

# **WorkCover WA**

## **Employer Compliance Policy:**

*An equitable and fair guide for action*



## Context

The *Employer Compliance Policy: An equitable and fair guide for action* provides an overview of our process and enforcement action for offences under s160(1)(a) of the *Workers' Compensation and Injury Management Act 1981* (the Act). This section of the Act requires employers to hold workers' compensation insurance.



### Equity and transparency

Breaches of this section of the Act reflect the vast majority of cases we investigate. By consistently applying the policy to these breaches, we ensure equity and transparency in our enforcement action, and provide procedural fairness and natural justice for employers.



### Accountability and responsiveness

The policy guides our enforcement action when an employer has no workers' compensation policy in place, or has an expired or lapsed policy. A strong framework of accountability and responsiveness underpins the policy.



### Consistent and fair

We periodically review our policies to ensure compliance outcomes are consistent with our changing operational environment and maintain an appropriate balance between administrative efficiency and the reduction of red tape for employers.

## Objectives

Our regulatory objectives are guided by our service standards and achieved through open and transparent principles. They work in combination to create an environment where we operate within a comprehensive accountability framework.

### Our Primary Objectives

- Clarity and consistency in compliance regulation
- Strengthening a regulatory culture in line with our policies
- Meeting the regulation needs of the scheme
- Providing a framework for monitoring, reviewing, reporting and improving regulatory compliance

### We Achieve This By

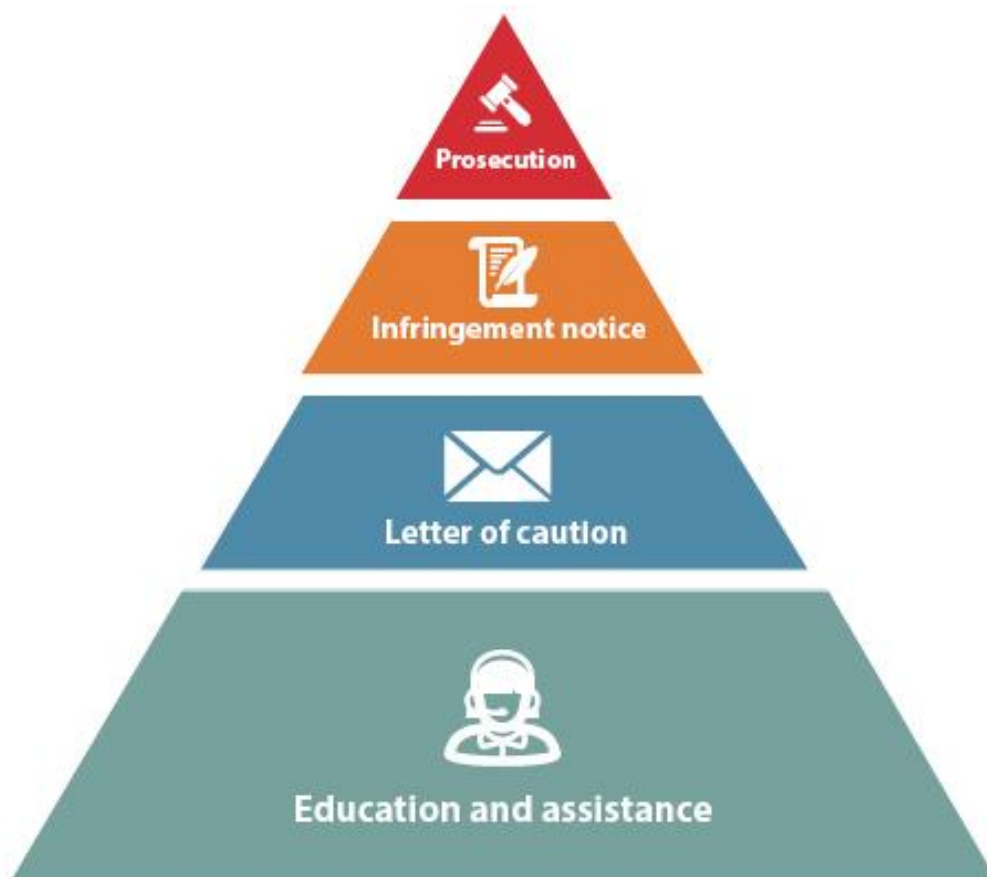
- Making fair, consistent and evidence-based decisions
- Educating and informing stakeholders
- Taking appropriate regulatory action where there is a failure to comply with legislative and other requirements

