

Workers' Compensation Regulator – Compliance Notice Policy

Purpose

This policy outlines the Workers' Compensation Regulator's approach to issuing compliance notices to a person for non-compliance of duties and obligations under the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (Act) as part of the Workers' Compensation Regulatory Services' (WCRS) compliance and enforcement approach detailed in the [Workers' Compensation Regulator - Compliance and Enforcement Framework](#).

Background

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

The Regulator's functions include compliance and enforcement, monitoring the compliance of insurers, employers and other persons with obligations 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 WCRS in the Office of Industrial Relations.

WCRS is committed to providing effective regulatory services to ensure a fair, efficient and sustainable workers' compensation scheme that delivers the objectives stated in the Act. The purpose of monitoring and compliance and, when required, enforcing compliance, is to ensure duty holders comply with their obligations and to act as a deterrent, for the benefit of injured workers, employers and the scheme.

Chapter 12 Part 4 of the Act establishes a framework enabling authorised persons appointed by the Regulator to issue written notices (called 'compliance notices').

An authorised person appointed by the Regulator may give a person a compliance notice requiring the person to take stated action, or to refrain from taking stated action, to prevent a contravention of the Act from continuing or being repeated.

A compliance notice may only be issued if the authorised person is satisfied on reasonable grounds that the person:

- has contravened the Act; and
- the contravention is continuing or is likely to be repeated.

Guiding principles

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

Proportionate – WCRS' enforcement measures are proportionate in 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, 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.

Decision to issue a compliance notice

In deciding whether to issue a compliance notice, an authorised person appointed by the Regulator is guided by a number of factors including:

<p>Whether there are legal grounds for issuing a compliance notice</p>	<p>A compliance notice may only be issued if the authorised person is satisfied on reasonable grounds that the person:</p> <ul style="list-style-type: none"> • has contravened the Act; and • the contravention is continuing or is likely to be repeated.
<p>The adverse effect, that is the extent of the risk, the seriousness of the breach and the actual or potential consequences</p>	<p>Consideration should be given to the extent of the contravention (systemic or individual matter/s), the seriousness of the contravention and the actual or potential consequences for workers, employers or the scheme.</p>
<p>The culpability of the duty holder</p>	<p>How far below acceptable standards the conduct falls and the extent to which the duty holder contributed to the contravention.</p>
<p>The compliance history and attitude of the duty holder.</p>	<p>Whether the duty holder has a history of non-compliance and/or a poor response to rectifying non-compliance or responding to any guidance or educational enforcement activities?</p>
<p>Impact of enforcement on encouragement or deterrence</p>	<p>If the alleged offence is trivial in nature, has it been repeated after earlier enforcement measures were taken (eg. guidance or education).</p>
<p>Any mitigating or aggravating circumstances</p>	<p>The circumstances of the situation in their entirety, and in particular extenuating factors that fall outside of what a reasonable person would consider 'normal' in the circumstances.</p> <p>Has the duty holder made any effort to control the risk?</p>
<p>Other enforcement options available</p>	<p>Whether the Act enables WorkCover Queensland to address the non-compliance by imposing an administrative penalty.</p> <p>A compliance notice may not be the most appropriate tool for offending that is a blatant, repeated or a systemic breach of the Act. In these situations, where there is</p>

	sufficient evidence, the Regulator may consider prosecution in accordance with the Workers' Compensation Regulator – Prosecutions Policy .
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The factors listed above are not exhaustive and not all factors will be relevant in a given situation. A decision to issue a notice is at the sole discretion of the authorised person and will depend on the circumstances of each case.

This decision will be made giving consideration to any potential impact on individual rights and with appropriate regard to the *Human Rights Act 2019 (Qld)*.

Independent review of compliance notice decisions

A duty holder may apply to the Regulator for an independent review of a decision to issue a compliance notice. An application for review must be made within 10 business days after the day the compliance notice is issued.

An application for review suspends the operation of the compliance notice until the review is completed and the period for appealing against the decision on the review expires.

If an applicant for review of a compliance notice is unhappy with a review decision made by the Regulator, they can lodge an appeal with the Queensland Industrial Relations Commission within 20 business days of receiving the Regulator's decision.

Further information on how to apply for a review can be found at <http://www.worksafe.qld.gov.au>.

Non-compliance with the notice

In situations where the duty holder does not comply with the relevant notice, the Regulator will consider the most appropriate enforcement approach in line with the WCR-Compliance and Enforcement Framework. This could include publication of enforcement actions and outcomes, license conditions for self-insurers or referral for prosecution.

Breaches of compliance notices cannot be prosecuted if they are under internal review or subject to an appeal, unless the Queensland Industrial Relations Commission orders otherwise in the case of appeals.



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