

2025

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**Work Health and Safety (Office of the Work Health
and Safety Commissioner) Compliance and
Enforcement Policy 2025-2029**

**Presented by
Michael Pettersson MLA
Skills, Training and Industrial Relations
May 2025**

Work Health and Safety (Office of the Work Health and Safety Commissioner) Compliance and Enforcement Policy 2025-2029

Notifiable instrument **NI2025-192**

made under the

Work Health and Safety Act 2011, section 2.37 (Compliance and Enforcement Policy)

1 Name of instrument

This instrument is the *Work Health and Safety (Office of the Work Health and Safety Commissioner) Compliance and Enforcement Policy 2025-2029*.

2 Commencement

This instrument commences on the day after notification.

3 Notification

I make the Compliance and Enforcement Policy 2025-2029 as set out in Schedule 1.

4 Revocation

This instrument revokes *Work Health and Safety (Office of the Work Health and Safety Commissioner) Compliance and Enforcement Policy 2023* [NI2023-342].



Jacqueline Agius
Work Health and Safety Commissioner
22 April 2025

Schedule 1: Compliance and Enforcement Policy 2025-2029

WORKSAFE**ACT**

OFFICE OF THE WORK HEALTH AND SAFETY COMMISSIONER

COMPLIANCE AND ENFORCEMENT POLICY **2025 - 2029**



Contents

INTRODUCTION	1
ABOUT WORKSAFE ACT	1
AIM OF COMPLIANCE MONITORING AND ENFORCEMENT	2
KEY PRINCIPLES.....	2
STRATEGIC ENFORCEMENT PRIORITIES.....	3
OUR APPROACH TO COMPLIANCE MONITORING AND ENFORCEMENT	3
MONITORING COMPLIANCE.....	4
INSPECTIONS	5
INVESTIGATIONS.....	5
COMPLIANCE AND ENFORCEMENT TOOLS.....	6
DECISION-MAKING CONSIDERATIONS.....	8
GUIDANCE AND INFORMATION.....	10
IMPROVEMENT NOTICES.....	10
PROHIBITION NOTICES.....	11
INFRINGEMENT NOTICES.....	12
NON-DISTURBANCE NOTICES.....	13
INJUNCTIONS	13
ENFORCEABLE UNDERTAKINGS.....	14
PROSECUTIONS	14
REVOKING, SUSPENDING OR CANCELLING AUTHORISATIONS.....	16
PUBLISHING ENFORCEMENT ACTIONS AND OUTCOMES	16
NOTIFICATION OF ENFORCEMENT DECISIONS.....	16
OTHER PERSONS WHO CAN EXERCISE WHS POWERS	17
CHALLENGING DECISIONS.....	17
PERIODIC REVIEW	17

INTRODUCTION

The Work Health and Safety (WHS) Commissioner and the Office of the WHS Commissioner (WorkSafe ACT) are established under the Work Health and Safety Act 2011 (the WHS Act).

One of the functions of the WHS Commissioner is to develop a Compliance and Enforcement Policy (the Policy) for WorkSafe ACT for every four-year period.

The WHS Commissioner has prepared this Policy in consultation with the Minister for Skills, Training and Industrial Relations and the WHS Council. This Policy outlines WorkSafe ACT's key principles, operational approaches, and the essential tools and guidelines for effective enforcement. This policy is implemented in alignment with the strategic priorities in WorkSafe ACT's Strategic Plan 2025-29.

WorkSafe ACT is dedicated to maintaining the highest standards of proactive and responsive compliance, ensuring all duty holders understand and meet their WHS and Dangerous Substances obligations. By clearly stating the aims, principles, and methodologies of WorkSafe ACT, this Policy seeks to enhance transparency, accountability, and collaboration.

In developing this Policy, WorkSafe ACT has been guided by Safe Work Australia's National Compliance and Enforcement Policy, with some amendments to ensure applicability to the jurisdiction.

The Policy will be monitored and reviewed throughout each four-year period to ensure it consistently meets the requirements and objectives of all stakeholders.



ABOUT WORKSAFE ACT

Duty holders must comply with their obligations to ensure workers and others are not exposed to preventable risks that may result in death, injury or illness. This Policy outlines how the regulator, the WHS Commissioner, uses available enforcement tools to ensure duty holders are meeting these legislative obligations.

The role of the regulator is to secure compliance through effective and appropriate monitoring and enforcement. WorkSafe ACT inspectors are subject to the regulator's directions in the exercise of their compliance powers under section 162 of the WHS Act.

