



## **Law and penalties**

### Workplace health and safety legislation

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## **Submission to the National OHS review**

### ***Queensland calls for national OHS system for the modern world***

The Queensland Government submission to the federal review of occupational health and safety laws has called for a national OHS system that addresses the needs of contemporary, non-traditional work arrangements, seeking duty holders to adopt a joint risk management approach within an effective regulatory framework. Queensland's submission calls for all duty holders under the new OHS Act to be required to do everything "reasonably practicable" to ensure that no one is exposed to risks to their health and safety from the business or undertaking. This requirement should be supported by regulations and codes of practice that provide greater clarity to duty holders, of what is expected and how they can meet their responsibilities.

Submission to the National OHS review.

## **How the legislation works**

### What you must do

The *Workplace Health and Safety Act 1995* sets out the laws about the health and safety requirements affecting most workplaces, work activities and specified high risk plant in Queensland. You need to be familiar with the Act in order to understand your obligations and safety requirements.

To make Queensland workplaces healthier and safer, you must fulfil your obligations under the *Workplace Health and Safety Act 1995*.

Read more about the Act, its purpose and who's covered.

In conjunction with the *Workplace Health and Safety Regulation 2008* the Act provides a framework for managing health and safety risks in Queensland workplaces together, they set out legal requirements affecting performance of work that must be followed.

The *Workplace Health and Safety Regulation 2008* either prohibits exposure to a risk or prescribes ways to prevent or minimise exposure to a risk. If a regulation exists for specific risks at your workplace (e.g. noise, hazardous substances, underwater diving, high risk plant, confined spaces), in order to meet your obligations under the Act you **must** do what the regulation says to prevent or minimise the impact of the risk.

Read more about the Regulation.

### ***What you must do***

To make Queensland workplaces healthier and safer, you must fulfil your obligations under the *Workplace Health and Safety Act 1995*.

If a regulation exists for specific risks at your workplace, you **must** do what the *Workplace Health and Safety Regulation 2008* says to prevent or minimise the impact of the risk.

If there is a Code of Practice – previously known as an Advisory Standard - about a risk at your workplace, you **must** either:

- do what the Code says; **or**
- adopt and follow another way that gives the same level of protection against the risk; **and** ensure you take reasonable precautions and exercise proper diligence.

If no regulation or code of practice exists about a risk at your workplace, you **must** choose an appropriate way to manage exposure to the risk, take reasonable precautions and exercise due care.

Find out more about risk management.

## **Workplace Health and Safety Act 1995**

### Purpose of the Act

What the Act does, protecting your health and safety

### Who is covered

Who the Act applies to

### Who is not covered

Where the Act does not apply

### ***Purpose of the Act***

The *Workplace Health and Safety Act 1995* is about making workplaces and work practices safer for everyone.

The Act sets out the laws about health and safety requirements affecting most workplaces, work activities and specified high risk plant in Queensland. It seeks to protect your health and safety and the health and safety of everyone at a workplace, while undertaking work activities or using specified high risk plant.

It specifically seeks to reduce the risk of a person's death, injury or illness as a result of a workplace or work activity, for example:

- Asthma caused by inhaling spray paint from a neighbouring workplace.
- Carbon monoxide poisoning caused by liquefied petroleum gas operated forklift being used in a coldroom.

- Legionnaire's disease acquired by inhaling legionella bacteria from a contaminated cooling tower of an air-conditioning unit.

The Act establishes a framework for preventing or minimising exposure to risk by:

- imposing workplace health and safety obligations on people who may affect the health and safety of others by what they do, or fail to do
- establishing benchmarks for industry through the making of regulations and codes of practice
- establishing a workplace health and safety board that encourages industry participation and cooperation
- appointing workplace health and safety officers to help employers and principal contractors manage workplace health and safety
- encouraging workplaces to have workplace health and safety committees involving workers and management
- supporting worker involvement through the establishment of workplace health and safety representatives in the workplace
- appointing accredited providers to assist industry in managing particular risks
- appointing inspectors to monitor and enforce compliance with the Act.

You need to be familiar with the *Workplace Health and Safety Act 1995* in order to understand your obligations and safety requirements.

### ***Who is covered***

Everyone has a responsibility to care for their own and others' health and safety at workplaces, while carrying out work activities or using specified high risk plant.

The *Workplace Health and Safety Act 1995* (PDF, 766 KB) specifically applies to:

people who conduct a business or undertaking

- people in control of a workplace
- principal contractors
- people in control of relevant workplace areas
- people in control of fixtures, fittings or plant included in relevant workplace areas
- designers, manufactures, hirers, importers and suppliers of plant
- owners of plant
- erectors and installers of certain plant
- manufacturers, suppliers and importers of substances used at workplaces
- designers of structures
- workers
- workplace visitors including customers and visiting salespeople
- volunteers.

These people all have workplace health and safety obligations to meet.

## ***Who is not covered***

The *Workplace Health and Safety Act 1995* does not apply to mines and quarries or land used for obtaining petroleum or used for geothermal exploration.

This Act does not affect:

- *Explosives Act 1999*
- *Public Safety Preservation Act 1986*
- *Radiation Safety Act 1999*
- *Transport Operations (Road Use Management) Act 1995*
- *Transport Operations (Marine Safety) Act 1994.*

People working in the electrical industry have an obligation to workplace health and safety under the *Electrical Safety Act 2002*. In situations where the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002* both impose obligations, the obligation under the *Electrical Safety Act 2002* takes precedence.

## **Workplace Health and Safety Regulation 2008**

On 1 September 2008, the *Workplace Health and Safety Regulation 1997* was repealed and replaced by the *Workplace Health and Safety Regulation 2008*.

The new Regulation:

- remakes provisions of the old Regulation
- removes the rural industry exemption from existing regulatory requirements over the next two years
- changes the numbering.

Workplace Health and Safety Queensland will be undertaking a process to review and update all forms and documents on the departmental website to ensure consistency with the new regulation. Until this process is complete, all forms and documents must be read in conjunction with the information provided in the Comparison Table. The Comparison Table has been provided to assist with the practical application of the *Workplace Health and Safety Regulation 2008*. It is not intended to provide a determination or comment on compliance or to provide legal interpretation. It is intended as a guide only and is provided as an information source only.

Explanatory notes have been developed to accompany the new regulation to help clients understand and interpret the provisions.

This information is intended to provide general information. The contents do not constitute specific advice and should not be relied upon as such. Formal advice as required should be sought from appropriate parties in particular matters. The Department of Employment and Industrial Relations hereby expressly excludes any liability to a user for damages incurred as a result of reliance upon the information contained herein.

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The *Workplace Health and Safety Regulation 2008* and the Workplace Health and Safety Act 1995 provide a framework for managing health and safety risks in Queensland workplaces.

The regulation sets out the legal requirements to prevent or control certain hazards which might cause injury or death in the workplace.

- It prohibits exposure to a risk.
- It prescribes ways of preventing or minimising exposure to a risk.
- It deals with administrative matters.

If a regulation exists for specific risks at your workplace in order to meet your obligations under the Act you must do what the regulation says to prevent or minimise the impact of the risk.

Things covered by the regulation include:

- how to apply for:
  - a certificate of registration of registrable plant
  - a certificate of registration of registrable plant design
  - a licence to perform high risk work
  - a certificate to work in an earthmoving or particular crane occupation
  - a certificate of authority to appoint a workplace health and safety officer
  - a certificate of appointment as an accredited provider
  - a certificate to perform a prescribed activity
- what to do if a certificate or licence is denied, cancelled or suspended
- how to renew certificates and licences
- restrictions for 'prescribed activities' such as demolition work or asbestos removal
- training requirements for people performing high risk work, working in an earthmoving or particular crane occupation, or doing prescribed activities
- training requirements for workplace health and safety officers
- when notification needs to be given for building and construction work
- what to do if there is a workplace health and safety incident
- what is required of construction workplace plans and work method statements in high risk construction and demolition activities
- safe housekeeping practices for construction work including specific requirements for principal contractors
- safe work practices around excavations and underground services
- ways to prevent falls from heights
- ways to prevent things falling on people
- prohibited substances

- how to safely manage:
  - hazardous substances
  - excessive noise
  - asbestos materials and asbestos removal
  - lead materials
- requirements for underwater diving work
- ways to make recreational snorkelling safer
- designing, manufacturing, modifying, supplying and working in confined spaces
- the use of roll-over protective structures on tractors
- availability and maintenance of amenities such as toilets, dining facilities and drinking water
- building requirements including ventilation, floor space and lighting
- first aid requirements
- limits on atmospheric contaminants.

