

# ENFORCEMENT POLICY



**Tasmania**  
Explore the possibilities  
Department of Infrastructure,  
Energy and Resources  
Tasmania



## Context ●●●●●

The Department of Infrastructure, Energy and Resources brings together the significant infrastructure activities of the Tasmanian Government. It provides the foundation for fostering Tasmania's economic development whilst ensuring the safety and quality of life of all Tasmanians.

Workplace Standards Tasmania, as a division of DIER, shares responsibility for delivering this outcome.

The Department's Charter *The Will and The Way* provides the guiding principles by which Workplace Standards operates and provides leadership in Workplace Standards' areas of responsibility.

Workplace Standards has a strategic focus on developing and maintaining a regulatory framework for occupational health and safety, workers rehabilitation and compensation, and the storage and handling of dangerous goods in workplaces; standards and safety in electrical, gas and building work; and the administration of legislation that implements the Government's industrial relations policies.

A part of Workplace Standards' purpose is to add value to the Tasmanian community by ensuring high standards of service delivery reflected in better workplace and community safety.

While the challenges facing Workplace Standards are numerous, a priority is to encourage industry to develop systematic solutions and a culture that empowers people with knowledge and provides a supportive environment where innovation is encouraged and rewarded.

## Outputs and Outcomes ●●●●●●

Workplace Standards aims to deliver six outputs:

- accreditation
- community awareness
- facilitate compliance
- policy, legislation and standards
- stakeholder relations
- managing for improved performance.

The output of facilitating compliance has particular relevance to this policy. The outcomes of facilitating compliance are:

- community meets the requirements of relevant legislation
- reinforcement and confirmation of appropriate attitudes and behaviour
- identification and correction of inappropriate attitudes and behaviour.

Further details of the other outputs and related outcomes are contained in Workplace Standards' Division and Branch Plans.

## Legislation administered ●●●●●●

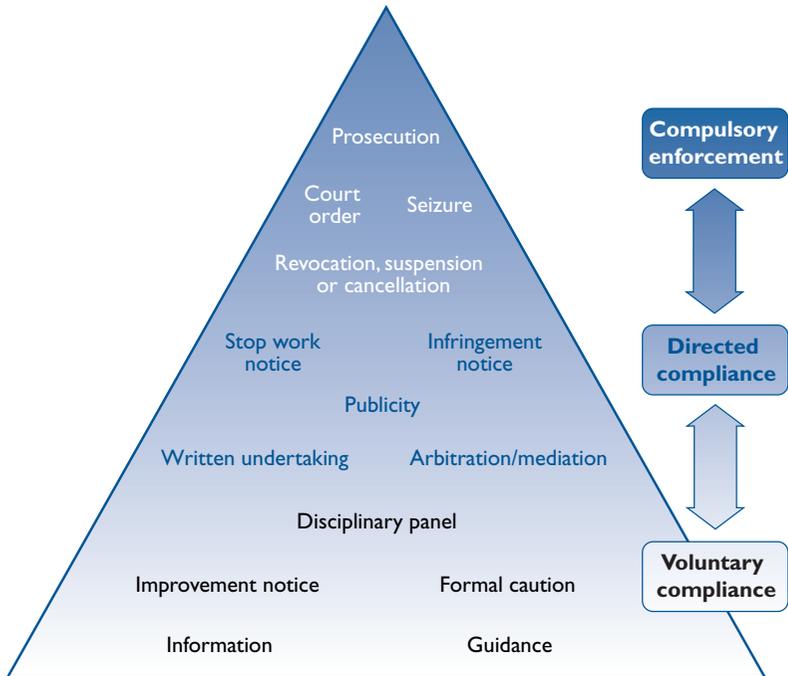
Workplace Standards is charged with the administration of a number of Acts and their associated regulations, the main ones being:

- *Building Act 2000*
- *Dangerous Goods Act 1998*
- *Electricity Industry Safety and Administration Act 1997*
- *Gas Act 2000*
- *Gas Pipelines Act 2000*
- *Industrial Relations Act 1984*
- *Long Service Leave Act 1976*
- *Workers Rehabilitation and Compensation Act 1988*
- *Workplace Health and Safety Act 1995.*

# Facilitate Compliance ●●●●●

Workplace Standards may employ a number of options to facilitate compliance with legislation, depending upon which Act is being administered.

When people and/or organisations fail to meet their obligations under an act administered by Workplace Standards, inspectors may use a range of compliance and enforcement options depending on the most appropriate approach, and which act they are administering. These include:



This diagram shows that there are a number of compliance/enforcement options. The structure presented by this triangular hierarchy does not necessarily mean that each step can or should be taken or that there is equality between those options placed at the same level.

