

- ensure regulators maintain a nationally consistent approach to compliance and enforcement
- ensure emerging national issues are dealt with appropriately, and
- address the compliance and regulatory burdens for persons conducting a business or undertaking (PCBUs) operating across more than one jurisdiction.

4. Monitoring compliance

Regulators monitor compliance with WHS laws in a number of ways including through inspections, audits and other verification activities. Regulators may also develop new methods for monitoring compliance. Compliance monitoring may be planned (e.g. targeted or proactive) or responsive:

Planned monitoring

includes targeting high risk activities and regulators' strategic enforcement priorities (see section 3). To plan these forward-thinking activities regulators may share information with each other and gather/use data and other information to target particular industries, workplaces or workplace parties.

Responsive monitoring

includes responding to incident notifications, WHS complaints or requests. These are triaged to determine an appropriate regulatory response.

These activities aim to assess and support compliance with WHS laws and enhance WHS management practices. For example, inspections may create opportunities for regulators to support duty holders to improve consultation with workers and other duty holders. Inspectors may also seek to help PCBUs develop better risk management processes to eliminate or minimise risks, driving sustainable, long term future compliance.⁷

Regulators appoint inspectors to conduct inspections and audits. Inspectors have significant powers under WHS laws including:

- requiring answers to questions
- requiring production of documents
- seizing items for use as evidence of an offence, and
- issuing improvement and prohibition notices.

Inspectors may attend workplaces and other sites, or undertake some monitoring remotely (e.g. requiring the production of documents where work is not done from a static workplace or hazards are unlikely to be physically visible).

⁷ Activities that assess and support duty holders to eliminate or minimise risk supports the object of the Act (s3(1)(a)).

5. Investigations

Prior to determining whether to take any action in relation to a possible breach, regulators undertake inquiries and investigations. Regulators undertake enquiries and inquiries and investigations for a range of reasons including to:

- assess compliance with WHS laws and whether a breach has occurred
- determine the cause of an incident
- determine what action may be needed to prevent a further breach or occurrence
- determine what action may be appropriate to enforce compliance with WHS laws
- gather information that may assist in preventing future breaches, and/or
- inform the development of WHS guidance, policy, or future changes to WHS laws.

It is not possible for regulators to investigate all complaints, reports (e.g. of incidents, injury or disease), or issues of non-compliance. As such, regulators apply the principles of proportionality and responsiveness, devoting investigation resources to the most serious cases and priority areas for investigation.



Regulators may conduct investigations in conjunction with other relevant agencies (e.g. other regulators, police, environmental protection agencies, electrical or other safety agencies). In such cases, a regulator may be a lead or support agency.

Generally, regulators carry out an investigation of a work-related death, unless there are compelling reasons not to. Otherwise, in **determining the most serious cases** to investigate, and the level of resources to be deployed, regulators take account of:

- the severity and scale of actual harm (e.g. serious injuries or illnesses including long latency diseases such as dust diseases and psychological injury and illness)
- the severity and scale of potential harm (e.g. where there is a risk of work-related fatalities and serious injuries or illnesses)
- the seriousness of any potential breach of the law
- the duty holder's compliance history (e.g. prior convictions and notices issued)
- whether the duty holder was licensed or authorised to undertake certain types work
- the practicality of achieving results
- the wider relevance of the event, including matters of significant community concern, or
- where widespread non-compliance could be deterred (e.g. widespread non-compliance with consultation duties) and improvements in WHS practice could be promoted.



The following circumstances or allegations are **priority areas for investigations**:

- regulators' strategic enforcement priorities – see section 3
- non-compliance with inspectors' notices or directions
- offences against inspectors
- offences against health and safety representatives (HSRs)
- matters relating to entry permit holders
- discrimination against workers on the basis of their WHS activities, and
- failure to notify incidents.

6. Compliance and enforcement action

Securing compliance with WHS laws through effective and appropriate compliance and enforcement action supports the object of the WHS Act.⁸ Regulators seek to use an effective mix of positive motivators and deterrents to encourage and secure the highest possible levels of compliance with WHS laws.

In doing so, there is a need to balance a number of considerations (as outlined below). This means compliance and enforcement actions will vary in different situations depending on all the specific circumstances.

