

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

WITNESS STATEMENT OF PAUL JEFFREY WATTS

1. I, Paul Jeffrey Watts, of an address known to the Commission, affirm:

Qualifications and Background

My qualifications are as follows:

- (a) Diploma of Occupational Health and Safety.
 - (b) Diploma of Training and Assessment.
 - (c) Diploma of Frontline Management.
 - (d) Diploma of Business and Diploma of Business Management.
 - (e) Diploma of Workplace Inspections.
2. After leaving high school 1976, I worked a variety of roles including many roles in the construction industry. I worked as a plant operator for various employers in the construction and associated industries. Including driving a loader, manufacturing pipes, and working at the CSR factory in New Farm manufacturing plaster.
 3. In 1993, I started work as part of the shore crew on the Port of Brisbane reclamation works. I commenced as a labourer/operator. I became the nominated Workplace Health and Safety Officer. It was this role that motivated me to pursue a career in safety and I completed my diplomas in Occupational Health and Safety, Training and Assessment and Frontline Management while working at the Port.
 4. In or around 2001, I commenced work with BMD as a Safety and Environment Coordinator. I was based in their head office at Manly but spent a lot of time travelling to BMD's work sites around southeast Queensland, conducting audits and then drafting reports on safety compliance.
 5. In or around October 2003 I commenced with Workplace Health and Safety Queensland (**WHSQ**) as an Inspector. I was promoted after three or four years to Principal Inspector.
 6. In or around 2010, I took what was initially planned to be a 12 month leave of absence, which was ultimately extended to run for about two and a half years. During that time, I worked for Coates Hire, Cape Scaffolding and on the Wivenhoe Pump Station project.
 7. In or around 2012, after completing my extended leave of absence, I returned to WHSQ and my role as a Principal Inspector.
 8. In or around October 2022, I retired.
 9. I was a union member at various points during my career. While employed as an Inspector I was a member of the Together Union.

General overview

10. During my time with WHSQ as an Inspector and later as a Principal Inspector, I was responsible for ensuring compliance with workplace health and safety legislation across a diverse range of construction sites and high-risk work environments. A significant and rewarding component of the role involved education. I regularly provided guidance and advice

to industry stakeholders, including principal contractors, site managers and subcontractors—on the actions required to meet their obligations under the relevant WHS legislation.

11. I exercised statutory powers to enter workplaces, conduct inspections, make inquiries, gather evidence, and take enforcement action where required. Enforcement action included issuing improvement notices, prohibition notices, infringement notices, non-disturbance notices, and giving verbal directions to stop unsafe work.
12. My role required me to work cooperatively with principal contractors, subcontractors, site managers, health and safety representatives, and union officials. On occasion the more high-profile jobs could be under media scrutiny. I was often required to manage situations where there were competing interests, heightened tensions, or significant pressure from different stakeholders.
13. My work required me to identify hazards and assess risks across numerous areas of construction practice, including but not limited to: working at heights, mobile plant operations, structural integrity, electrical safety, hazardous substances, excavation, crane operations, and general site safety systems.
14. I routinely attended sites both proactively and in response to complaints, incidents, and internal or industry-wide compliance campaigns. Depending on the nature of the matter, I could be required to respond immediately where there was a serious risk to health and safety.
15. As a Principal Inspector, I was considered a senior and experienced member of the inspectorate. I provided guidance and informal mentoring to less experienced inspectors, including showing them how to conduct inspections, what to look for, how to gather appropriate evidence, and how to interact professionally with site personnel.
16. I was responsible for ensuring that all enforcement actions I took were supported by evidence and consistent with legislative requirements and internal policy. This included keeping detailed notes, taking photographs, documenting conversations, and preparing notices that could withstand scrutiny or potential legal challenge.
17. I worked largely autonomously in the field and was expected to apply sound judgement, impartiality, and professionalism in sometimes challenging or confrontational environments. This included situations involving aggressive behaviour, union activity, or disputes between parties on site.
18. Ultimately, my responsibilities were directed towards ensuring that workers and members of the public were protected from foreseeable risks, and that duty-holders complied with their obligations under workplace health and safety laws.

How Issuing Notices is Supposed to Work

19. Under the workplace health and safety legislation, the process of issuing statutory notices is intended to follow a clear, lawful, and structured sequence. The starting point is always the identification of a risk or breach through observation, inquiry, or evidence gathered during an inspection.
20. When I attended a workplace, the first thing I would do was show my identification to the appropriate duty holder. Subsequently, I was required to assess conditions objectively and determine whether there is a reasonably foreseeable risk to the health and safety of workers or others. If a risk or breach was identified, I had to consider which enforcement tool, if any, was appropriate. Notices are not meant to be issued automatically. Notices are intended to be used when legislative criteria are met in the opinion of the inspector
21. When I identified a situation that presents an immediate or serious risk, I could issue a prohibition notice. Before doing so, I must have satisfied myself that the activity involved, or would involve, a serious risk to health and safety that emanates from an immediate or

imminent exposure to a hazard. A prohibition notice could be given verbally on site but must be followed by a written notice.

22. If I identified a non-immediate, rectifiable breach or a deficiency in risk control, I could issue an improvement notice. This required me to form a belief, based on reasonable grounds, that a duty-holder was not complying with a provision of the legislation. Improvement notices were intended to give a reasonable timeframe for rectification and were not punitive in nature. If you failed to comply with an improvement notice you could be issued an infringement notice or in extreme cases prosecuted.
23. In some circumstances, I could issue an infringement notice, which was a financial penalty issued for prescribed offences. Infringement notices could not be issued in isolation, they always had to be supported by an improvement notice or a prohibition notice. Infringement notices were intended to be used where the offence was clear, the legislation allows it, and the circumstances warrant a penalty rather than education or direction alone. They must be supported by evidence that the elements of the offence were satisfied.

Compliance Monitoring and Enforcement Policy (CEMP)

24. In late 2018, WHSQ brought in a new policy, the Compliance Monitoring and Enforcement Policy (known as **CMEP**), which fundamentally changed the way inspectors were required to carry out enforcement. Annexed to my statement and marked "**PJW-1**" is a copy of CMEP and schedules..
25. This policy provided formal direction from the Regulator about how inspectors were expected to exercise their compliance powers. The CMEP changed the enforcement approach significantly. Before the CMEP, inspectors retained discretion to decide whether education, direction, rectification on the spot, or formal enforcement action was the most appropriate response in the circumstances.
26. One of the biggest impacts was the removal of discretion in relation to the issue of infringement notices, particularly for contraventions designated by the Regulator as priority areas for enforcement. Section 5.1.1 of the CMEP states that where an inspector identifies a contravention of one of these priority provisions, the inspector will issue an infringement notice.
27. As an example, in or around 2020 I attended a construction site on Albert Street in the Brisbane CBD. I was accompanied by another inspector, I met a representative of the principal contractor, and CFMMEU officials. During the site inspection we reached an area where a mobile crane was positioned.
28. The CFMEU official inspected a toolbox used by the crane crew to store maintenance tools and located a can of dry lubricant spray. He stated words to the effect of, "Where is the safety data sheet for this, and it is included on the hazardous substances register. Under the CEMP, this is a mandatory infringement." At that time, possessing a hazardous substance, such as dry lubricant spray, without an accompanying safety data sheet, or without it being listed on the hazardous substances register, was classified as a priority infringement under the CEMP enforcement schedule.
29. My preference would have been to address the issue by discussing it directly with the crane company's representative and providing education about their obligations. However, due to the mandatory enforcement requirements, I was compelled to issue infringement notices. The penalty for failing to have the substance supported by a safety data sheet was \$3,600 for a corporation, and the penalty for failing to list it on the hazardous substances register was \$2,160 for a corporation.
30. Based on the monthly performance management meetings with my Operations Manager, I believe that under the CMEP, inspectors were assessed on the volume of notices issued as the main component of their work. This placed significant pressure on inspectors to issue

large numbers of notices, including in situations where we previously would have used professional judgement to address the issue more appropriately.