Workplace Standards will use promotion, education and advice to encourage compliance with the provisions of the legislation it administers.

Where these methods are inadequate, compliance will generally be secured through the use of formal notices and directions, and other enforcement methods provided for under the legislation.

Prosecution is normally the last resort in a line of alternative actions that are to be considered before a person or body corporate is proceeded against in court.

However, in some circumstances, prosecution will be considered as the only appropriate response to the offender and the only means of deterring other prospective offenders from contravening the legislation.

An inspector may visit a workplace either by appointment or unannounced. While some inspector visits may be arranged in advance with the employer, there are many circumstances when prior warning will not be given. Such circumstances may include but are not limited to blitz audits or inspections, and investigations of complaints involving an alleged occupational health and safety breach, dangerous circumstance, incidence or accident.

## Information

Workplace Standards endeavours to provide easy and ready access to information about the legislation it administers through

- *media campaigns*
- *publications*
- *the internet*
- *the Helpline*
- *the Inspectorate.*

## Guidance

Guidance may be provided to end users and stakeholders upon request or as a result of an inspector's activity.

## Notices

Where an inspector identifies a contravention of an act or regulations and this is not rectified immediately, and the circumstances do not or are not likely to cause an immediate risk to workplace health and safety, the inspector may issue a notice requiring remedial work.

An inspector will ensure the obligation holder has complied with the notice.

An inspector may also (or alternatively) issue a notice prohibiting certain activity if the inspector has a reasonable belief that the circumstances are causing or are likely to cause an immediate risk to workplace health and safety. Such a notice requires the person in control to immediately cease activity and remedy the situation. These notices may be issued verbally, and are followed up by a notice in writing.

## Formal cautions

Formal cautions can be issued for a range of legislation. The issue of cautions is recorded and will be considered in deciding any future appropriate action.

## Disciplinary panel, Show cause notices

When a failure to comply with the *Electricity Industry Safety and Administration Act 1997* involving a licence holder is alleged, the Electricity Regulator can issue a notice to the licence holder to show cause why disciplinary action should not be taken against them. After consideration of the matter by a disciplinary panel, the Regulator may take one or more specific actions against the licence holder, including suspension or cancellation.

## Referral to the Tasmanian Industrial Commission

Alleged breaches of Tasmanian industrial awards may be referred to the Tasmanian Industrial Commission for determination, as may disputes concerning entitlement to long service leave.

## Infringement notices

Infringement notices (sometimes called on-the-spot fines) may be issued for certain offences. When an inspector issues an infringement notice, it has an immediate punitive effect.

## Seizure

An inspector is empowered to seize and retain anything that affords evidence of an alleged offence.

## Court order

The Director of Industry Safety can seek a court order to enforce workplace health and safety notices.

## Mediation and arbitration

Mediation and arbitration may be used to bring about compliance and to gain an appreciation of the level of commitment a person or employer has to compliance with the legislation.

## Written undertaking

The Secretary of the Department may accept written undertakings from the employer or person alleged to have contravened the *Workplace Health and Safety Act 1995*. Undertakings must be of substance and address the conduct that has given rise to the perceived breach and its consequences. They should include firm future actions to prevent a recurrence to any other breaches of this Act. A written undertaking is enforceable in the Magistrates Court.

## **Revocation, suspension or cancellation of licences, permits, approvals, certificates or exemptions**

Licences, permits, approvals, registration, certificates or exemptions may be suspended or cancelled under certain conditions.

## **Publicity**

Publicity will be used to promote and encourage compliance with legislation and will be used to publicise the results of prosecutions.

## **Prosecution**

The ultimate legislative sanction for committing an alleged breach of the law is to be prosecuted. The Prosecution Policy provides further guidance and explanation.

## **Guiding Principles** ● ● ● ● ●

The guiding principles underlying Workplace Standards' compliance and enforcement efforts are:

### **Consistency**

Workplace Standards will endeavour to ensure that similar circumstances lead to similar outcomes.

### **Transparency**

Workplace Standards is committed to open and transparent dealings with obligation holders. By establishing and publishing our policies, obligation holders will have a better understanding of what is expected of them and what they may expect from Workplace Standards.

## Proportionality

Enforcement options are normally proportional to the seriousness of the offence. More serious offences will warrant more severe enforcement options. An organisation's previous record and previous interventions by Workplace Standards may also influence the appropriate enforcement option employed.

## State Service

### Code of Conduct and Principles ●●●●●●

In all its activities (including compliance and enforcement) Workplace Standards and its staff will adhere to *The State Service Principles* and *The State Service Code of Conduct* (section 7 and 9 of the *State Service Act 2000* respectively) (detailed on page 9).

