

# **Compliance Monitoring and Enforcement Policy**

**Workplace Health and Safety Queensland  
Electrical Safety Office Queensland**

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# 1 Introduction

## 1.1 Policy scope

This policy covers the administration and enforcement of the following legislation:

- *Work Health and Safety Act 2011* (WHS Act),
- *Work Health and Safety Regulation 2011* (WHS Regulation),
- *Electrical Safety Act 2002* (ES Act)
- *Electrical Safety Regulation 2013* (ES Regulation).
- *Safety in Recreational Water Activities Act 2011* (SRWA Act)
- *Safety in Recreational Water Activities Regulation 2011* (SRWA Regulation).

In the text of this policy these regulatory instruments are referred to as “the legislation”.

Under the legislation, the Regulator is appointed by the Governor in Council. The Regulator may delegate to an Inspector, appropriately qualified public service employee or person prescribed under a regulation, a function or power under the legislation. Inspectors are subject to the Regulator’s direction (s162 WHS Act and s137B ES Act). This Policy provides direction by the Regulator in the exercise of the inspector’s compliance powers.

In general terms, the legislation is administered by Workplace Health and Safety Queensland and the Electrical Safety Office who are both referenced as the “regulator”. The monitoring and enforcement of compliance with the legislation occurs by the inspectorate. The following core concepts from the legislation are reflected in the regulator’s approach and factored into enforcement decisions:

- workers should be protected from exposure to the risks of illness or injury by duty holders in the course of their business or undertaking
- other people should not have their health and safety put at risk as a result of work being carried out
- duty holders in control of the work that creates the risk are in the best position to eliminate or minimise exposure to those risks
- duty holders, including persons conducting a business or undertaking PCBUs, officers, workers and others need to be proactive in ensuring health and safety in the workplace
- primary duty holders must communicate, and collaborate with workers and representatives, to manage work health and safety risks
- where there are multiple duty holders then they need to work together to exchange ideas and information about reducing or eliminating risks in their workplace.

## 1.2 The regulator

The regulator is responsible for securing compliance through effective and appropriate monitoring and enforcement.

The regulator uses a range of tools to promote and secure compliance with the legislation: to ensure duty holders eliminate or minimise exposure to the risk of illness and injury; and, ensure duty holders who contravene health and safety requirements are held to account.

Inspectors authorised under the legislation are key agents in this regulatory approach, using the powers conferred upon them to provide information and advice about compliance, and to monitor and enforce compliance which includes directing compliance, imposing a sanction, or both.

The regulator takes the following approach in fulfilling its regulatory functions:

- targeting regulatory activity through evidence based research and data analysis of risk of serious harm and/or fatalities to focus on high priority areas for enforcement.
- adopting a high interaction approach involving key agencies, stakeholders and workplaces.
- practising highly visible, credible, proportionate, transparent and consistent enforcement.
- focusing on unmanaged risk and compliance or duty based contraventions, with duty holders being held accountable for contraventions of the legislation
- prioritising sustainable compliance through the provision of information and advice that assists duty holders to implement higher order controls to design and adopt WHS management solutions.
- providing information, resources, education and training.

This approach is summarised below.



Figure 1: The regulatory approach

### 1.3 Purpose

The Compliance Monitoring and Enforcement Policy (this policy) explains how the regulator uses compliance monitoring and enforcement to ensure duty holders are meeting their legislative duties, and to create credible deterrents for contravening the legislation.

The Compliance and Enforcement Framework, is aligned with Strategic Lever 4 of the Five Year Strategic Plan for WHS in Queensland: Regulating effectively. The purpose of the policy is to inform duty holders of the regulator's approach to compliance monitoring and

enforcement and guide inspectors and their managers in their decision-making and use of enforcement measures.

Duty holders must comply with their obligations under the legislation to ensure workers and others are not exposed to unacceptable risks that may result in death, injury or illness.