Codes of practice also provide practical advice on how to manage exposure to risk, and like the Regulation, must be followed to meet your obligations.

### **Ministerial notices**

Ministerial notices are urgent workplace warnings. They are issued when a situation occurs that puts someone at imminent serious risk of harm at, or near, a workplace.

A notice may set out methods of work or other things to prevent or minimise exposure to the risk.

A notice overrides any existing regulation.

### **Who enforces the law**

Inspectors from Workplace Health and Safety Queensland are appointed under the *Workplace Health and Safety Act 1995* to enforce the law and its regulations.

Inspectors are based in 20 regional offices throughout Queensland.

They visit workplaces to:

- investigate workplace incidents
- investigate reports of unsafe or unhealthy conditions or dangerous work practices
- assess workplace health and safety risks to workers and members of the public
- provide information and advice on obligations under the Act.

Inspectors have the power to impose a range of enforcement strategies to encourage greater compliance of the legislative requirements.

For more information, refer to workplace incidents and inspections or contact the Workplace Health and Safety Infoline on 1300 369 915.

## **Boards of inquiry**

A Board of Inquiry may be established by the Minister to look into a workplace incident.

It looks into the probable causes of the workplace incident and makes recommendations to minimise future risks.

## **Workplace consultation**

The *Workplace Health and Safety Act 1995* encourages Queensland workplaces and work practices to be healthier and safer for everyone – workers and the community.

It actively seeks industry participation by involving employers and workers and having them represented in the decision-making and advisory processes through:

- Workplace Health and Safety Board
- Industry sector standing committees
- Workplace health and safety officers
- Workplace health and safety committees
- Workplace health and safety representatives

## ***Workplace Health and Safety Board***

The Workplace Health and Safety Board, established under the *Workplace Health and Safety Act 1995*, is a key link between industry and government.

The Board provides advice and makes recommendations to the Minister for Transport, Trade, Employment and Industrial Relations about policies, strategies, allocation of resources and legislative arrangements for workplace health and safety.

Its role includes:

- developing a five-year strategic plan to improve health and safety in Queensland workplaces, with an eye to both existing and future needs of industry and the community
- ensuring adequate industry consultation in the development of proposed codes of conduct
- advising the Minister on state, national and international workplace health and safety issues
- promoting workplace health and safety to industry and the community to encourage a healthy, safe workplace culture.

Board members represent employers and workers and have practical experience and competence in the management of workplace health and safety.

### ***Industry sector standing committees***

Industry sector standing committees provide the Workplace Health and Safety Board with industry-specific advice on workplace health and safety issues.

There are six industry sector standing committees, representing:

- construction
- manufacturing
- rural
- health and community services
- retail and wholesale
- transport and storage.

Other industry sector standing committees may be established, as needed.

Members of industry sector standing committees represent employers and workers and have practical experience and competence in the management of workplace health and safety.

### ***Workplace health and safety officers***

Employers and principal contractors with 30 or more workers normally employed at a workplace must appoint a workplace health and safety officer.

- An employer, who employs five workers on Tuesdays, Wednesdays and Thursdays at a workplace but employs 30 workers in three shifts of ten on Mondays and Fridays, needs a workplace health and safety officer.
- At a construction workplace, the principal contractor must appoint a workplace health and safety officer if:
  - 30 or more people work at the workplace during any 24 hour period; or
  - the principal contractor built at least 30 domestic premises during the previous financial year.

Employers with fewer workers are encouraged to appoint a workplace health and safety officer for the wellbeing of their employees.

Workplace health and safety officers are specially trained. Their duties include:

- advising the employer or principal contractor of the overall state of health and safety of the workplace
- inspecting the workplace for hazards and unsafe or unsatisfactory work practices or conditions
- educating workers about workplace health and safety
- investigating workplace incidents
- supporting inspectors in their duties.

For more information on the requirements of workplace health and safety officers refer to Part 8 of the *Workplace Health and Safety Act 1995*.

### ***Workplace health and safety committees***

Workplace health and safety committees foster a cooperative spirit in a workplace, encouraging the employer and workers to work together for a healthier, safer workplace.

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.

### ***Workplace health and safety representatives***

Workplace health and safety representatives are elected by their co-workers to represent them on workplace health and safety issues.

The workplace health and safety representatives can carry out inspections and review the circumstances of workplace incidents.

They can participate in the workplace health and safety committee.

Workplace health and safety representatives do not need any experience or special qualification but are entitled to paid training, if requested.

### **Regulatory Impact Statements**

A Regulatory Impact Statement is produced when significant subordinate legislation is developed.

The regulatory impact statement:

- explains why subordinate legislation is needed
- outlines the costs and benefits associated with the subordinate legislation

All Regulatory Impact Statements must be open to public comment for at least 28 days. By commenting on a Regulatory Impact Statement, you are participating in the legislative development process and providing valuable feedback to the Department of Employment and Industrial Relations.

### ***Recent Regulatory Impact Statements***

- Proposed removal of the rural industry exemption from the Workplace Health and Safety Regulation 1997 - closed Friday 29 February 2008
- Proposed Workplace Health and Safety Regulation 2008 - closed Friday 29 February 2008

## **Inspections**

### Workplace incidents and inspections

Types of incidents, recording, reporting and notifying of incidents

### Inspectors' powers

Entering property, what they can do under the law

### Enforcement options

Advice, verbal directions, improvement notices, prohibition notices, court orders, seizures, infringement notices, prosecutions

### Making a complaint

How to complain about the quality of service received during a visit

### Investigations

Why investigations occur, types of incidents investigated

## **Workplace incidents and inspections**

The Department is empowered under the law to respond to health and safety incidents at workplaces and inspect workplaces to monitor and enforce compliance with the *Workplace Health and Safety Act 1995*.

Where there are failures to meet obligations under the Act, the Department can respond with several enforcement options.

When a workplace incident occurs there are requirements for notifying the Department, recording details about the incident and actions to address what happened.

Refer to the workplace incidents and inspections area of this site for more information on:

- types of incidents
- what to do in an emergency
- how to notify the Department of a workplace incident
- recordkeeping regarding workplace incidents
- workplace inspections
- inspectors.

## **Inspectors' powers**

Inspectors have unfettered power to enter any workplace or suspected workplace or any place where specified high risk plant is situated (i.e. amusement rides, cooling towers, escalators). Inspectors also have the power to enter land around domestic premises to gain access to a workplace or suspected workplace.

Inspectors can also enter any place with a warrant or the property owner's consent.

To gain consent, the inspector must tell the occupier:

- the purpose of entry
- that consent does not have to be given.

If consent is given, the inspector **may** ask the occupier to sign an acknowledgement of the consent and will give the occupier a copy of this acknowledgement.

An inspector can also apply to a magistrate for a warrant to enter a place to exercise inspectors' powers.

Every appointed inspector holds an identity card which shows a recent photo of the inspector and is signed by the inspector. Before exercising a power (including entry into the workplace) inspectors must show their identity card.

Following entry to a place, inspectors have 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).

Inspectors also have specific powers to seize things – such as plant, equipment or substances - in the following circumstances:

- where the inspector believes the thing is evidence of an offence against the Act
- if seizing the thing is consistent with the purpose of entry
- where a warrant was issued for the seizure
- if the inspector believes the thing is defective, hazardous or likely to cause an injury.

Inspectors can also seize workplaces or part of the workplace if it is believed to be defective or hazardous.

## **Enforcement options**

When people fail to meet their obligations under the *Workplace Health and Safety Act 1995*, inspectors may use a range of compliance and enforcement options including:

- advice
- verbal direction
- improvement notice
- prohibition notice
- court order to secure compliance with notices
- seizure
- infringement notice
- prosecution.

The *Workplace Health and Safety Enforcement Framework* outlines these enforcement options as well as the investigation and prosecution policies.

### ***Verbal directions***

Verbal directions only relate to situations where a breach can be rectified and inspected prior to the inspector leaving the site.