31. The policy had a marked effect on workplace relationships. Some duty-holders (for example those in control of sites and principally responsible for safety) became defensive because they knew that inspectors no longer had the ability to use discretion or provide an educative response. This made constructive engagement with them more difficult and, in some cases, escalated tensions unnecessarily.
32. The increased enforcement pressure was particularly evident on sites where the CFMEU was involved. In those situations, the CMEP was applied in a rigid manner, and I often felt that enforcement decisions were expected to align with the demands or expectations of the CFMEU (and very occasionally other unions such as the Electrical Trades Union or the plumbers' union).
33. The CMEP significantly increased workloads for inspectors. The volume of notices I was required to issue grew dramatically, and the administrative burden associated with preparing, documenting, and following up those notices became substantial. This contributed directly to long working hours, increased stress, and declining morale across the inspectorate.
34. The longer working hours had a real and significant impact on me. I spent a lot of time working from home, in excess of my normal contracted hours, which was work I did not get paid for. The extended hours and increased stress impacted my mental health. At one point I can recall I was sufficiently stressed and anxious that I sought the assistance of a counsellor in Caboolture, which I found beneficial.
35. Overall, the introduction and application of the CMEP changed the nature of the inspector role from one centred on practical, risk-based decision-making to one that was heavily compliance-driven. In my view, it removed an important safeguard, being the inspector's independent judgement, which had always been central to fair and effective workplace regulation. The removal of the inspector's independent judgement and discretion affected relationship building with industry noticeably.

Sanitary Bin Incident at Cross River Rail Site

36. On Monday, 15 June 2020, I was directed Mark Murphy to attend the Albert Street Station site of the Cross River Rail project in response to a union complaint. Mr Murphy was the Acting Operations Manager I reported to at the time of this incident. Prior to attending, I arranged to pick up Inspector William Harris from the Brendale office and organised parking for us at the Myer Centre in the Brisbane CBD.
37. Mr Harris phoned ahead to the site and completed the required COVID-19 risk assessment with the Project Manager Joshua Sims, before we travelled. After driving into the city, we arrived at the site at 11:25 am.
38. Upon arrival, we met CFMMEU organisers Andy Blakley and Shaun Desmond, to whom I showed my Inspector ID. They presented their Form 117 notices, which alleged issues including Safe Work Method Statements (**SWMS**) not reflecting high-risk work, unsafe access and egress, unsafe systems of work, and an out-of-date lifting register.
39. I then met with CPB Contractors' representatives, including a Safety Advisor Sue Salarnis, Area Supervisor Shane Wormald, and Industrial Relations Advisor Tan Truong, and again showed my identification.
40. The union organisers immediately raised concerns about traffic management at the front of the site, which I inspected, photographed, and discussed with the traffic controller. As the inspection continued the union organisers raised a series of issues, each of which I inspected and where appropriate I took enforcement action.

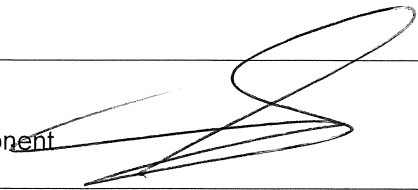
41. As the inspection continued, the CFMMEU organisers raised an issue involving a male worker using the female toilet. I approached the worker, who acknowledged what had occurred and apologised. Because union organisers often scrutinise amenities, I inspected the female and male toilets.
42. I photographed the outside of the female toilet and noted that the female decal was not very clear or easy to see. I also photographed the interior of both toilets. Each contained a cleaning register showing they had been cleaned on the morning of 15 June 2020, and both toilets were clean, tidy and well maintained.
43. During this inspection, the union organisers raised the issue that no female sanitary bin had been provided in the female toilet. Mr Desmond said, "this is a priority infringement," (meaning it was one of the offences nominated as a priority area for enforcement on the schedule to the CMEP, and therefore the CMEP required me to issue an infringement notice). I told him that I did not agree and that I would investigate it further.
44. In assessing whether I held a reasonable belief, I considered the legislative test. The legislative test was about whether amenities provided were hygienic, safe and serviceable. In my view, the relevant provision did not make it an offence to fail to provide amenities. To constitute an "unhygienic" toilet under the legislation, there would need to be something materially unhygienic present. For example, a used tampon, sanitary pad, faecal matter, blood, or similar contamination. In this case the toilets were clean, recently serviced, and there was nothing unhygienic present. My view was that the absence of a sanitary bin, by itself, did not constitute grounds for a priority infringement notice.
45. I raised with CPB the need for clearer signage to prevent confusion about the female toilet, and I was later advised that additional signage had been installed. CPB also indicated they would arrange for a sanitary bin to be placed in all site toilets.
46. At the conclusion of our inspection, Inspector Harris, Ms Salarnis, Mr Blakley, Mr Desmond, and I conducted a debrief with Mr Sims. I explained the notices that would be issued, including an Improvement Notice concerning the installation of a sanitary bin in the female toilet. At that time, I did not consider an infringement notice to be lawful.
47. In my view, the appropriate regulatory response to the absence of a sanitary bin was an improvement notice. An improvement notice is designed to address non-immediate, rectifiable issues where a duty-holder is not fully complying with the legislation but where there is no serious or imminent risk to health and safety. It directs the duty-holder to take corrective action within a reasonable timeframe, and it is educative rather than punitive. In this case, the toilet was clean, recently serviced, and there was nothing unhygienic present. The issue required simple rectification, and CPB had already taken steps to arrange sanitary bins across their sites. An improvement notice was therefore both lawful and proportionate to the circumstances I observed. Failure to comply with an improvement notice could lead to further regulatory action.
48. By contrast, an infringement notice is a financial penalty issued only where the elements of a prescribed offence are clearly satisfied. It requires the inspector to form a reasonable belief that the offence has actually occurred. Infringement notices are punitive in nature and should only be used where a breach meets the legislative threshold and warrants a penalty rather than education or direction. In this instance, I could not form a reasonable belief that an offence had been committed. The toilet was not unhygienic which is what I would have needed to establish to issue the infringement notice. In my view the absence of a sanitary bin, while contrary to other provisions of the regulation, did not meet the statutory test for issuing a notice. In my view, issuing an infringement would have been unlawful and inconsistent with my obligations as an inspector.
49. After we left the site, I completed drafting the notices. I sent the notices to Mr Sims at 7:22 pm on 15 June 2020. I had issued an improvement notice regarding the sanitary bin, consistent with the law and my reasonable belief. I did not issue an infringement notice.

50. On 18 June 2020 at 7:18 am, I received a phone call from Mr Murphy, who was acting as Operations Manager for Construction Team in Brendale. He asked me about the sanitary-bin issue and the fact that I had issued an improvement notice rather than an infringement notice.
51. I explained to Mr Murphy that the toilets were clean, that the cleaning register confirmed servicing that morning, and that the absence of a sanitary bin did not constitute an unhygienic toilet under the legislation. I told him that I would have issued an infringement notice immediately had I seen a used tampon, used pad, blood, or any other evidence of an actual hygiene issue.
52. Mr Murphy told me that Helen Burgess (Director, Construction Compliance and Field Services) had telephoned him, and that she had directed him to direct me to issue an infringement notice against CPB for failing to provide a sanitary bin. I explained to him that I could not lawfully issue an infringement where I could not form a reasonable belief of an offence.
53. I again refused to issue an infringement on the basis that I believed it would be unlawful and contrary to both the legislation and my statutory obligations as an inspector. Mr Murphy said he was simply passing on instructions.
54. At 8:24 am on 18 June 2020, Mr Murphy called me again. He told me that Ms Burgess had been "chewing his ear" about the matter and that she had been speaking to "Beau" about the matter. When I asked him about Helen speaking to Beau, who I took to be Beau Sieffert a CFMEU organiser, Mr Murphy changed topic quickly relayed her direction verbatim: "This is a priority infringement and if you do not issue the notice, you are in breach of the CMEP".
55. I considered this statement to be a direct and serious threat. I believed that issuing an infringement where no offence existed would be illegal, and I also believed that being accused of breaching the CMEP could result in harsh disciplinary action against me. I again refused to issue the infringement.
56. Feeling intimidated and alarmed by the threat, I contacted my Together Union representative Remi Armstrong, leaving a message. I also contacted senior staff including Marc Dennett (Executive Director) who initially agreed with my interpretation of the legislation. I also asked an administrative officer named Christine Newington to send me the formal bullying and harassment complaint form, which she did.
57. I later learned that the issue had been referred to the WHSQ legal unit for advice. In my view, this was a step that should have occurred before any direction was given to me to issue an infringement notice.
58. That night I slept for only a couple of hours due to the stress and uncertainty caused by the threat that I would be in breach of the CMEP. I did not know what disciplinary action might follow, and the entire incident significantly impacted my wellbeing. It was one of the clearest examples of inappropriate interference with my statutory functions.
59. In the days that followed, I made enquiries with Mr Murphy to seek legal advice from the WHSQ legal unit about the sanitary-bin issue. My understanding from a conversation with Mr Murphy is that the Legal Unit later confirmed that the legislation did not support an infringement notice for an "unhygienic toilet" based on the absence of a sanitary bin alone, which aligned with my original assessment.
60. This incident was a turning point for me. It demonstrated, in a very stark way, how the CMEP was being applied: not as a framework to support lawful and proportionate enforcement, but as a mechanism used to override inspector judgement and compel the issuing of notices even when the statutory criteria were clearly not met. It was one of the key events that led me to lodge a bullying and harassment complaint and eventually contributed to my decision to leave WHSQ.