The purpose of *monitoring compliance* and, when required, *enforcing compliance*, is to ensure duty holders comply with their obligations. This may require directing remedial or compliance action. The threat of being caught and the deterrent effect of a strong regulator will provide a better environment where the risk of exposure to injury and illness is minimised.

Enforcement measures available to the inspectorate include prohibition notices, improvement notices, electrical safety protection notices, unsafe equipment notices and infringement notices (on the spot fines).

Whether there is a single issue, or multiple issues that result in a number of enforcement decisions, inspectors consider the overall enforcement approach, including whether it:

- deals with the most serious risks in order of priority
- takes account of the magnitude of the breaches and provides a proportionate response to the level of risk
- adequately addresses systemic problems with a focus on common causation factors
- secures sustained compliance, including system wide changes where multiple contraventions are apparent
- influences and deters other duty holders in the same industry
- increases the likelihood of sustained compliance.

## 2 Principles of compliance monitoring and enforcement

Compliance monitoring and enforcement is designed to ensure the following aims:

- obvious risks to the physical and psychological health and safety of workers and others are managed and any contraventions of the legislative requirements are quickly addressed;
- work is conducted in a way that is electrically safe;
- PCBUs are fulfilling their duties under the legislation to ensure the health and safety of workers and others; and
- officers<sup>1</sup> of a PCBU are exercising due diligence to ensure the PCBU is complying with any relevant duties.

With a focus on contraventions identified as a high priority for enforcement, the regulator will:

- monitor compliance through observation, conversation and document examination at the workplace; and
- take action to enforce compliance where there are unmanaged risks and contraventions with high levels of culpability leaving workers and others exposed to the likelihood of serious injury or illness.

The regulator is guided by seven nationally agreed principles when undertaking its compliance monitoring and enforcement role, exercising its regulatory responsibility and administering the legislation. The principles<sup>2</sup> are:

<i>Consistency</i>	The regulator will endeavour to ensure that similar circumstances lead to similar approaches being taken, providing greater protection and certainty in workplace and industry.
<i>Constructiveness</i>	The regulator will provide support, advice and guidance to assist compliance with the legislation and build capability.
<i>Transparency</i>	The regulator will demonstrate impartiality, balance and integrity.
<i>Accountability</i>	The regulator is willing to explain its decisions and make available avenues of complaint or appeal.
<i>Proportionality</i>	Compliance and enforcement responses are proportionate to the seriousness of the conduct.
<i>Responsiveness</i>	Compliance and enforcement measures are responsive to the particular circumstances of the duty holder or workplace.
<i>Targeted</i>	Activities are focussed on the areas of assessed highest risk or the regulator's strategic enforcement priorities.

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<sup>1</sup> Officers are persons who make, or participate in making decisions that affect the whole, or substantial part, of the business or undertaking of the State, Commonwealth or other State for the purpose of the legislation.

<sup>2</sup> The principles outlined are in accordance with the [National Compliance and Enforcement Policy](#).

## 3 Monitoring compliance

The regulator monitors compliance with the legislation, maintains a credible threat of detecting non-compliance and constantly improves its capacity to detect and respond to non-compliance. The primary focus is on ensuring duty holders comply with the legislation so that workers and others are not exposed to the risk of injury and illness. The regulator prioritises compliance monitoring activities to focus on the industries and mechanisms which pose the greatest risk of harm to the health and safety and electrical safety of workers and others.

Inspectors undertake workplace visits using observation, discussion and review of documents to make an assessment of the level of risk and extent of compliance. These visits may be initiated by state-wide compliance campaigns (e.g. safety blitzes), workplace assessments (e.g. audits and inspections) or in response to incident notifications or complaints. Inspectors will not give prior notice of entry to a workplace except in specific circumstances (e.g. remote sites where it is necessary to ensure someone is on site or where it is necessary to ensure a particular person is available) and where advance notice will not compromise the intention of the visit.