### ***Improvement notice***

A contravention of the Act that does not pose a risk of serious bodily harm may attract an improvement notice.

The notice will order the person receiving the notice to fix:

- the contravention; **or**
- things or operations causing the contravention.

An improvement notice will:

- explain that the inspector believes the law is being broken
- specify the part of the law under question
- outline how the law is being or has been broken
- set out the action that must be taken to rectify the contravention
- state the day before which the rectification must have been carried out.

A person issued with an improvement notice must comply with its directions.

An inspector will generally return to the workplace to check that the actions have been taken.

Failure to comply may lead to a court order to secure compliance with notices.

### ***Prohibition notices***

A prohibition notice requires an **immediate** action. It may mean an immediate stop is put to:

- a workplace activity
- the use of equipment or plant
- the use of a substance.

A prohibition notice may be issued if the inspector reasonably believes circumstances at the workplace are causing – or are likely to cause – a risk of serious bodily injury, work caused illness or dangerous event.

The prohibition notice will state:

- the inspector's belief that circumstances causing, or likely to cause, the risk to workplace health and safety exist or are likely to arise in that workplace; **and**
- the circumstances that have caused – or are likely to cause – the risk.

The prohibition notice and its directives must be followed.

**Failure to comply with a prohibition order may lead to a court order to secure compliance with notices.**

### ***Court order to secure compliance with notices***

If a person or organisation fails to comply with an improvement or prohibition notice – and there is an imminent risk of serious bodily injury, work-caused illness or a dangerous event – the chief executive may seek an order to secure compliance from an industrial magistrate.

### ***Seizure***

Inspectors can seize things – such as plant, equipment or substances - to prevent serious bodily harm or illness.

Inspectors can also seize workplaces or part of the workplace if it is believed to be defective or hazardous.

Inspectors can also require owners of workplaces to destroy the workplace, workplace area, plant or substance or make it harmless.

They are also empowered to seize anything that may be evidence of an offence against the *Workplace Health and Safety Act 1995* (PDF, 766 KB) or where a warrant was issued for the seizure.

Seized things must be receipted and returned to the owner after six months or at the conclusion of proceedings for an offence.

Seized things may be forfeited if the inspector:

- cannot find the owner
- cannot return it after reasonable efforts to the owner or
- believes its return could see an offence committed under the Act.

### ***Infringement notice***

For certain offences against the *Workplace Health and Safety Act 1995* and the *Workplace Health and Safety Regulation 2008*, an inspector may impose an infringement notice – or on-the-spot fine.

This has an **immediate punitive effect**.

In most cases, it will be issued along with other notices.

For further information refer to penalties.

## **Making a complaint**

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

#### **Workplace Health and Safety Queensland inspectors**

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

If you are unhappy with the inspectors' decision you can ask the Department of Employment and Industrial Relations to review the decision.

## **Investigations**

Workplace Health and Safety Queensland inspectors investigate workplace incidents to:

- determine their cause
- prevent similar incidents recurring at a workplace
- notify employers of incidents occurring within their industry
- prosecute offences against the *Workplace Health and Safety Act 1995*.

Comprehensive investigations are generally completed within six months. Less serious incidents or complicated complaints are dealt with more quickly.

Not all incidents are of the same gravity; the extent of investigation mirrors the seriousness of the event or complaint:

- **Type 1 event** - involves death or grievous bodily harm of workers or a member of the public likely as a result of a work activity, or exposure to substances likely to kill or cause grievous bodily harm to a worker or member of the public.

- These events are comprehensively investigated by Workplace Health and Safety Queensland **unless** another agency (e.g. police, Department of Transport) is leading the investigation or the incident is not covered by the Act or it was out of the control of a person with an obligation under the Act. Read section 3 of the *Workplace Health and Safety Act 1995* to find out what is not covered by the Act.
- **Type 2 event** – involves a dangerous event or a workplace incident causing bodily harm.
  - Workplace Health and Safety Queensland will see that control measures are put in place at the workplace to prevent reoccurrence.
- **Type 3 event** - involves complaints of significant risks to health and safety.
  - Intervention will occur to determine the validity of the complaint and to resolve the matter, including taking appropriate enforcement action.
- **Type 4 event** – involves other complaints.
  - Workplace Health and Safety Queensland will contact the workplace and the person who made the complaint and determine if any intervention is warranted to assist in the resolution of the matter.

The *Workplace Health and Safety Enforcement Framework* outlines the investigation policy as well as the enforcement options and prosecution policy.

Find out more information about Workplace Health and Safety Queensland inspectors; including their role and powers under the legislation.

## Prosecutions

### Cause to prosecute

Why prosecutions occur, who gets prosecuted

### Defences

What is a defence against prosecution

### Appeals

Lodging an appeal

### Access to your information

Freedom of information, administrative release

### Queensland Workplace Prosecutions

Details of the variety of breaches of legislation and the department's response to those breaches

### Review of Workplace Health and Safety Enforcement Framework

Recommendations from the review into the *Workplace Health and Safety Enforcement Framework*

## Cause to prosecute

Workplace Health and Safety Queensland actively draws public attention to individuals and organisations it successfully prosecutes for breaching the *Workplace Health and Safety Act 1995*.

The *Workplace Health and Safety Enforcement Framework* outlines the prosecution policy as well as the enforcement options and investigation policy.

**Prosecuting obligation holders aims to provide a powerful deterrent to others.** It draws attention to the consequences of workplace health and safety violations and the importance of healthy, safer workplaces.

Workplace Health and Safety Queensland aims to ensure prosecution activity is strategically focused and targeted for maximum impact. A decision to prosecute is based on an assessment of:

- the nature of the non-compliance
- the obligation holder's performance
- government priorities.

Priority will also be given to prosecuting offences relevant to:

- target industries
- poor performing firms
- injury types.

Three key issues to be considered before legal action is taken are:

- the case to answer
- the prospect of conviction

- the public interest.

Other circumstances for prosecution include:

- an inspector alleges a repeat of the same offence
- an inspector alleges a person has been advised of the requirement of the legislation and has still failed to comply
- alleged failure to comply with an improvement or prohibition notice
- alleged offences relating to inspectors' powers, obstruction and false or misleading documents or information.

## Defences

Following a regulation will provide you with a defence in a prosecution for a breach of an obligation.

Following a code of practice will also provide you with a defence in a prosecution for a breach of an obligation.

**If you do not follow a code of practice**, you need to be able to show that:

- you took reasonable precautions and exercised proper diligence in choosing an appropriate alternative to manage exposure to the risk; or
- the breach occurred as a result of factors outside your control.

If no regulation or code of practice exists you need to show that you chose any appropriate way and took reasonable precautions, **and** exercised proper diligence to prevent the contravention.

Sections 23 (Intention – motive) and 24 (Mistake of fact) of the *Criminal Code Act 1899*, dealing with accidental acts or omissions, or a mistaken belief, are not a valid defence.

## Appeals and internal review of decisions

If your interests are affected by a decision of an inspector (including the issue of statutory notices) you can apply to the Department of Employment and Industrial Relations for the decision to be reviewed internally.

You must complete an application for review of decision with enough supporting information to enable a decision about the review to be made. The application should be made within 14 days after the day you received the original decision and be submitted to a Department of Employment and Industrial Relations' office nearest to you.

The review will be undertaken internally and you will receive written notice which either:

- confirms the original decision
- varies the original decision
- sets aside the original decision and makes a substitute decision.

You can also apply to the Industrial Court for a stay of the original decision while the internal review process is underway.

If you disagree with a decision or fine, you can also appeal to the Industrial Court.

A notice of appeal must be lodged in writing within 30 days of either receiving the original decision or, if appealing a review decision, the receipt of reasons for the review decision.

The Industrial Court may:

- confirm the decision appealed against
- vary the decision appealed against
- set aside the decision appealed against and make a substitute decision
- return the issue to Workplace Health and Safety Queensland.

### **Access to your information**

Some information you may want for your case may be available under Workplace Health and Safety Queensland's administrative release of information policy.

Other information may need to be applied for under the *Freedom of Information Act 1992*.

You will need to make a written request for access to any files or documents.

