

OFFICE OF INDUSTRIAL RELATIONS

LICENSING AND ADVISORY SERVICES

**HIGH RISK WORK LICENSING
(ACCREDITED ASSESSORS)
COMPLIANCE AND ENFORCEMENT
POLICY**

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Introduction

Accreditation to conduct nationally mandated assessment in prescribed high risk work (HRW) competencies is part of a regulatory system which authorises individuals under the *Work Health and Safety Act 2011* (the Act), the *Work Health and Safety Regulation 2011* (the Regulation) and the *Conditions of accreditation as an assessor for high risk work classes* (the Conditions), to carry out prescribed classes of work. The role of HRW accredited assessors is to conduct competency assessment of persons seeking to obtain HRW licences according to the requirements of the nationally mandated assessment instrument, the Conditions and the Act.

A HRW accredited assessor has an obligation to conduct their business diligently, efficiently, honestly, impartially and with integrity. The Regulator must ensure the competence and actions of accredited assessors support the integrity of the HRW licensing framework. To this end, the Regulator has a responsibility to ensure that HRW accredited assessors are performing their responsibilities correctly and in compliance with the Act, Regulation and Conditions. The Regulator can achieve compliance through effective education, engagement and enforcement activities.

This *High-Risk Work Licensing (Accredited Assessors) Compliance and Enforcement Policy* (the Accredited Assessors CEP) provides direction and guidance in the administration of compliance and enforcement strategies with respect to accredited HRW assessors. The Accredited Assessors CEP is to be read in conjunction with the principles set out in the Office of Industrial Relations' (OIR) [Compliance Monitoring and Enforcement Policy](#) (CMEP), the *Corrupt Conduct Protocol— what assessors need to know*, and the relevant legislative provisions in the Act and Regulation and the Conditions.

Data will be collated on the compliance and enforcement outcomes determined according to this policy, which will inform the Regulator's annual targeted compliance strategies.

A risk-based approach to compliance and enforcement for non-compliance by accredited assessors

Decisions about suitable compliance actions, and types of intervention and/or sanction to apply must be guided by the level of risk associated with:

- persons obtaining documentation to support a HRW licence application without having evidenced the required standard of competence, and
- unsafe work practices during training and assessment that could result in injury or death.

Determining the risk level

The risk level is determined by assessing the circumstances of the accredited assessor's non-compliance and categorising it as a high, medium or low risk.

High risk – non-compliance where the HRW accredited assessor's action or behaviour has the potential to severely impact the competency of the licence holder or the integrity of the assessment process. This includes unsafe work practices that may result in injury or death, or outcomes that may result in the issue of licences to candidates who are not competent. High risk breaches also include fraud, collusion or corruption where they have a direct impact on the competency of the licence holder. Due to its severity, high risk non-compliance may lead to cancellation of accreditation and may have further consequences for the licence holder and aligned registered training organisation (RTO), including criminal prosecution or corrupt conduct referrals under the *Crime and Corruption Act 2001*. For information on what is considered corrupt conduct, please refer to the *Corrupt Conduct Protocol – what assessors need to know*.

Examples of high-risk non-compliance include:

- collusion with a person, RTO, employer, or work provider to provide an assessment outcome that is not based on an accurate assessment of the competence of a person seeking to obtain a licence
- issuing a notice of satisfactory assessment (NSA) to a person who is not competent
- issuing an NSA to a person/s without assessing competence against the prescribed mandated assessment instrument
- conducting assessment outside the scope of the accreditation
- accepting or not reporting a bribe or inducement, or corrupt behaviour
- making false or misleading declarations
- providing partial or complete copies of national assessment instruments to any person outside of the prescribed assessment process.

Medium risk – non-compliance where the HRW accredited assessor's breach of conditions will likely have a moderate impact on competency and process integrity. This may include a high frequency of administrative breaches where the level of actual or potential harm posed is moderate.

Examples of medium risk non-compliance include:

- not keeping student details confidential
- not sighting evidence of person's identity prior to commencing a HRW assessment
- not following OIR notification requirements
- allowing an oral calculations assessment
- not verifying evidence of completed training.