### 3.1 Status of standards

In addition to complying with the legislation, duty holders in Queensland must follow the safety measures in Approved Codes of Practice (ACoP) and electrical safety duty holders must also follow the safety measures in Ministerial Notices. Duty holders can follow another method outlined in a technical or an industry standard to manage hazards and risks, as long as it provides an equivalent or higher standard of work health and safety to the standard required in the ACoP or Ministerial Notice.

When addressing matters where a risk of harm is present, inspectors will assess the degree of uncontrolled risk as a fundamental premise of any enforcement decision, and will consider whether the risk has been eliminated or minimised according to the legislation or relevant standard so far as is reasonably practicable.<sup>3</sup>

### 3.2 Quality of risk management controls

Inspectors will determine the quality of controls implemented to eliminate or manage the risk so far as reasonably practicable. An assessment is made to determine the level and suitability of control measures being applied. That assessment provides a residual risk rating with five levels of control. These five levels are outlined below:

1. Controls are in place. The controls are currently as prescribed by the legislation, are working and are effective, i.e. the hazard or risk has been eliminated or residual risk is minimised.
2. Controls are in place, so far as is reasonably practicable. There is some remaining risk because better controls do not appear to be available or a better alternative would require investment grossly disproportionate to the risk. Ongoing monitoring of this risk is needed.
3. Controls are low level with no evidence of investigation into higher order controls or assessment of the feasibility of implementing higher order controls. Low level control measures may still be considered a contravention if higher level control measures are reasonably practicable.

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<sup>3</sup> Inspectors may refer to standards to determine what is reasonably practicable (see glossary).

4. Controls currently in place are inadequate. There are known problems or limitations with existing controls and further action is needed to eliminate or minimise exposure to the risk.
5. The risk is essentially uncontrolled. Controls either have not been implemented, or they are grossly inadequate. Urgent action is required.

A residual risk rating of three or higher would indicate a contravention has occurred and enforcement action is required.

### 3.3 Management Systems Approach

Duty holders seeking to manage exposure to the risk of injury or illness must design and implement a sustainable systematic management approach focussing on high order controls. Higher order systematic solutions and controls include:

- PCBUs consulting with workers;
- PCBUs consulting, coordinating and cooperating with other duty holders;
- Officers of PCBUs exercising due diligence (WHS Act s27(5); ES Act 38A) and ensuring the PCBU is complying with any relevant duties;
- WHS management systems that collect and maintain registers and records and reporting systems as part of ensuring compliance;
- Provision of adequate welfare facilities and a safe workplace;
- Good work design that optimises work health and safety, human performance, job satisfaction, and business success (see Principles of Good Work Design Handbook published by Safe Work Australia).

While a contravention of these, or similar, provisions may not result in an immediate risk to health and safety, it does indicate that there is failure in the comprehensive health and safety management in the workplace and consequently higher potential for harm to occur.

Where an inspector identifies a suspected contravention of broader, or higher level duties, the inspector may utilise enforcement options to secure compliance and deter the adoption of lower level control measures.

## 4 Directed compliance

The regulator has a number of enforcement measures available to direct compliance or sanction non-compliance. These measures work as an effective incentive for compliant behaviour and as a deterrent to non-compliance.

Enforcement responses are specific and proportionate to the situation they address, taking into account:

- the level of risk
- the level of actual or potential harm
- the availability, clarity and status of standards or guidance
- any relevant history of non-compliance
- whether the contravention has been identified as a priority area for enforcement by the regulator.

During workplace visits inspectors may identify contraventions that the duty holder can rectify in the presence of the inspector to achieve immediate compliance. Immediate rectification of contraventions will be recorded by the Inspector. Contraventions that cannot be immediately rectified will result in a notice to remedy.



Identification of lower level breaches may indicate failures in the management system and higher order controls. Where individual or collective contraventions are identified the inspector is empowered to issue notices for contravention of broader, or higher order duties. For example, after issuing a prohibition notice to stop the unsafe operation of a fork-lift, an improvement notice may be issued for contravening s19(3)(F) – provision of information, training, instruction or supervision. The PCBU should have observed, stopped and rectified the prohibited activity and ensured appropriate training and supervision was undertaken to ensure the safe operation of the fork-lift.