The regulator directs WorkSafe ACT inspectors to exercise their compliance powers in accordance with this Policy. This Policy outlines WorkSafe ACT's administration and enforcement of the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011, and also applies to the Dangerous Substances Act 2004 and Dangerous Substances (General) Regulation 2004.

A specific compliance and enforcement policy has been developed for the Labour Hire Licensing Act (2020), and is available on our website.

AIM OF COMPLIANCE MONITORING AND ENFORCEMENT

The aim of WorkSafe ACT's compliance and enforcement activity is to prevent work-related deaths, injuries and illnesses and to protect property and the environment by securing the highest possible level of compliance with legislation.

KEY PRINCIPLES

The regulator is guided by the seven nationally agreed principles when undertaking its compliance monitoring and enforcement role, exercising its regulatory responsibility and administering its legislation. These principles underpin how WorkSafe ACT works, as outlined below.

Consistency	Compliance and enforcement decisions will be made in accordance with WorkSafe ACT's published policies. Outcomes from compliance monitoring and enforcement activities should be consistent and predictable for all parties, including workers, duty holders, employers, and worker representatives.
Constructiveness	WorkSafe ACT will provide guidance and support to duty holders, workers and their health and safety representatives (HSRs) to increase the maturity of persons conducting a business or undertaking (PCBUs) and employers in identifying and managing risks.
Transparency	WorkSafe ACT will demonstrate impartiality and act with integrity in all compliance and enforcement activities. Regulatory decisions will be made based on standard operating procedures and internal policy. We will balance confidentiality requirements with the need to provide information about regulatory actions.
Accountability	WorkSafe ACT is willing to explain decisions whilst protecting the integrity of inspections and investigations. Our decisions will be evidence-based and any complaints or appeals against regulatory actions will be managed in alignment with the relevant policies and through our fair and consistent processes.
Proportionality	When determining a regulatory response, WorkSafe ACT will consider the level of actual or potential harm involved, as well as the experience and past conduct of the duty holder. Regulatory action will be proportionate to the seriousness of the risk, taking all relevant considerations into account.
Responsiveness	WorkSafe ACT will conduct its compliance and enforcement action as efficiently as possible. We will be adaptable and respond to new priorities, legislation and WHS practices.

STRATEGIC ENFORCEMENT PRIORITIES

To identify strategic enforcement priorities, WorkSafe ACT uses data and intelligence gathered from inspections, investigations and consultation with the community, industry and unions to identify current and emerging trends. WorkSafe ACT also aligns with national priorities set out in the Australian Work Health and Safety Strategy 2023-2033.

WorkSafe ACT engages with other regulators both within the ACT and across Australia and New Zealand to ensure effective collaboration of shared safety and dangerous substances matters.

WorkSafe ACT's strategic enforcement priorities are outlined in the WorkSafe ACT Strategic Plan 2025-2029. Priority is given to industries, substances, and mechanisms of injury and illness that present a significant risk of injury or illness to workers. The inspectorate will focus on these priority areas, issuing relevant notices to ensure compliance, and where relevant, progress matters for investigation and prosecution. Our priority areas change periodically to reflect current and emerging risks.

OUR APPROACH TO COMPLIANCE MONITORING AND ENFORCEMENT

WorkSafe ACT uses a range of tools to promote and secure compliance with legislation. Integral to our approach is the recognition that duty holders in control of the work or workplace are in the best position to eliminate or minimise exposure to risks. Real and sustainable improvement in managing risks is primarily achieved by the proactive, dedicated and collaborative efforts of all duty holders involved in the work.

WorkSafe ACT's approach to compliance monitoring and enforcement activities includes the following key features:

- Using intelligence and data analysis to target and prioritise regulatory activity towards areas with the most serious risks.
- Securing sustained compliance, including system-wide changes where multiple breaches and repeat offending are identified.
- Ensuring duty holders are controlling both physical and psychological risks to the health and safety of workers and others.
- Ensuring that any breaches of legislative requirements are quickly and effectively addressed.
- Providing information and guidance to help duty holders take a systematic approach to risk management and ensuring the hierarchy of controls is applied to eliminate or minimise the risks.
- Carrying out enforcement measures that are proportionate, transparent, consistent, and suited to the specific circumstances.
- Striving for continuous improvement through monitoring and assessing the effectiveness of our regulatory activities to ensure community expectations are met.