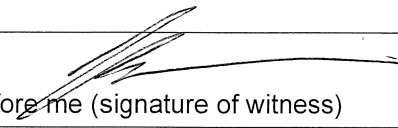
Bullying and Harassment Complaint

61. The sanitary-bin incident at the Albert Street site, and the pressure placed on me to issue an infringement that I believed was unlawful, led me to the point where I felt I needed to make a formal complaint about the conduct of senior management, specifically, the conduct of Ms Burgess.
62. On 22 June 2020, I completed the form that Ms Newington had provided me with and submitted it. A copy of my complaint is annexed and marked "**PJW-2**". Some days later I was interviewed by Christopher Coxon (Compliance Services Support, Compliance and Field Services) at the Brisbane North Sunshine Coast Regional Office who took my statement. This statement was submitted on 26 June 2020. A copy of my witness statement is annexed and marked "**PJW-3**".
63. My complaint and statement set out my concerns that I had been placed under unreasonable and inappropriate pressure to issue an infringement that was not supported by the legislation, that this pressure was coming from a senior manager, and that I believed the conduct amounted to bullying, intimidation, and interference with my statutory functions as an inspector.
64. I received a letter dated 13 August 2020 from Mr Dennett in response to my complaint. A copy of that response is annexed and marked "**PJW-4**". I found this response dismissive and entirely inadequate, particularly given pressure that Ms Burgess via Mr Murphy had placed upon me based on what she had been told by the Union and in circumstances where she had not taken the opportunity to obtain legal advice. Based on previous experience, I understood it would have been a simple enough matter for Ms Burgess to obtain that advice from the Legal Unit. Ms Burgess had access to WHSQ's Legal Unit and should not have been relying on the union, or any external party, for advice on what constituted a legal breach.
65. The response did not address the core of my complaint, which was that I had been directed to issue an infringement notice contrary to the legislation and threatened with disciplinary action for refusing to do so. Rather than investigating the substance of my concerns, the complaint outcome appeared to excuse the conduct without any meaningful examination.
66. This dismissal of my complaint reinforced my belief that parts of senior management were unwilling, or unable, to act independently of external pressure, particularly in matters involving the CFMEU. It also demonstrated to me that raising legitimate concerns internally would not result in fair treatment or a proper review of managerial conduct.
67. This experience contributed significantly to my deteriorating morale, stress levels, and overall wellbeing. It became increasingly clear to me that I could not rely on management to support inspectors in performing their statutory duties independently, and this was one of the major factors that led me to ultimately leave WHSQ.

I affirm the contents of this statement are true.

Signature of Deponent 

Place DRISBANK Date 27 4 26

Before me (signature of witness) 

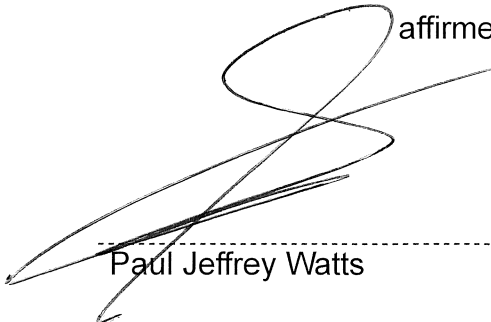
JACK DOMINIC KERIN
Full name of witness (please print)

- Justice of the Peace (JP #)
- Notary public
- Lawyer
- Other authorised person (specify)

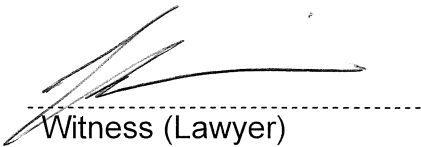
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as PJW-1 in the statement of Paul Jeffrey Watts affirmed at Brisbane on 27 February 2026



Paul Jeffrey Watts



Witness (Lawyer)

Compliance Monitoring and Enforcement Policy

**Workplace Health and Safety Queensland
Electrical Safety Office Queensland**

December 2018

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1 Introduction

1.1 Policy scope

This policy covers the administration and enforcement of the following legislation:

- *Work Health and Safety Act 2011* (WHS Act),
- *Work Health and Safety Regulation 2011* (WHS Regulation),
- *Electrical Safety Act 2002* (ES Act)
- *Electrical Safety Regulation 2013* (ES Regulation).
- *Safety in Recreational Water Activities Act 2011* (SRWA Act)
- *Safety in Recreational Water Activities Regulation 2011* (SRWA Regulation).

In the text of this policy these regulatory instruments are referred to as “the legislation”.

Under the legislation, the Regulator is appointed by the Governor in Council. The Regulator may delegate to an Inspector, appropriately qualified public service employee or person prescribed under a regulation, a function or power under the legislation. Inspectors are subject to the Regulator’s direction (s162 WHS Act and s137B ES Act). This Policy provides direction by the Regulator in the exercise of the inspector’s compliance powers.

In general terms, the legislation is administered by Workplace Health and Safety Queensland and the Electrical Safety Office who are both referenced as the “regulator”. The monitoring and enforcement of compliance with the legislation occurs by the inspectorate. The following core concepts from the legislation are reflected in the regulator’s approach and factored into enforcement decisions:

- workers should be protected from exposure to the risks of illness or injury by duty holders in the course of their business or undertaking
- other people should not have their health and safety put at risk as a result of work being carried out
- duty holders in control of the work that creates the risk are in the best position to eliminate or minimise exposure to those risks
- duty holders, including persons conducting a business or undertaking PCBUs, officers, workers and others need to be proactive in ensuring health and safety in the workplace
- primary duty holders must communicate, and collaborate with workers and representatives, to manage work health and safety risks
- where there are multiple duty holders then they need to work together to exchange ideas and information about reducing or eliminating risks in their workplace.

1.2 The regulator

The regulator is responsible for securing compliance through effective and appropriate monitoring and enforcement.

The regulator uses a range of tools to promote and secure compliance with the legislation: to ensure duty holders eliminate or minimise exposure to the risk of illness and injury; and, ensure duty holders who contravene health and safety requirements are held to account.

Inspectors authorised under the legislation are key agents in this regulatory approach, using the powers conferred upon them to provide information and advice about compliance, and to monitor and enforce compliance which includes directing compliance, imposing a sanction, or both.

The regulator takes the following approach in fulfilling its regulatory functions:

- targeting regulatory activity through evidence based research and data analysis of risk of serious harm and/or fatalities to focus on high priority areas for enforcement.
- adopting a high interaction approach involving key agencies, stakeholders and workplaces.
- practising highly visible, credible, proportionate, transparent and consistent enforcement.
- focusing on unmanaged risk and compliance or duty based contraventions, with duty holders being held accountable for contraventions of the legislation
- prioritising sustainable compliance through the provision of information and advice that assists duty holders to implement higher order controls to design and adopt WHS management solutions.
- providing information, resources, education and training.

This approach is summarised below.