Consideration will be given to any relevant history of non-compliance as a repeat of similar contraventions could be indicative of a systematic management failure. In these circumstances the inspector is empowered to take action for contravention of the higher order duties under the legislation, including the PCBU's primary duties and an officers duty to exercise due diligence.

#### 4.1 Enforcement measures

When the inspector identifies a contravention, they are required to use their powers under the legislation to address the contravention. Inspectors are empowered to direct compliance by various means including the issue of:

- improvement notices
- prohibition notices – for work activities that give rise to a serious risk to health and safety of a person, an inspector will prohibit the activity until risks are appropriately managed
- electrical safety protection notices – for circumstances causing, or likely to cause, an immediate electrical risk to persons or property at a place
- non disturbance notices - to facilitate the exercise of an inspector's compliance powers
- unsafe equipment notices - for defective or hazardous electrical equipment that is likely to cause a serious electrical incident.

The first priority for directed compliance is to address any circumstances that involve:

- a serious risk<sup>4</sup> to health and safety arising from immediate or imminent exposure to a hazard by issuing a prohibition notice; or
- an immediate electrical risk by issuing an electrical safety protection notice (ESPN). The electrical supply will also be isolated in these circumstances.

In each case the inspector will give an oral direction and issue a written notice. See Flowchart 1: Enforcement overview (at end of this policy) for a high level outline of the regulator's approach to enforcement

##### 4.1.1 Prohibition Notice (WHS Act s195-197)

Prohibition notices will 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 emanating from an immediate or imminent exposure to a hazard. For example: unguarded machinery or working at heights without any 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 notice will stipulate the matter that gives 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

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<sup>4</sup> A serious risk to health or safety is not defined in the WHS Act. In general terms a serious risk can be considered a significant risk that is neither trivial nor slight, which has a real chance of materialising (Fallas v Mourlas [2006] NSWCA 32).

contravened. The prohibition notice may also contain recommendations such as measures that could be taken to remedy the contravention.

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.

#### 4.1.2 Electrical safety protection notice (ES Act s147(8))

An electrical safety protection notice (ESPN) will be issued in all cases where an inspector reasonably believes that circumstances are causing, or likely to cause, an immediate electrical risk to persons or property.

This will include action to disconnect the supply of electricity to the area that is not considered electrically safe. Inspectors will also ensure an exclusion zone is in place around the area until the electricity supply can be disconnected.

Where the direction has been given orally, the direction must be confirmed by a written ESPN and given to the person as soon as reasonably practicable.

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

#### 4.1.3 Improvement Notice (WHS Act s191-192; ES Act s146-146A)

An improvement notice is issued:

- in order to remedy a contravention,
- to prevent a likely contravention from occurring,
- to remedy the things or operations causing the contravention or likely contravention (causal factors) within a specified timeframe.

Inspectors will issue an improvement notice in all cases where they reasonably believe that a person is contravening a provision of the legislation; or has contravened a provision and believes it is likely that it will continue or be repeated. The exception to this is where immediate rectification of a contravention occurs while the inspector is at the workplace and this must be recorded by the inspector. Where the contravention is evidence of a systematic management failure the inspector will issue an Improvement Notice that addresses the systematic management failure.

The purpose of an improvement notice is to focus the duty holder on the tasks to be carried out in order to remedy a contravention or any causal factors to achieve compliance with their duties under the legislation. For example, an inspector may issue a notice to remedy a contravention of risk management or hazard control provisions. The inspector may also issue a notice to address broader, or higher level duties under the legislation.

The notice stipulates the contravention, the provision that is being contravened (or is likely to be contravened), and a time frame (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 contravention or prevent a recurrence, or likely recurrence of the contravention.