WorkSafe ACT has a strong regulatory posture and, where warranted, will take immediate action to protect the health, safety and wellbeing of Territory workers. The most serious offences require the strongest regulatory responses, including prosecution.



MONITORING COMPLIANCE

WorkSafe ACT monitors compliance with the legislation in several ways, including utilising inspection powers, and carrying out comprehensive investigations.

INSPECTIONS

WorkSafe ACT conducts inspections (also referred to as workplace visits) to ensure workplaces are keeping their workers and others safe. Data analysis and intelligence are used to guide proactive (planned) inspections, audits and inquiries. These generally occur in workplaces that have been identified as more likely to expose workers to risk. Reactive (responsive) inspections are undertaken in response to incident notifications, requests, enquiries, and complaints. Proactive and reactive work is triaged based on the seriousness of the potential breaches to ensure resources are allocated to where they are needed the most.

Inspectors have significant powers under WHS legislation. They can enter any workplace and:

- require workers and PCBUs to answer questions
- require the production of documents
- seize items for use as evidence of an offence, and
- issue notices.

Inspections may be targeted towards reviewing specific safety processes, particularly if there has been a complaint or incident. Some inspections are broad and used to determine the general level of safety maturity and compliance in the workplace. All inspections are carried out to determine if there are any breaches of WHS and other relevant legislation. WorkSafe ACT inspectors gather information and undertake thorough analysis to determine whether a breach has occurred. The action taken in response to an identified breach is outlined in the sections below.

INVESTIGATIONS

Investigations will be commenced when WorkSafe ACT forms a view that a potential criminal prosecution, as opposed to another compliance or enforcement tool, is necessary to address an alleged breach. An investigation will gather all relevant evidence in a manner that is capable of being presented before a court.

Investigations broadly examine whether any required safe systems of work were existent and/or whether the required systems were followed. The mere existence of an injury (physical or psychological) does not mean that a breach has occurred, rather such is evidence to be considered as part of the investigation. Furthermore, given the legislation framework is 'duty' and 'risk' based, a breach can occur even where there is no resultant injury, but the potential of such existed arising directly from the failure of a duty holder to address the risk. Accordingly, investigations by their nature are typically more in depth and time consuming.

At the conclusion of an investigation, a brief of evidence will be reviewed by WorkSafe ACT and a prosecutor, in order to determine whether there are reasonable prospects of conviction and also whether it is in the public interest to pursue the prosecution. Additional information concerning prosecutions is provided below.

Consistent with the principles of proportionality and responsiveness, WorkSafe ACT allocate investigative resources to the most serious cases. Lessons learned from investigations contribute to the development of guidance and policy and may

inform future legislative changes.

In determining which complaints or reports of incidents, injury or illness to investigate and in deciding the level of resources to be deployed, WorkSafe ACT prioritises the following circumstances or allegations for investigation:

- work-related fatalities and serious injuries – or where there is a risk of such outcomes
- substantial damage to property or the environment, including from the handling of or exposure to dangerous substances
- non-compliance with inspectors' notices or directions
- offences against inspectors
- offences against health and safety representatives (HSRs) and matters relating to entry permit holders
- discrimination against workers on the basis of their WHS activities, and
- failure to notify incidents, including sexual assault (under the WHS Act), or failure to report dangerous occurrence (under the Dangerous Substances Act).

WorkSafe ACT may conduct investigations in conjunction with other relevant agencies (e.g. ACT Policing, the Environmental Protection Authority or Access Canberra). In such cases, WorkSafe ACT may be a lead or support agency.

COMPLIANCE AND ENFORCEMENT TOOLS

Where an inspection or investigation reveals evidence of an alleged breach, WorkSafe ACT will consider what enforcement action will be taken.

Inspectors have multiple ways to compel a duty holder to remedy potential issues and to sanction a duty holder who breaches their duties. The type of tool used will vary depending on several factors that are outlined in the decision-making considerations section below. These measures may be used alone but are typically used in combination. The tools that are available to the regulator include:

- giving guidance and seeking voluntary compliance
- compliance agreements for dangerous substances
- issuing an improvement, prohibition, or infringement notice
- issuing a non-disturbance notice
- seeking an injunction
- accepting an enforceable undertaking (EU)
- commencing a civil or criminal prosecution
- revoking, suspending, or cancelling authorisations, and
- resolving or assisting parties to resolve certain WHS disputes.

These tools are described in detail in the sections below.