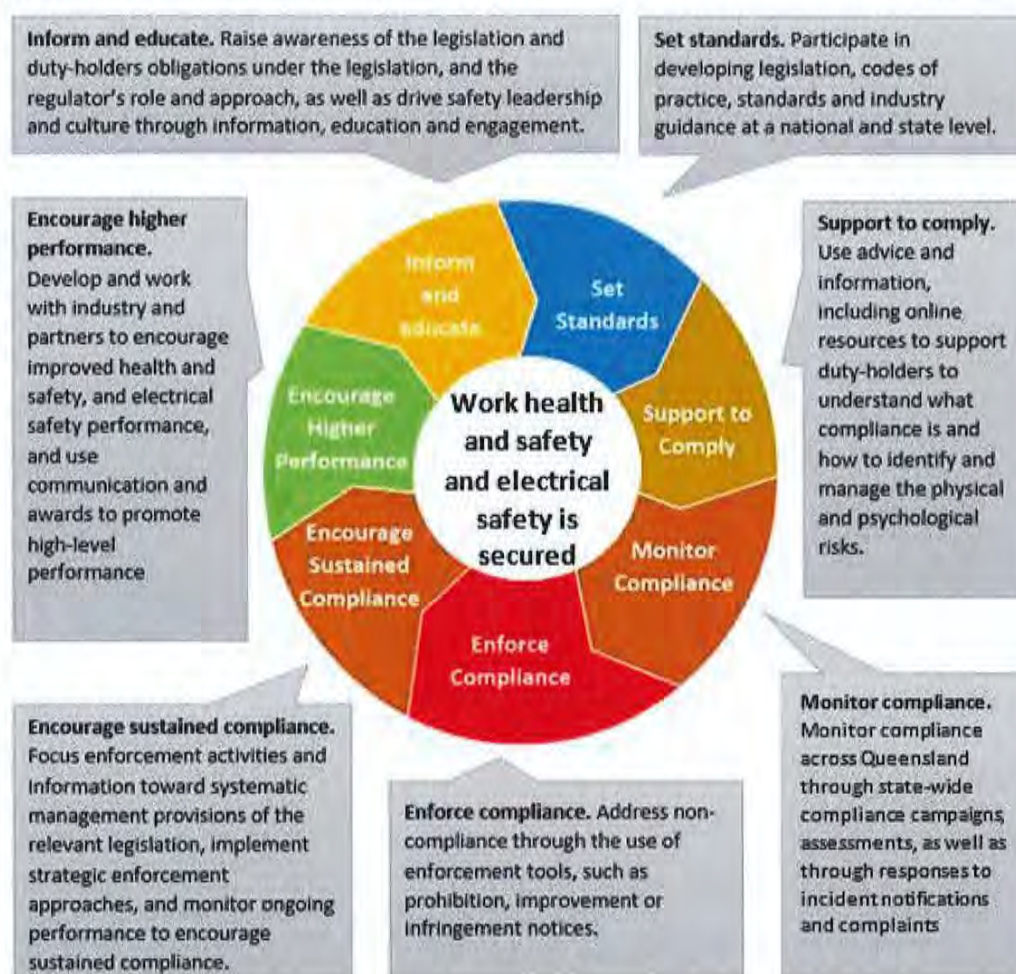


Figure 1: The regulatory approach

1.3 Purpose

The Compliance Monitoring and Enforcement Policy (this policy) explains how the regulator uses compliance monitoring and enforcement to ensure duty holders are meeting their legislative duties, and to create credible deterrents for contravening the legislation.

The Compliance and Enforcement Framework, is aligned with Strategic Lever 4 of the Five Year Strategic Plan for WHS in Queensland: Regulating effectively. The purpose of the policy is to inform duty holders of the regulator's approach to compliance monitoring and

enforcement and guide inspectors and their managers in their decision-making and use of enforcement measures.

Duty holders must comply with their obligations under the legislation to ensure workers and others are not exposed to unacceptable risks that may result in death, injury or illness.

The purpose of *monitoring compliance* and, when required, *enforcing compliance*, is to ensure duty holders comply with their obligations. This may require directing remedial or compliance action. The threat of being caught and the deterrent effect of a strong regulator will provide a better environment where the risk of exposure to injury and illness is minimised.

Enforcement measures available to the inspectorate include prohibition notices, improvement notices, electrical safety protection notices, unsafe equipment notices and infringement notices (on the spot fines).

Whether there is a single issue, or multiple issues that result in a number of enforcement decisions, inspectors consider the overall enforcement approach, including whether it:

- deals with the most serious risks in order of priority
- takes account of the magnitude of the breaches and provides a proportionate response to the level of risk
- adequately addresses systemic problems with a focus on common causation factors
- secures sustained compliance, including system wide changes where multiple contraventions are apparent
- influences and deters other duty holders in the same industry
- increases the likelihood of sustained compliance.

2 Principles of compliance monitoring and enforcement

Compliance monitoring and enforcement is designed to ensure the following aims:

- obvious risks to the physical and psychological health and safety of workers and others are managed and any contraventions of the legislative requirements are quickly addressed;
- work is conducted in a way that is electrically safe;
- PCBUs are fulfilling their duties under the legislation to ensure the health and safety of workers and others; and
- officers¹ of a PCBU are exercising due diligence to ensure the PCBU is complying with any relevant duties.

With a focus on contraventions identified as a high priority for enforcement, the regulator will:

- monitor compliance through observation, conversation and document examination at the workplace; and
- take action to enforce compliance where there are unmanaged risks and contraventions with high levels of culpability leaving workers and others exposed to the likelihood of serious injury or illness.

The regulator is guided by seven nationally agreed principles when undertaking its compliance monitoring and enforcement role, exercising its regulatory responsibility and administering the legislation. The principles² are:

<i>Consistency</i>	The regulator will endeavour to ensure that similar circumstances lead to similar approaches being taken, providing greater protection and certainty in workplace and industry.
<i>Constructiveness</i>	The regulator will provide support, advice and guidance to assist compliance with the legislation and build capability.
<i>Transparency</i>	The regulator will demonstrate impartiality, balance and integrity.
<i>Accountability</i>	The regulator is willing to explain its decisions and make available avenues of complaint or appeal.
<i>Proportionality</i>	Compliance and enforcement responses are proportionate to the seriousness of the conduct.
<i>Responsiveness</i>	Compliance and enforcement measures are responsive to the particular circumstances of the duty holder or workplace.
<i>Targeted</i>	Activities are focussed on the areas of assessed highest risk or the regulator's strategic enforcement priorities.

¹ Officers are persons who make, or participate in making decisions that affect the whole, or substantial part, of the business or undertaking of the State, Commonwealth or other State for the purpose of the legislation.

² The principles outlined are in accordance with the National Compliance and Enforcement Policy.

3 Monitoring compliance

The regulator monitors compliance with the legislation, maintains a credible threat of detecting non-compliance and constantly improves its capacity to detect and respond to non-compliance. The primary focus is on ensuring duty holders comply with the legislation so that workers and others are not exposed to the risk of injury and illness. The regulator prioritises compliance monitoring activities to focus on the industries and mechanisms which pose the greatest risk of harm to the health and safety and electrical safety of workers and others.

Inspectors undertake workplace visits using observation, discussion and review of documents to make an assessment of the level of risk and extent of compliance. These visits may be initiated by state-wide compliance campaigns (e.g. safety blitzes), workplace assessments (e.g. audits and inspections) or in response to incident notifications or complaints. Inspectors will not give prior notice of entry to a workplace except in specific circumstances (e.g. remote sites where it is necessary to ensure someone is on site or where it is necessary to ensure a particular person is available) and where advance notice will not compromise the intention of the visit.

3.1 Status of standards

In addition to complying with the legislation, duty holders in Queensland must follow the safety measures in Approved Codes of Practice (ACoP) and electrical safety duty holders must also follow the safety measures in Ministerial Notices. Duty holders can follow another method outlined in a technical or an industry standard to manage hazards and risks, as long as it provides an equivalent or higher standard of work health and safety to the standard required in the ACoP or Ministerial Notice.

When addressing matters where a risk of harm is present, inspectors will assess the degree of uncontrolled risk as a fundamental premise of any enforcement decision, and will consider whether the risk has been eliminated or minimised according to the legislation or relevant standard so far as is reasonably practicable.³

3.2 Quality of risk management controls

Inspectors will determine the quality of controls implemented to eliminate or manage the risk so far as reasonably practicable. An assessment is made to determine the level and suitability of control measures being applied. That assessment provides a residual risk rating with five levels of control. These five levels are outlined below:

1. Controls are in place. The controls are currently as prescribed by the legislation, are working and are effective, i.e. the hazard or risk has been eliminated or residual risk is minimised.
2. Controls are in place, so far as is reasonably practicable. There is some remaining risk because better controls do not appear to be available or a better alternative would require investment grossly disproportionate to the risk. Ongoing monitoring of this risk is needed.
3. Controls are low level with no evidence of investigation into higher order controls or assessment of the feasibility of implementing higher order controls. Low level control measures may still be considered a contravention if higher level control measures are reasonably practicable.

³ Inspectors may refer to standards to determine what is reasonably practicable (see glossary).

