

What to expect when an inspector calls



A guide for duty holders under the *Work Health and Safety Act 2011*

Workplace Health and Safety Queensland (WHSQ) inspectors work with businesses to improve health and safety in Queensland workplaces. Inspectors play a key role in helping businesses meet relevant requirements of the *Work Health and Safety Act 2011* (WHS Act), *Electrical Safety Act 2002* (ES Act) and *Safety in Recreational Water Activities Act 2011* (SRWA Act). Inspectors use a mix of advice and directing compliance to help businesses achieve sustainable safety outcomes. This brochure will help you understand more about the role of an inspector, particularly the reasons for an inspector visit and what to expect when an inspector visits your workplace.

What to expect when an inspector calls

Why do inspectors visit workplaces?

Around 25 Queenslanders die each year as a result of traumatic incidents at the workplace, and over 5000 suffer a permanent injury. These deaths and injuries carry with them a devastating and personal impact on workers and their families, with a significant financial cost to the Queensland community. Overall, workplace incidents are estimated to cost the Queensland economy over \$6.2 billion each year.

Inspectors work with businesses to develop and improve systems of work to prevent people from becoming injured or ill as a result of their daily work activities. Inspectors visit workplaces to provide this assistance in a variety of ways, including to:

- provide advice and information on how to manage workplace hazards
- assist to resolve work health and safety issues
- assist to resolve right of entry and workplace access disputes
- review disputed provisional improvement notices
- issue notices to require compliance with work health and safety laws
- investigate contraventions of work health and safety laws.



When will an inspector visit?

Inspector visits can be planned in advance to address areas of risk or they can be in response to complaints or incidents. Each year, WHSQ reviews workplace incident and injury data to identify trends and develop specific proactive interventions. Interventions may be conducted across Queensland or be concentrated in specific geographic regions. Interventions that include compliance assistance usually involve inspector visits or educational activities such as advisory sessions or a combination of these.

Businesses can also request that an inspector visit their workplace to check the effectiveness of new or existing safety practices.

Businesses are not usually provided with advanced notice of inspector visits if the visit is in response to a complaint. This ensures that the state of the workplace is relatively unchanged and the reason for the visit is not compromised. Inspectors usually make appointments for visits that are part of a proactive intervention.

What to expect when an inspector calls

What are inspector powers? How do they work?

The laws administered by WHSQ provide inspectors with a range of powers that may be exercised to help the inspector complete their job. This includes the power to:

- enter a workplace or suspected workplace
- inspect, examine and make inquiries (including documents)
- inspect, examine and seize things (including documents)
- bring and use any equipment or materials they may need
- take measurements, conduct tests and make sketches or recordings (e.g. photographs, films, audio and video)
- take and remove samples for analysis
- copy documents (e.g. training records, employee records, manufacturer's instructions)
- require a person to provide a document
- require a person to answer questions
- require a person to provide his or her name and residential address if the inspector suspects he/she has committed an offence
- issue a non-disturbance notice to preserve or prevent the disturbance of a site
- take affidavits
- issue improvement, prohibition and infringement notices
- exercise any compliance power or other power that is reasonably necessary.



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What happens during an inspector visit?

Inspectors carry photo identification and will identify themselves as soon as they enter a workplace.

When entering a workplace, an inspector will advise the person with management or control of the workplace and any health and safety representative on site of his or her arrival and the reason for their visit to the workplace.

Inspectors sometimes visit workplaces in teams as inspectors may specialise in a particular aspect of safety management (e.g. ergonomics, hazardous chemicals, etc). They may also take along other individuals if required who are not inspectors, including technical experts, interpreters or police officers. An inspector can also require a person at a workplace to provide reasonable help to assist the inspector perform his or her duties.

The inspector will explain the focus of the visit and the inspection process. The inspector may review documented procedures, observe work practices, speak with workers and supervisors, and/or look at tools and equipment.

At the end of the inspection, the inspector will summarise the key findings and explain any actions needed to be taken. If notices are to be issued, the inspector will explain these as well as your appeal rights if you disagree with a decision.



What happens when inspectors visit to investigate workplace incidents?

