



Workplace inspections

Workplace Health and Safety Queensland (WHSQ) inspectors

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Workplace Health and Safety inspectors

Under the *Workplace Health and Safety Act 1995* inspectors have particular legal powers. Workplace Health and Safety Queensland inspectors are appointed primarily to assist employers develop and improve systems of work, to prevent people from being injured or becoming ill as a result of their daily work activities.

Who are WHSQ inspectors?

Experiences, areas of focus, powers, seize rights

Types of inspectors

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Why does an inspector visit a workplace?

Main role, reasons, advance notice

What happens during an inspection?

Process, identity card, give advice, investigate, enforcement action

Do inspectors have to explain their decisions?

Disagree with decision, what to do about service

Who are WHSQ inspectors?

Workplace Health and Safety Queensland inspectors may have experience in a variety of trades, and most will have tertiary qualifications in occupational health and safety-related disciplines.

The inspectors undertake inductions, on the job coaching, mentoring and training on a broad range of issues in the workplace including ergonomics, hazardous substances, construction issues and noise.

The training provides them with the underpinning skills and knowledge to allow them to undertake the Diploma of Government (Workplace Inspections).

The main areas of focus for inspectors include:

- **high risk industries** - manufacturing and construction
- **work-related fatalities** - falls from heights or electricity incidents
- **occupational injury black spots** - where evidenced based analysis reveals an occupation is over-represented in terms of severe injuries.

All inspectors may enter a workplace and exercise their powers while they are in the workplace. Inspectors also have the right to enter any place where:

- demolition work or asbestos removal work (prescribed activities) is being done, for example and
- there is specified high risk plant, for example lifts, amusement devices, cooling towers, air conditioning units, escalators, LP gas cylinders

After entering the workplace, the inspector has the power to:

- search any part of the place
- inspect, measure, test, photograph or film any part of the workplace or anything at the workplace
- take samples
- copy a document at the workplace
- make enquiries or conduct surveys to assess the degree of risk at the workplace or the standards of health and safety existing at a workplace
- inquire into the circumstances and probable causes of workplace incidents
- take any person, equipment or materials into the workplace to assist the inspector to exercise a power
- require a person to give reasonable help
- require a person to produce certain documents or ask other people to provide these documents, for example maintenance records kept by a mechanic contracted by an employer to do the work).

An inspector may seize:

- evidence of an offence against the Act
- a thing that has been used to commit an offence against the Act
- a dangerous place or thing

Most of the time inspectors carry out their role without the need to formally exercise their powers. However, their authority to use these powers is necessary, particularly when they are investigating incidents and intervening where there are dangerous work practices.

It is an offence to obstruct, threaten or interfere with an inspector who is exercising their powers under the Act.

Types of inspectors

The main areas of speciality for Workplace Health and Safety Queensland inspectors are:

- construction
- diving
- electrical
- ergonomics
- health; which includes:
 - dangerous goods
 - hazardous substances
 - noise
- plant and machinery
- psycho-social; which includes:
 - workplace harassment
 - violence in the workplace
 - stress

There are also small business advisors who provide information and advice to small business owners on such topics as:

- health
- ergonomics

Why does an inspector visit a workplace?

The main role of an inspector is to ensure workplaces comply with workplace health and safety legislation. It is also part of an inspector's role to provide information and advice on the legislation.

Inspectors visit workplaces for a variety of reasons including to:

- investigate workplace incidents
- investigate reports of unsafe, or unhealthy conditions and dangerous work practices
- assess workplace health and safety risks to workers and members of the public
- conduct workplace health and safety inspections and audits
- provide information and advice on the legislation.

Inspectors only pre-arrange their visit to a workplace if they are confident that advance notice will not jeopardise the intention of the visit. **Advance notice is not usually provided.**

What happens during an inspection?

- On entering a workplace an inspector will notify the employer (or the most senior management person at the site).
- The employer must then notify any elected workplace health and safety representatives in the workplace.
- The inspector will take all reasonable steps to notify the health and safety representative (if any) on arrival, and to ascertain any relevant information.
- The representative will also be informed of the outcome of the visit.

All inspectors carry an identity card, and before exercising a power in relation to a person will show the card for the person's inspection. The inspector can also provide a business card with their contact details on it.