## Enforcement approach

Our priority is to ensure an employer takes out workers' compensation insurance before any enforcement action commences.

We adopt a four tiered approach when regulating employers. Our model is based on the concept that our effort is most effective when directed towards providing programs, publications and assistance to employers to optimise compliance. Established criteria guide which enforcement action is appropriate for different circumstances.

**Figure 1: Snapshot of our enforcement approach**



We educate and assist employers to promote compliance and provide guidance about employers' legal obligations. Our education and assistance program is an integral part of our compliance approach and interaction with employers.



We issue letters of caution on the least serious and lowest risk cases where non-compliance is detected.



We issue infringement notices where an offence has been detected and we consider a penalty is necessary to adequately penalise the employer and promote future compliance.



We commence prosecution on the most serious and high risk cases, repeat offences, situations where an injury has occurred without insurance in place, and in cases where it is in the public interest to do so.

## Enforcement Action

It is not possible or desirable to prosecute every offence which we detect. The seriousness of the breach is rated in each case to determine a proportionate enforcement response.

We gather evidence to establish the elements of an offence using administrative and more formal means.

The enforcement approach is objective and supports consistent decision-making. As shown in the model below it focuses on two key factors used to determine enforcement action.



### Breach

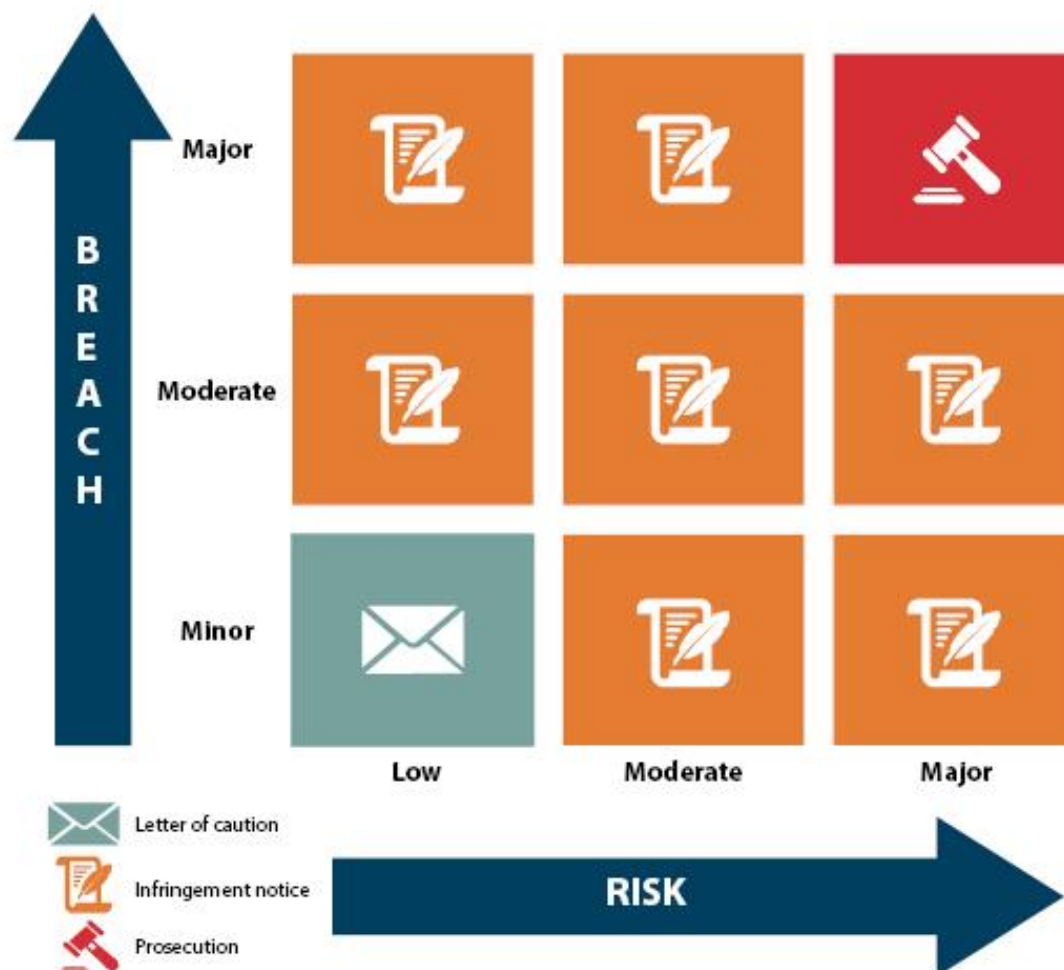
A breach assessment takes into account the employer's compliance history and their diligence in maintaining insurance.