Sanctions, such as an infringement notice, licence suspension, enforceable undertakings or prosecution are penalties for non-compliance and act as a further incentive to comply with legislation. Sanctions also act as a general deterrent for other duty holders by showing consequences of non-compliance.

WorkSafe ACT may also publish information relating to enforcement actions and outcomes to deter future occurrences.



DECISION-MAKING CONSIDERATIONS

In deciding on the most appropriate action to take, WorkSafe ACT considers all relevant matters for the specific situation of the breach, including the conduct of the duty holder (duty holder typically refers to the PCBU, see the WHS Act for full definitions). Overall, the following is considered when deciding on what enforcement action to take:

- the extent of the risk
- the seriousness of the breach
- whether the risk to health and safety is imminent or immediate
- the actual or potential consequences, including whether there is a risk of death or serious injury
- the compliance history of the duty holder, including number, type and nature of previous enforcement actions:
 - if there have been previous enforcement actions, whether they were for the same or similar breaches (referred to as repeat offenders), and/or
 - if there has been a failure to comply with an existing or previous notice or direction given by WorkSafe ACT.
- the attitude of the duty holder, including the likelihood of the offence being repeated:
 - if there has been reckless and/or grossly negligent disregard of health and safety requirements, and/or
 - if vulnerable people have been put at risk, which may include young or older workers, people with disability, migrant workers, those from a culturally and linguistically diverse background and those in insecure work arrangements, and/or
 - if the duty holder is seeking economic advantage by avoiding minimum legal requirements for commercial gain.
- the overall standard of the PCBU's management of health and safety, including any mitigating or aggravating circumstances, such as efforts undertaken by the duty holder to control risks. This includes if the duty holder has applied higher order controls (elimination, substitution, isolation and engineering)
- the size and complexity of the business
- whether the duty holder was authorised to undertake certain types of work, and
- whether the safety issues are minor and can be rectified in the presence of an inspector.

Where there are multiple duty holders involved, including more than one business or undertaking, the legislation imposes duties on all involved to effectively consult, coordinate and collaborate to manage risks. When determining what action to take against breaches where multiple duty holders are involved, WorkSafe ACT considers the roles of all relevant duty holders and whether they have each discharged their obligations.

Note: When an inspector identifies a breach, they are required to use their powers under the legislation to address the non-compliance. Punitive actions will generally be used for breaches, while guidance is used to support continued compliance.

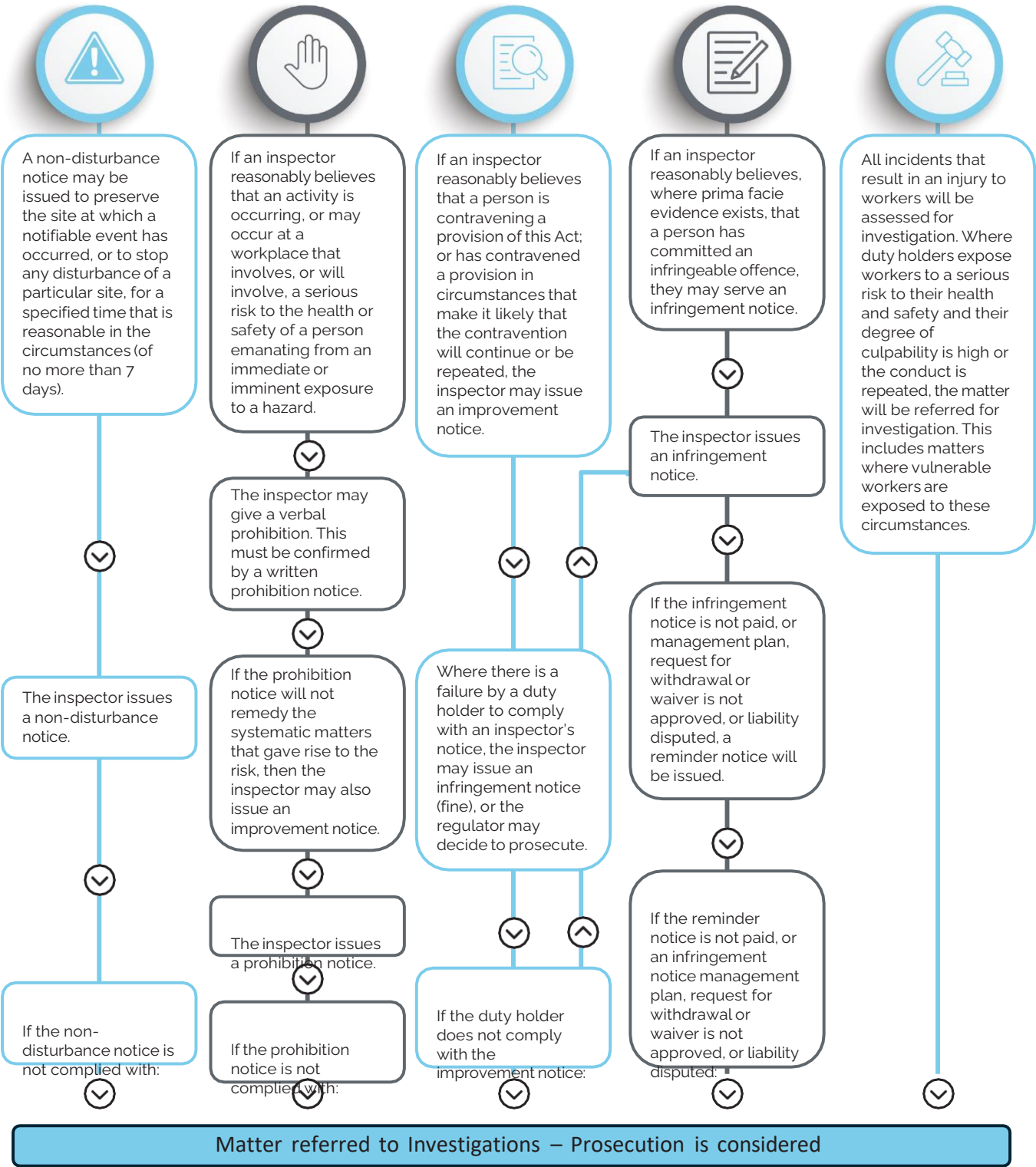
Although each workplace and circumstance will be different, and there are a variety of tools that can be used, the majority of enforcement decisions are made following a similar process. The typical decision-making process is outlined in figure 1.

