WHEN AN INSPECTOR CALLS

A Guide To WorkCover’s Compliance Strategy
Disclaimer

This publication contains industry recommended action or information regarding occupational health, safety, injury management or workers compensation. It includes some of your obligations under the various Workers Compensation and Occupational Health and Safety Legislation that WorkCover administers. To ensure you comply with your legal obligations you must refer to the appropriate acts.
Introduction

Employers in New South Wales have an obligation under the law to ensure the health, safety and welfare of their employees and of visitors to their workplaces. Employers must also ensure that their employees are covered by workers compensation insurance.

WorkCover is responsible for the administration of the laws covering occupational health and safety and workers compensation.

WorkCover provides information, advisory, compliance and enforcement services to ensure that workplaces meet their health and safety obligations. This reflects the community expectation that everyone is entitled to safe and healthy working conditions.

This document is intended to help employers and others understand:

• the role and functions of WorkCover Inspectors;
• the powers available to Inspectors;
• the rights and responsibilities of employers and others during visits by WorkCover Inspectors; and
• arrangements during the implementation period of the OHS Act 2000 and OHS Regulation 2001.

The Legislation

WorkCover Inspectors are responsible for enforcing the following laws concerning occupational health and safety and workers compensation:

Acts

• Occupational Health and Safety Act 2000
• Dangerous Goods Act 1975
• Rural Workers Accommodation Act 1969
• Workplace Injury Management and Workers Compensation Act 1998
• Workers Compensation Act 1987

Regulations

• Occupational Health and Safety Regulation 2001
• Dangerous Goods (General) Regulation 1999
• Dangerous Goods (Gas Installations) Regulation 1998
• Workers Compensation (General) Regulation 1995
• Workplace Injury Management and Workers Compensation Regulation 1999

These Regulations are supported by a number of Codes of Practice and other guidance material.
set out the legal obligations of employers, self-employed persons, employees, controllers of work premises, designers, manufacturers and suppliers in relation to OHS and workers compensation;

set out WorkCover’s functions and responsibilities;

describe the legislative objectives and outcomes and set maximum penalties for non-compliance; and

assign WorkCover and its Inspectors various powers to administer and enforce the law.

A WorkCover Inspector’s primary role is to provide advice and assistance. At the same time, Inspectors are responsible for ensuring that all persons and organisations meet their OHS and workers compensation obligations.

Visits by WorkCover Inspectors to work places or work sites can be at random or part of a specific targeted program. They may be to investigate complaints or incidents or to investigate accidents that have resulted in injuries or deaths.

During these visits Inspectors may:

- provide information, education and advice on the requirements of OHS or workers compensation law;
- explain the range of WorkCover services;
- provide advice on the development and improvement of systems to eliminate or reduce the risk of injury and illness;
- monitor compliance with legislation or investigate breaches of legislation;
- investigate the circumstances of deaths or injuries and disease;
- investigate dangerous incidents;
- investigate reports of unsafe or unhealthy conditions or dangerous work practices; and
- initiate compliance action, including prosecutions, against negligent or reckless offenders.

The Inspector will often be accompanied by employers or employees’ representatives, or both, around the work site. They will talk to a range of people, gathering as much information as possible about the workplace in order to provide the advice or take the most appropriate action to improve occupational health and safety.

All WorkCover Inspectors carry photo identification and will identify themselves upon entering the workplace.
Under the law, Inspectors have a range of powers including the power to:

- enter and investigate any premises they have reason to believe is a place of work;
- conduct interviews and make inquiries;
- take photographs, recordings and measurements, or samples;
- gather information, examine and copy documents;
- issue directions;
- issue Notices that:
  - require employers to remedy unsafe working conditions or hazards,
  - prohibit work from continuing until a hazard is fixed, and
  - require employers to provide proof of correct workers’ compensation insurance; and
  - issue on-the-spot fines for breaches of the legislation.

In carrying out their duties Inspectors may request the assistance of technical or scientific experts. They may also request the assistance of police officers where they are hindered in carrying out their duties.

When a WorkCover Inspector visits a workplace where a health and safety issue has been brought to their attention, they will evaluate the situation and choose what action, if any, to take. The evaluation takes into account a number of factors including:

- the nature of the problem and how serious it is; and
- commitment in the workplace to implementing systems that ensure effective and continuous improvement to occupational health and safety.

Depending on the circumstances the Inspector may:

- issue an Improvement Notice directing a person or organisation to undertake corrective action;
- issue a Prohibition Notice directing the immediate cessation of any activity that would endanger the health or safety of workers or visitors to the workplace;
- issue a workers compensation notice directing a person or organisation to undertake corrective action in relation to a workers compensation or injury management matter.
- issue a Penalty Notice (also known as an on-the-spot fine); or
- initiate investigations that may lead to prosecution. An Inspector may issue an investigation notice as part of an investigation.

An Inspector may choose one or more of these options based on the individual circumstances.
The enforcement options available to WorkCover Inspector's are:

1. Improvement Notice
   An Improvement Notice requires a particular hazard or potential risk to health and safety to be rectified within a specific timeframe. An Improvement Notice is in effect a written instruction that carries with it a requirement for corrective action. It identifies an unsafe work practice or hazard that requires rectification.
   The Notice may give written suggestions on how to rectify the situation and may provide reference to Australian Standards, approved Codes of Practice or other guidance material. Information is provided on the Notice about the review process.
   In most instances the Inspector will return to the workplace to ensure that the Notice has been complied with. Failure to comply with an Improvement Notice will result in further action such as an issue of a Penalty Notice or prosecution.