WHSQ exercises discretion in deciding the extent to which workplace incidents will be investigated. In making these decisions, WHSQ is guided by the principles set out in the *National Compliance and Enforcement Policy 2011*.

During a visit to a workplace to conduct an investigation into an incident, an inspector may:

- take action to secure the scene of the incident to prevent evidence relating to the incident from becoming lost or misplaced (e.g. prevent access to part of the workplace)
- seize evidence of an offence against the WHS Act (or other applicable work health and safety laws) or an item of plant, part of a workplace or an entire workplace
- take photographs, make sketches and take notes
- speak with employers, managers and workers, especially those who witnessed the incident under investigation
- take formal statements and/or affidavits from witnesses
- examine records and documents (and take copies)
- take another person to the workplace to assist in the investigation (e.g. a technical expert)
- take proportionate and responsive enforcement action.

If evidence is seized an inspector will issue a receipt for the seized item. The inspector will explain the process for seizure, storage and return of the seized item to the owner once it is no longer required by the inspector. The owner of the seized item may apply to WHSQ for the seized item to be returned after a six month period. The inspector will also advise who you can contact within WHSQ for updates about when the item is likely to be returned.

An investigation of a serious workplace incident will usually begin immediately after the incident is notified to WHSQ. An inspector may visit the workplace on several occasions in order to complete the investigation. The time taken to complete the investigation will vary depending on the circumstances. More complex incidents may take many months to complete.

In the event of a workplace death, WHSQ will contact the deceased's next of kin. During this contact the next of kin will be consulted about their preferences for ongoing contact and how they can access further information about the investigation.

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How does an inspector enforce the law?

Inspectors may use a number of methods to enforce the law. Inspectors may:

- provide advice and information
- issue notices to require rectification of alleged safety breaches (e.g. improvement and prohibition notices)
- issue infringement notices (on-the-spot fines) as penalties for non-compliance
- seize items (e.g. plant, equipment or substances)
- institute court proceedings for an offence against the WHS Act.

Inspectors may use a combination of these methods taking into consideration:

- the nature and seriousness of the risk
- the actions taken by the workplace to address the issue

- the commitment in the workplace to implement systems to ensure effective and continuous improvement to work health and safety.

When taking enforcement action, inspectors will explain:

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

If you are unsure about what is required, please ask the inspector to clarify.

What to expect when an inspector calls

What if I disagree with an inspector's decision?

If your interests are affected by an inspector's decision, you have the option to request a review of a decision or apply to cancel an infringement notice.

Internal reviews of decisions

You may apply for an internal review of an inspector's decision. There are three possible outcomes of an internal review:

- confirmation of the original decision
- variation of the original decision
- setting aside the original decision and substituting another decision.

If the review is in relation to a prohibition or non-disturbance notice, you may apply for a stay (i.e. suspension) of the original decision while the internal review process is underway. If the review is in relation to an improvement notice, a stay is automatically granted once the application for internal review is lodged. You will receive written notice about the outcome of the internal review.

External reviews of decisions

You may apply for an external review of a decision if you are not satisfied with the decision from the internal review process or a reviewable decision made by the regulator.

An external review of a reviewable decision is conducted by the Queensland Civil and Administrative Tribunal (QCAT) or the Queensland Industrial Relations Commission (QIRC) depending on the decision. The WHS Act, ES Act and SRWA Act outline the different decisions reviewable by QCAT and by QIRC.

If the decision falls within the decisions reviewable by QCAT you must submit your written notice of appeal to QCAT within 28 days of receiving the notice of decision.

If the decision falls within the decisions reviewable by QIRC, you must file a written application for a review with the industrial registrar. Your application must be filed within 30 days after the day on which the decision first came to the applicant's notice.

Application to cancel an infringement notice

If you believe you have been incorrectly identified as the alleged offender in an infringement notice you may apply to have the notice cancelled for a mistake of fact. This process does **not** apply to improvement and prohibition notices.

To apply for a mistake of fact you must complete a statutory declaration and provide information supporting your claim. Statutory declaration forms are available at any courthouse and must be completed in the presence of a commissioner for declarations. All documentation should be submitted to your local WHSQ office.