FIGURE 1. OVERVIEW OF DECISION PROCESS.

Inspector is aware of or suspects a duty holder has contravened the legislation

An inspector may issue a non-disturbance notice to the person with management or control of a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of their compliance powers.

Where an inspection or investigation reveals evidence of an alleged breach, WorkSafe will consider what enforcement action will be taken. A number of measures are available to WorkSafe ACT to compel a duty holder to remedy any identified contravention and to sanction a contravening duty holder. These measures and compliance powers may be used alone or in combination.



COMPLIANCE SUPPORT AND INFORMATION

Where the legal requirements are not met for issuing a notice, an inspector may provide compliance support. Where compliance support is provided, the overall standard of the management of health and safety will be considered, including the duty holder's commitment to safety, to ensure the safety of the workplace is maintained.

After a workplace visit, the inspector may provide links to, or copies of, any guidance or resources discussed during the inspection. Guidance aims to raise awareness of rights and obligations and helps duty holders understand how to comply with legislation and address workplace safety issues. Inspectors may recommend resources from reputable sources, including WorkSafe ACT publications, Codes of Practice, Safe Work Australia, other WHS regulator websites, and Australian/New Zealand Standards.

Support through providing guidance and information is designed to assist duty holders in complying with the law and identifying potential issues. Guidance can also be provided to support the use of other compliance and enforcement tools, such as improvement and prohibition notices.

IMPROVEMENT NOTICES

Inspectors have the power to issue improvement notices to ensure that non-compliance with WHS or relevant legislation is remedied.

Improvement Notices are issued to a duty holder and caution the workplace about an unsafe practice, particular hazard or potential risk to health and safety. The notice requires corrective action to be taken within a specified timeframe. Separate notices are issued for each identified breach of the WHS Act or Regulations. Improvement notices and compliance agreements can also be issued under the Dangerous Substances Act 2004.

Inspectors must issue an improvement notice in all cases where they reasonably believe that a person is breaching their duties under the legislation. The exception to this is where immediate rectification of a breach occurs while the inspector is at the workplace. Rectification of breaches will be recorded by the inspector. The inspector will issue a notice for breaches that cannot be immediately rectified, or where the breach is more serious or is an instance of repeated non-compliance.

The purpose of an improvement notice is to focus the duty holder on the safety issues in the workplace, and clearly set out the rectifications required to achieve compliance with their duties under the legislation. The inspector may also issue a notice to address broader, or higher-level duties.