### Further Information ●●●●●●

Further information about Workplace Standards *Prosecution Policy* may be obtained by:

- writing to The General Manager of Workplace Standards Tasmania, PO Box 56, Rosny Park Tasmania, 7018
- calling the Workplace Standards Helpline on 1300 366 322 (within Tasmania) or 03 6233 7657 (outside Tasmania).



S J Hyam  
General Manager  
7 July 2004

# State Service principles and Code of Conduct ●●●●●

## Extracts from the *State Service Act 2000*

### Section 7 — The State Service Principles

#### (1) The State Service Principles are as follows:

- (a) the State Service is apolitical, performing its functions in an impartial, ethical and professional manner
- (b) the State Service is a public service in which employment decisions are based on merit
- (c) the State Service provides a workplace that is free from discrimination and recognises and utilises the diversity of the community it serves
- (d) the State Service is accountable for its actions and performance, within the framework of Ministerial responsibility, to the Government, the Parliament and the community
- (e) the State Service is responsive to the Government in providing honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs
- (f) the State Service delivers services fairly and impartially to the community
- (g) the State Service develops leadership of the highest quality
- (h) the State Service establishes workplace practices that encourage communication, consultation, cooperation and input from employees on matters that affect their work and workplace
- (i) the State Service provides a fair, flexible, safe and rewarding workplace

- (j) the State Service focuses on managing its performance and achieving results
  - (k) the State Service promotes equity in employment
  - (l) the State Service provides a reasonable opportunity to members of the community to apply for State Service employment
  - (m) the State Service provides a fair system of review of decisions taken in respect of employees.
- (2) For the purposes of subsection (1)(b), a decision relating to appointment or promotion is based on merit if:**
- (a) an assessment is made of the relative suitability of the candidates for the duties and
  - (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties and
  - (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties and
  - (d) the assessment is the primary consideration in making the decision.

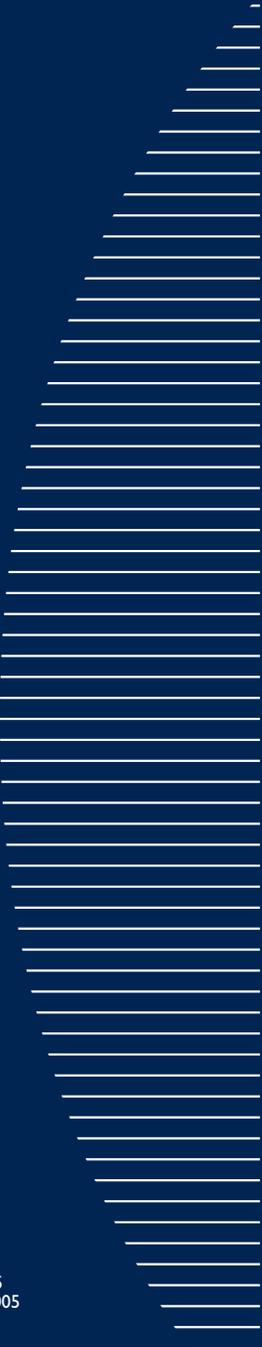
## **Section 9 — The State Service Code of Conduct**

- (1) An employee must behave honestly and with integrity in the course of State Service employment.
- (2) An employee must act with care and diligence in the course of State Service employment.
- (3) An employee, when acting in the course of State Service employment, must treat everyone with respect and without harassment, victimisation or discrimination.
- (4) An employee, when acting in the course of State Service employment, must comply with all applicable Australian law.

- (5) For the purpose of subsection (4), 'Australian law' means:
  - (a) any Act (including this Act) or any instrument made under an Act, or
  - (b) any law of the Commonwealth or a State or Territory, including any instrument made under such a law.
- (6) An employee must comply with any standing orders made under section 34(2) and with any lawful and reasonable direction given by a person having authority to give the direction.
- (7) An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment.
- (8) An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.
- (9) An employee must use Tasmanian Government resources in a proper manner.
- (10) An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.
- (11) An employee must not make improper use of —
  - (a) information gained in the course of his or her employment or
  - (b) the employee's duties, status, power or authority— in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.
- (12) An employee who receives a gift in the course of his or her employment or in relation to his or her employment must declare that gift as prescribed by the regulations.

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- (13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.
  - (14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.
  - (15) An employee must comply with any other conduct requirement that is prescribed by the regulations.
  - (16) For the purposes of this section, a reference to an employee includes a reference to an officer and a reference to State Service employment includes a reference to an appointment as an officer and an arrangement made under section 46(1)(a).





For more information contact:  
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