You will be notified in writing about the outcome of your application within 14 days of a decision being made. If your application is unsuccessful, a new payment date will be provided.

More information about internal and external reviews of decisions can be found in the WHS Act, ES Act and SRWA Act and also on the back of enforcement notices. Information about applications for the cancellation of infringement notices for a mistake of fact can be found in the *State Penalties Enforcement Act 1999* and also on the back of the infringement notice.

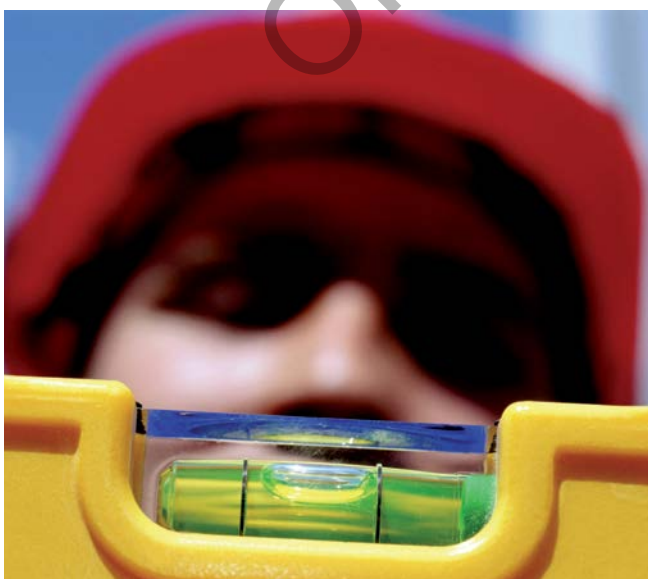


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What is expected of me during an inspector visit?

You must provide reasonable help to assist the inspector in his or her work, if they request it. It is an offence to hinder, obstruct, impersonate, assault, threaten or intimidate an inspector or a person assisting an inspector.



What conduct should I expect of inspectors?

Inspectors are expected to deliver high quality, professional services in which they:

- treat all people in the business and at the workplace with respect, dignity and sensitivity in all circumstances
- interact with duty holders and other individuals in a timely and efficient manner
- remain professional and consistent in all activities
- ensure any confidential information or documents obtained during a workplace inspection are not used or disclosed inadvertently
- undertake activities without favouritism or discrimination
- explain all decisions
- conduct all activities in accordance with the values outlined in the Code of Conduct for the Queensland Public Service and Global Code of Integrity for Labour Inspection.

If you feel that an inspector has not operated within these principles, you can make a complaint to the WHSQ regional director in your area.

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Who do I talk to about workers' compensation?

All employers in Queensland are required to have a workers' compensation policy that covers their employees.

Workers' compensation insurance in Queensland is handled by WorkCover Queensland, except where the employer has been granted a licence to self-insure. Contact WorkCover Queensland on **1300 362 128** or visit **www.workcoverqld.com.au**



How do I find out more about work health and safety?

Visit the WHSQ website to:

- download information and tools to help you manage health and safety in your business
- subscribe to eNews and follow WHSQ on social media sites
- keep up to date with changes to work health and safety laws
- find out about audit campaigns, industry events and information sessions
- arrange a free small to medium enterprise safety advisory visit
- access work health and safety legislation and codes of practice

Visit **www.worksafe.qld.gov.au** or call the WHS Infoline on **1300 369 915**.

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The role of Workplace Health and Safety Queensland in workplace bullying complaints

What is workplace bullying?

Workplace bullying is defined as *repeated* and *unreasonable* behaviour directed towards a worker or a group of workers that *creates a risk to health and safety*.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

What is not workplace bullying?

1. A single incident of unreasonable behaviour is not considered workplace bullying, however it may have the potential to escalate and should not be ignored by workplace parties.
2. Workplace bullying does not include reasonable management action taken in a lawful and reasonable way, taking the particular circumstances into account.
3. Differences of opinion and disagreements are generally not considered to be workplace bullying.
4. Workplace bullying does not include acts of unlawful discrimination ¹ or sexual harassment ².

What are my health and safety duties?