4. Controls currently in place are inadequate. There are known problems or limitations with existing controls and further action is needed to eliminate or minimise exposure to the risk.
5. The risk is essentially uncontrolled. Controls either have not been implemented, or they are grossly inadequate. Urgent action is required.

A residual risk rating of three or higher would indicate a contravention has occurred and enforcement action is required.

3.3 Management Systems Approach

Duty holders seeking to manage exposure to the risk of injury or illness must design and implement a sustainable systematic management approach focussing on high order controls. Higher order systematic solutions and controls include:

- PCBUs consulting with workers;
- PCBUs consulting, coordinating and cooperating with other duty holders;
- Officers of PCBUs exercising due diligence (WHS Act s27(5); ES Act 38A) and ensuring the PCBU is complying with any relevant duties;
- WHS management systems that collect and maintain registers and records and reporting systems as part of ensuring compliance;
- Provision of adequate welfare facilities and a safe workplace;
- Good work design that optimises work health and safety, human performance, job satisfaction, and business success (see Principles of Good Work Design Handbook published by Safe Work Australia).

While a contravention of these, or similar, provisions may not result in an immediate risk to health and safety, it does indicate that there is failure in the comprehensive health and safety management in the workplace and consequently higher potential for harm to occur.

Where an inspector identifies a suspected contravention of broader, or higher level duties, the inspector may utilise enforcement options to secure compliance and deter the adoption of lower level control measures.

4 Directed compliance

The regulator has a number of enforcement measures available to direct compliance or sanction non-compliance. These measures work as an effective incentive for compliant behaviour and as a deterrent to non-compliance.

Enforcement responses are specific and proportionate to the situation they address, taking into account:

- the level of risk
- the level of actual or potential harm
- the availability, clarity and status of standards or guidance
- any relevant history of non-compliance
- whether the contravention has been identified as a priority area for enforcement by the regulator.

During workplace visits inspectors may identify contraventions that the duty holder can rectify in the presence of the inspector to achieve immediate compliance. Immediate rectification of contraventions will be recorded by the Inspector. Contraventions that cannot be immediately rectified will result in a notice to remedy.

Identification of lower level breaches may indicate failures in the management system and higher order controls. Where individual or collective contraventions are identified the inspector is empowered to issue notices for contravention of broader, or higher order duties. For example, after issuing a prohibition notice to stop the unsafe operation of a fork-lift, an improvement notice may be issued for contravening s19(3)(F) – provision of information, training, instruction or supervision. The PCBU should have observed, stopped and rectified the prohibited activity and ensured appropriate training and supervision was undertaken to ensure the safe operation of the fork-lift.

Consideration will be given to any relevant history of non-compliance as a repeat of similar contraventions could be indicative of a systematic management failure. In these circumstances the inspector is empowered to take action for contravention of the higher order duties under the legislation, including the PCBU's primary duties and an officers duty to exercise due diligence.

4.1 Enforcement measures

When the inspector identifies a contravention, they are required to use their powers under the legislation to address the contravention. Inspectors are empowered to direct compliance by various means including the issue of:

- improvement notices
- prohibition notices – for work activities that give rise to a serious risk to health and safety of a person, an inspector will prohibit the activity until risks are appropriately managed
- electrical safety protection notices – for circumstances causing, or likely to cause, an immediate electrical risk to persons or property at a place
- non disturbance notices - to facilitate the exercise of an inspector's compliance powers
- unsafe equipment notices - for defective or hazardous electrical equipment that is likely to cause a serious electrical incident.

The first priority for directed compliance is to address any circumstances that involve:

- a serious risk⁴ to health and safety arising from immediate or imminent exposure to a hazard by issuing a prohibition notice; or
- an immediate electrical risk by issuing an electrical safety protection notice (ESPN). The electrical supply will also be isolated in these circumstances.

In each case the inspector will give an oral direction and issue a written notice. See Flowchart 1: Enforcement overview (at end of this policy) for a high level outline of the regulator's approach to enforcement

4.1.1 Prohibition Notice (WHS Act s195-197)

Prohibition notices will be issued by an inspector to stop an activity that is occurring or may occur at a workplace if they reasonably believe the activity involves, or would involve, a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard. For example: unguarded machinery or working at heights without any control measures.

Where the direction has been given orally, the direction must be confirmed by a written prohibition notice and given to the person that has control over the activity as soon as reasonably practicable. The notice will stipulate the matter that gives rise to the risk (or is likely to give rise to the risk) and, the provision in the legislation that is being, or is likely to be

⁴ A serious risk to health or safety is not defined in the WHS Act. In general terms a serious risk can be considered a significant risk that is neither trivial nor slight, which has a real chance of materialising (Fallas v Mourlas [2006] NSWCA 32).

contravened. The prohibition notice may also contain recommendations such as measures that could be taken to remedy the contravention.

Improvement notices may also be issued at the same time to address any underlying failure, including systematic management provisions under the relevant legislation that led to the serious risk arising.

4.1.2 Electrical safety protection notice (ES Act s147(8))

An electrical safety protection notice (ESPN) will be issued in all cases where an inspector reasonably believes that circumstances are causing, or likely to cause, an immediate electrical risk to persons or property.

This will include action to disconnect the supply of electricity to the area that is not considered electrically safe. Inspectors will also ensure an exclusion zone is in place around the area until the electricity supply can be disconnected.

Where the direction has been given orally, the direction must be confirmed by a written ESPN and given to the person as soon as reasonably practicable.

Improvement notices may also be issued at the same time to address any underlying failure to comply with systematic management provisions under the relevant legislation that led to the serious risk arising.

4.1.3 Improvement Notice (WHS Act s191-192; ES Act s146-146A)

An improvement notice is issued:

- in order to remedy a contravention,
- to prevent a likely contravention from occurring,
- to remedy the things or operations causing the contravention or likely contravention (causal factors) within a specified timeframe.

Inspectors will issue an improvement notice in all cases where they reasonably believe that a person is contravening a provision of the legislation; or has contravened a provision and believes it is likely that it will continue or be repeated. The exception to this is where immediate rectification of a contravention occurs while the inspector is at the workplace and this must be recorded by the inspector. Where the contravention is evidence of a systematic management failure the inspector will issue an Improvement Notice that addresses the systematic management failure.

The purpose of an improvement notice is to focus the duty holder on the tasks to be carried out in order to remedy a contravention or any causal factors to achieve compliance with their duties under the legislation. For example, an inspector may issue a notice to remedy a contravention of risk management or hazard control provisions. The inspector may also issue a notice to address broader, or higher level duties under the legislation.

The notice stipulates the contravention, the provision that is being contravened (or is likely to be contravened), and a time frame (a compliance period) by which the duty holder must comply with the notice. The notice may also contain directions for measures to be taken to remedy the contravention or prevent a recurrence, or likely recurrence of the contravention.

An improvement notice may also be issued even when a prohibition notice or electrical safety protection notice has been issued. Unless the contravention is otherwise addressed by a prohibition notice or electrical safety protection notice, an improvement notice will be issued where the contravention cannot be immediately remedied while the inspector is at the workplace or onsite.

4.2 Other directions

4.2.1 Unsafe equipment notice (ES Act s148)

An unsafe equipment notice will be issued if an inspector reasonably believes that electrical equipment is so defective or hazardous that it is likely to cause a serious electrical incident. The purpose of the unsafe equipment notice is to require the owner to make the electrical equipment harmless or incapable of operation.

The owner may choose to have the item made electrically safe or destroyed. An unsafe equipment tag must be attached securely to the equipment.

4.2.2 Non-Disturbance Notice (WHS Act s198-199; ES Act s149)

An inspector may issue a non-disturbance notice if he/she reasonably believes it is necessary to do so to facilitate the exercise of their powers. For instance, a non-disturbance notice may be issued to preserve the site at which a notifiable event has occurred, or to stop any disturbance of a particular site (including plant, substance, structure or thing associated with the site), for a specified time that is reasonable in the circumstances (of no more than 7 days). The non-disturbance notice must state the period of non-disturbance; the obligations of the person to whom the notice is issued; the measures to be taken to preserve the site; and the penalty for contravening the notice.

A non-disturbance notice does not prevent any action, to assist an injured person, remove a deceased person, make the site safe to prevent further injury, that is associated with a police investigation, or for which an inspector has given permission.