Compliance and enforcement decision making

Once there is evidence of an alleged breach, regulators consider what enforcement action, if any, should be taken. The most appropriate enforcement tool will depend on all the circumstances. Specific criteria which guide regulators in the use of each compliance tool are outlined below and regulators also consider:



The breach

- Extent of the risk
- Seriousness of the breach
- Actual or potential consequences
- Culpability e.g. how far below acceptable standards conduct falls
- Any aggravating or mitigating circumstances e.g. extent duty holder contributed vs tried to control the risk
- Immediacy of risk
- If the safety issue can be fixed in the inspector's presence or they can be satisfied with a plan to fix the breach

The duty holder

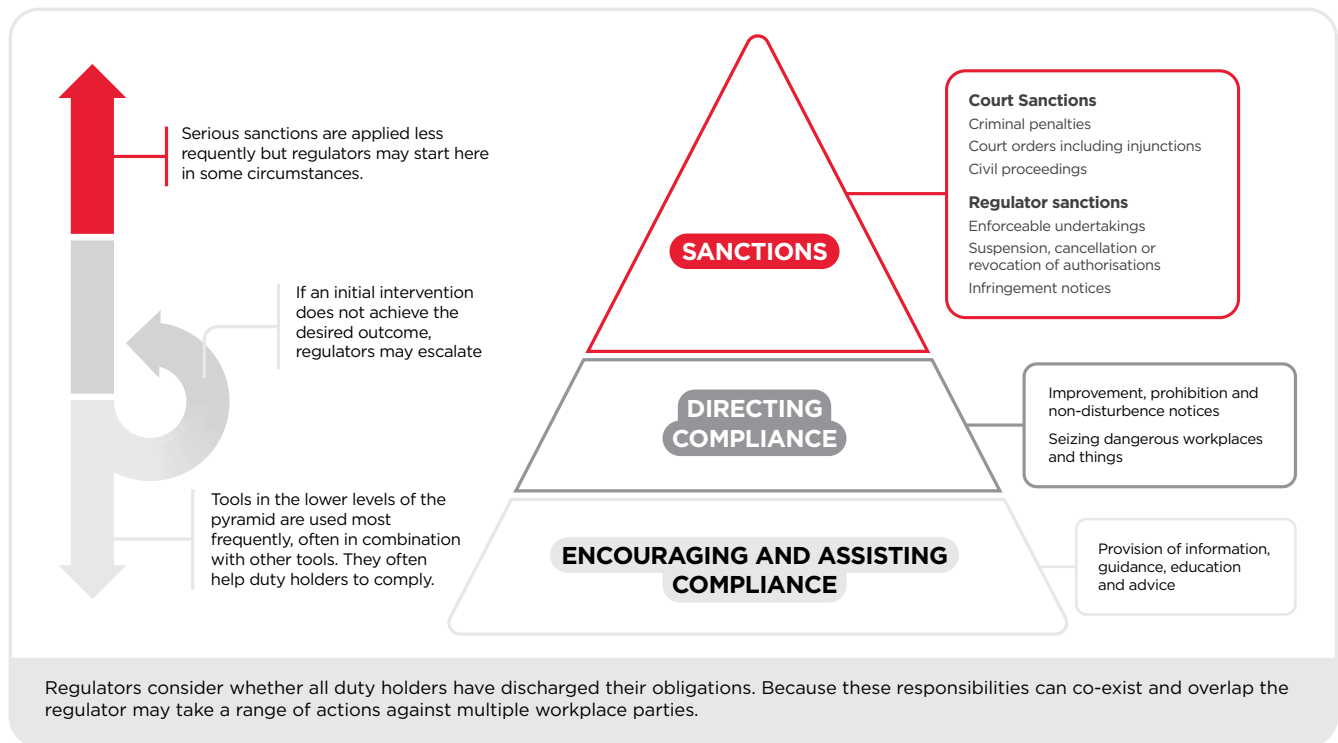
- Compliance history
- Attitude and willingness to comply
- Likelihood of reoffending
- Authorisation to undertake certain types of work
- Prior notice of the risk e.g. direct to duty holder or via educational or communication materials

The public interest

- Deterrence impact e.g. prevalence of the offence and possible industry impact
- Encouraging better WHS, continuous innovation and improvement, and building capability
- Strategic enforcement priorities
- Community expectation
- Need to support workplace parties, foster co-operative, consultative relationships and fair and effective workplace representation (this reflects the model WHS Act object s3(1)(b))

⁸ Model WHS Act s3(e).

