

# Workers' Compensation and Rehabilitation Act 2003

## Compliance and enforcement policy

### 1. Introduction

The Workers' Compensation Regulator is responsible for regulating the Queensland workers' compensation scheme.

The Workers' Compensation Regulator's responsibilities include ensuring compliance with and enforcement of duties and obligations under the *Workers' Compensation and Rehabilitation Act 2003* (the Act), facilitating the efficient operation of the scheme and supporting dispute resolution mechanisms.

The compliance and enforcement functions include (but are not limited to) monitoring the compliance of insurers with the Act, monitoring the performance of insurers under the Act (including the consistent application of the Act), investigating non-compliance with the Act, and conducting and defending proceedings under the Act. These functions are delegated to and undertaken by the Office of Industrial Relations (OIR).

Functions other than compliance and enforcement include (but are not limited to) supporting the efficient administration of medical assessment tribunals, undertaking reviews of insurer decisions and managing appeals, promotion and education about the scheme, deciding applications relating to self-insurance, and undertaking workplace rehabilitation and return to work accreditation activities. These functions are delegated to and undertaken by OIR.

This policy sets out the principles that underpin the approach OIR will take with all duty holders to monitoring and enforcing compliance with the Act. Duty holders under the Act include employers, insurers, workers, service providers and any other person with a duty under the Act.

This policy covers regulation and enforcement of the following legislation:

- *Workers' Compensation and Rehabilitation Act 2003* (the Act)
- *Workers' Compensation and Rehabilitation Regulation 2014* (the Regulation).

In the policy this is referred to as "the legislation".

### 2. Aims of compliance and enforcement

OIR is committed to ensuring a fair, efficient and responsive workers' compensation scheme that delivers the objectives stated in the Act. Decisions and actions under this policy will be undertaken in a way that supports procedural fairness to all affected parties.

In realising this objective, the legislation provides OIR with a range of functions including:

- promotion and education about the scheme to duty holders and the community;
- monitoring performance and enforcing compliance of insurers;
- fostering co-operative, consultative relationships between insurers, employers and workers/claimants and their representatives;
- sharing information with others if authorised; and
- conducting and defending proceedings under the legislation.

OIR seeks to use an effective mix of positive motivators, compliance monitoring and deterrents to encourage and secure the highest possible levels of compliance with the legislation. In doing so, there is a need to balance a number of considerations, including:

- the community's expectation that insurers, employers and workers will be monitored and held accountable if they fail to comply with the legislation;
- the need to support insurers and employers to build capability to achieve compliance with the legislation; and
- the need to work with insurers, employers and workers/claimants and their representatives to continue to promote innovation and continuous improvement in workers' compensation and rehabilitation standards.

The positive motivators employed by OIR include:

- communicating with, engaging and supporting stakeholders;
- providing practical and constructive advice, information, and education about rights, duties and responsibilities; and
- fostering cooperative and consultative relationships between insurers, employers and workers/claimants and their representatives.

Compliance monitoring activities may include investigations, inspections, audits, reviews of files and documents, and other verification activities with the aim of enhancing workers' compensation and rehabilitation practices and achieving sustainable compliance with the legislation. OIR will address any identified deficiencies by using compliance and enforcement tools outlined in this policy, as considered appropriate to the circumstances.

There are a number of ways in which non-compliance is deterred. These include:

- detecting and dealing with alleged non-compliance with the legislation;
- undertaking reviews of files and documents, inspections, audits and investigations of alleged non-compliance of the legislation;
- taking appropriate enforcement action in response to non-compliance;
- seeking appropriate sentencing outcomes in prosecutions; and
- publishing information regarding the nature and outcome of compliance and enforcement activities.

### **3. Key principles**

This policy explains how OIR uses compliance monitoring and enforcement to ensure that duty holders are meeting their legislative duties and to create credible deterrents to breaching the legislation.