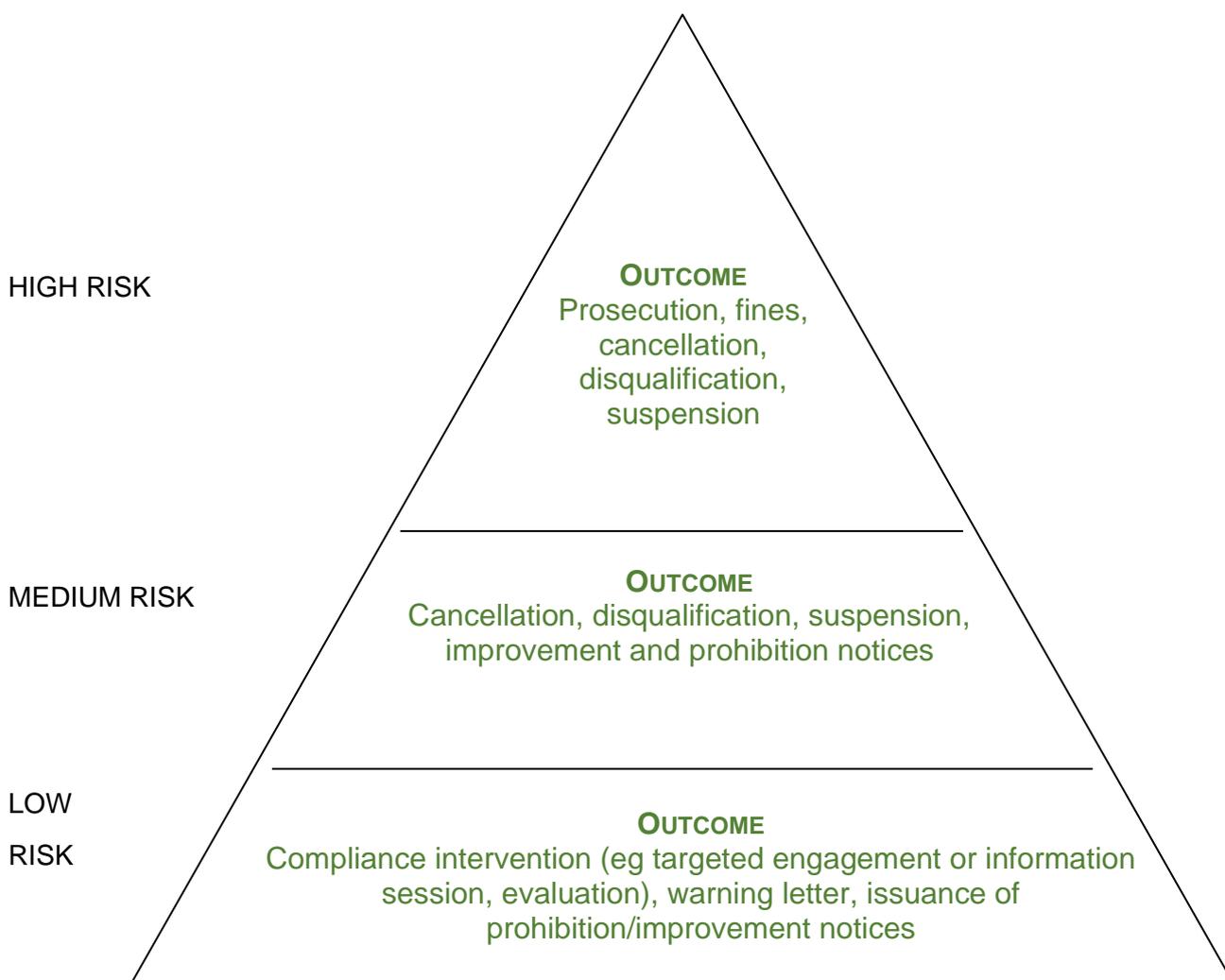
Low risk – non-compliance where breaches are generally minor or administrative in nature and have a minimal impact on competency or system integrity and where a health and safety risk is not created as a result of the non-compliance.

Examples of low risk non-compliance include:

- not providing requested records in the required timeframe
- not notifying assessment variations
- not providing assessment records to the RTO
- not informing the applicant of stipulated information.