Regulators will then start their intervention with the most appropriate tools. The below pyramid demonstrates, in a general sense, the relative volume or proportionate use of the different common tools.



Compliance and enforcement tools

As shown in the pyramid, a number of tools are available to regulators. They can be used alone or in combination to:

- positively motivate, encourage or assist compliance
- direct compliance by compelling a duty holder to remedy any identified breach, or
- sanction a contravening duty holder.

There may be minor differences in the tools available to each regulator and regulators may develop new tools to respond to emerging health and safety risks.

Encouraging and assisting compliance

Advice or guidance

Advice and guidance is used to:

- raise workplace parties' awareness of their obligations
- raise workplace parties' awareness of the duties owed to them
- help duty holders know how to comply with WHS laws, and
- build duty holder capability to manage WHS and achieve compliance.



Providing advice and guidance may include positive motivators such as:

- communicating with, engaging and supporting stakeholders
- providing practical and constructive advice, information, and education about rights, duties and responsibilities
- fostering cooperative and consultative relationships between PCBUs, their workers, HSRs, unions and employer organisations
- supporting and involving workplace parties in the provision and promotion of education and training, and
- providing support to HSRs and entry permit holders to assist them in performing their functions and exercise their legislative powers.

In some situations, this may be as simple as providing links to published guidance material or may involve more extensive support. The provision of advice and guidance does not affect the requirement for PCBUs to manage WHS risks. PCBUs are often best placed to know, in the context of their own business or undertaking, how best to manage the WHS risks.

After providing advice and guidance on compliance the regulator may decide to take no further action, as guided by the considerations above, and if satisfied that a person has taken timely and satisfactory steps to remedy a breach.

Regulators will not always commence with the provision of advice or guidance. Regulators may commence with more serious sanctions or use advice and guidance to support the use of other compliance and enforcement tools, such as improvement and prohibition notices.

Publishing enforcement actions and outcome

Regulators may publicise information about their enforcement actions to raise awareness of WHS laws and the consequences of non-compliance to deter similar conduct and promote better practices. This may be done by:

- summarising cases on their website
- speaking to the media and sending press releases about a case
- using a case as a teaching tool at seminars, conferences and in materials distributed to various groups
- using information about a case in the regulators' publications
- using information from a case to gather and publish data and statistics, and/or
- providing evaluations or findings from compliance programs.

At any stage of an inspection, audit, investigation or prosecution, regulators may disclose information about a case for the purposes of preventing similar offences from occurring. Regulators may also disclose information about a case to the public at any time where they consider that it is necessary to quell speculation or to correct or forestall inaccurate media reports.

In the case of enforceable undertakings, regulators are required to publish a notice of a decision to accept an undertaking and the reasons for that decision.

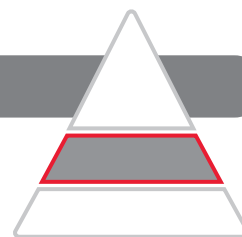
At all times, regulators aim to be accurate, impartial, balanced (e.g. balancing privacy, the public interest), fair and ensure due process in the way in which they communicate about investigations, inspections, audits and enforcement actions.

Directing compliance

Improvement or prohibition notices

Inspectors have the power to issue improvement and prohibition notices to remedy non-compliance with WHS laws and serious risks.

Because they are 'remedial' not 'punitive' (e.g. they are not punishment) they may be used in addition to other tools, such as infringement notices or prosecutions, where punishment is warranted.



Improvement notices

! may be issued in any circumstance where inspectors form a reasonable belief regarding a breach unless the inspector considers that some other action is appropriate to achieve the desired outcome.

Prohibition notices

x are issued where there is a serious risk which emanates from an immediate or imminent exposure to a hazard. It is a direction prohibiting an activity until the inspector is satisfied the risk has been remedied. The direction may be given orally but must be confirmed by written notice.

Where there is a failure to comply with an inspector's notice, the regulator may prosecute or apply sanctions, if there is a serious risk to health and safety, may also seek an injunction against the person to whom the notice was directed.

Sanctioning non-compliance - Regulator sanctions

Infringement notices

Infringement notices are an immediate form of punishment for certain types of breaches. They send a clear and timely message that there are consequences for non-compliance. They are often used in addition to remedial action in the form of an improvement or prohibition notice. For transparency, regulators publish a list of infringeable offences.