Administrative requests need to be addressed to either the Executive Director, Workplace Health and Safety Queensland or the Regional Manager in your local area.

Information provided under the administrative release of information policy may be given only to:

- the person injured – or their authorised representative
- employer – or authorised representative
- immediate family of deceased – or authorised representative
- person to whom such documents relate (such as certification files, statements, but not complaints and audits).

No personal information about anyone other than the applicant will be provided. Personal information includes home address, bank details and medical records.

There are restrictions on what can be released administratively. You cannot access:

- legal unit files
- audit files
- complaint files
- investigation files not yet completed
- any documents containing legally privileged information
- commercially sensitive material
- contentious matters

- documents received from another government department or agency (for example Queensland Police Service, Transport, Environmental Protection Agency, electrical entities)
- documents containing statements provided 'in confidence' to the investigation process.

Requests for this type of information need to be made under the *Freedom of Information Act 1992*.

## **Review of Workplace Health and Safety Enforcement Framework**

### Recommendations to be implemented

### Recommendations being submitted for consideration as part of the national review

In September 2007, Mr Robin Stewart-Crompton was commissioned by the Department of Employment and Industrial Relations to conduct an independent review into the current *Workplace Health and Safety Enforcement Framework* (the Framework). The purpose of the review was to ensure the Framework remains relevant and that it continues to provide the necessary deterrence to breaches of Queensland's workplace health and safety and electrical safety laws.

The review was based around terms of reference which included consideration of:

- level of deterrence afforded by the current enforcement and prosecution policy
- balance of effort between advisory, investigation and prosecution priorities
- current jurisdictional arrangements
- expansion of enforcement and prosecution options, and
- sufficiency of compliance resources in terms of numbers and skills.

A reference group comprising members of the Workplace Health and Safety and Electrical Safety Boards and key industry stakeholders, representing employer and union representatives, provided guidance to the review.

Mr Stewart-Crompton consulted with a wide range of stakeholders including unions, the construction and building industry, employer associations, inspectors and other government agencies. Consultations were also held with the Chief Magistrate Judge Marshall Irwin, Industrial Court of Queensland President David Hall, and State Coroner Michael Barnes.

The review made 50 recommendations to either be implemented or to be further considered. The recommendations are outlined below.

Since completion of the review, the Federal Government has initiated a national review into model occupational health and safety laws. Mr Stewart-Crompton has been appointed to chair the national review panel. An interim

report is due to the Workplace Relations Ministers' Council in October 2008, with the final report due by the end of January 2009.

The Queensland Government will implement 43 of the 50 recommendations of the review, with the other recommendations being submitted for consideration as part of the national review.

## ***Recommendations to be implemented***

### **Legislative amendments**

**R.17** The Industrial Court of Queensland should continue to have appellate jurisdiction and should have the power to impose or reimpose a sentence of imprisonment when hearing an appeal.

**R.18** The Industrial Magistrates Court, rather than the Supreme Court, should have the power to make orders about compliance with prohibition and improvement notices.

**R.25** The monetary penalties as specified in the *Workplace Health and Safety Act 1995* (WHS Act) and the *Electrical Safety Act 2002* (ES Act) do not need to be increased at this point, but the Director-General, of the Department of Employment and Industrial Relations (DEIR), should be required to provide the Minister with a report at least once in each three year period on whether any adjustments are required to the penalties and sentencing options that are provided under the legislation.

**R.34** Where a report of a coronial inquest or inquiry, or proceedings at the inquest or inquiry, disclose that an offence has occurred under the WHS Act or the ES Act of the regulations, provision should be made to permit proceedings to be commenced within two years after the date of the report or the conclusion of the inquest or inquiry.

**R.39** Victim Impact Statements may be prepared by an injured person or deceased person's survivors and presented to court at sentencing stage.

**R.40** The WHS Act and ES Act should either expressly set out the maximum monetary penalties for corporate offenders or include a note to explain that the *Penalties and Sentencing Act 1992* multiplies the maximum fine provided for a natural person by a factor of five.

**R.42** The shield of the Crown should not apply in relation to safety and health matters and s.3 of the ES Act should be amended accordingly.

**R.43** The maximum period of imprisonment under the WHS Act and the ES Act for causing multiple deaths should be increased to five years and the relativity of other periods of imprisonment under the Acts should be reviewed. In addition, the Review recommended further investigation of the introduction of Provisional Improvement Notices (R.45). Following consultation with unions and employers, it is proposed to introduce this provision as part of the proposed current amendments.

**R.45** The Director-General, DEIR, should raise in the Australian Safety and Compensation Council (ASCC) the issue of how a nationally consistent approach to the issuing of Provisional Improvement Notices by Workplace Health and Safety Representatives could be achieved.

#### **Legislative amendments requiring further consideration**

**R.9** Legal advice should be sought on whether inspectors are sufficiently indemnified against liability (s.183 of the WHS Act; s.205 of the ES Act) in circumstances where they have given advice to duty holders in relation to meeting obligations.

**R.27** There should be an examination of whether the application of the *Penalties and Sentencing Act 1992* to enforcement under the WHS Act and the ES Act has any unintended consequences.

**R.31** Action to implement the Johnstone report on enforceable undertakings should be finalised.

#### **Improvements to policies and administration**

**R.1** The *Workplace Health and Safety Enforcement Framework* and the Electrical Safety Office (ESO) Prosecution Policy should be revised to make the policy aim of deterrence more explicit, including by setting out the range of penalties that may be imposed where there is a conviction and to clarify how the enforcement framework is integrated with the overall WHSQ and ESO strategies and business plans for securing compliance.

**R.2** The revision of the documents should be used as a tool for raising awareness among duty holders of their obligations and the consequences of failure to discharge them.

**R.4** The understaffing of the electrical safety inspectorate should be addressed as a matter of urgency and in this respect the Department may wish to consider approaches that are being taken in other States to attract and retain inspectors.

**R.5** The training needs of inspectors should be reviewed to determine how to strengthen their education, advisory and auditing skills. This should be undertaken in the context of initiatives by Heads of Workplace Safety Authorities (HWSA) National Workplace Inspectors Training and Development Reference Group. Any necessary modifications should be made to the training programs.

**R.6** To improve understanding of the role of WHSQ in securing public safety, more information should be available about this aspect of its work and the allocation of resources to it.

**R.8** To improve the transparency of decisions about prosecutions, complainants and obligation holders should be informed in a timely way about

progress on investigations and the reasons for decisions about taking or not taking action.

**R.10** At least for WHSQ, to reduce any uncertainty about the roles and responsibilities of inspectors and to improve performance, consideration should be given to the separation of education and advisory functions from investigation and enforcement functions, with inspectors allocated to one or other area (and with periodic rotation).

**R.11** Action to be taken to identify the needs of obligation holders (particularly small businesses) for advice, education and information, including by surveys.

**R.13** Enforcement activities in priority industries should be benchmarked against other jurisdictions.

**R. 14** There should be periodic examinations (e.g., as part of annual business planning) of whether the resources of WHSQ and the ESO are satisfactorily deployed to deal with safety issues in areas of precarious employment and in relation to vulnerable groups of workers, with benchmarking, if possible, against the use of resources for such purposes by other State regulators.

**R.15** The outcome of enforcement activities and the lessons to be learned from them should be more effectively promulgated, including through industry associations, unions, industry media and OHS professionals.

**R.22** Although the range of obligation holders does not need to be extended, more attention should be given to identifying, educating and, where there are breaches, taking enforcement action against upstream and other obligation holders who are rarely the subject of such action

**R.23** In order to identify and overcome any technical, administrative or legal obstacles to securing compliance by all obligation holders, a systematic examination should be made of why there appear to be relatively few prosecutions of obligation holders apart from those who are most directly involved in a breach of the legislation.

**R.28** In a suitable case, the prosecutor should present the Court with the arguments for a revision upwards of the penalties that are normally imposed and for a reconsideration of the factors currently taken into account in sentencing under the legislation.

**R.32** The review, scheduling and implementing of the matters that may be the subject of infringement notices for breaches of the WHS Act and the ES Act should be regularly undertaken (at least annually).

**R.35** The Industrial Magistrates Court should be encouraged in suitable cases to exercise its powers under s.53A of the *Justices Act 1886* to order mediation.

