

### WorkSafe

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## How do WorkSafe inspectors decide when to issue a notice?

When dealing with possible breaches of the law, WorkSafe's enforcement policy guides inspectors.

### WorkSafe enforcement policy

1. All provisions of the *Occupational Safety and Health Act 1984* and *Occupational Safety and Health Regulations 1996* are important in regard to the need to comply, and will be appropriately enforced. However, the enforcement action will depend on the circumstances of the case, in particular the seriousness of the breach as reflected by the penalty Parliament has provided.
2. Non-compliance will be addressed by: improvement notice, prohibition notice, prosecution action, verbal direction, or any combination of these. Verbal direction in the context of the enforcement policy only relates to situations where a breach can be immediately rectified and inspected prior to the inspector leaving the site.
3. Action taken by the inspector, including verbal directions, will be conveyed to the employer, safety and health representatives or safety and health committee or any other relevant party while the inspector is at the workplace.
4. Where an inspector obtains sufficient evidence to establish a *prima facie* case, and there is a reasonable prospect of a conviction, consideration will be given to taking prosecution action, instead of, or in addition to, applying alternative enforcement actions, in circumstances including:
  - (i) where the issue of notices is not considered sufficient for ensuring compliance with the Act or regulations;
  - (ii) where an alleged breach of the Act or regulations either has resulted, or could have resulted, in a fatality or serious injury;

- (iii) alleged failure to comply with an improvement or a prohibition notice;
- (iv) where an inspector alleges a person has repeated the same offence;
- (v) in cases of discrimination against an employee for any action in relation to occupational safety and health;
- (vi) breaches of the consultative provisions of the Act; and
- (vii) where there is obstruction of an inspector.

In cases falling under one or more of the above circumstances, a prosecution will only be initiated where:

- an inspector obtains sufficient evidence to establish a *prima facie* case; and
- it is considered to be in the public interest, including there being a reasonable prospect of success.

5. Circumstances may arise in the process of investigating a serious injury or fatality whereby WorkSafe forms the view the evidence is appropriate to action under the Criminal Code, and the Police Service and/or Coroner's Office will be briefed accordingly.

Prosecution action is taken in accordance with WorkSafe's prosecution policy.

### Further information

For further information, please refer to the:

- *Occupational Safety and Health Act 1984*
- *WorkSafe prosecution policy*
- WorkSafe bulletin 2/2005 - *Provisional improvement notices*

# Work safety notices



Improvement notices, prohibition notices and review of provisional improvement notices.



The aim of the *Occupational Safety and Health Act 1984* is to promote and improve standards of occupational safety and health at work.

WorkSafe, through its inspectors, is responsible for the firm and fair enforcement of the requirements of the Act and Occupational Safety and Health Regulations 1996.

Where inspectors become aware of non-compliance with the Act or regulations they may;

- issue verbal directions;
- issue written directions (improvement or prohibition notices); and/or
- commence prosecution action.

An inspector will also consider any requests for review of provisional improvement notices issued by an elected and trained safety and health representative. Inspectors review provisional improvement notices by attending the workplace where they were issued.

### What is a verbal direction?

A verbal direction is an instruction given by a WorkSafe inspector requiring a person to remedy (fix) an alleged breach of the Act or regulations. The breach must be rectified immediately and will be inspected prior to the inspector leaving the site.

Any verbal direction issued by an inspector will be conveyed to the employer, safety and health representatives or safety and health committee or any other relevant party while the inspector is at the workplace.

### What is an improvement notice?

An improvement notice is a written direction issued by a WorkSafe inspector requiring a person to remedy (fix) an alleged breach of the Act or regulations.

An improvement notice states the reasons for the inspector issuing the notice and must include a reference to a specific regulation or provision of the Act.

#### Can improvement notices be reviewed?

Requests for review of improvement notices can be lodged with the WorkSafe Commissioner before the deadline given by the inspector to comply.

Improvement notices are suspended while being reviewed by the Commissioner.

After considering a request for a review, the Commissioner can affirm, modify or cancel the notice.

Decisions of the Commissioner on the review may be appealed before the Occupational Safety and Health Tribunal. Any appeal to the tribunal must be lodged with the Western Australian Industrial Relations Commission (WAIRC) within seven days of the Commissioner's decision.

#### How do I get an extension of the deadline?

Extensions to the compliance deadline specified in an improvement notice can only be issued by the WorkSafe Commissioner as part of the review of a notice.

### What is a prohibition notice?

A prohibition notice is a written direction issued by a WorkSafe inspector that prohibits any activity the inspector believes involves or will involve a risk of imminent and serious injury or harm to the health of any person.

A prohibition notice states the reason the inspector issued the notice and may include a reference to a specific regulation or provision of the Act.

On issuing a prohibition notice, the inspector remains at the workplace until the employer is advised of the notice and the prohibited activity has ceased.

Failure to comply with a prohibition notice could lead to prosecution.

#### Can prohibition notices be reviewed?

Requests for review of a prohibition notice can be lodged with the WorkSafe Commissioner within seven days of the issue of the notice, or the Commissioner may allow further time.

Prohibition notices remain in force while they are being reviewed by the Commissioner.

After considering a request for a review of a prohibition notice, the Commissioner can affirm, modify or cancel the notice.

Decisions of the Commissioner about the review of a prohibition notice may be appealed before the Occupational Safety and Health Tribunal. Any appeal to the tribunal must be lodged with the WAIRC within seven days of the Commissioner's decision.

#### Do I notify WorkSafe when I have complied with an improvement notice or prohibition notice?

A person who receives an improvement notice must notify the Commissioner without delay, once the requirements of the notice have been satisfied. This can be done by returning the detachable portion of the notice to WorkSafe.

Activities that cease as a result of a prohibition notice may recommence as soon as the matter is rectified.

### What is a provisional improvement notice?

A provisional improvement notice (PIN) is similar to an improvement notice issued by an inspector, except that it is issued by elected safety and health representative who is qualified to do so. PINs are written directions requiring a person to remedy (fix) an alleged breach of the Act or regulations

A minimum of seven days must be given to rectify the problem set out in the provisional improvement notice. If the safety issue involves serious and imminent danger to employees, other action should be taken such as following the resolution of issues procedures in the workplace, as the issuing of a PIN may not immediately resolve the issue

Failure to comply with a PIN before the deadline given is an offence.

If issuing a PIN fails to resolve the matter contact WorkSafe on (08) 9327 8777.

#### Review request

Before the PIN expires, a request may be lodged with WorkSafe for a review. An inspector will then visit the workplace to carry out the review.

Until the inspector either confirms, modifies or cancels the PIN it is suspended.

If the inspector confirms or modifies the PIN it becomes the same as an improvement notice issued by the inspector. If a PIN is not technically correct it may be cancelled and an improvement notice issued by the inspector.

### Display of notices

Any improvement notice or prohibition notice issued must be displayed in a prominent place at, or near any workplace affected by the notice. These notices shall not be removed until the requirements have been satisfied.