The notice will outline the breach, the section of the legislation that is being contravened (or is likely to be contravened), and a timeframe (a compliance period) by which the duty holder must comply with the notice. The notice may also contain directions for measures to be taken to remedy the breach or prevent a recurrence. An improvement notice may also be issued in combination with other compliance actions, such as a prohibition notice.

Improvement notices are a 'remedial' enforcement tool (i.e. they require the person to remedy the breach), not 'punitive' measures (i.e. they are not punishment), however they must be complied with. Where there is a failure to comply with an inspector's notice, a fine (infringement notice) may be issued. If the breach is not remedied, the duty holder has a number of breaches or has overall poor safety practices, the regulator may prosecute.

PROHIBITION NOTICES

Where there is a serious risk from an immediate or imminent exposure to a hazard, an inspector will issue a prohibition notice.

Prohibition Notices are issued to stop an activity (immediately) until the inspector is satisfied the risk has been remedied. This direction can be given verbally and confirmed in writing. A prohibition notice will be issued in circumstances where there is a serious risk emanating from an immediate or imminent exposure to a hazard.

Prohibition notices must be issued by an inspector to stop an activity that is occurring or may occur at a workplace if they reasonably believe the activity involves, or would involve, a serious risk to the health or safety of a person. Some examples where a prohibition notice would be issued include unguarded machinery or working at heights without any fall control measures.

Where the direction has been given orally, the direction must be confirmed by a written prohibition notice and given to the person that has control over the activity as soon as reasonably practicable. The written notice will be issued regardless of whether the verbal prohibition notice has been complied with in the interim. The notice will outline the matter that gives rise (or gave rise) to the risk (or is likely to give rise to the risk), and the provision in the legislation that is being, or is likely to be contravened. The prohibition notice may also contain recommendations such as measures that could be taken to remedy the breach.

Improvement notices may also be issued at the same time to address any underlying failure, including systematic management provisions under the relevant legislation that led to the serious risk arising.

Where there is a failure to comply with an inspector's notice, the regulator may prosecute or, if there is a serious risk to health and safety, may seek an injunction against the person to whom the notice was directed. Prohibition notices are 'remedial' enforcement measures (i.e. they require the person to remedy the breach), not 'punitive' measures (i.e. they are not punishment).

A prohibition notice may also be issued when an improvement notice or electrical safety protection notice has been issued, unless the breach is otherwise addressed by an improvement notice or where it cannot be immediately remedied while the inspector is at the workplace.



INFRINGEMENT NOTICES

Inspectors have the power to issue infringement notices in response to non-compliance with WHS or relevant legislation.

Infringement Notices (on the spot fines) are a mechanism for inspectors to impose an immediate form of punitive action for certain types of breaches, sending a clear and timely message that there are consequences for non-compliance.

Infringement notices must be issued where a breach warrants punishment and an inspector believes on reasonable grounds that an offence has been committed.

Infringement notices are issued under the Magistrates Court Act 1930 (Magistrates Court Act). There are currently over 150 infringement notice offences for breach of WHS legislation under the Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011, and over 70 for a breach of the dangerous substances legislation under the Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004.

Factors that are considered when issuing an infringement notice are similar to the decision-making considerations. Additional considerations for infringement notices include:

- the prevalence of the offence in the ACT, including potential industry impact and deterrence effects of infringements
- whether the subject matter of the offence is in alignment with the Strategic Plan
- prior notice of the risk (e.g. if the duty holder has previously been provided with educational material, safety alerts, guidance sheets etc.)
- whether the circumstances warrant the application of a sanction at a lesser scale than an Enforceable Undertaking (EU) or prosecution (possibly in addition to remedial action in the form of an improvement or prohibition notice), and
- any mitigating or aggravating circumstances relevant to issuing an infringement notice.

When determining whether to issue an infringement notice to a worker, rather than a duty holder, the inspector will always consider whether the duty holder (usually the person with control of the workplace or PCBU) has met their obligations to the worker and others.

An infringement notice scheme for the ACT has been established under the Magistrates Court Act that opens various pathways to a person who receives an infringement notice, including:

- Applying to the WHS Regulator to:
 - enter into an infringement notice management plan that allows the person or corporation to pay the penalty in instalments
 - add the infringement notice to an existing infringement notice management plan, or
 - waive or withdraw the infringement notice penalty if certain circumstances are met.
- Applying to the Justice and Community Safety Director-General to:
 - enter into an infringement management plan through participation in an approved community work or social development program.