**R.46** The proposed code of practice relating to the obligations of executive officers should be completed and given effect.

**R.49** WHSQ and the ESO should analyse the difficulties in bringing risk focused prosecutions as a first step in developing, in consultation with the social partners, a systematic approach to the detection and prosecution of risk-based breaches.

**R. 50** To improve accountability and foster ongoing cooperation, the various regulators in Queensland with complementary or overlapping responsibilities for work-related safety and health should include a description in their Annual Reports of how they have maintained and improved working relationships with the other regulators.

#### **For further consultation and discussion**

**R.19** With discussion with the Attorney-General's Department and the Department of Public Prosecutions, an examination should be made of the benefits of bringing more serious matters involving a fatality or serious injury before a superior court.

**R.20** The Director-General, DEIR, should discuss with the Chief Magistrate how the Department can assist in informing Industrial Magistrates about matters relevant to the exercise of their jurisdiction in relation to prosecutions under the WHS Act and the ES Act.

**R.21** The Director-General, DEIR, should discuss with the State Coroner how the Department can assist more effectively in coronial inquiries and in the dissemination of relevant findings and recommendations.

**R.30** Consideration should be given to whether the approach taken to national audits and blitzes by HWSA could be adapted for electrical safety.

**R. 44** Although an offence of industrial manslaughter is not recommended, the Director-General should raise in the ASCC the issue of achieving a nationally consistent approach to offences relating to work-related fatalities.

**R.47** The Director-General, DEIR, should raise in the ASCC the issue of how a nationally consistent approach to the responsibility of corporate officers could be achieved, having regard to developments in relation to companies law.

**R.48** The Director-General, DEIR, should raise with HWSA the question of how best to deal with problems associated with seeking to bring proceedings against an upstream duty holder who is located outside the State concerned.

#### **For further consideration**

**R.3** Consideration should be given to seeking data about the deterrent effects of the policies and their application through periodic surveys of obligation holders.

**R.12** Subject to the availability of resources, consideration should be given to enabling intermediaries (industry associations, unions, OHS professionals) to

play a greater role in providing advice to duty holders on meeting their obligations.

**R.24** When the outcome of the scheduled 2008 review by the National Transport Commission of the chain of responsibility provisions of the road laws is available, consider the implications for the regulation of obligation holders under the WHS Act and the ES Act.

**Supported but no changes required**

**R.7** Only officials should be able to bring prosecutions for criminal breaches under the WHS Act and ES Act.

**R.16** The Industrial Magistrates Court should continue to have first instance jurisdiction over prosecutions under the WHS Act and the ES Act.

***Recommendations being submitted for consideration as part of the national review***

The following 7 recommendations will be submitted for consideration as part of the national review.

**R.26** Statutory provision should be made for higher penalties where a duty holder is a previous offender.

**R. 29** Considerations should be given to providing for civil remedies (fines, injunctions, other remedial orders) as well as for criminal penalties for less serious offences under the WHS Act and the ES Act, with the regulator having the option to bring proceedings of either type for a breach.

**R.33** The limitation periods for bringing prosecutions under the WHS Act and the ES Act should, subject to wider criminal justice policy considerations, be increased to within 2 years after the act or omission alleged to constitute the offence or within 6 months of the offence coming to the knowledge of the complainant or the Chief Executive, whichever is the later.

**R.36** A wider range of sentencing options should be expressly provided for under the WHS Act and the ES Act, namely:

- orders about specified actions that must be taken or refrained from
- Community Service Orders
- Adverse Publicity Orders
- corporate probation
- exclusion from performing certain functions for a specific period
- restrictions on performing particular functions except under specified conditions.

**R.37** There should be a sanction for non-compliance with a non-monetary order.

**R.38** When considering what orders to make upon a conviction for an offence under the WHS Act or the ES Act, the Court should be required, upon

application, to have regard to the potential effect of a fine on the capacity of the duty holder to carry on the business that was involved in the proceedings, including the effect on the employment or continuing engagement of other persons by the business.

**R. 41** If it decided to provide for civil remedies as an enforcement option (R.29), consideration should, in the context of the overall enforcement regime, be given to who should be authorised to seek such remedies.

## **Penalties**

What is a breach?

What is a breach?

What is the maximum penalty

Schedule of maximum penalties

Fines

Schedule of fines, on the spot fines

Enforceable undertakings

Definition, when can you apply, who decides if the application is successful

## **What is a breach?**

A breach occurs when the law is not upheld:

Either an action is taken that places a person at risk of injury, illness or death or steps are not taken to avoid a risky situation from occurring or there is a failure to comply with regulatory requirements. Examples of breaches of the law include:

- exposing workers to the risk of excessive noise;
- working at heights where the risk of falling is not controlled;
- allowing non-certificated operators to use specified equipment such as forklifts;
- not ensuring that plant is appropriately guarded to eliminate or minimise exposure of workers to moving parts;
- failing to have in place construction work method statements for demolition work;
- not notifying the Department of Industrial Relations when a serious bodily injury occurs at your workplace.

**If you do not fulfil your obligations under the *Workplace Health and Safety Act 1995* you are in breach of the legislation and can be prosecuted.**

## What is the maximum penalty?

Breaching the law is serious; it may be the difference between life and death.

Therefore penalties are substantial.

<b>Workplace Health and Safety Act 1995</b>	<b>Individual</b>	<b>Imprisonment</b>	<b>Corporation</b>
Multiple deaths	\$200,000	3 years	\$1 million
Offences causing death or grievous bodily harm	\$100,000	2 years	\$500,000
Exposure to a substance likely to cause death or grievous bodily harm	\$75,000	1 year	\$375,000
Offences causing bodily harm	\$75,000	1 year	\$375,000
Other offences	\$50,000	6 months	\$250,000

## Fines

### On-the-spot fines

When are these fines issued, what happens if they aren't paid

### Schedule of on-the-spot fines

Description of offences, fine amounts for both individuals and corporations

### Revoking of licences and registrations

When does this occur, is there any recourse

## On-the-spot fines

An on-the-spot fine is an alternative to prosecuting alleged offenders directly through the Court. It is also called an infringement notice.

On-the-spot fines may be issued for workplace health and safety offences prescribed in Schedule 5 of the *State Penalties Enforcement Regulations 2000*.

These include:

- failure to appoint a workplace health and safety officer
- failure to comply with an improvement notice
- failure to record a work-caused illness or injury
- allowing persons to undertake construction work where there is a risk the person could fall, without having adequate controls in place.

The fine may be paid in full at any Workplace Health and Safety office within 28 days or arrangements can be made to pay an on-the-spot fine of \$150 or more in instalments.

The alleged offender can choose to contest the infringement notice in a Magistrates Court.

## Failure to pay

Not paying the fine can lead to further enforcement action, including:

- redirection of wages or funds from a bank account
- issuing of a warrant for the seizure and sale of property
- suspension of the debtor's driver licence until the debt is satisfied
- registration of the debt for enforcement interstate
- issuing an arrest and imprisonment warrant.

## Schedule of on-the-spot fines

### Infringement Notice Offences

#### Workplace Health and Safety Act 1995

Section	Offence Description	Penalty Units	Penalty Amount
117(4)	Failed to comply with improvement notice.	5(I) 20(C)	\$500 \$2000
93(1)	Employer failed to appoint health and safety officer.	2(I) 4(C)	\$200 \$400
94(1)	Principal contractor failed to appoint health and safety officer.	2(I) 4(C)	\$200 \$400
<b>Housekeeping</b>			
24(1)	Principal contractor failed to meet obligation about safe housekeeping practices – R 277(1).	4 (I) 8 (C)	\$400 \$800
<b>Excavations</b>			
24(1)	Principal contractor failed to meet obligations for underground services before work started – R 280(2).	4 (I) 8 (C)	\$400 \$800
24(1)	Relevant person commenced work without obtaining information from PC about underground services at a workplace where a PC is required– R 306(2).	4 (I) 8 (C)	\$400 \$800
24(1)	Relevant person failed to implement control measures for underground services at a workplace where a PC is required – R306(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person commenced work without obtaining and reviewing information from appropriate sources about underground services at a workplace where a PC is not required – R 307(2).	4 (I) 8 (C)	\$400 \$800
24(1)	Relevant person failed to implement control measures for underground services at a workplace where a PC is not required – R 307(3).	8(I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to identify hazards, assess the risks and decide on appropriate controls for excavation work or work in an excavation. – R311(2)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to use and maintain control measures for the risks of excavation work or work in an excavation. – R 311(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to erect a barricade at least 900 mm high to restrict access by a person to a trench at least 1 m deep – R 312(2).	4 (I) 8 (C)	\$400 \$800
<b>Work at Heights</b>			
24(1)	Relevant person failed to implement control measures before work starts to prevent a person falling or to safely arrest a person's fall – R 318(3).	8 (I) 16 (C)	\$800 \$1600

