

Workers' Compensation Regulator – Prosecutions Policy

Purpose

This policy provides general information about the Workers' Compensation Regulator's approach to prosecutions for offences committed by persons against the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (the Act) as part of the Workers' Compensation Regulatory Services compliance and enforcement approach detailed in the [Workers' Compensation and Rehabilitation Act 2003 Compliance and Enforcement Policy](#).

Background

The Workers' Compensation Regulator is responsible for the regulation of the workers' compensation scheme in Queensland.

The Workers' Compensation Regulator's functions include compliance and enforcement, monitoring the compliance of insurers with the Act, monitoring the performance of insurers under the Act, investigating non-compliance with the Act, and conducting and defending proceedings under the Act. These functions are delegated to and undertaken by Workers' Compensation Regulatory Services (WCRS) in the Office of Industrial Relations.

Prosecutions serve as a strong deterrent against potential offenders and helps to preserve the integrity of the workers' compensation scheme.

WCRS receives notifications and referrals of potential matters for prosecution from the general public, workers' compensation insurers and other sources. WCRS encourages individuals and stakeholders to continue to assist identifying conduct of persons who maybe engaging in illegal and inappropriate conduct, or who know of others whose conduct may have been inappropriate. This conduct can be reported at <https://www.worksafe.qld.gov.au/>.

WCRS performs investigative and prosecutorial functions for all offences under the Act in line with relevant legislation and prosecution guidelines including the guidelines of the Office of the Director of Public Prosecutions, Queensland. The type of offences under the Act include:

- Offences relating to fraud and for providing false or misleading information or documents to workers' compensation insurers, registered persons or authorized persons under the Act;
- 'Claim farming' offences relating to persons who give or receive consideration for claim referrals and approach/contact other persons and solicit/induce those persons to make a claim, or the provision of law practice certificates;
- Offences relating to the use of a workers' compensation document for a purpose relating to a worker's employment, namely decisions about whether to hire a worker or whether their employment should continue; and
- Offences relating to the under-declaration of wages by employers to WorkCover Queensland.

More information on the offences can be found at <https://www.worksafe.qld.gov.au/>.

The performance of these functions regularly results in prosecutions against workers, employers, providers and third parties. For prosecution outcomes see <https://www.worksafe.qld.gov.au/>.

Guiding Principals

When exercising its enforcement and compliance functions WCRS is guided by eight principles. These principles are:

Proportionate	WCRS enforcement measures are proportionate to the context, the seriousness of the issue they seek to address, and take into account duty holder factors.
Transparent	The legislation, standards, enforcement approaches and decisions are publicly available to demonstrate WCRS credibility and ensure duty holders understand what is expected of them and what they can expect from WCRS.
Consistent	Consistency of approach provides certainty about the types of enforcement measures WCRS takes, why, and in what circumstances. The outcomes of WCRS 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. WCRS responds consistently when dealing with similar cases, but is flexible enough to take into account the specific circumstances of each case.
Accountable	WCRS carefully considers the action it takes around enforcement and has a sound legal basis for its enforcement decision making. Both WCRS staff and duty holders are accountable for their actions. WCRS is judged against certain standards by the public (such as the principles contained in this policy), and enforcement practices are open for public scrutiny. WCRS has effective and easily accessible mechanisms for dealing with complaints, or reviews of its processes or actions.
Targeted	WCRS 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 WCRS strategic enforcement priorities.
Constructive	WCRS provides support, advice and guidance to assist compliance with the legislation and build capability.
Responsive	WCRS compliance and enforcement measures are responsive to the particular circumstances of the duty holder.
Inclusive	WCRS engages with the community, workers, business and government to promote the legislation, set standards and exchange information to assist with compliance and enforcement.

In exercising prosecution functions this approach means:

Presumption of innocence

- WCRS recognises that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

- The Workers' Compensation Regulator has the onus of proof to prove the defendant's guilt beyond reasonable doubt.

Fairness and without bias

- WCRS conducts timely enquiries and necessary investigations into all significant aspects of a matter, including taking action that is fair and reasonable.
- WCRS acts in an unbiased manner and assisting the court to arrive at the truth, ensuring that the prosecution's case is presented properly and with fairness to the defendant.

Integrity and professionalism

- WCRS exercises powers independently in the public interest with integrity and professionalism and without fear, favour or bias
- WCRS provides clarity and certainty about priorities and processes while taking account of the circumstances of each matter.
- WCRS conducts prosecutions in a timely and efficient manner, including (if applicable) disclosure of material and briefs of evidence to the defence within a reasonable timeframe.

Independence and objectivity

- WCRS acts objectively to ensure actions are based on evidence and that appropriate checks and balances exist in the decision making process

Respect for human rights

- WCRS bases decisions to continue or discontinue a prosecution on evidence and applicable law and not be influenced by factors such as race, religion, sex, national origin or political views
- WCRS exercises powers with appropriate regard to the *Human Rights Act 2019* (Qld).

Decision to Prosecute

The Workers' Compensation Regulator makes decisions on whether to commence a prosecution with regard to the evidence, the law and the Guidelines published by the Director of Public Prosecutions Queensland.

A two-tier test applies:

- **Is there is sufficient evidence to prove the elements of the specific offence?** There must be a reasonable prospect of a conviction before a Magistrate. Consideration will be given to factors such as any lines of defence, admissibility of evidence and credibility of witnesses.
- **Is it in the public interest to prosecute?** The Workers' Compensation Regulator must, for example, consider if the offence is serious, the prevalence of the alleged offence, the attitude of the accused and the degree of culpability of the alleged offender in connection with the offence. There are also other considerations such as the alleged offender's age, health, ability to understand the English language, culture, background and criminal history.

The above considerations are not exhaustive. The weight given to, and relevance of, the above factors will depend on the circumstances of each case. The decision and discretion to prosecute lies with the Workers' Compensation Regulator to exercise the powers ethically, responsibly, consistently and on a case-by-case basis.

Does the Workers' Compensation Regulator negotiate charges?

Negotiating charges is a legitimate and important part of the criminal justice system throughout Australia. At all times the interest is in achieving a just result. The public interest supports a conviction of the guilty and accordingly, the most efficient conviction is a plea of guilty.

The Workers' Compensation Regulator encourages early charge and plea negotiations including those that may result in a reduction of the level or the number of charges. Early notice of a plea of guilty maximises the benefits for the complainant and the community.

Cooperation

The Workers' Compensation Regulator exercises discretion in relation to any voluntary disclosures on a case-by-case basis.

Where a person voluntarily comes forward with relevant evidence of conduct that contravenes the Act and there is either no knowledge of or insufficient evidence to justify further action, the Workers' Compensation Regulator will consider whether leniency is appropriate in accordance with the public interest. To be considered disclosure must be full and frank in relation to the conduct in question and, where possible, include submission of any documentary or other evidence that may be available or known to the discloser. There must also be an undertaking to cooperate throughout the investigation and to support any enforcement steps.

For more information, contact:

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