Compliance and enforcement outcomes

The graphic below is a guide to the compliance and enforcement outcomes for high, medium and low risk non-compliances. Discretion will need to be exercised in each case to consider other aggravating or mitigating factors, including frequent and deliberate non-compliances and other relevant matters, to ultimately determine the risk level and appropriate intervention or sanction.



The various compliance and enforcement options available to the Regulator are considered in detail below and include guidance around when and how it may be appropriate to use them based on the level of risk presented by the non-compliance.

Compliance and enforcement responses should always be proportionate and responsive to the specific situation they address, taking into account additional relevant factors to the level of risk, including:

- the level of actual or potential harm
- any relevant history of non-compliance
- whether the contravention has been identified as a priority area for enforcement by the Regulator
- the likelihood of ongoing contraventions
- the need for deterrence for future non-compliance, and
- any aggravating factors, for example, deliberate and dishonest non-compliance.
- the extent to which the assessor is able to exercise control over the matter

Enforcement measures

The Regulator has a number of enforcement measures available to direct compliance and sanction non-compliance. These measures work as an effective incentive for compliant behaviour as well as a deterrent for non-compliance and can be utilised for repeated and deliberate low-risk non-compliances and medium and high-risk non-compliances and breaches.

The Manager Licensing Operations and Compliance will triage non-compliances and determine where additional actions or investigation is warranted. On completion of investigations or other compliance activities medium or high-risk non-compliances must be referred to the Director Licensing and Advisory Services (LAS) for a decision on enforcement measures. The referral must be in the form of a brief for decision or an investigation report and include relevant evidence to support the reason for the referral. At a minimum, the brief must specify:

- the facts and circumstances of the non-compliance
- any history of non-compliance
- any aggravating or mitigating factors
- any comparable enforcement outcomes for breaches by other assessors, and
- a range of suggested enforcement options and the basis upon which they are being proposed.

Prosecution

Prosecuting accredited assessors 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 WHS legislation may be referred to the independent statutory office of the Director of Workplace Health and Safety Prosecutions (DWHSP). The DWHSP makes the decision whether to prosecute or not. The DWHSP may decide to take prosecution action as a result of an investigation, even where a non-compliance has not resulted in a death, injury, illness or disease.

Corrupt conduct

Non-compliance by an accredited assessor with conditions or obligations under the WHS legislation, which lead to the issue of HRW licences/authorisations in circumstances where they should not have been issued and therefore compromise the health and safety of persons, can amount to corrupt conduct under the *Crime and Corruption Act 2001*.

Corrupt conduct is defined to be conduct that:

- impairs, or could impair, public confidence in public administration; and
- involves, or could involve fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of protecting health or safety of persons; and
- would, if proved, be a criminal offence; or
- would, if proved, be a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Fraud includes anything that is dishonest, deceptive, corrupt or unethical. For example, issuing a competent result for a HRW assessment to a person who has not demonstrated competency.

If a reasonable suspicion of corrupt conduct is formed by an inspector, specific steps must be undertaken to deal with the matter. For full details on how corrupt conduct matters are required to be dealt with by inspectors, refer to the Licensing and Advisory Services' *Corrupt Conduct Protocol – what accredited assessors need to know*.

Cancellation, disqualification or suspension of accreditation

The purpose of imposing regulatory sanctions (cancellation, disqualification, or suspension) on accredited assessors is not to punish, but to protect the integrity of the processes which ensures the competence of HRW licence holders, the safety of workers and members of the public and the validity of the HRW licence framework. The Regulator can achieve these objectives by imposing regulatory sanctions which:

- are proportionate to the aim of the sanction
- protect the public and the public interest
- encourage future compliance of the accredited assessor
- are tailored to the facts of the particular case and take into account the circumstances of the accredited assessor concerned (noting that close professional and/or personal relationships between HRW

accredited assessors and inspectors are not a relevant factor when determining the appropriate enforcement action to take against a HRW accredited assessor)

- are proportionate to the nature of the non-compliance and the harm or potential harm caused
- maintain and promote confidence in the performance of accredited assessors and their compliance with the conditions
- deter accredited assessors from failing to comply with the Conditions.

