



WorkCover WA

Compliance

and

Enforcement Policy

Current as at
February 2006

WorkCover WA in fulfilling its responsibility to administer the *Workers' Compensation and Injury Management Act 1981*, (the Act) has adopted the following policy to ensure compliance of all relevant parties within the workers' compensation and injury management system.

WorkCover is also cognisant of its strategic objectives to monitor compliance with the legislation and ensuring 100% of parties identified as not complying with relevant legislation or standards subsequently comply.

WorkCover's Approach

WorkCover may take a number of different approaches to compliance (education, information and enforcement) depending on the nature of the issue that has arisen. The approach to be adopted in any particular matter will depend on an assessment of the circumstances as well as consideration of factors detailed below.

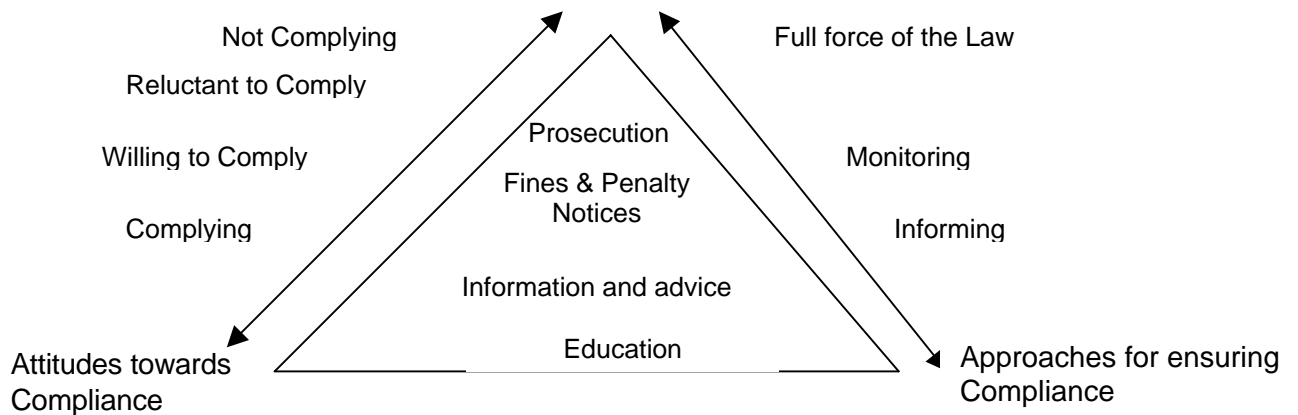
Regardless of the reasons for its interaction, WorkCover applies the general principles of transparency, proportionality, consistency and accountability in undertaking its compliance role.

- **Transparency**
WorkCover will make all attempts to ensure that parties understand what is expected of them and of WorkCover in relation to interactions with key parties, the reasons for the visits, without breaches of confidentiality, any actions which are undertaken and the reasons why, and any arrangements for follow up activities.
- **Proportionality**
The approach taken by WorkCover will be proportionate to the seriousness of any perceived breach, or the level of non-compliance with legislative requirements. Any decision to proceed to prosecution will be weighed in the light of the public interest to be protected.
- **Consistency**
Areas with similar risks, comparable levels of non-compliance or extent of seriousness of breach can generally expect a uniform approach from WorkCover.
- **Accountability**
WorkCover is accountable to the Government, statutory bodies such as the Ombudsman, and to the broader community for the actions undertaken by it in performing the compliance role.

Compliance generally

To support its compliance policy WorkCover will apply the most appropriate compliance intervention ranging from the provision of information, the issuing of an infringement notice to prosecution action depending on the circumstances.

The type of activity used will depend on the circumstances relating to non-compliance.



This pyramid reflects the increasing severity of the compliance options at WorkCover's disposal, but is not meant to imply a staged response. WorkCover will choose one or more options based on the individual circumstances of the matter.

A compliance interaction can be undertaken for a number of reasons including:

- In response to a complaint regarding workers' compensation requirements or injury management.
- As part of a planned audit program.
- Under a targeted intervention program in response to non-compliant employers.

Compliance strategies

WorkCover uses information derived from a variety of sources to identify areas of possible non-compliance with the workers' compensation legislation.

WorkCover has discretion in determining the appropriate method of achieving compliance. Decision-making in terms of requiring compliance is, however, structured and involves consideration of the factors outlined in this policy. The decision to take prosecution action is often not the compliance action of first choice-rather it is made after careful consideration of a range of factors, including whether advice or some other form of compliance option is more appropriate.

Information

WorkCover will provide information to parties on their legislative requirements if there is a breach. Investigators will ensure a consultative process to assist parties understand their responsibilities and make an informed judgement on whether the breach was due to a lack of information or a wilful act.

Infringement notices

Infringement notices are used as an effective and efficient method of dealing with less serious breaches of the legislation. The offences in respect of which notices can be issued and the amounts that can be imposed by way of fine are set out in the Workers' Compensation & Injury Management Regulations 1982. A person served with an infringement notice may elect not to pay the penalty and the matter can proceed to court. If the fine attached to the infringement notice is paid then no further action will be taken by WorkCover in relation to that offence.

The factors a WorkCover authorised officer considers when determining whether to issue an infringement notice include:

- Whether the breach is a minor one.
- Whether the breach can be remedied quickly.
- Whether the issuing of an infringement notice is likely to have the desired deterrent effect.
- If the breach is a one-off situation or part of an ongoing pattern of non-compliance.

Prosecution

The fact that an infringement notice can be issued for an alleged breach does not mean that only this action can be taken. WorkCover has discretion to undertake a prosecution for an offence and it has discretion not to take prosecution action in certain circumstances (see prima facie case). Where an infringement notice is considered under the circumstances to be inappropriate, prosecution action may be initiated.

Factors taken into account when considering prosecution

The question of whether or not to prosecute is determined by:

- Whether or not the admissible evidence available is capable of establishing each element of the offence, i.e. a prima facie case.
- Whether or not it can be said that there is no reasonable prospect of conviction.
- Whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

Public Interest Test

WorkCover recognises, in the public interest, not all offences under an Act of Parliament should be the subject of prosecution. The resources available for prosecution action are finite and should not be expended in pursuing inappropriate cases.

Considerations related to public interest are matters of public policy that do not affect the weight or reliability of evidence. The factors that can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case.

Prima facie case

Before any prosecution is considered, there must be enough evidence to establish a prima facie case beyond reasonable doubt.