<b>Section</b>	<b>Offence Description</b>	<b>Penalty Units</b>	<b>Penalty Amount</b>
24(1)	Relevant person failed to ensure there is enough distance available for a person using a fall-arrest harness system – R 323(7).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person used, or allowed worker to use, a ladder to gain access to a place in way other than that prescribed, or for work that is not permitted work – R 325(2).	4 (I) 8 (C)	\$400 \$800
24(1)	Relevant person used, or allowed worker to use, a single or extension ladder in a way other than that prescribed where person can fall 2m/3 m – R 326(4)	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to secure each trestle ladder – R 328(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to erect edge protection along outer edge of platform – R 328(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to implement a control measure to prevent or minimise exposure to the risk of falling off the inner edge of the platform where the gap between the inner edge and face of building or other structure is over 225mm. – R 328(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to implement a control measure to prevent or minimise exposure to the risk of falling off the ends of the platform – R 328(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to ensure platform supported by trestle ladders has unobstructed surface of at least 450 mm and is not higher than 5 m when doing housing construction work – R 329(5).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to ensure platform supported by trestle ladders has unobstructed surface of at least 450 mm and is not higher than 5 m when doing work other than housing construction work – R 329(5).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person erected, or allowed worker to erect scaffolding when person could fall 2 m/3 m without prescribed control measure – R 331(2).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person dismantled, or allowed worker to dismantle scaffolding when a person could fall 2 m/3 m without prescribed control measure – R 332(2).	8 (I) 16 (C)	\$800 \$1600
<b>Falling Objects</b>			
24(1)	Principal contractor failed to ensure a prescribed control measure is in place along proposed line before work starts – R 284(3).	8(I) 16 (C)	\$800 \$1600
24(1)	Principal contractor failed to implement additional control measure as prescribed if the measured angle is 75° or more before construction work starts – R 285(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Principal contractor failed to implement a control measure before lifting a load over an adjoining area – R 290(3).	8 (I) 16 (C)	\$800 \$1600
24(1)	Relevant person failed to implement additional control measure as prescribed if the measured angle is 75° or more before work starts. - R 334(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to ensure a prescribed control measure is in place along proposed line before work starts at a workplace where a principal contractor is not required. - R 334(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to implement a control measure before lifting a load over an adjoining area. - R 334(1)	8(I) 16(C)	\$800 \$1600

<b>Section</b>	<b>Offence Description</b>	<b>Penalty Units</b>	<b>Penalty Amount</b>
<b>Asbestos</b>			
24(1)	Relevant person used a prohibited substance or prohibited ACM for a prohibited purpose – R 141(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person allowed worker to use a prohibited substance or prohibited ACM for a prohibited purpose – R 141(2)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to comply with the Asbestos Management Code when performing work on ACM – R 142(1)	8(I) 16(C)	\$800 \$1600
24(1)	A relevant person allowed worker to perform work on ACM without complying with the Asbestos Management Code – R 142(2)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to comply with Asbestos Removal Code when removing ACM. R 146(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person used a prohibited method to clean ACM – R 143(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person allowed worker to use a prohibited method to clean ACM – R 143(2)	8(I) 16(C)	\$800 \$1600
24(1)	Owner of structure or part failed to comply with Asbestos Management Code – R 145(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to remove ACM in accordance with the Asbestos Removal Code. – R 146(1)	8(I) 16(C)	\$800 \$1600
24(1)	Relevant person failed to remove ACM from a domestic, residential building in accordance with the Asbestos Removal Code. – R 146(2)	8(I) 16(C)	\$800 \$1600

## Workplace Health and Safety Regulation 2008

<b>Reg. No</b>	<b>Offence Description</b>	<b>Penalty Units</b>	<b>Penalty Amount</b>
<b>Plant Registration &amp; Design Registration</b>			
6	Use of registrable plant before registration.	2(I) 4(C)	\$200 \$400
8	Fail to notify of change of plant ownership as prescribed.	2(I) 4(C)	\$200 \$400
12(1)	Relevant person installed or used plant mentioned in schedule 4 that was not design registered.	2(I) 4(C)	\$200 \$400
12(2)	Relevant person allowed worker to install or use plant mentioned in schedule 4 that was not design registered.	2(I) 4(C)	\$200 \$400
12(3)	Owner of specified high risk plant installed or used, or allowed someone else to install or use, specified high risk plant that was not design registered.	2(I) 4(C)	\$200 \$400
12(6)	Failed to provide a certificate of registration of plant design to the chief executive within 10 days of receiving notice.	1(I) 2(C)	\$100 \$200
14(1)	Certificate holder failed to provide certificate number to the manufacturer and supplier of the plant.	2(I) 4(C)	\$200 \$400
14(2)	Manufacturer or supplier of plant failed to give certificate number to each person who the manufacturer or supplier supplies plant.	2(I) 4(C)	\$200 \$400

Reg. No	Offence Description	Penalty Units	Penalty Amount
15(1)	Supplier of plant mentioned in schedule 4 failed to mark the plant with the certificate number for plant design registration.	2(I) 4(C)	\$200 \$400
15(2)	Relevant person failed to ensure that the certificate number for plant design registration was permanently marked on the plant.	2(I) 4(C)	\$200 \$400
15(4)	Owner of specified high risk plant mentioned in 15 failed to ensure that the certificate number for plant design registration was permanently marked on the plant.	2(I) 4(C)	\$200 \$400
103(1)	Applicant for a certificate of plant design registration allowed the designer of plant to verify the designer's own plant design.	2(I) 4(C)	\$200 \$400
103(2)	Designer of plant verified their own plant design.	2(I) 4(C)	\$200 \$400
105(3)	Failed to give chief executive information mentioned in 104 within 28 days of requiring the information.	2(I) 4(C)	\$200 \$400

**Training and Certificates for High Risk Work Licences & Earthmoving or Particular Crane Certificates & Prescribed Activities**

18(1)	Employer must not employ or allow a worker to perform high risk work unless appropriately authorised.	2(I) 4(C)	\$200 \$400
18(2)	Person must not perform high risk work unless the person has appropriate authority to perform such work.	2(I)	\$200
23	High risk work licence holder must notify chief executive of address change within 14 days.	1(I)	\$100
25(1)	An employer must not employ or allow a worker to perform work in an earthmoving or particular crane occupation without appropriate authority.	2(I) 4(C)	\$200 \$400
25(2)	A person must not perform work in an earthmoving or particular crane occupation without appropriate authority.	2(I)	\$200
32(1)	A trainee's employer must ensure the trainee is being trained to achieve the set standard and is being supervised appropriately and keeps a training record.	2(I) 2(C)	\$200 \$200
32(2)	A trainee's employer must keep a written record of a trainee's formal and informal learning, progress of that learning, the extent of the informal learning, including the reasons for that decision and the name and qualifications of the training supervisor.	2(I) 2(C)	\$200 \$200
34	The trainee's supervisor must supervise the trainee when performing high risk work or work in an earthmoving or particular crane occupation unless the circumstances of a task make direct supervision impracticable or unnecessary and supervision is reduced.	2(I)	\$200
35	The trainee must keep a written training record that identifies the trainee and includes the scope of work performed, date performed, type of plant used, date training completed, supervisor's name, supervisor's licence or certificate number.	2(I)	\$200
36	The trainee's supervisor must sign the trainee's training record if the supervisor supervised the training and is satisfied the entry is correct.	2(I)	\$200
37(2)	The relevant person must ensure the worker is being supervised during the assessment by someone who holds a relevant licence or certificate.	2(I) 2(C)	\$200 \$200