Depending on the circumstances, the inspector may give advice, conduct an investigation or take enforcement action.

While conducting the investigation the inspector may:

- observe or search any part of a place (e.g. observe the use of a machine; observe the work processes);
- take measurements
- take photographs or video footage of anything at the place
- take samples of things (e.g. samples of substances used at the workplace)
- conduct tests (for example, test for the presence of lead in paint)
- obtain copies of documents (e.g. training records, employee records, manufacturers instructions etc.)
- talk to managers, supervisors, workers and other people (e.g. take a statement from a worker who has witnessed an incident)
- seize a thing (e.g. seize a defective power tool involved in an incident)
- ask for assistance in exercising powers

While conducting enforcement action the inspector may:

- provide general advice on workplace health and safety
- give verbal directions
- issue improvement notices, prohibition notices, dangerous goods directives, electrical safety protection notices, or on-the-spot fines (infringement notices)
- exercise any authorised powers
- cancel or suspend licenses, approvals, certifications and authorisations

In conducting a visit, inspectors may take with them other persons who are not inspectors, including technical experts, interpreters or police officers.

In order to deliver high quality, professional service, inspectors are expected to:

- treat obligation holders and other people with respect, dignity and sensitivity in all circumstances;
- deal with obligation holders and other people in a timely and efficient manner
- be professional and consistent in all of their dealings
- show no favour or discrimination
- conduct their activities according to the guidelines of the *Department of Industrial Relations Code of Conduct*

Do inspectors have to explain their decisions?

When taking enforcement action the inspector will explain:

- the reason for taking the action
- the evidence on which they have based their decision
- what you should do to comply
- where you can get some guidance on how to comply
- the date by which you should comply

If you are not completely clear about the explanation, please ask the inspector to clarify these issues.

What if I disagree with an inspector's decision?

If your interests are affected by a decision made by an inspector, such as the decision to issue a notice, you have the right to seek a review of the decision.

The appeal process is explained on the reverse side of all enforcement notices and involves the following steps:

- an application for review of a decision must be submitted on the approved form within a certain period (approved forms are also available from all WHSQ offices)
- in most cases **the application should be submitted within 14 days** after the day you receive notice of the inspector's decision.
- if the application is for the review of a decision to forfeit a thing, the application must be submitted within 28 days after the day you receive notice of the original decision.
- ensure you submit enough information on the application form to enable a decision to be made.

The Department of Industrial Relations will give you written notice of the review decision within 14 days of making the decision.

You also have the right to make an appeal against an original decision or a review decision in the Industrial Court.

More information on the appeals process is available in sections 148 - 157 of the *Workplace Health and Safety Act 1995*.

What can I do if I'm not happy with the service I received from an inspector?

If you cannot reach a resolution of the problem with the person you are dealing with, you can raise the issue by contacting, in the first instance, the Regional Manager of your nearest regional WHSQ office.

The Regional Manager will investigate your concerns promptly (and tell you what will be done about them). Most concerns are resolved in this way. However if your concerns have not been resolved to your satisfaction, you can write to the following address.

The Director
Regional Services Branch
Workplace Health and Safety Queensland
GPO Box 69
BRISBANE QLD 4001

Internal investigations

Employers are encouraged to perform their own investigations into incidents. Internal mechanisms for doing this include workplace health and safety officers, workplace health and safety representatives and workplace health and safety committees.

Workplace health and safety officers (WHSO)

Any workplace with 30 or more employees is required by law to have a workplace health and safety officer (WHSO).

Workplace health and safety officers are appointed by employers and principal contractors to:

- advise the employer on health and safety issues
- implement workplace health and safety related initiatives
- perform workplace inspections
- help with the functioning of the health and safety committee

Workplace health and safety officers appointed under the *Workplace Health and Safety Act 1995* must conduct an assessment of the workplace at least once every twelve months to identify any unsafe work practices. The WHSO must follow the assessment criteria set out by Workplace Health and Safety Queensland, or the one agreed to by the workplace health and safety committee at the workplace.

The WHSO must record and submit the results, and any recommendations to rectify unsafe work practices, to the employer or principal contractor and the Workplace Health and Safety Committee at the workplace, within 30 days of completing the assessment.