2. Workers Compensation Notice
   An Instruction Notice or a Complaint Investigation Notice requires rectification of workers compensation and injury management issues within a specific timeframe.

3. Prohibition Notice
   A Prohibition Notice is issued where there is an immediate health or safety risk to life. It requires the cessation of work until the situation is made safe. This is a very serious action.
   Work cannot continue until WorkCover is satisfied that people are no longer exposed to the risk. Information is provided on the Notice about the review process. Court action may be taken for non-compliance with a Prohibition Notice.

4. Penalty Notice
   An Penalty Notice (also known as an on-the-spot fine) is a financial penalty, which may be imposed for a breach of OHS legislation. This Notice is an alternative to prosecution and is issued to highlight the seriousness of a health and safety issue in the workplace arising from negligent or reckless action.

5. Prosecution
   Prosecution refers to criminal proceedings taken by WorkCover. These matters are heard before a Court. Prosecution is initiated in the most serious cases where, following a thorough investigation, the Inspector has made a recommendation that prosecution action is warranted.
   The Inspector's recommendation is referred to WorkCover management and its legal advisers. A prosecution proceeds if the Inspector's recommendation is supported.
   Prosecution is pursued in cases where there is a need to highlight
a common hazard or risk, where the incident is of considerable public concern, or where there has been serious willful non-compliance. The Court decides whether a case is proven or not, and determines any penalty.

WorkCover acknowledges that many workplaces will need time and help in understanding the new risk management and consultation requirements. To assist workplaces in understanding and implementing these new provisions the new OHS Regulation 2001 has transitional periods.

During the transitional period the primary role of the WorkCover Inspector will be to focus on educating employers and employees about the new provisions of the OHS Act 2000 and OHS Regulation 2001 and generating awareness about the new legislative requirements.

Inspectors assist employers to achieve safety outcomes rather than focusing on process and procedural issues. New provisions of the OHS Regulation 2001 will not be enforced during the transitional period to allow workplaces sufficient time to implement the new provisions.

Some new provisions do not have specific transitional arrangements listed in the OHS Regulation 2001, as either there was some requirement previously or there were requirements for some industry sectors. It is WorkCover policy that in circumstances where a requirement did not apply previously to a particular workplace, obligation bearers have 12 months to comply from 1 September 2001.

Penalty notices (on-the-spot fines) will not be written for any regulatory provision which has a transitional period until that period has lapsed.

Full lists of transitional arrangements are provided in the document: A Summary of the Occupational Health and Safety Regulation 2001. This publication is available on WorkCover’s Website or through the WorkCover Assistance Service (Phone 13 10 50).

A Small Business Safety Starter Kit is available to assist small business implement the OHS Regulation 2001.

The starter kit encourages small businesses to become part of WorkCover’s Small Business Network. Members of the Network will receive regular health and safety information and access to technical and advisory information and support.

The Small Business Safety Starter Kit was developed in response to small business concerns that they needed special assistance in understanding and complying with the OHS Regulation 2001.
An employer may appeal the issuing of a Notice or direction by a WorkCover Inspector.

Where an employer regards the issuing of an Improvement or Prohibition Notice, or a Penalty Notice, as unreasonable they may ask for it to be reviewed. This request should be made in writing within 7 days of the issue of the Notice. It should be addressed to the Team Manager responsible for that industry in the metropolitan area, or to the relevant Country Team Manager.

A person not satisfied with the result of the review of a Notice issued by WorkCover may elect to have the matter heard in a Local Court.

WorkCover Inspectors have experience in a range of trades and professions. Many hold tertiary qualifications in occupational health and safety-related disciplines. To qualify as a WorkCover Inspector they must undergo an intensive accredited training program. Inspectors also regularly attend specialist courses and briefings to make sure their skills and knowledge are at the forefront of industry best practice.

WorkCover Inspectors are based at metropolitan and regional offices throughout NSW. The Inspectors are part of seven Industry Teams, two Country Teams and one Coordination Team. These are:

- Construction Industry
- Consumer and Business Services Industry
- Government Industry
- Health and Community Services Industry
- Manufacturing Industry
- Retail, Wholesale, Transport, and Storage Industry
- Rural Industry
- Country North
- Country South
- Compliance Coordination
Further information can be obtained from:

- The WorkCover Assistance Service (formerly referred to as the Client Contact Centre). The phone number is 13 10 50 (02 9370 5301 for those interstate). The address is Ground Floor, 400 Kent St, Sydney. The email address is contact@workcover.nsw.gov.au

- The WorkCover website at www.workcover.nsw.gov.au

- One of WorkCover’s local offices located throughout NSW

You can also fax through requests for publications to WorkCover on fax number 02 9370 5999.

The WorkCover Assistance Service is set up to provide assistance, answer queries and take requests for information on the OHS Regulation 2001. Requests for advice via the WorkCover Website will be sent directly to the WorkCover Assistance Service.

WorkCover has also developed a database of frequently asked questions (FAQs), which is available on the WorkCover Website.