For further information on the infringement notice management plans, including details around applications and approvals, see Division 3.8.2A of the Magistrates Court Act and the Waiver of Penalty Guidelines and Withdrawal of Infringement Notice Guidelines.

A failure to make a payment that is required under an infringement notice may result in proceedings being brought before the court.

An infringement notice may be revoked, and the matter referred for prosecution in circumstances where further investigation reveals that there is reason to pursue a higher order sanction. Where the fine has been paid, either in full or partially the infringement notice may be withdrawn, the penalty amount already paid refunded, and prosecution commenced.

The recipient of an infringement notice has a right to dispute liability of the notice.

NON-DISTURBANCE NOTICES

An inspector may issue a non-disturbance notice if they reasonably believe it is necessary to do so to facilitate the exercise of their powers.

A non-disturbance notice may be issued to preserve the site at which a notifiable event has occurred, or to stop any disturbance of a particular site (including plant, substance, structure or thing associated with the site), for a specified time that is reasonable in the circumstances (no more than seven days).



The non-disturbance notice must state the period of non-disturbance; the obligations of the person to whom the notice is issued; the measures to be taken to preserve the site; and the penalty for contravening the notice. A non-disturbance notice does not prevent any action to assist an injured person, remove a deceased person, make the site safe to prevent further injury, comply with a police investigation, or for which an inspector has given permission. PCBU's, HSRs and right of entry holders will be given permission to enter a worksite according to the non-disturbance notice to carry out their duties under WHS legislation.

INJUNCTIONS

Injunctions may be sought by WorkSafe ACT to compel a person to comply with an inspector's improvement, prohibition or non-disturbance notice. Injunctions are used when there is a serious risk to health and safety which has not been remedied by the person issued the notice and other mechanisms available to the regulator have not resulted in compliance being secured.

The Dangerous Substances Act also allows for an injunction to be sought when a person has committed, is committing, or is likely to commit an offence against the Act.

Injunctions will be sought when there are exceptional, pressing or urgent circumstances (for example, where the breach involves a significant risk to public safety).

ENFORCEABLE UNDERTAKINGS

The WHS Commissioner may accept an EU as an alternative to prosecuting a breach of the legislation. An EU is a legally binding agreement intended to improve not only the risk management processes directly related to the breach, but also to deliver tangible benefits to the workplace, the relevant industry, and/or the broader community. Once an undertaking is accepted by the regulator it is enforceable.

An EU cannot be accepted for a Category 1 offence under the WHS Act.

The acceptance of an EU by the Commissioner in connection with a breach will involve consideration of a number of factors, including:

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

The Commissioner's decisions about EUs are made in accordance with its Enforceable Undertakings: General Guidelines available on WorkSafe ACT's website. WorkSafe ACT also publishes EUs the WHS Commissioner has accepted on our website and in our annual report.

PROSECUTIONS

Prosecutions may be brought against duty holders who breach their WHS and Dangerous Substances duties. Category 1 and Category 2 offences against the WHS Act are most likely to be prosecuted, as these involve reckless conduct or failure to comply with duties that lead to risk of death, serious injury or illness.

Prosecutions involve taking duty holders to court and providing credible evidence that an offence has been committed and duties have not been met. Criminal charges may be laid, which can include large monetary fines or imprisonment.

Prosecution of duty holders provides a powerful deterrent to others and ensures that those who contravene the legislation are held to account. WorkSafe ACT applies the Work Health and Safety (Prosecution) Guidelines 2023 when making decisions on whether to refer an alleged offence.

The question of whether to bring a prosecution for a breach of the laws is a significant one as the effect on those impacted by the decision (the worker or family of a deceased worker for instance) has to be considered as well as the seriousness of the offence. WorkSafe ACT operates within a broader prosecutorial framework as part of the criminal justice system that requires the highest standard of integrity to be applied to prosecution decision making.



Where the regulator considers that a prosecution for offences should be initiated, the WHS Commissioner may commence proceedings. In commencing a proceeding under the WHS Act, section 230 provides two methods for doing so:

1. the WHS Commissioner can commence a proceeding in their own right pursuant to section 230(1) of the Act, or
2. the WHS Commissioner may refer a matter to the Director of Public Prosecutions (DPP) under section 230(2) for the DPP to consider commencing a proceeding on behalf of the WHS Commissioner. Information about the DPP, including its Prosecution Policy, may be found at www.dpp.act.gov.au.