Employers and principal contractors must:

- provide resources to allow the WHSO to conduct the assessment during normal working hours
- take appropriate action to rectify any unsafe work practices identified in the assessment

Assessments and recommendations, and other matters recorded must be kept by the employer or principal contractor for five years.

Workplace health and safety representatives (WHSR)

Workers may elect a workplace health and safety representative themselves, or at the employer's suggestion.

Elected workplace health and safety representatives (WHSR's) are entitled to do:

- workplace inspections
- report hazards
- review incidents

After conducting an internal investigation a WHSR may:

- make recommendations in the hazard report form
- provide the form to the employer - WHSRs must keep a copy

If the issues are not satisfactorily resolved by the Workplace Health and Safety Officer, the employer or self-employed person, the WHSR may notify a Workplace Health and Safety Queensland inspector located in all regional offices.

Workplace health and safety committees

Health and safety committees help workers and employers work together to make a workplace healthy and safe.

A worker can ask for a health and safety committee. Once a worker has asked for a committee, the employer is required by law to appoint one. Employers can also establish a health and safety committee without a worker asking for one.

In some larger workplaces, there can be more than one health and safety representative. There may also be more than one committee. Major employers may have different health and safety representatives, and committees, at different offices.

Their role includes:

- encouraging and maintaining an active interest in workplace health and safety
- considering training and education needs to address workplace health and safety issues
- keeping workers up-to-date with new standards, rules and procedures
- reviewing the circumstances surrounding workplace incidents
- helping resolve issues about workplace health and safety
- providing the employer with advice on how to address workplace health and safety issues

Union right of entry

Authorised representatives of employee organisations (e.g. unions) have powers under the *Workplace Health and Safety Act 1995* to enter workplaces to:

- discuss workplace health and safety matters
- investigate suspected contraventions of workplace health and safety law

Representatives are authorised to exercise these rights under both state and federal laws through the issue of permits. For workplaces covered by the federal *Workplace Relations Amendment (Work Choices) Act 2005*, for example workplaces occupied by a constitutional corporation, **both** state and federal permits are required for a representative to enter a workplace.

The state permit is issued under the *Workplace Health and Safety Act 1995* by the Queensland Industrial Relations Committee. It is referred to as an authority under section 364 of the Industrial Relations Act 1999.

The federal permit is issued under the *Workplace Relations Amendment (Work Choices) Act 2005* by the Australian Industrial Relations Commission. It is referred to as a permit to enter and inspect premises.

Entry to discuss workplace health and safety matters

An authorised representative may enter a workplace to discuss workplace health and safety matters:

- if a worker working at the place is a member, or is eligible to be a member, of the representative's employee organisation
- after providing 24 hours written notice of the entry and reasons for the entry
- only with eligible members who wish to take part in the discussions
- only during work break times, such as meal breaks, periods immediately before or after work commences

There are also requirements for notification of entry by a representative and expectations for the conduct of both representatives and occupiers (e.g. employers).

Significant penalties exist under state and federal laws for contraventions of requirements for both representatives and occupiers.

For detailed information on the powers of representatives, notification requirements, expectations of conduct and penalties refer to the Legislative Application: Union Right of Entry

Entry to investigate suspected contraventions of workplace health and safety law

An authorised representative may enter a workplace to investigate suspected contraventions of workplace health and safety law:

- if a worker working at the place is a member, or is eligible to be a member, of the representative's employee organisation; and
- if they reasonably suspect a contravention has happened or is happening at the place that relates to or affects the eligible member

There are also requirements for notification of entry by a representative and expectations for the conduct of both representatives and occupiers (e.g. employers).

After entry an authorised representative has a number of powers to investigate the suspected contravention. This includes the power to:

- inspect plant, substances or other things relevant to the suspected contravention outlined in their written notice;
- observe work being carried on;
- speak to eligible members with their consent;
- speak to the occupier about matters relevant to the suspected contravention outlined in the written notice;
- require documents (including employment records) to be produced or copied only if the documents are relevant to the suspected contravention outlined in the written notice; and
- require the person to give reasonable help to exercise these powers.

Significant penalties exist under state and federal laws for contraventions of requirements for both representatives and occupiers.

For detailed information on the powers of representatives, notification requirements, expectations of conduct and penalties refer to the Legislative Application: Union Right of Entry