### Risk

A risk assessment considers factors which increase or decrease the risks associated with the circumstances of the breach.

**Figure 2: Enforcement action at a glance**



As every case is unique, some deviations from the approach may be required in exceptional circumstances. These circumstances can be found on page 6.

## Enforcement Outcomes



### Letters of caution

Letters of caution serve as a formal warning to an employer and advise the current offence will be taken into account if a future breach of compliance occurs.

Prosecution will typically be considered where a letter of caution has previously been issued, and a second instance of non-compliance occurs.



### Infringement notices

Our inspectors can issue infringement notices within six months of an offence in certain circumstances. An infringement notice requires an employer to pay a penalty of \$400 per worker based on the number of workers employed within a particular timeframe as relevant to the offence.

The penalty must be paid within 28 days, however, the employer may request a limited extension of time to pay. Extension requests must be made before the due date.

Part payments cannot be made and if a modified penalty is not paid by the due date, we will consider prosecution.



### Prosecution

Prosecution is the first enforcement option to be considered in the following circumstances: where:

- **Previous infringements**  
An employer has previously been issued a letter of caution, infringement notice or has been prosecuted by WorkCover WA under s160 of the Act.
- **Uninsured**  
An employer has been uninsured for more than 2 years.
- **Number of workers**  
An employer has a significant number of workers employed.
- **Workplace injury**  
A workplace injury (uninsured claim) has occurred during a period of non-compliance.

As all cases have unique facts, we may also consider prosecution of cases outside these scenarios when taking public interest factors into account.



## Exceptional circumstances

The following circumstances may be considered in enforcement decision-making:

- **Bad health**  
Imminent or actual serious illness or injury arising during the non-compliance period as relevant to the situation.
- **Financial situation**  
The employer has been declared bankrupt or is in liquidation.
- **Concurrent penalty**  
The employer has already been penalised or otherwise held accountable for the offence by WorkCover WA.
- **Third party interference**  
The employer acted with due diligence and the professional advice, actions and/or omissions of a third party led to the non-compliance. Where poor practise is evident, our investigators are required to educate and/or penalise the third party.
- **Other**  
Situations which are so particular and unusual that they are very rarely seen, such as deliberate attempts to avoid legal obligations via entity restructuring or 'phoenix' companies.
- **Prior offences**  
Employers with a previous non-compliance history will be subject to escalated penalties, including prosecution.

## Further information and advice

An overview of your broader rights and obligations as an employer as well as how to obtain an insurance policy is available on our website.

For further information on this publication or the information contained within it, please contact us on 1300 794 744.