The Regulator may cancel or suspend an accreditation if satisfied about one or more of the following:

- the HRW accredited assessor is no longer qualified¹ to conduct the competency assessment stated in their accreditation document (that is, they no longer hold a current relevant HRW licence, or a relevant training and assessment qualification)
- the HRW accredited assessor is not able to conduct the competency assessment to which the accreditation relates competently
- the HRW accredited assessor has failed to comply with a condition imposed on the accreditation
- the HRW accredited assessor gave false or misleading information or failed to give information that should have been given to OIR. This may have occurred in the initial application or in subsequent requests from OIR for additional information.

The following matters should be considered when making a decision to suspend or cancel an accreditation:

- all known relevant allegations, facts and circumstances
- any submissions made by the HRW accredited assessor
- any advice received from a corresponding regulator
- any relevant WHS conviction of the HRW accredited assessor
- any suspension or cancellation of an equivalent accreditation held by the HRW accredited assessor, or a refusal to issue an equivalent accreditation to the HRW accredited assessor
- any suspension of a HRW licence held by the HRW accredited assessor
- any enforceable undertaking the HRW accredited assessor has entered into, and
- the HRW accredited assessor's record in relation to any matters arising.

¹ The WHS Regulation provides that an applicant is qualified if:

- the applicant's competencies, skills and knowledge are in accordance with the *Standards for NVR Registered Training Organisations 2011* published by the Commonwealth, and
- the applicant holds a current HRW licence for the class of HRW to which the competency assessment relates.

These matters may have taken place in Queensland or in another Australian jurisdiction under a relevant WHS law.

Disqualification is a further sanction that may be imposed in addition to the cancellation of an accreditation. The imposition of a disqualification period is decided on a case by case basis. As a guideline, given that an assessor's accreditation is granted for a three-year period, cancellations due to high-risk or serial non-compliances could also result in a three-year disqualification period. This would normally be the maximum disqualification period, unless there are exceptional circumstances. Shorter periods of disqualification would apply for lesser breaches.

The Director LAS, has the discretion to vary a disqualification period depending on circumstances. For example, cancellation of accreditation due to medium and/or low risk breaches may receive a disqualification period for the remainder of the current accreditation. In some circumstances, a disqualification may be imposed subject to specified conditions, such as the assessor undertaking further training. In this instance, persons seeking to resume or renew their accreditation must provide evidence of meeting these additional conditions. The disqualification period in this instance is completely dependent on the assessor.

Process to suspend, cancel and/or disqualify an assessor's accreditation

If the Director LAS determines that the evidence provided justifies a suspension, cancellation or disqualification of the assessor's accreditation, the following process must be followed in accordance with the WHS Regulation:

1. Notice of proposal

The HRW accredited assessor must be provided written notice of the proposed suspension or cancellation that outlines all known relevant allegations, facts and circumstances. The notice must provide the assessor a period of not less than 28 days to make submissions to OIR in relation to the proposed suspension or cancellation. It must also detail any proposed variation of conditions of accreditation, along with any conditions on which the suspension or disqualification period ending are to be contingent.

2. Submissions

An accredited assessor who has been issued with a notice proposing cancellation or suspension may make a submission in relation to that proposal. Submissions must be made by the date stated in the notice.

Submissions must directly address the specific matters raised in the notice and relate only to the stated allegation and/or the facts and circumstances.

3. Decision

After the submission period has passed the Director LAS must review any submissions or other relevant information in order to make a final decision on the sanction. OIR must give the HRW accredited assessor written notice of a decision to, or not to, suspend or cancel an accreditation within 14 days after the decision is made.

Where a decision to cancel or suspend is taken, the notice must state:

- when the cancellation or suspension takes effect
- the reasons for the cancellation or suspension, and
- when the accreditation document must be returned to the Regulator.

If a decision is made to suspend the accreditation, the following details are also provided:

- when the suspension begins and ends
- whether any variation is to be made to the conditions of accreditation, including imposing different conditions, and
- whether the cessation of the suspension is conditional upon the HRW accredited assessor undergoing retraining or reassessment or taking other prescribed action.

If a decision to cancel is accompanied by a decision to disqualify, additional details are also required to be included in the notice:

- the reasons for the disqualification
- when the period of disqualification begins and ends, and
- whether the ending of the disqualification is conditional on the HRW accredited assessor undergoing retraining or reassessment or taking other prescribed action.