Where the WHS Commissioner decides to commence a proceeding in accordance with s 230(1) of the WHS Act, the WHS Commissioner will be required to follow the process for starting criminal proceedings within Chapter 3 of the Magistrates Court Act. This includes laying information in accordance with Part 3.3 of the Magistrates Court Act.

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

1. the existence of a prima facie case, that is, whether the evidence is sufficient to justify the institution of proceedings
2. 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
3. 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 time elapsed since 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 availability and 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.

In relation to WHS offences, the time for the regulator to bring charges against a person is limited. 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 the WHS Act
- within six months of a contravention of an enforceable undertaking, or
- if an offence relates to reckless conduct that creates a risk of death or serious injury/illness, at any time thereafter if fresh evidence is discovered.

Proceedings for a contravention of a civil penalty provision may be brought within two years after the regulator first becomes aware of the contravention.



REVOKING, SUSPENDING OR CANCELLING AUTHORISATIONS

The regulator authorises certain people to undertake specified types of work and organisations to conduct certain types of undertakings. For example, work involving the removal of dangerous substances such as asbestos.

If necessary, the regulator will suspend or cancel a person's authorisation in order to deal with inappropriate conduct or practices identified during inspection work or as a result of information received. Such action is a protective measure and may be undertaken even where steps have been taken to remedy a breach or where an offender has otherwise been punished (that is, fined).

WorkSafe ACT recognises that the revocation, suspension or cancellation of authorisations may have serious consequences for a person. When making decisions about authorisations, WorkSafe ACT balances these considerations with the paramount need to protect the health and safety of workers and other persons. In deciding whether to issue or renew an authorisation, WorkSafe ACT will consider the person's history of compliance.

PUBLISHING ENFORCEMENT ACTIONS AND OUTCOMES

WorkSafe ACT publicises information about its enforcement actions to raise awareness of duties and responsibilities and the consequences of non-compliance. This serves to deter others from engaging in similar conduct and promotes better practices.

At any stage of an inspection, audit, investigation or prosecution, WorkSafe ACT may disclose information about a case for the purposes of preventing similar offences from occurring.

In the case of EUs under the WHS Act, WorkSafe ACT is required to publish a notice of a decision to accept an undertaking and the reasons for that decision.

At all times, WorkSafe ACT will act in a way that is accurate, impartial, balanced and fair in how it communicates about investigations, inspections, audits and enforcement actions.

Details of WHS prosecutions and accepted EUs are available on WorkSafe ACT's website.

NOTIFICATION OF ENFORCEMENT DECISIONS

When WorkSafe ACT decides whether to initiate a prosecution or accept an EU following an investigation, WorkSafe ACT may notify the following parties of the decision:

- the alleged offender
- the person who raised the matter with the regulator or their 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.

Inspectors may also provide information about their workplace inspections and any actions taken to relevant workplace parties.

OTHER PERSONS WHO CAN EXERCISE WHS POWERS

It is also important to note that elected HSRs have functions and powers under WHS laws, including powers to take certain actions.

Union officials who hold WHS entry permits have powers of entry into workplaces and other powers in relation to suspected WHS breaches. WorkSafe ACT, when issuing a WHS entry permit, also has certain powers to resolve a dispute about right of entry and to revoke entry permits.

Civil proceedings may be brought by the regulator in relation to conduct breaching provisions relating to WHS entry permit holders – whether by entry permit holders or by those who owe duties to them.



CHALLENGING DECISIONS

There are a number of decisions made by WorkSafe ACT that are reviewable. These are listed in the WHS Act (section 223), WHS Regulation (regulation 676) and the Dangerous Substances Regulation (Schedule 5). An eligible person may apply to WorkSafe ACT for an internal review of the decision.

If an internal review is sought, the dispute must be in writing and state the grounds for the review.

External formal reviews of internal review decisions are undertaken by the ACT Civil and Administrative Tribunal (ACAT). There are time limits to seek a review of decisions and fees may apply. ACAT has various powers which include confirming the decision, varying the decision or setting aside the decision. For more information on ACAT or the appeals process, visit www.acat.act.gov.au.

In addition to ACAT, a person who has a complaint about a decision made by WorkSafe ACT can complain to the ACT Ombudsman at www.ombudsman.act.gov.au.

PERIODIC REVIEW

This policy will be reviewed at least once every four years (or where legislative amendments require a revision) to:

- address any operational inefficiency with the policy
- ensure the policy is achieving its objective, and
- reflect new approaches to compliance and enforcement.

WORKSAFEACT