Generally, infringement notices will be issued where some punishment is warranted but the breach does not warrant prosecution or an enforceable undertaking. This means they are only available for offences where:

- a prosecution of the offence would not give rise to a right to trial by jury, and
- there is prima facie evidence an offence has been committed.

When issuing an infringement notice to a worker, the regulator or inspector will always consider whether the PCBU's obligations to the worker and others have been met.

Revoking, suspending or cancelling authorisations

Regulators authorise:

- certain people to undertake certain types of work (e.g. work involving the removal of dangerous substances such as asbestos), and
- organisations to conduct certain types of undertakings (e.g. operate major hazard facilities).

Regulators may decide to revoke, suspend or cancel a person's authorisation as a protective measure to deal with inappropriate conduct or practices. The serious consequences are balanced against the paramount importance of protecting the health and safety of workers and other persons. These measures may be used even if a breach has been remedied or an offender punished (e.g. fined).

When deciding whether to issue or renew an authorisation, regulators will consider a range of factors including the person's compliance history.



Enforceable undertakings

An enforceable undertaking is a legally binding agreement entered into as an alternative to having the matter decided through legal proceedings for an alleged breach of the WHS Act. Generally, they will not be accepted for Category 1 offences or if an infringement notice has been issued.

An enforceable undertaking provides an opportunity for significant WHS improvements to be undertaken. Typically, the activities associated with an undertaking are substantial and must aim to deliver tangible benefits to the workplace, industry or broader community.

Whether an enforceable undertaking will be accepted depends on a number of factors, including:

- the nature and extent of the breach
- the quality of the remedial action proposed and the extent to which it achieves measurable improvements in workplace safety, and
- the likelihood that the enforceable undertaking will deliver real benefits to the workplace, industry or community beyond that which would normally be expected of a duty holder.

Sanctioning non-compliance - Court sanctions

Civil proceedings – breaches of right of entry powers

Regulators may bring civil proceedings in relation to breaches of provisions relating to WHS entry permit holders. This includes breaches by entry permit holders or by those who owe duties to them. Although not a criminal offence, a regulator may seek a monetary penalty against a permit holder or other person who fails to act in accordance with the law.⁹



Injunctions

Regulators may seek an injunction to compel a person to comply with an inspector's improvement, prohibition or non-disturbance notice. Injunctions are used when a serious risk to health and safety has not been remedied by the person the notice was issued to and other mechanisms available to the regulator have not secured compliance.

Injunctions are likely to be sought when there are exceptional, pressing or urgent circumstances (e.g. a significant risk to public safety).

Prosecutions

Prosecutions may be brought in relation to alleged breaches of offence provisions in WHS laws. Bringing a prosecution for a breach of WHS laws is a significant decision which has considerable impacts (e.g. on the defendant, worker or family of a deceased worker).

For WHS offences, regulators have limited time to bring charges. Proceedings for a criminal offence under WHS laws may be brought within the latest of the following:

- within two years after the offence first comes to the regulator's attention
- within one year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act
- within six months of a breach of an enforceable undertaking, or
- a proceeding for a Category 1 offence, that is an offence relating to reckless conduct or gross negligence that creates a risk of death or serious injury/illness, may be brought if at any time if fresh evidence is discovered.

Proceedings for a breach of a civil penalty provision (failure to comply with obligations towards or of, WHS entry permit holders) may be brought within two years after the regulator first becomes aware of the breach.

⁹ Jurisdictional note: WA does not have provisions for entry permit holders in its WHS Act



Director of Public Prosecution guidelines

Regulators operate within a broader prosecutorial framework as part of the criminal justice system. This requires the highest standard of integrity for prosecutorial decision making.

Each regulator applies the Director of Public Prosecution (DPP) guidelines specific to its jurisdiction. However, the DPPs have agreed upon a common set of principles to be used in determining whether a prosecution should commence or, if commenced, should proceed. While some jurisdictions express these criteria differently, they do not differ in substance.