5 Sanctions

Sanctions, such as an infringement notice, licence suspension, enforceable undertaking (EU) or prosecution are penalties for non-compliance and act as a further incentive to comply with the legislation. Sanctions also act as a general deterrent for other duty holders who may consider contravening their duties.

5.1.1 Infringement Notice

Infringement notices (on the spot fines) are issued under the *State Penalties Enforcement Regulation 2014* (SPER) and may be issued by an inspector if they believe, on reasonable grounds, that a person is committing or has committed an infringement notice offence under the legislation. Infringement notices may be issued to an organisation, individual or both.

There are currently 240 infringement notice offences for contraventions of the WHS and ES legislation. The regulator has identified a smaller number as priority areas for enforcement. An inspector will have additional focus on these areas, and if an inspector identifies a contravention of a provision determined by the regulator to be a priority, the inspector will issue an infringement notice. The provisions determined as a priority by the regulator will change periodically to reflect current and emerging risks.

The priority areas do not prevent an inspector from issuing an infringement notice for an infringeable offence not identified as a priority; an inspector may issue an infringement notice for any infringement notice offence.

The full list of infringement notice offences, including those indicated as priority areas for enforcement, is available on the Worksafe website.

An inspector will use other directed compliance measures, in conjunction with infringement notices, to ensure the contravention is remedied.

Infringement notices may be issued for risk based or systematic WHS management contraventions, such as *failure to ensure, so far as is reasonably practicable, that a person, plant or thing did not come within an unsafe distance of an overhead or underground electric line* (SPER Schedule 1 - ES Reg s68(1)) or failure of the duty holder to comply with *registration holder must keep registration document available for inspection under the Act* (SPER Schedule 1 - WHS Reg s262(1)).

An infringement notice may be revoked and the matter referred for prosecution in circumstances where further investigation reveals that there is reason to pursue a higher order sanction.

If the recipient of an infringement notice makes full and proper payment of the penalty then the liability of the alleged offence is discharged and no prosecution may be brought. However, where the fine has not been paid, or payment has commenced by instalment and not satisfied in full, the infringement notice may be withdrawn, the penalty amount already paid refunded, and prosecution commenced.

The recipient of an infringement notice may choose a hearing in the Magistrates Court instead of paying the fine.

5.1.2 Review of authorisations

A range of authorisations, such as licences, permits, registration and certificates are issued under the legislation. The terms and conditions of a specific authorisation, such as high risk work and electrical licences, are set out in the relevant documents.

If a duty holder fails to adhere to the conditions set out in the authorisation documents, the licence may be suspended, cancelled or conditions of a licence amended. Suspension or cancellation of a licence or other authorisation is typically used where the offence was of a nature that exposed persons to serious risk or where other penalties have not resulted in improvements that reduce risk. Details of all licence suspensions and cancellations will be published on the Worksafe website.

5.1.3 Enforceable Undertakings (WHS Acts216, ES Act s49)

An EU is an enforcement pathway permitted under the legislation as an alternative to a court imposed sanction following an alleged contravention of the legislation. An EU cannot be accepted for a category 1 offence⁵ (reckless conduct), category 2 causing death, or industrial manslaughter.

An EU allows a duty holder to voluntarily enter into a legally-binding agreement with WHSQ to implement effective health and safety initiatives. The agreement outlines actions the duty holder will undertake to address the contravention and deliver tangible benefits for workers, industry, and the community as a whole.

An EU is not imposed on a duty holder. A duty holder must apply to the regulator who considers the application and makes a decision about whether or not to accept it.

The regulator's decisions about EUs are made in accordance with its *Guidelines for the acceptance of an Enforceable Undertaking*.

⁵ See definition in the appendix 1: glossary

5.1.4 Prosecution

Prosecuting duty holders aims to provide a powerful deterrent to others and ensures that those who contravene the legislation are held to account. It draws attention to the consequences of contravening the legislation.

Serious contraventions of the legislation may be referred to the independent statutory office of the Director of Workplace Health and Safety Prosecutions (DWHSP). The DWHSP makes the decision to prosecute or not.

The DWHSP may decide to take prosecution action as a result of an investigation whether or not a contravention has resulted in a death, injury, illness or disease actually occurring.

Category 1 offences are referred to the Director of Public Prosecutions with the decision to prosecute being made by the DPP in line with the DPP's Prosecution Guidelines.

<https://www.worksafe.qld.gov.au/laws-and-compliance/prosecutions/guidelines-prosecutions>

6 Information and advice about compliance (WHS Act s160(a); ES Act 137(a))

When issuing a notice, an inspector will provide information to support understanding of the notice. This information will be provided verbally and, in some instances, may be confirmed or expanded upon in writing (e.g. by email). Such information should include clear explanation of the contravention and a brief explanation of what compliance looks like i.e. the evidence the inspector will be looking for to determine whether the notice is complied with. An inspector may also provide practical guidance and support, based on reliable information sources such as [worksafe.qld.gov.au](http://www.worksafe.qld.gov.au), Safe Work Australia or other WHS regulator websites, Codes of Practice and Australian/New Zealand Standards.

Where there isn't an apparent contravention or where the level of risk management does not meet the legal requirements for issuing a notice, an inspector may also provide practical guidance and compliance support.

In the circumstances where general information and advice is provided without a notice being issued, the inspector may follow this up by providing information in writing (e.g. email) with the regulator retaining a record of the information provided. For example, in a post workplace visit email, the inspector may provide links to, or copies of, any guidance or research discussed during the visit.

In some circumstances a referral may also be made to one of the regulator's programs or services, such as Workplace Assistance services, the Work Health Design Branch, the Safety Leadership at Work program or Mental Health at Work. These programs and services aim to assist the PCBU to comply through directed guidance which includes education, training or support.

7 Review of decisions

A person affected by an inspector's decision (other than the issue or content of an infringement notice) may apply to the regulator for an internal review of that decision. In these circumstances an eligible person may apply to the relevant body to have the decision reviewed:

- Internal review – application can be made to the regulator within 14 calendar days of the decision coming to the notice of the eligible person, or in relation to an improvement notice, an application must be made in the time stated in the notice or 14 calendar days, whichever is shorter.
- External review – application can be made to review the original decision or the internal review decision, within a specified time from the day the applicant received or became aware of the decision:
 - 30 calendar days to the Queensland Industrial Relations Commission
 - 28 calendar days to the Queensland Civil Administrative Tribunal.

The list of reviewable decisions document outlines who is eligible to apply for a review and who would undertake the external review.

Note: neither the decision to issue nor the content of an infringement notice is reviewable. The recipient of an infringement notice may choose a hearing in the Magistrates Court instead of paying the fine.

8 Periodic review

This policy will be reviewed at least every five years or where legislative amendments require a revision. The purpose of the review is to:

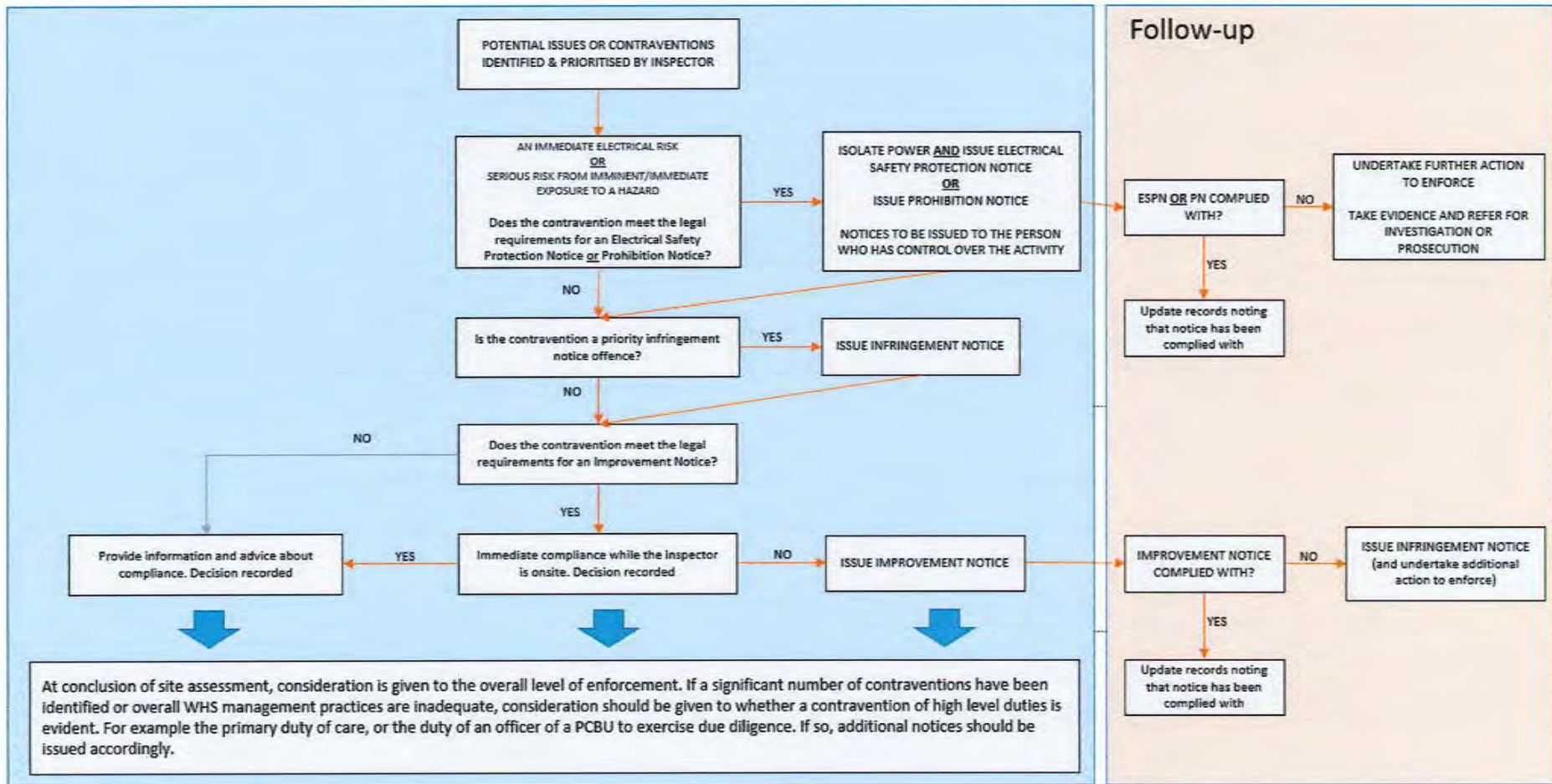
- address any operational inefficiency with this policy
- ensure this policy is achieving its objectives
- reflect new approaches to compliance and enforcement, and
- reflect any relevant legislative amendments.

9 Glossary

<i>Term</i>	<i>Definition</i>
<i>Authorisations</i>	A person or worker can be authorised under the legislation by a licence, permit, registration or other authority issued by the regulator under the legislation.
<i>Contravention</i>	Contravention means to an act of breaking or failing to observe a law
<i>Compliance</i>	Following the law, i.e. acting in accordance with the legislation, including fulfilling duties under the Act or Regulation and obtaining the right approvals or permissions. It means conducting authorised activities in accordance with any conditions or regulatory requirements.
<i>Category 1 offence</i>	Reckless conduct – category 1 (s31 WHS Act or s40B ES Act). A person commits a category 1 offence if – a) The person has a health and safety duty; and b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and c) the person is reckless as to the risk to an individual of death or serious injury or illness.
<i>Duty holder</i>	The primary duty holder is the person conducting a business or undertaking (PCBU) as described under WHS Act s19 or ES Act s30. If a PCBU has a duty or obligation, officers of the PCBU have a duty to exercise due diligence to ensure the PCBU complies that duty with (s27 WHS Act, s38A ES Act). Principal contractors in high risk construction have additional duties under the WHS Regulation (Chapter 6 WHS Regulation). Workers and other persons also have duties under sections 28-29 of the WHS Act.
<i>ES Act</i>	<i>Electrical Safety Act 2002</i>
<i>ES Regulation</i>	<i>Electrical Safety Regulation 2013</i>
<i>Enforcement response</i>	Action that aims to enforce compliance in order to reduce or stop workplace related death, injuries and disease by using: <ul style="list-style-type: none"> • directive compliance to achieve a remedy of a contravention through the issue of notices; and/or • sanctions to deter non-compliance by holding duty holders to account, through prosecution, enforceable undertakings or the issue of infringement notices.
<i>Inspector</i>	An inspector appointed under s156 WHS Act and s123 ES Act.
<i>Apparent non-compliance</i>	Apparent failure to comply with any provision of the relevant Act and Regulation which leads to further investigation into whether there was a contravention of the relevant legislation.
<i>Notifiable incident</i>	Any of the following events that arise from work: <ul style="list-style-type: none"> • the death of a person; or • a serious injury or illness, or • a dangerous incident

	As defined in WHS Act s35 - s37.
<i>Reasonably practicable</i>	Reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including— <ul style="list-style-type: none"> a. the likelihood of the hazard or the risk concerned occurring; and b. the degree of harm that might result from the hazard or the risk; and c. what the person concerned knows, or ought reasonably to know, about— <ul style="list-style-type: none"> i. the hazard or the risk; and ii. ways of eliminating or minimising the risk; and d. the availability and suitability of ways to eliminate or minimise the risk; and e. after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.
<i>Regulator</i>	The Regulator means the person appointed by the Governor in Council under Schedule 2 Part 1 s1 WHS Act
<i>regulator</i>	The regulator means Workplace Health and Safety Queensland and the Electrical Safety Office
<i>Residual Risk</i>	WHS Matrix – The ‘risk rating’ is determined by comparing the quality of the controls used by the duty holder compared with standards (legislation, Codes of Practice, etc.), taking into account what is reasonably practicable.
<i>WHS Act</i>	The <i>Work Health and Safety Act 2011</i>
<i>WHS Regulations</i>	The <i>Work Health and Safety Regulations 2011</i>
<i>WHSQ</i>	Workplace Health and Safety Queensland
<i>Workplace</i>	Any place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work (WHS Act s8). This includes a vehicle, vessel, aircraft or other mobile structure; and any waters and any installation on land, on the bed of any waters or floating on any waters.

Flowchart 1: Enforcement overview



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worksafe.qld.gov.au

Background

The enforcement note provides direction by the Regulator in the exercise of the inspector's compliance powers (i.e. under (s162 WHS Act and s137B ES Act) when assessing compliance and implementing enforcement actions when non-compliance is found for contraventions of the infringeable provisions listed in **Schedule 1**.

Enforcement Action

Inspectors **must** assess compliance with any provision listed in schedule 1 when undertaking assessment or investigation work that concerns the provision.

Example- Failure to comply with an improvement notice.

Under s193 of the WHS Act and s146B of the ES Act, the person issued an improvement notice must comply with the notice prior to the compliance date specified on the notice.

Inspectors **must** assess compliance with all improvement notices issued. The Improvement Notice will also include information informing the duty holder of the need to provide satisfactory evidence of compliance with the Improvement Notice and that failure to provide this evidence by the compliance date will result in a return visit and imposition of an Infringement Notice where compliance with the Improvement Notice has not occurred.

Evidence of compliance provided by the notice recipient must clearly demonstrate that compliance has occurred i.e. simply completing and returning the tear off 'action taken' statement from a printed notice or providing unsubstantiated assertions by the relevant person, is not sufficient. Verification should be from multiple sources such as: statements from the PCBU and the HSR; photographs; and, copies of invoices or other documents.

If the inspector has not received satisfactory evidence of compliance prior to the Compliance Date, the inspector must then visit the worksite or workplace to determine whether the Improvement Notice has been complied with. The follow-up visit should occur on the Compliance Date or as soon as possible after the Compliance Date, and must occur within 5 working days of the Compliance Date. Follow-up visits which do not occur on the Compliance Date **must** be approved by the inspector's manager and recorded.

An Infringement Notice must be issued if an inspector conducts a follow-up visit to check compliance with the Improvement Notice and finds that the Improvement Notice has not been satisfactorily complied with.

Assessing compliance means gathering evidence to form a reasonable belief about whether the person has complied with this provision. A record, supported by the evidence gathered, **must** be made of the inspector's decision on whether, or not, the person has complied with this provision.

When an inspector decides that the person has not complied with this provision, they **must in the first instance** issue an infringement notice. If there are exceptional circumstances, for example the notice recipient is the injured party, approval to **not** issue an infringement notice must be obtained from the inspector's manager and this decision and reasons recorded.

If the inspector reasonably believes the issuing of an infringement notice to be an inadequate sanction, then the inspector should discuss the use of a higher sanction with their manager. Such higher level sanctions include injunctions or prosecution.

