Functions of WorkCover

WHS Act: s152

WorkCover has several functions under the Work Health and Safety Act, including:

- Providing advice and information about work health and safety, both to duty-holders under the WHS Act and the community generally;
- Promoting and supporting training and education on work health and safety;
- Fostering cooperation and consultation on work health and safety issues between duty holders and the persons to whom they owe those duties and their representatives (e.g. union representatives);
- Collecting, analysing and publishing statistics on work health and safety;
- Encouraging and co-ordinating the sharing of information to achieve the objectives of the WHS legislation including information from corresponding regulators; and
- Monitoring and enforcing compliance, including conducting and defending prosecutions.

Functions and Powers of Inspectors

WHS Act: s160 - 190

Under the Work Health and Safety Act, inspectors may:

- Provide information and advice about complying with the WHS Act;
- Investigate breaches of the WHS Act, issue notices to require compliance and assist in prosecutions;
- Review Provisional Improvement Notices (PINs) issued by HSRs in the event of a dispute;
- Assist in resolving work health and safety issues and those relating to access and entry rights at a workplace.

To help inspectors perform these functions, they are given powers to:

- Enter a workplace, or somewhere suspected to be a workplace, at any time, with or without the consent of the manager or controller of the workplace.
- Once at a workplace, inspectors are entitled to:
  - Inspect and examine the workplace and any item or document at the workplace;
  - Bring to, and use equipment or other materials at the workplace;
  - Take measurements and samples, conduct tests, and make recordings or sketches (including photos, video and audio recordings);and
  - Require any person at the workplace to assist them to carry out their enquiries.
- Inspectors may require a person at a workplace to answer questions, produce documents or provide other information. The person is required to comply with the request, even if this means the person will incriminate themselves or expose them to a penalty. (Documents protected by 'legal privilege' are exempt from this requirement).

Enforcement Measures

WHS Act: s191-222

Provisional Improvement Notices (PINS)

- Details can be found in Issuing of PINS publication.
- PINs may be issued by suitably trained HSRs to the PCBU.

Improvement Notices

- Improvement notices are issued by an inspector, if they believe a person is breaching a provision of the Act, or has done so and it is likely the breach will continue or happen again.
- The improvement notice will generally require the person it is issued to, to remedy the breach, prevent a likely breach from happening, or fix the things or operations causing the breach. Improvement notices will include details of the breach and the date this needs to be remedied by. An improvement notice may also include directions on what measures the person needs to take to correct the breach.
- Fines of up to $50,000 for an individual and $250,000 for a body corporate can be imposed for failing to comply with an improvement notice in the time specified.

Prohibition Notices

- Prohibition notices are issued by an inspector if they believe an activity is either happening, or will happen at a workplace that will involve a serious risk to the health and safety of a person from exposure to a hazard.
- The inspector may then issue a direction prohibiting the activity taking place, or being carried out in a certain way, until the inspector is satisfied that the hazards creating the serious risk have been eliminated or adequately controlled.
- A prohibition notice may specify the workplace (or part of) where the activity is not to be carried out; any item not to be used (e.g. machinery); and/or any procedure that is not to be followed.
- A prohibition notice may also include directions on what measures are to be taken to remedy the risk.

Non-disturbance Notices

- Non-disturbance notices may be issued by an inspector to enable them to exercise their compliance powers, for example, after a serious incident has occurred.
- These notices are a direction to the person with management or control of a workplace. They require that person to preserve the site where a notifiable incident has taken place, or to prevent any disturbance of a particular site. This includes preventing plant from operating.
- Non-disturbance notices do not prevent assisting an injured person, removing a deceased person or making the site safe and preventing further incidents.
- Non-disturbance notices can be issued for a maximum of seven days, although subsequent notices can be issued if required.

Sentencing for offences

Model WHS Act: s234-242

Enforceable (WHS) undertakings

- Where a breach of the WHS Act has occurred that is not a Category 1 offence, WorkCover may accept a written undertaking from the person that the person must then comply.
- A prosecution cannot be brought for an offence under the WHS Act once an enforceable undertaking has been accepted.
- The idea behind these undertakings is to allow businesses to implement effective work health and safety initiatives and improve work safety as an alternative to prosecution.

Adverse publicity orders

The court may make an adverse publicity order in relation to an offence that requires:

- Information pertaining to the offence, its consequences, the penalty imposed and any other related matter to be publicised; and/or
- Notifying a specified person of information pertaining to the offence, its consequences, the penalty imposed and any other related matter.

Orders for restoration

The court may make an order for restoration in relation to an offence that requires the offender to:

- Take any actions within the offender's power to rectify any matter caused by committing of the offence; and
- Do so within the time specified by the court.

Work Health and Safety (WHS) Project Orders

The court may make an order the undertaking of a WHS project in relation to an offence that requires the offender to:

- Undertake a specified project for the general improvement of work health and safety;
- Do so within the specified period; and
- Comply with conditions specified as part of the project.

Court ordered WHS undertaking

- The court may adjourn proceedings for an offence for up to two years (with or without a conviction) and release an offender on the basis they give a WHS undertaking with specified conditions.
- Certain conditions must be complied with while the order is in place e.g., the offender is not to commit any offence against the WHS Act during the period.
- The court is required to discharge the offender without a further hearing if the court is satisfied that the offender has observed the conditions of the undertaking within the specified time frame.

Injunction

- Where the court finds a person guilty of an offence, including non-compliance with a non-disturbance, improvement or prohibition notice, the court may issue an order (an injunction) requiring the person to cease contravention of the WHS Act.

Training Orders

The court may make a training order in relation to an offence that requires the offender to:

- Undertake a specified training course themselves; or
- Arrange for worker/s to complete a specified training course.

FAILURE TO COMPLY WITH ORDERS

Where a person fails to comply with an order, without a reasonable excuse, fines of up to $50,000 for an individual and $250,000 for a body corporate can be imposed.

This does not apply to a court ordered WHS undertaking or Injunctions to which failure to comply will result in either penalties determined at the time the court makes the WHS undertaking or further court proceedings or actions.

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