Reg. No	Offence Description	Penalty Units	Penalty Amount
37(3)	The relevant person must make a written record that states the worker's and employer's name and address, unit of competency or class, start and finish date of assessment, plant to be used, employer's licence or certificate number and worker's progress.	2(I) 2(C)	\$200 \$200
40(2)	The certificate or licence holder must take reasonable precautions and exercise reasonable diligence when performing work in relation to which the certificate or licence was granted.	4(I)	\$400
60(2)	After assessing the applicant's competency the authorised accredited provider must make a record of the assessment and give a copy of it to the applicant.	2(I) 2(C)	\$200 \$200
61(2)	The authorised accredited provider must, if required, give the record of assessment to the chief executive in writing or keep the record of assessment for at least 5 years	2(I) 4(C)	\$200 \$400
62	Registered training organisation failed to ensure each person who trained and assessed competency of applicant for part 3, 3a or 4 complied with prescribed requirements	4(I) 8(C)	\$400 \$800
63	A registered training organisation must not make a practical assessment of an applicant's competency for part 3, 3A or 4 unless the applicant has a competent assessment result in the written assessment and assignment (if required).	2(I) 2(C)	\$200 \$200
65	After a registered training organisation has assessed an applicant's competency for part 3, 3A or 4 the organisation must make an assessment summary and a statement of attainment and issue both to the applicant.	2(I) 2(C)	\$200 \$200
124(1)	Person failed to return suspended or cancelled certificate within timeframes.	2(I)	\$200
274	Principal contractor must not allow a person to perform high risk work, work in an earthmoving or particular crane occupation or work that is a prescribed activity unless the person is appropriately authorised.	2(I) 4(C)	\$200 \$400
<b>Notifiable Building and Construction Work</b>			
129(2)	Failed to file approved form with Authority or agent and pay appropriate fee.	3(I) 5(C)	\$300 \$500
<b>Injuries, Illnesses and Dangerous Events</b>			
134(2)	Failed to notify of "event" happening at a workplace.	2(I) 4(C)	\$200 \$400
135(2)	Failed to make record of work caused illness or work injury.	2(I) 4(C)	\$200 \$400
135(3)	Failed to make record of dangerous event.	2(I) 4(C)	\$200 \$400
<b>Hazardous Substances for construction work where Principal Contractor is required</b>			
305	Relevant person failed to give principal contractor notice of intention to use a hazardous substance and a copy of the MSDS.	3(I) 5(C)	\$300 \$500
279(1)	Principal contractor failed to keep register of hazardous substances with information specified in s 279(2) & (3).	3(I) 5(C)	\$300 \$500
<b>Hazardous Substances</b>			
192(5)	Manufacturer/importer refused to disclose ingredient's chemical name.	3(I) 5(C)	\$300 \$500

<b>Reg. No</b>	<b>Offence Description</b>	<b>Penalty Units</b>	<b>Penalty Amount</b>
195(3)	Supplier failed to provide copy of MSDS on request.	3(I) 5(C)	\$300 \$500
204	Relevant person failed to record specific information after doing a risk assessment.	3(I) 5(C)	\$300 \$500
206(3)	Relevant person failed to make a record of the monitoring result.	3(I) 5(C)	\$300 \$500
207(5)	Relevant person who is an employer failed to pay for worker's health surveillance.	3(I) 5(C)	\$300 \$500
209(1)	Relevant person who is an employer failed to keep hazardous substances register at workplace.	3(I) 5(C)	\$300 \$500
209(2)	Relevant person who is an employer failed to allow worker to inspect the hazardous substances register.	3(I) 5(C)	\$300 \$500
210(2)	Relevant person who is employer failed to keep record of risk assessment that showed hazardous substance use does not cause significant degree of risk to health for 5 yrs	3(I) 5(C)	\$300 \$500
210(4)	Failed to ask for and comply with chief executive's directions about document storage when no longer relevant person.	3(I) 5(C)	\$300 \$500
211(3)	Relevant person who is an employer failed to keep record of worker induction and training for 5 years.	3(I) 5(C)	\$300 \$500
<b>Lead</b>			
227(2)	Supplier failed to provide copy of lead's current MSDS on request.	3(I) 5(C)	\$300 \$500
231(1)(a)	Failed to keep register of lead used in a lead process and MSDS at workplace.	3(I) 5(C)	\$300 \$500
233(7)(b) (i)	Relevant person failed to notify chief executive that a process includes a lead-risk job in approved form within 28 days	2(I) 4(C)	\$200 \$400
234	Relevant person failed to record specific information after doing a risk assessment on a lead process.	3(I) 5(C)	\$300 \$500
236(1)(b)	Relevant person failed to make record of monitoring result for lead-risk job.	3(I) 5(C)	\$300 \$500
237(4)(d)	Relevant person failed to notify chief executive of health surveillance results as prescribed.	3(I) 5(C)	\$300 \$500
244(2)	Relevant person failed to keep record of risk assessment showing process does not include lead-risk job for 5 years.	3(I) 5(C)	\$300 \$500
244(3)	Relevant person who is an employer failed to keep record of worker induction and training for 5 years.	3(I) 5(C)	\$300 \$500
244(6)	Relevant person who stops being an employer failed to ask for and comply with chief executive's directions about document storage when no longer a relevant person.	3(I) 5(C)	\$300 \$500
<b>Construction safety plans and work method statements</b>			
263(1)	Principal contractor failed to ensure a construction safety plan is prepared before the start of construction work.	4 (I) 8 (C)	\$400 \$800
270	Principal contractor allowed person to perform high risk construction activity that is a prescribed activity in a way that does not comply with the current work method statement	3(I) 5(C)	\$300 \$500

Reg. No	Offence Description	Penalty Units	Penalty Amount
294(1)	Relevant person failed to prepare a work method statement before start of high risk construction activity.	4 (I) 8 (C)	\$400 \$800
297(1)	Relevant person performed high risk construction activity in a way that does not comply with the current work method statement.	3(I) 5(C)	\$300 \$500
297(2)	Relevant person who is an employer allowed worker to perform high risk construction activity in a way that does not comply with the current work method statement.	3(I) 5(C)	\$300 \$500
<b>Construction Induction</b>			
272(1)	Principal contractor allowed relevant person to start work without sighting general induction evidence.	1(I) 2(C)	\$100 \$200
273(2)	Principal contractor allowed person to start construction work without site-specific induction for the workplace.	1(I) 2(C)	\$100 \$200
273(5)	Principal contractor failed to ensure a record is made about site-specific induction.	1(I) 2(C)	\$100 \$200
273(6)	Principal contractor failed to keep record of site-specific induction for duration of construction work.	1(I) 2(C)	\$100 \$200
301	Relevant person failed to hold and show PC general induction evidence before start of construction work.	2/3(I) 1 1/3(C)	\$65 \$130
302	Relevant person allowed worker to start construction work before sighting general induction evidence for the worker.	1(I) 2(C)	\$100 \$200
337(1)	Worker failed to hold and show employer general induction evidence before start of construction work.	2/3(I)	\$65
<b>Amenities</b>			
292(2)	Principal Contractor failed to ensure amenities are maintained in a hygienic, safe and serviceable manner.	3(I) 5(C)	\$300 \$500
346(1)	Relevant person who is an employer failed to ensure amenities are maintained in a hygienic, safe and serviceable manner.	3(I) 5(C)	\$300 \$500
348(2)	Relevant person who is an employer failed to ensure atmospheric contaminants are at a level less than the national exposure standard.	3(I) 5(C)	\$300 \$500
349(2)	Relevant person who is an employer has failed to ensure first aid equipment is reasonably accessible to the employer's workers.	3(I) 5(C)	\$300 \$500
349(4)	Relevant person who is an employer has failed to ensure first aid equipment is reasonably accessible to the employer.	3(I) 5(C)	\$300 \$500
349(6)	Relevant person who is an employer has failed to ensure first aid equipment is maintained in a hygienic, safe and serviceable condition.	3(I) 5(C)	\$300 \$500
335(1)	Relevant person performing construction work failed to ensure first aid equipment is reasonably accessible.	3(I) 5(C)	\$300 \$500
335(3)	Relevant person performing construction work has failed to ensure first aid equipment is maintained in a hygienic, safe and serviceable condition.	3(I) 5(C)	\$300 \$500