In determining whether to prosecute, three criteria need to be met:

- **the existence of a prima facie case**, that is, whether the evidence is sufficient to justify the institution of proceedings
- **a reasonable prospect of conviction**, that is, an evaluation of the likely strength of the case when it is presented in court (taking into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court or tribunal that will determine the matter, the admissibility of any confession or other evidence, and any lines of defence available to the defendant), and
- **a public interest test** which may include the following considerations:
 - a) the seriousness or, conversely, the triviality of the alleged offence or whether it is only of a technical nature
 - b) any mitigating or aggravating circumstances
 - c) the characteristics of the duty holder—any special infirmities, prior compliance history and background
 - d) the age of the alleged offence
 - e) the degree of culpability of the alleged offender
 - f) whether the prosecution would be perceived as counter-productive, that is, by bringing the law into disrepute
 - g) the efficacy of any alternatives to prosecution
 - h) the prevalence of the alleged offence and the need for deterrence, both specific and general, and
 - i) whether the alleged offence is of considerable public concern.

7. Notification of enforcement decisions

In some situations, workplace parties may be notified of enforcement decisions including when a regulator decides whether to initiate a prosecution or enforceable undertaking following an investigation. Inspectors may also provide information about their workplace inspections and any actions taken. Workplace parties may include:

- the alleged offender
- the person who raised the matter with the regulator or their representative (e.g. a HSR, union or other representative)
- the person who was injured or exposed to risk, and
- the family members of a person who has died as a result of an alleged breach.

The nature and extent of any information provided will be determined by the regulator and will depend on the circumstances including the application of other legislative frameworks such as privacy and information laws.

8. Challenging decisions

WHS laws provide that certain persons can seek internal and/or external review of certain types of inspector or regulator decisions.

In relation to prosecutions, if a regulator has not brought a prosecution within six months of the date of an alleged Category 1 or 2 offence (but not later than 18 months after the date of the alleged offence), a person can request the regulator bring a prosecution. Following a request to bring a prosecution the regulator must advise, within three months, whether the investigation has been completed, and if so, whether a prosecution will be brought or give reasons why a prosecution will not be brought.

9. Providing for fair and effective workplace representation

Providing for fair and effective workplace representation supports the object of the model WHS Act.¹⁰

HSRs

have important functions and powers under WHS laws, including powers to take certain actions and, if trained, issue provisional improvement notices and direct work to cease. For more information see the [Worker representation and participation guide](#).

Union officials who hold WHS entry permits

have powers of entry into workplaces and other powers in relation to suspected

WHS breaches.

A representative of a workplace party to an issue

may enter the workplace for the purpose of attending discussions with a view to resolving the WHS issue. A workplace party (who may have a representative) means:

- the PCBU or PCBUs
- the HSR if the worker or workers affected are in a work group, or
- the worker or workers affected by the issue if they are not in a work group.

To help secure compliance and provide for fair and effective workplace representation, consultation, co-operation and issue resolution regulators may intervene to provide assistance. This includes circumstances where:

- a party to a work group negotiation asks the regulator to appoint an inspector to assist because the PCBU has not taken all reasonable steps to commence negotiations in the relevant timeframe or agreement on the determination of a work group cannot be reached in a reasonable timeframe after negotiations commence, or
- a party to a dispute may ask an inspector to be appointed to assist in resolving a dispute about the exercise or purported exercise of a right of entry.

Regulators are guided by the same considerations which guide their compliance and enforcement decision making, as well as any specific considerations relating to HSRs, right of entry and issue resolution. For example, reasonable efforts must have been made to achieve an effective resolution of the issue before a workplace party may ask the regulator to appoint an inspector to assist.

¹⁰ model WHS Act s3(b))

10. Periodic review

This Policy was updated on **27 June 2024** to improve the documents readability and ensure it continues to support a nationally consistent approach to compliance and enforcement. It supersedes the previous version agreed by WHS ministers on 10 August 2011.

This Policy will be periodically reviewed, including where relevant changes are made to WHS laws.



11. Australian WHS regulators

In addition to this policy, regulators each publish further details about their compliance and enforcement programs, which can be found at each regulator's website.

Comcare

<http://www.comcare.gov.au/>

SafeWork NSW

<http://www.safework.nsw.gov.au/>

WorkSafe ACT

<https://www.worksafe.act.gov.au/>

NT WorkSafe

<http://www.worksafe.nt.gov.au/>

WorkSafe Tasmania

<http://www.worksafe.tas.gov.au/>

SafeWork SA

<http://www.safework.sa.gov.au/>

Workplace Health and Safety Queensland

<https://www.worksafe.qld.gov.au/>

WorkSafe Victoria

<http://www.worksafe.vic.gov.au/>

WorkSafe WA

<https://www.commerce.wa.gov.au/worksafe>



safe work australia