The *Work Health and Safety Act 2011* imposes health and safety duties on various parties at the workplace to ensure risks to work health and safety are effectively managed. These duties include managing risks to health and safety associated with workplace bullying.

The [Guide for preventing and responding to workplace bullying](#) provides information on the main health and safety problems linked to workplace bullying and gives practical advice on how to manage them.

The role of Workplace Health and Safety Queensland in workplace bullying complaints

Workplace Health and Safety Queensland (WHSQ) can only respond to complaints in certain situations that fall within the scope of the *Work Health and Safety Act 2011*, such as:

- The complaint must (on face value) fall within the definition of workplace bullying.
- The complaint must be in writing unless there are exceptional circumstances.
- The complainant must contact the Work Health and Safety Infoline on 1300 362 128 for an information package, which includes the address to send the complaint and a checklist which must be completed, signed and attached to the written complaint.
- Attempts should be made to resolve the situation within the workplace prior to contacting WHSQ. Information regarding the outcome of attempts to resolve the matter at

the workplace should be included in the written complaint.

What happens next?

Where a complaint falls within the above scope and a risk of injury or illness from workplace bullying is determined likely to exist, an inspector may be assigned to the complaint.

The purpose of the inspector's assessment is to determine if the duties under the *Work Health and Safety Act 2011* are being met in regard to managing the risk of workplace bullying. If the inspector determines from their assessment that systems at the workplace are inadequate, the inspector will select the most appropriate response/s ranging from advice through to issuing an improvement notice to secure compliance with the legislation.

WHSQ does not provide legal advice, mediation between parties, counselling or victim support for workplace bullying matters. Compensation, unfair dismissal, reinstatement or other individual outcomes are not within the role of WHSQ.

The inspector will contact the workplace, advise them of the complaint and may request evidence from the workplace that the risk of injury or illness from workplace bullying is being effectively managed.

The types of evidence an inspector could request may include:

- incident records
- a workplace policy that sets out standards of appropriate workplace behaviour
- copies of the workplace's reporting and response procedures
- workplace records to demonstrate how the allegation of workplace bullying has been investigated
- steps that were taken to remedy the situation (should the risk of workplace bullying be identified in the investigation)
- staff training records
- any other information required by the inspector.

When an inspector visits

During a workplace visit, the inspector may review documentation and may interview staff members as part of the assessment. The inspector will assess if there is a risk of injury from workplace bullying and review controls implemented at the workplace.

The [Guide for preventing and responding to workplace bullying](#) states that a combination of control measures aimed at both the organisational level and at individual behaviours should be considered to effectively prevent and respond to workplace bullying risks. A strategy aimed at preventing or controlling exposure to the risk of workplace bullying may include:

1. management commitment in identifying, preventing and responding to workplace bullying
2. setting appropriate standards of behaviour at the workplace, e.g. through a code of conduct or workplace bullying policy
3. designing safe systems of work by clearly defining jobs and providing workers with the resources, information and training they need to carry out their work safely
4. developing productive and respectful workplace relationships through good management practices and effective communication
5. implementing workplace bullying reporting and response procedures
6. providing workers and others information, training and supervision.

When persons at the workplace fail to meet their duties under the *Work Health and Safety Act 2011*, inspectors may use a range of compliance and enforcement options including, but not limited to, advice, verbal directions, improvement and infringement notices.

Inspectors are skilled in determining the best enforcement option/s to use in response to a given situation in order to secure the most advantageous workplace health and safety outcome.

More information

To obtain a copy of the [Guide for preventing and responding to workplace bullying](#), or for other work health and safety legislation and information, visit www.worksafe.qld.gov.au or call Workplace Health and Safety Queensland infoline on 1300 362 128.

¹ Discrimination on the basis of the following attributes— (a) sex (b) relationship status (c) pregnancy (d) parental status (e) breastfeeding (f) age (g) race (h) impairment (i) religious belief or religious activity (j) political belief or activity (k) trade union activity (l) lawful sexual activity (m) gender identity (n) sexuality (o) family responsibilities (p) association with, or relation to, a person identified on the basis of any of the above attributes.

² Sexual harassment is any form of unwelcome attention of a sexual nature that is humiliating, intimidating or offensive.