An improvement notice may also be issued even when a prohibition notice or electrical safety protection notice has been issued. Unless the contravention is otherwise addressed by a prohibition notice or electrical safety protection notice, an improvement notice will be issued where the contravention cannot be immediately remedied while the inspector is at the workplace or onsite.

## 4.2 Other directions

### 4.2.1 Unsafe equipment notice (ES Act s148)

An unsafe equipment notice will be issued if an inspector reasonably believes that electrical equipment is so defective or hazardous that it is likely to cause a serious electrical incident. The purpose of the unsafe equipment notice is to require the owner to make the electrical equipment harmless or incapable of operation.

The owner may choose to have the item made electrically safe or destroyed. An unsafe equipment tag must be attached securely to the equipment.

### 4.2.2 Non-Disturbance Notice (WHS Act s198-199; ES Act s149)

An inspector may issue a non-disturbance notice if he/she reasonably believes it is necessary to do so to facilitate the exercise of their powers. For instance, 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 (of no more than 7 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, that is associated with a police investigation, or for which an inspector has given permission.

## 5 Sanctions

Sanctions, such as an infringement notice, licence suspension, enforceable undertaking (EU) or prosecution are penalties for non-compliance and act as a further incentive to comply with the legislation. Sanctions also act as a general deterrent for other duty holders who may consider contravening their duties.

### 5.1.1 Infringement Notice

Infringement notices (on the spot fines) are issued under the *State Penalties Enforcement Regulation 2014* (SPER) and may be issued by an inspector if they believe, on reasonable grounds, that a person is committing or has committed an infringement notice offence under the legislation. Infringement notices may be issued to an organisation, individual or both.

There are currently 240 infringement notice offences for contraventions of the WHS and ES legislation. The regulator has identified a smaller number as priority areas for enforcement. An inspector will have additional focus on these areas, and if an inspector identifies a contravention of a provision determined by the regulator to be a priority, the inspector will issue an infringement notice. The provisions determined as a priority by the regulator will change periodically to reflect current and emerging risks.

The priority areas do not prevent an inspector from issuing an infringement notice for an infringeable offence not identified as a priority; an inspector may issue an infringement notice for any infringement notice offence.

The full list of infringement notice offences, including those indicated as priority areas for enforcement, is available on the Worksafe website.

An inspector will use other directed compliance measures, in conjunction with infringement notices, to ensure the contravention is remedied.

Infringement notices may be issued for risk based or systematic WHS management contraventions, such as *failure to ensure, so far as is reasonably practicable, that a person, plant or thing did not come within an unsafe distance of an overhead or underground electric line* (SPER Schedule 1 - ES Reg s68(1)) or failure of the duty holder to comply with *registration holder must keep registration document available for inspection under the Act* (SPER Schedule 1 - WHS Reg s262(1)).

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.

If the recipient of an infringement notice makes full and proper payment of the penalty then the liability of the alleged offence is discharged and no prosecution may be brought. However, where the fine has not been paid, or payment has commenced by instalment and not satisfied in full, the infringement notice may be withdrawn, the penalty amount already paid refunded, and prosecution commenced.

The recipient of an infringement notice may choose a hearing in the Magistrates Court instead of paying the fine.

### 5.1.2 Review of authorisations

A range of authorisations, such as licences, permits, registration and certificates are issued under the legislation. The terms and conditions of a specific authorisation, such as high risk work and electrical licences, are set out in the relevant documents.

If a duty holder fails to adhere to the conditions set out in the authorisation documents, the licence may be suspended, cancelled or conditions of a licence amended. Suspension or cancellation of a licence or other authorisation is typically used where the offence was of a nature that exposed persons to serious risk or where other penalties have not resulted in improvements that reduce risk. Details of all licence suspensions and cancellations will be published on the Worksafe website.

### 5.1.3 Enforceable Undertakings (WHS Acts216, ES Act s49)

An EU is an enforcement pathway permitted under the legislation as an alternative to a court imposed sanction following an alleged contravention of the legislation. An EU cannot be accepted for a category 1 offence<sup>5</sup> (reckless conduct), category 2 causing death, or industrial manslaughter.