OIR is guided by eight principles when undertaking its compliance monitoring and enforcement role, exercising its regulatory responsibility and administering the legislation. The principles are:

<b>Proportionate</b>	OIR's enforcement measures are proportionate to the context, the seriousness of the issue they seek to address, and take into account duty holder factors.
<b>Transparent</b>	The legislation, standards, enforcement approaches and decisions are publicly available to demonstrate OIR's credibility and ensure duty holders understand what is expected of them and what they can expect from OIR.
<b>Consistent</b>	Consistency of approach provides certainty about the types of enforcement measures OIR takes, why, and in what circumstances. The outcomes of OIR's enforcement activities are predictable and consistent, which means that similar non-compliance should lead to similar enforcement outcomes. This approach does not necessarily mean uniformity, i.e. OIR responds consistently when dealing with similar cases, but is flexible enough to take into account the specific circumstances of each case.
<b>Accountable</b>	OIR carefully considers the action it takes around enforcement and has a sound legal basis for its enforcement decision making. Both OIR staff and duty holders are accountable for their actions. OIR is judged against certain standards by the public (such as the principles contained in this policy), and enforcement practices are open for public scrutiny. OIR has effective and easily accessible mechanisms for dealing with complaints, or reviews of its processes or actions.
<b>Targeted</b>	OIR targets its enforcement activities to identify and remedy the most serious non-compliances, focusing on activities that give rise to the most serious risks, and OIR's strategic enforcement priorities.
<b>Constructive</b>	OIR provides support, advice and guidance to assist compliance with the legislation and build capability.
<b>Responsive</b>	OIR's compliance and enforcement measures are responsive to the particular circumstances of the duty holder.
<b>Inclusive</b>	OIR engages with the community, workers, business and government to promote the legislation, set standards and exchange information to assist with compliance and enforcement.

#### 4. Monitoring compliance

OIR monitors compliance with the legislation in a number of ways, such as through the use of authorised persons powers and carrying out audits.

OIR also receives reports, information, notifications and requests to respond to workers' compensation and rehabilitation issues. These are triaged to determine an appropriate regulatory response.

OIR also gathers/uses data and other information to proactively target areas where poor performance and/or non-compliance with legislation and licence pose the greatest risk to the scheme and taking action to reduce that risk.

Prior to determining whether to take any action in relation to a possible breach, OIR undertakes inquiries to determine whether a breach has occurred and gathers information that may assist in preventing future non-compliance.

The aim of reviews of files and documents, investigations, inspections and audits is to assess the extent of compliance by duty holders with the legislation, and to support compliance. Reviews of files and documents, investigations, inspections and audits are a feature of both planned (targeted) and responsive work.

Authorised persons have significant powers under the legislation including:

- entering a workplace at any time
- requiring information or production of documents
- seizing items for use as evidence of an offence.

Investigations are undertaken for a range of reasons, such as to determine the causes of non-compliance, to assess compliance with the legislation, to determine what action may be needed to prevent a further occurrence, and to determine what action may be appropriate to enforce compliance with the legislation. Lessons learnt from investigations also inform development of workers' compensation and rehabilitation guidance and policy, and may inform future changes to the legislation.

Consistent with the principles of proportionality and responsiveness, resources available for investigations are devoted to the most serious cases. It is not possible for OIR to investigate all issues of non-compliance with the law which are uncovered in the course of an inspection, or in response to a complaint.

In determining which complaints or reports of non-compliance to investigate and in deciding the level of resources to be deployed, OIR take account of the following factors:

- the seriousness of any potential breach of the law;
- the duty holder's compliance history;
- strategic enforcement priorities;
- the practicality of achieving results; and
- the wider relevance of the event, including matters of significant community concern.

## **5. Compliance and enforcement tools**

Where an inspection or investigation reveals evidence of an alleged breach, OIR will consider what enforcement action, if any, should be taken.

A number of measures are available to OIR to compel a duty holder to remedy any identified non-compliance and to sanction a contravening duty holder. These measures may be used alone or in combination.

OIR determines the most appropriate tool to be used depending on all the circumstances of a breach. The tools that are available to OIR include:

- giving advice on compliance and seeking voluntary compliance
- resolving or assisting parties to resolve certain workers' compensation and rehabilitation disputes
- issuing a notice
- commencing a prosecution
- publishing enforcement actions and outcomes
- licence consequences.

## **6. Criteria which guide enforcement decision-making**

In deciding on the most appropriate action to take, OIR are guided by the following considerations:

- the adverse effect, that is the extent of the risk, the seriousness of the breach and the actual or potential consequences
- the culpability of the duty holder, that is, how far below acceptable standards the conduct falls and the extent to which the duty holder contributed to the risk
- the compliance history and attitude of the duty holder
- if it is a repeat offence or there is a likelihood of the offence being repeated
- impact of enforcement on encouragement or deterrence
- any mitigating or aggravating circumstances, including efforts undertaken by the duty holder to control risks.

The legislation imposes duties on multiple parties and these responsibilities can co-exist and overlap. When determining whether to take action and against whom to take such action, OIR considers all relevant duty holders and whether they have discharged their obligations.