<b>Reg. No</b>	<b>Offence Description</b>	<b>Penalty Units</b>	<b>Penalty Amount</b>
350	Relevant person who is an employer failed to ensure a trained first aid person is available to treat an injury to a rural industry worker	3(I) 5(C)	\$300 \$500
Sch11, s2(1)	Principal Contractor has failed to ensure complying toilets are reasonably available.	3(I) 5(C)	\$300 \$500
Sch11, s5(1)	Principal Contractor has failed to ensure complying meal/break area is reasonably available.	3(I) 5(C)	\$300 \$500
Sch11, s6(1)	Principal Contractor has failed to ensure hand and face washing facilities are reasonably available.	3(I) 5(C)	\$300 \$500
Sch11, s7(1)	Principal Contractor has failed to ensure adequate supply of drinking water is reasonably available.	3(I) 5(C)	\$300 \$500
Sch12, s1(1)	Relevant person who is an employer in the rural industry has failed to ensure complying toilets are reasonably available.	3(I) 5(C)	\$300 \$500
Sch12, s3(1)	Relevant person who is an employer in the rural industry has failed to ensure complying meal/break area is reasonably available.	3(I) 5(C)	\$300 \$500
Sch12, s4	Relevant person who is an employer in the rural industry has failed to ensure hand and face washing facilities are reasonably available.	3(I) 5(C)	\$300 \$500
Sch12, s5(1)	Relevant person who is an employer in the rural industry has failed to ensure drinking water is reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s7(1)	Relevant person who is an employer has failed to ensure complying toilets are reasonably available in a class 1b building.	3(I) 5(C)	\$300 \$500
Sch13, s8	Relevant person who is an employer has failed to ensure hand and face washing facilities are reasonably available in a class 1b building.	3(I) 5(C)	\$300 \$500
Sch13, s10(1)	Relevant person who is an employer has failed to ensure complying toilets are reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s10(2)	Relevant person who is an employer has failed to ensure hand and face washing facilities are reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s16(1)	Relevant person who is an employer has failed to ensure complying meal/break area is reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s20	Relevant person who is an employer has failed to ensure complying dressing room facilities are reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s22(1)	Relevant person who is an employer has failed to ensure drinking water is reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s24	Relevant person who is an employer has failed to ensure hand and face washing facilities are reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s25(2)	Relevant person who is an employer has failed to ensure shower facilities are reasonably available.	3(I) 5(C)	\$300 \$500
Sch13, s29(1)	Relevant person who is an employer has failed to ensure complying toilets are reasonably available to a worker when not at their employer's workplace.	3(I) 5(C)	\$300 \$500
Sch13, s30	Relevant person who is an employer has failed to ensure complying meal/break area is reasonably available to a worker when not at their employer's workplace.	3(I) 5(C)	\$300 \$500

Reg. No	Offence Description	Penalty Units	Penalty Amount
Sch13, s31(1)	Relevant person who is an employer has failed to ensure drinking water is reasonably available when not at their employer's workplace.	3(I) 5(C)	\$300 \$500
Sch13, s32	Relevant person who is an employer has failed to ensure hand and face washing facilities are reasonably available when not at their employer's workplace.	3(I) 5(C)	\$300 \$500
Sch13, s33(2)	Relevant person who is an employer has failed to ensure shower facilities are reasonably available when not at their employer's workplace.	3(I) 5(C)	\$300 \$500
Sch14, s2(3)	Relevant person who is an employer has failed to ensure ventilation requirements meet the specified performance requirements.	3(I) 5(C)	\$300 \$500
Sch14, s4(3)	Relevant person who is an employer has failed to ensure lighting requirements meet the specified performance requirements.	3(I) 5(C)	\$300 \$500
Sch14, s5(3)	Relevant person who is an employer has failed to ensure that the building complies with the specified performance requirements for floor area/air space.	3(I) 5(C)	\$300 \$500
<b>Workplace Access</b> 137(2)	Relevant person who is an employer has failed to ensure appropriate, safe and clear access to and from the workplace (other than workplace where construction work is being performed)	3(I) 5(C)	\$300 \$500

## Revoking of licences and certificates

### ***Revoking/suspending of certificates/licences for prescribed occupations and prescribed activities***

The revoking of certificates/licences is an option that may be taken by the Chief Executive of this Department. It is typically used for repeat offenders or where the offence was of a nature that exposed persons to extreme risk or where other penalties have not resulted in changes that reduce risk.

Suspension of certificates/licences is an option used where minor breaches of the Act or Regulation have been detected and the chief executive deems the suspension of that certificate/licence to be appropriate. The period of suspension will be based on the nature and circumstances of the breach.

The chief executive may issue a written notice to "show cause", stating that the chief executive is considering suspending or cancelling a certificate/licence.

There is an opportunity to respond to the "show cause" notice, giving reasons why the certificate/licence should not be suspended or cancelled. If the chief executive is not satisfied with the response, and decides to either suspend or cancel the certificate/licence, the chief executive must notify the holder of the certificate/licence of that decision in writing within 10 days of making that decision. The chief executive, in that written notice must also specify the period of suspension and notify the holder of the licence or registration to surrender to the Department the certificate/licence within 21 days.

## **Enforceable undertakings**

The Department of Employment and Industrial Relations administers both the *Electrical Safety Act 2002* and the *Workplace Health and Safety Act 1995*. Both Acts provide enforceable undertakings as an enforcement option.

### ***What is an enforceable undertaking?***

An enforceable undertaking is a legal agreement in which a person or organisation undertakes to carry out specific activities to improve worker health and safety and deliver benefits to industry and the broader community.

### ***When can an organisation apply for an enforceable undertaking?***

After the department alleges an organisation has breached either the *Electrical Safety Act 2002* or the *Workplace Health and Safety Act 1995* (normally via complaint and summons) that organisation may decide to apply for an enforceable undertaking. When an application for an enforceable undertaking is received, legal proceedings connected with the alleged breach are put on hold. If the application for an enforceable undertaking is not accepted, prosecution will proceed.

### ***What is the difference between a prosecution in court and an enforceable undertaking?***

In general, compliance with an enforceable undertaking will cost an organisation considerably more than the amount they could expect to be fined in court. This is because enforceable undertakings usually commit the organisation to substantial educational and safety promotion obligations, as well as the cost of carrying out safety upgrades, audits and training.

An enforceable undertaking includes a commitment to future safety standards, including taking steps to ensure the specific type of incident does not occur again. All enforceable undertakings are rigorously monitored by the department.

### ***Who decides if an application will be accepted?***

The department has established a group of experts as an advisory panel. Each application for an undertaking is reviewed by a three-member panel.

For electrical safety applications, the panel is made up of two industry representatives and the Executive Director of Electrical Safety Office.

For workplace health and safety applications the panel is made up of two industry representatives and the Executive Director of Workplace Health and Safety Queensland.

These groups consider all facts before making a recommendation to the Director-General, who can accept or reject the application.

### ***When will an enforceable undertaking be accepted?***

The Director-General will only accept an enforceable undertaking when it:

- provides significant and real benefits to workers, industry and the community;
- acknowledges that the Department alleges a breach has occurred;
- identifies the facts and circumstances of the alleged breach;
- includes an assurance from the organisation about future behaviour;
- establishes or maintains an occupational health and safety management system at the workplace which is subject to third party audit at regular intervals; and
- represents the most appropriate enforcement option in the circumstances of the case.

### ***What are the penalties for breaching an enforceable undertaking?***

If an organisation breaches an enforceable undertaking, the department can apply for a court order which can include an order directing compliance with the undertaking or directing the payment of a fine or security bond.

The maximum penalty for failing to comply with an enforceable undertaking is \$500,000 for a corporation and \$100,000 for an individual.

### ***Information for applicants***

More detailed information and an application guide is available from the department to assist in applying for an enforceable undertaking.

Coordinators are also available if you plan to apply for an enforceable undertaking in relation to an allegation made by the Department of Employment and Industrial Relations. The coordinators can be contacted as follows:

- South East and South West Queensland - Ph 07 3247 5494
- Central Queensland, North Queensland and Wide Bay - Ph 07 4938 4138
- Email: [undertakings@deir.qld.gov.au](mailto:undertakings@deir.qld.gov.au)

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