An EU allows a duty holder to voluntarily enter into a legally-binding agreement with WHSQ to implement effective health and safety initiatives. The agreement outlines actions the duty holder will undertake to address the contravention and deliver tangible benefits for workers, industry, and the community as a whole.

An EU is not imposed on a duty holder. A duty holder must apply to the regulator who considers the application and makes a decision about whether or not to accept it.

The regulator's decisions about EUs are made in accordance with its *Guidelines for the acceptance of an Enforceable Undertaking*.

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<sup>5</sup> See definition in the appendix 1: glossary

#### 5.1.4 Prosecution

Prosecuting duty holders aims to provide a powerful deterrent to others and ensures that those who contravene the legislation are held to account. It draws attention to the consequences of contravening the legislation.

Serious contraventions of the legislation may be referred to the independent statutory office of the Director of Workplace Health and Safety Prosecutions (DWHSP). The DWHSP makes the decision to prosecute or not.

The DWHSP may decide to take prosecution action as a result of an investigation whether or not a contravention has resulted in a death, injury, illness or disease actually occurring.

Category 1 offences are referred to the Director of Public Prosecutions with the decision to prosecute being made by the DPP in line with the DPP's Prosecution Guidelines.

<https://www.worksafe.qld.gov.au/laws-and-compliance/prosecutions/guidelines-prosecutions>

## 6 Information and advice about compliance (WHS Act s160(a); ES Act 137(a))

When issuing a notice, an inspector will provide information to support understanding of the notice. This information will be provided verbally and, in some instances, may be confirmed or expanded upon in writing (e.g. by email). Such information should include clear explanation of the contravention and a brief explanation of what compliance looks like i.e. the evidence the inspector will be looking for to determine whether the notice is complied with. An inspector may also provide practical guidance and support, based on reliable information sources such as [worksafe.qld.gov.au](http://www.worksafe.qld.gov.au), Safe Work Australia or other WHS regulator websites, Codes of Practice and Australian/New Zealand Standards.

Where there isn't an apparent contravention or where the level of risk management does not meet the legal requirements for issuing a notice, an inspector may also provide practical guidance and compliance support.

In the circumstances where general information and advice is provided without a notice being issued, the inspector may follow this up by providing information in writing (e.g. email) with the regulator retaining a record of the information provided. For example, in a post workplace visit email, the inspector may provide links to, or copies of, any guidance or research discussed during the visit.

In some circumstances a referral may also be made to one of the regulator's programs or services, such as Workplace Assistance services, the Work Health Design Branch, the Safety Leadership at Work program or Mental Health at Work. These programs and services aim to assist the PCBU to comply through directed guidance which includes education, training or support.

## 7 Review of decisions

A person affected by an inspector's decision (other than the issue or content of an infringement notice) may apply to the regulator for an internal review of that decision. In these circumstances an eligible person may apply to the relevant body to have the decision reviewed:

- Internal review – application can be made to the regulator within 14 calendar days of the decision coming to the notice of the eligible person, or in relation to an improvement notice, an application must be made in the time stated in the notice or 14 calendar days, whichever is shorter.
- External review – application can be made to review the original decision or the internal review decision, within a specified time from the day the applicant received or became aware of the decision:
  - 30 calendar days to the Queensland Industrial Relations Commission
  - 28 calendar days to the Queensland Civil Administrative Tribunal.

The [list of reviewable decisions](#) document outlines who is eligible to apply for a review and who would undertake the external review.

**Note:** neither the decision to issue nor the content of an infringement notice is reviewable. The recipient of an infringement notice may choose a hearing in the Magistrates Court instead of paying the fine.

## 8 Periodic review

This policy will be reviewed at least every five years or where legislative amendments require a revision. The purpose of the review is to:

- address any operational inefficiency with this policy
- ensure this policy is achieving its objectives
- reflect new approaches to compliance and enforcement, and
- reflect any relevant legislative amendments.