In addition to these general criteria which guide decision-making, the remainder of this policy elaborates on the specific criteria which guide OIR in the use of each compliance tool.

## **7. Advice or guidance**

Advice and guidance aims to raise awareness of rights and obligations and help duty holders know how to comply with the legislation and build their capability to address workers' compensation and rehabilitation issues and achieve compliance.

Having provided the duty holder with advice or guidance as to how compliance may be achieved, if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, OIR may decide to take no further action.

The breach will be documented in writing via trackable means (e.g. a letter or email), recorded on OIR's systems and may be referred to in the future. For example: if a similar breach occurs in the future and the duty holder has previously been given an opportunity to immediately remedy, the duty holder may expect a stronger enforcement response.

## **8. Notices**

Authorised persons have the power to issue notices. Authorised persons may issue a notice in any circumstance where they form a reasonable belief regarding a non-compliance unless some other appropriate action is considered by the authorised person to achieve the desired outcome.

A notice is issued to remedy a breach, prevent a likely breach from occurring, or remedy the things or operations causing the breach or likely breach (causal factors) within a specified timeframe. The notice must stipulate the non-compliance 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 non-compliance or prevent a recurrence, or likely recurrence of the non-compliance.

All notices will be documented in writing via trackable means (e.g. a letter or email), recorded on OIR's systems and may be referred to in the future.

Notices are 'remedial' enforcement measures, not 'punitive' measures (i.e. they are not punishment). This means that in cases where punishment is warranted, other measures such as prosecution may also be taken in addition to notices issued by an authorised person.

## **9. Prosecutions**

Prosecutions may be brought in relation to alleged non-compliance of the legislation.

The question of whether to bring a prosecution for a breach of the legislation is a significant one as the effect on those impacted by the decision will be considerable. OIR operate within a broader prosecutorial framework as part of the criminal justice system that requires the highest standard of integrity to be applied to prosecutorial decision making.

OIR applies the Director of Public Prosecution (DPP) guidelines. In determining whether or not to prosecute, OIR will consider:

- 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)

- 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 including 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.

## **10. Licence implications for self-insurers**

OIR will monitor and investigate compliance with the Act and the self-insurance licence and inform the Workers' Compensation Regulator of any non-compliance, whether the actions have been remedied or not and regardless of any prosecutions brought in relation to alleged non-compliance.

The Workers' Compensation Regulator may at any time and without notice, impose or vary conditions on a self-insurer's licence. A condition can be imposed on the self-insurer or may be imposed in relation to a particular employer who is a member of the licence.

The Workers' Compensation Regulator may cancel a licence if the self-insurer, or a member of the self-insurance licence, contravenes the Act or a condition of the licence.

If the Workers' Compensation Regulator considers grounds exist to cancel a licence, the Workers' Compensation Regulator will give the self-insurer written notice of the intention to cancel the licence (a show cause notice) and invite the self-insurer to show why the licence should not be cancelled. After considering all written representations made within the stated time, the Workers' Compensation Regulator may cancel the licence.

To support this policy OIR will publish a self-insurance performance and compliance framework that will clearly articulate the expectations self-insured employers must meet and outcomes to be achieved. This framework will assist with the implementation of risk-based licensing and the regulatory framework for self-insurers.

## **11. Publishing enforcement actions and outcomes**

OIR publicise information about their enforcement actions in order to raise awareness of the legislation and the consequences of non-compliance, thereby deterring people from engaging in similar conduct and promoting better practices.

Examples of the ways OIR may publicise information about enforcement actions are:

- summarising cases on their websites;
- 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 OIR publications; and
- using information from a case to gather and publish data and statistics.

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

At all times, OIR aim to be accurate, impartial, balanced and fair in the way in which they communicate about investigations, inspections, audits and enforcement actions.

## **12. Notification of enforcement decisions**

When OIR makes a decision regarding whether to initiate a prosecution following an investigation, OIR may notify the following parties of the decision:

- the alleged offender
- the person who raised the matter
- any persons who were exposed to risk due to the non-compliance.

## **13. Challenging decisions**

The legislation provide that certain persons can seek internal and/or external review of certain types of decisions that are made by authorised persons and OIR. The range of decisions for which a review can be sought are listed in the Act.

## **14. More information about compliance and enforcement**

In addition to this policy, OIR may publish further details about compliance and enforcement programs, which can be found at the WorkSafe website.