The reasons stated in the notice should reflect those detailed in the proposal to cancel or suspend, except where any submissions made by the accredited assessor are taken into account and addressed in the final decision. The effective date for a cancellation or a period of suspension or disqualification is determined by the Director LAS and should be clearly included in the notice.

Surrender of accreditation

In order to surrender accreditation, the assessor must return their accreditation card and other documents. Surrender of accreditation does not prevent the assessor from applying to be an accredited assessor at a future time however the compliance record of the assessor will be considered as part of the application process and significant non-compliances may result in the regulator refusing future applications.²

Return of accreditation documents following suspension or cancellation

It is a legal requirement that the accreditation documents of cancelled or suspended assessors be returned to the Regulator. The final notice must advise the date by which the documentation must be returned, which is

² Section 118(2)(iii) WHS Regulation states that before granting accreditation the regulator must be satisfied that the applicant is able to ensure compliance with any conditions that will apply to the accreditation. The regulator may also take into account the applicant's record in relation to any matter arising under a relevant WHS law (section 119(d) WHS Regulation).

usually within 14 days of the issue of the notice. If documents are not returned by the stipulated date, an infringement notice may be issued and a fine imposed.

Review of decision to cancel, suspend or disqualify

Decisions to suspend, cancel or disqualify an accreditation are reviewable decisions under the WHS Regulation. Fully documented rationales for the decisions reached, the evidence relied upon and any consideration of submissions made must be maintained to ensure any review application made by an accredited assessor about the Director's decision can be adequately substantiated and defended.

Subsequent non-compliance by a sanctioned assessor

Any subsequent non-compliance by the accredited assessor subject to a suspension, cancellation or disqualification must be addressed separately to afford the assessor natural justice. Actions taken by OIR to cancel, disqualify or suspend a HRW assessor accreditation are advised to other Australian jurisdictions under the relevant WHS legislative provisions.

Improvement and prohibition notices

Prohibition notices can 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, a prohibition notice may be issued to an assessor where that assessor is also a PCBU and/or RTO to prohibit the use of unsafe equipment. It is, however, unlikely that a prohibition notice would be issued to an accredited assessor where the assessor is not the PCBU/RTO, as breaches of accreditation conditions are in most cases more appropriately dealt with through license suspensions or cancellations.

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.

Improvement notices can be issued either with a prohibition notice or on their own in the following circumstances:

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

The purpose of an improvement notice is to focus an accredited assessor's attention on the tasks to be carried out in order to remedy a contravention or any causal factors to achieve compliance with their relevant duties under the legislation. Improvement notices are not issued to assessors to remedy breaches against their conditions of accreditation as these are ordinarily dealt with through licence suspensions or cancellations. However, licensing inspectors have issued improvement notices to PCBUs in relation to a range of matters arising out of the evaluation of assessors including for example, the provision of safe plant, provision of adequate facilities for workers, provision of operator protective devices and the provision of maintenance for plant.

Inspectors can 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. Where the contravention is evidence of a systematic management failure the inspector can issue an improvement notice that addresses the systematic management failure.

Compliance interventions

Compliance interventions are activities that focus on educating and engaging with assessors to assist them in meeting the responsibilities of their role and achieving compliance with the conditions of accreditation. These options are reserved for first-time, low-risk, unintentional non-compliances which can be remedied by OIR assistance in educating or supporting assessors to rectify the non-compliance. For example, when OIR identifies that an assessor is making what appears to be honest mistakes in the course of their assessment or providing insufficient detail in their assessments. Similarly, if assessors and/or RTOs seek OIR's assistance to improve their assessment practices, compliance interventions can be utilised to proactively support assessors to achieve compliance.

Higher risk breaches or non-compliances identified by inspectors during the course of any compliance interventions, must be escalated and considered for possible enforcement action in accordance with this Policy.

Details of all corrective actions taken must be documented in full and placed on the assessor's file. This includes when OIR inspectors conduct evaluations of HRW accredited assessors and discuss the outcomes with the assessors.