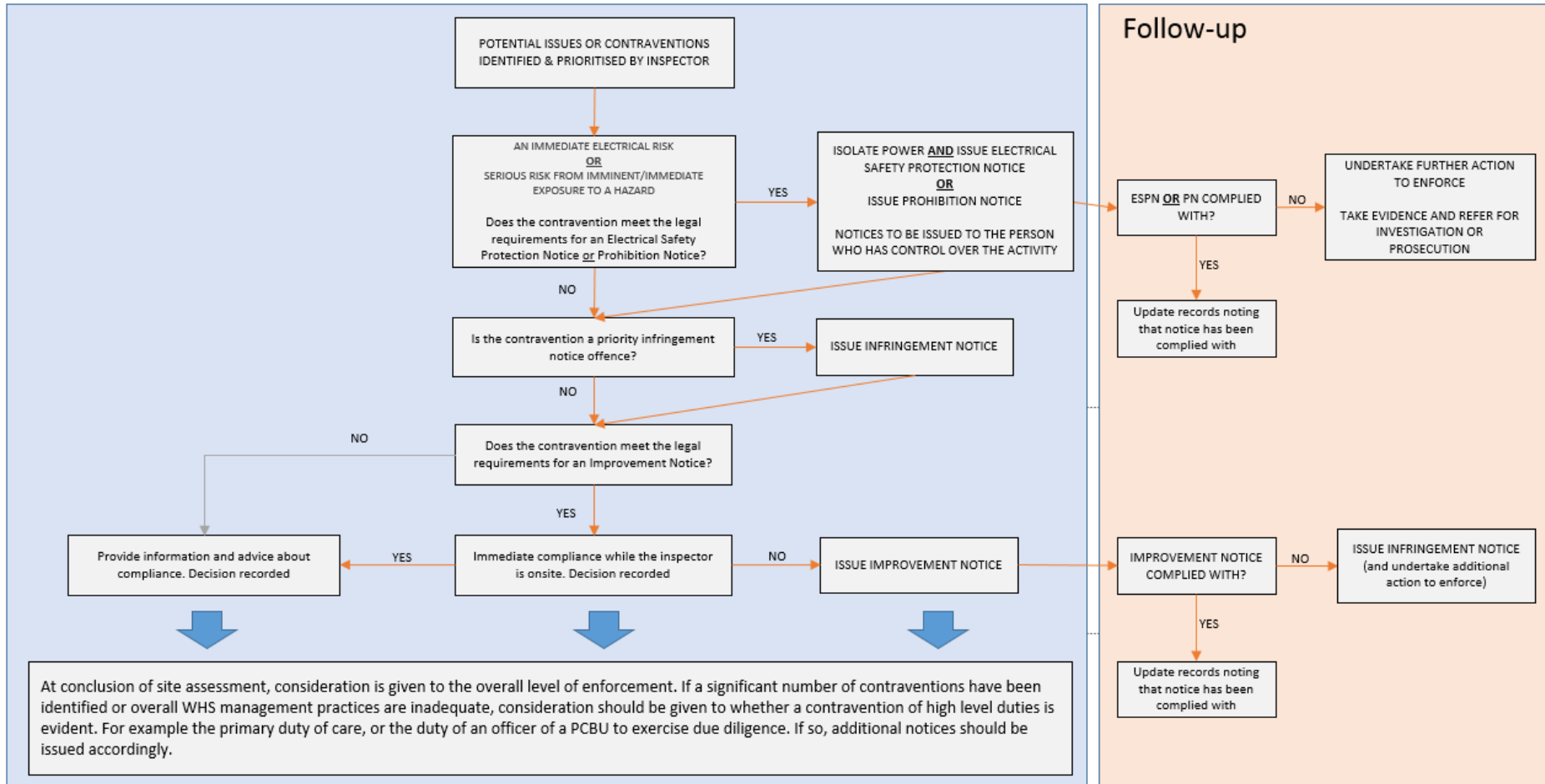
## 9 Glossary

<i>Term</i>	<i>Definition</i>
<i>Authorisations</i>	A person or worker can be authorised under the legislation by a licence, permit, registration or other authority issued by the regulator under the legislation.
<i>Contravention</i>	Contravention means to an act of breaking or failing to observe a law
<i>Compliance</i>	Following the law, i.e. acting in accordance with the legislation, including fulfilling duties under the Act or Regulation and obtaining the right approvals or permissions. It means conducting authorised activities in accordance with any conditions or regulatory requirements.
<i>Category 1 offence</i>	Reckless conduct – category 1 (s31 WHS Act or s40B ES Act). A person commits a category 1 offence if – a) The person has a health and safety duty; and b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and c) the person is reckless as to the risk to an individual of death or serious injury or illness.
<i>Duty holder</i>	The primary duty holder is the person conducting a business or undertaking (PCBU) as described under WHS Act s19 or ES Act s30.  If a PCBU has a duty or obligation, officers of the PCBU have a duty to exercise due diligence to ensure the PCBU complies that duty with (s27 WHS Act, s38A ES Act).  Principal contractors in high risk construction have additional duties under the WHS Regulation (Chapter 6 WHS Regulation).  Workers and other persons also have duties under sections 28-29 of the WHS Act.
<i>ES Act</i>	<i>Electrical Safety Act 2002</i>
<i>ES Regulation</i>	<i>Electrical Safety Regulation 2013</i>
<i>Enforcement response</i>	Action that aims to enforce compliance in order to reduce or stop workplace related death, injuries and disease by using: <ul style="list-style-type: none"> <li>• directive compliance to achieve a remedy of a contravention through the issue of notices; and/or</li> <li>• sanctions to deter non-compliance by holding duty holders to account, through prosecution, enforceable undertakings or the issue of infringement notices.</li> </ul>
<i>Inspector</i>	An inspector appointed under s156 WHS Act and s123 ES Act.
<i>Apparent non-compliance</i>	Apparent failure to comply with any provision of the relevant Act and Regulation which leads to further investigation into whether there was a contravention of the relevant legislation.
<i>Notifiable incident</i>	Any of the following events that arise from work: <ul style="list-style-type: none"> <li>• the death of a person; or</li> <li>• a serious injury or illness, or</li> <li>• a dangerous incident</li> </ul>

	As defined in WHS Act s35 - s37.
<i>Reasonably practicable</i>	Reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including— <ul style="list-style-type: none"> <li>a. the likelihood of the hazard or the risk concerned occurring; and</li> <li>b. the degree of harm that might result from the hazard or the risk; and</li> <li>c. what the person concerned knows, or ought reasonably to know, about— <ul style="list-style-type: none"> <li>i. the hazard or the risk; and</li> <li>ii. ways of eliminating or minimising the risk; and</li> </ul> </li> <li>d. the availability and suitability of ways to eliminate or minimise the risk; and</li> <li>e. after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.</li> </ul>
<i>Regulator</i>	The Regulator means the person appointed by the Governor in Council under Schedule 2 Part 1 s1 WHS Act
<i>regulator</i>	The regulator means Workplace Health and Safety Queensland and the Electrical Safety Office
<i>Residual Risk</i>	WHS Matrix – The ‘risk rating’ is determined by comparing the quality of the controls used by the duty holder compared with standards (legislation, Codes of Practice, etc.), taking into account what is reasonably practicable.
<i>WHS Act</i>	The <i>Work Health and Safety Act 2011</i>
<i>WHS Regulations</i>	The <i>Work Health and Safety Regulations 2011</i>
<i>WHSQ</i>	Workplace Health and Safety Queensland
<i>Workplace</i>	Any place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work (WHS Act s8). This includes a vehicle, vessel, aircraft or other mobile structure; and any waters and any installation on land, on the bed of any waters or floating on any waters.



# Flowchart 1: Enforcement overview



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