Competency testing

Competency testing is a means of assessing an existing assessor's competence where unintentional non-compliances have been identified in an assessor's assessment practices. It involves 95% successful completion of an abbreviated NAI and online work health and safety test. Inspectors can exercise their discretion to request that a candidate have a second assessment attempt, in circumstances where a candidate has achieved higher than 80% on their first test attempt. Failure to pass the competency test will mean that the assessor is not competent and should be reported to the Licensing Operations and Compliance Manager for a decision to be made with the LAS Director about suspension or cancellation of the assessor's accreditation.

Engagement and information sessions

There are a number of tailored engagement and information sessions which OIR can provide to assist assessors to better understand and improve their compliance when it has been identified that an assessor is inadvertently not meeting the required standards of assessment compliance and where support and education can provide a simple solution to achieve improved compliance. Examples of engagement and information sessions include:

- a regulator-driven engagement session where OIR focuses on identified areas of non-compliance requiring clarification
- an RTO or assessor-requested session where the participants specify what they would like to receive guidance or clarification about, including a question and answer session
- the provision of refresher induction sessions (excluding the testing component), and
- one on one training sessions for assessors (subject to OIR resourcing and inspector availability).

Targeted compliance programs

Targeted compliance programs can be utilised by OIR to gauge assessors' compliance in circumstances where they have not been able to be assessed by OIR for over 12 months, or where a pattern of non-compliance with a particular condition has emerged across a specific industry, suggesting an industry-wide misunderstanding about a compliance issue within a specific class of licence, which requires clarification.

Targeted compliance mechanisms can include onsite evaluations or desktop audits.

Face to face, onsite evaluations can be conducted by OIR without prior notice or knowledge and involve an inspector attending an assessment to evaluate how an assessor undertakes assessment. A report is provided to the assessor about their assessment compliance and includes general advice.

In circumstances whereby assessors are found non-compliant on the basis of RTO behaviours, the basis of those behaviours must be established prior to determining courses of action. Where RTO behaviour is determined to be the result of misunderstanding of assessment requirements, engagement activities may be relied upon to remedy the misunderstanding whereas breaches of the *Standards for Registered Training Organisations (RTOs) 2015* are reported to ASQA for their consideration.

Warning letters

Following instances of low or medium risk non-compliance, OIR may send a letter to a HRW accredited assessor advising of the non-compliances observed and the intended actions to be taken if non-compliances continue. The letter provides written advice and clarifies, explains or provides clear instruction relating to the relevant Conditions. Continued non-compliances may be escalated.

Supervised assessments

This option provides an education-based, guided one-on-one supervision of the assessment process by an OIR Inspector and may be utilised for first time offenders of low risk non-compliances.

Additional assessor training

OIR may place additional training requirements on an assessor on the basis of low risk non-compliances. Training can include best practice instruction on marking assessments, ensuring evidence of identity protocols are in place and identifying and addressing health and safety risks in a training and assessment environment.

Changes to conditions of accreditation

The Regulator may alter conditions or impose additional conditions on an assessor's accreditation to assist in the correction of low risk non-compliances (see section 121 of the WHS Regulation). Examples include lengthening the period of time assessment notifications are to be lodged to ensure OIR's presence or requiring the assessor to attend another induction course as refresher training. Only the Regulator (or their delegate) is able to alter the conditions. The changed conditions apply until the accreditation is renewed or for a specified period. It is important to note that changing the conditions of accreditation for an assessor for HRW classes in association with the suspension or disqualification of an accreditation is a reviewable decision. Accordingly, it is important to document the reasons for amending the conditions of an assessor's accreditation.

Notification of enforcement measures

When the Regulator and/or DWHSP makes a decision to initiate prosecution or enforcement measures, such as suspension or cancellation following an investigation, the Regulator should notify the relevant parties of the decision including:

- the alleged offender
- the person who raised the matter with the Regulator or their representative
- the employer of the HRW accredited assessor or person in charge of the business or undertaking
- the RTO/s with which the assessor is aligned
- the persons whose training, assessment or HRW licence was impacted
- the family members of a person who has died as a result of an alleged breach
- other WHS jurisdictions
- the Australian Skills Quality Authority, and
- the Office of the Queensland Training Ombudsman.