The evidentiary standard required to issue an infringement notice is a “reasonable belief” that the duty holder has failed to comply with the provision. A “reasonable belief” is less than “proof” but more than “suspicion.” In *George v Rockett* (1990) 170 CLR 104 the High Court held that “When a statute prescribes that there must be “reasonable grounds” for a state of mind – including suspicion and belief – it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.”

The basis of a reasonable belief can be determined by making sufficient inquiries (including as relevant the exercise of powers to require production of documents and answers to questions and to copy and retain documents) and an analysis of the information obtained to reach the relevant conclusion upon which to issue the notice. It will be supported if information from one source is validated/verified by the same information from another source, rather than relying on one source only. For example a photograph showing a contravention that is validated by a worker’s statement.

However should the recipient of the infringement notice elect to have the matter heard in court, the higher standard of ‘beyond reasonable doubt’ applies. Therefore evidence to the higher standard should either exist at the time of issue of the infringement notice or be obtainable if the person elects to have the matter heard in court. For example an inspector might form a reasonable belief after talking with workers about the contravention and making notes of these conversations. If the person elects to have the matter heard in court the inspector could take formal and more detailed statements from these workers.

Sources of evidence may include:

- observations, photographs, measurements, testing, sampling;
- information obtained from inquiries with persons who work at the workplace or are associated with the workplace;
- information obtained from reviewing relevant documents;
- information on relevant provision and how a person might comply with the provision, for example from relevant Regulations, Codes of Practice, Australian Standards and other published guidance material; and
- advice provided by suitable technical specialists (if relevant)

Inspectors must record in detail how they formed their reasonable belief in their notebook and ensure other evidence relied upon would be admissible in a court.

Schedule 2 includes a summary of the evidence for each offence that must be identified before the issue of an infringement notice. Inspectors should use the hyperlinks in Schedule 1 to find the relevant evidence summaries in Schedule 2.

Additionally it is OIR policy that, in addition to issuing an infringement notice for a scheduled offence, an improvement, prohibition or electrical safety prohibition notice (as relevant) should also be issued by an inspector if the relevant contravention, including systematic WHS management failure or unmanaged serious risk, has not been remedied.

Further requirements concerning infringement notices, including their drafting and issue can be found in the relevant operational policy¹. An example infringement notice is attached.

¹ OFSWQ operational procedure – Infringement notices v5.0 Nov 2016.



Infringement notice

ABN 13 846 673 994
State Penalties Enforcement Act 1999

This notice is issued under the *State Penalties Enforcement Act 1999* section 13 to a person who is contravening or has contravened a provision that has been designated an offence under the Act or the regulations that may attract an infringement notice. This notice requires the person to whom it is issued to ensure payment by the due date unless other available action is taken (refer to reverse side of notice for relevant information).

Notice No. F

Notice issued to:		
Legal name of alleged offender:	XYZ PTY LTD.	
ABN:	123 456 789 10	ACN: 123 456 789
Trading as (if applicable):	XYZ.	
Address:	456 JOHNSON STREET, MCDOWALL, QUEENSLAND	
		Postcode: 4053
Date of birth:	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	Contact number:
Identification type:	ID number:	

Details of alleged contravention:

Location of offence
 123 SMITH STREET, MCDOWALL, QUEENSLAND – COMPRESSOR SHED

I, WILLIAM BLOGGS reasonably believe on 15 AUGUST 2018 at 12:10
Inspector name Date 24 hour time

you committed an infringement notice offence by contravening a provision of the:

Work Health and Safety Act 2011, section 193 *Work Health and Safety Regulation 2011*, regulation _____

Electrical Safety Act 2002, section _____ *Electrical Safety Regulation 2002*, regulation _____

Safety in Recreational Water Activities Act 2011, section _____ *Safety in Recreational Water Activities Act 2011*, section _____

Offence code: 7000
 Penalty amount \$3600 *Payment must be received within 28 days after the date of this notice.*

Description of the offence:

FAILURE TO COMPLY WITH IMPROVEMENT NOTICE I123456 WITHIN PERIOD STATED.

Issuing inspector:

<u>William Bloggs</u>	<u>1234</u>	<u>1300 362 128</u>
Signature of inspector	Inspector's ID	Inspector's contact number
<u>15/08/2018</u>	<u>PO Box 820 Lutwyche QLD 4030</u>	
Date issued	Inspector's work address	

Service method:

Delivered personally Left for a person at the workplace Registered Post Fax Left at the person's last known place of residence or business

Joseph Jones Management Representative For Person With Management Or Control Of A Workplace
 Notice given to Relationship to person to whom notice is issued

Information about payment options is detailed on the back of this notice.

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SCHEDULE 1- PRIORITY INFRINGEMENT OFFENCES

Note: Use hyperlinks to go to elements tables for each offence in schedule 2

<p align="center">Priority Infringement offences Work Health and Safety Act 2011</p>					
Legislation	Section	Category	Code	Description	Penalty
WHS Act 2011	38(7)	Incident Notification	7001	PCBU failed to keep record of notifiable incident for at least 5 years from day notice of incident was given to regulator	(I) \$600 (C) \$3000
WHS Act 2011	70(2)	HSRs	7005	PCBU failed to allow HSR to spend the time reasonably necessary to exercise his/her powers and/or functions	(I) \$720 (C) \$3600
WHS Act 2011	193	Enforcement Measures	7000	Failure to comply with improvement notice within period stated. Improvement Notice I.....	(I) \$720 (C) \$3600

<p align="center">Priority Infringement offences Work Health and Safety Regulation 2011</p>					
Legislation	Section	Category	Code	Description	Penalty
WHS Regulation 2011	50(1)	General Workplace Management	8003	PCBU failed to ensure carrying out of air monitoring as prescribed to determine airborne concentration of a substance/mixture to which an exposure standard applies	(I) \$720 (C) \$3600
WHS Regulation 2011	66(2)	Confined Spaces	8005	PCBU failed to ensure that risk assessment for confined spaces was conducted by competent person	(I) \$432 (C) \$2160
WHS Regulation 2011	69	Confined Spaces	8009	PCBU failed to provide worker entering confined space with system of work that included: (a) continuous communication with worker from outside, and (b) monitoring of conditions in confined space by standby person in vicinity, and if practicable, observing the work being carried out	(I) \$720 (C) \$3600
WHS Regulation 2011	85(1)	High Risk Work	8017	PCBU directed/allowed worker to carry out high risk work without seeing written evidence from worker that worker has relevant high risk work licence	(I) \$432 (C) \$2160
WHS Regulation 2011	85(2)	High Risk Work	8018	PCBU directed/allowed worker to carry out high risk work without seeing written evidence from worker that: worker is undertaking the relevant course of training OR worker has applied for relevant licence OR worker holds relevant certification	(I) \$432 (C) \$2160
WHS Regulation 2011	85(3)	High Risk Work	8019	PCBU has directed/allowed worker to supervise high risk work without seeing written evidence that supervising worker holds relevant high risk work licence	(I) \$432 (C) \$2160

WHS Regulation 2011	175(1)	Diving Work	8034	PCBU directed/allowed a worker to carry out general diving work without seeing written evidence from worker that worker had relevant competence	(I) \$432 (C) \$2160
WHS Regulation 2011	299(1)	Construction work- Work Method Statements	9001	PCBU failed to ensure that a safe work method statement for high risk construction work was prepared before the work commenced	(I) \$720 (C) \$3600
WHS Regulation 2011	300(1)	Construction work- Work Method Statements	9002	PCBU failed to ensure that high risk construction work was carried out in accordance with the safe work method statement	(I) \$720 (C) \$3600
WHS Regulation 2011	300(2)	Construction work- Work Method Statements	9003	PCBU failed to ensure that work not being carried out in accordance with the safe work method statement was stopped immediately, or as soon as it was safe to do so, and only resumed once the work was being done in accordance with the safe work method statement	(I) \$720 (C) \$3600
WHS Regulation 2011	301	Construction work- Work Method Statements	8068	PCBU failed to give PC a copy of safe work method statement for high risk construction work before work commenced	(I) \$144 (C) \$720
WHS Regulation 2011	302	Construction work- Work Method Statements	8069	PCBU failed to ensure that safe work method statement was reviewed and revised (as necessary) after revision of relevant control measures under section 38	(I) \$432 (C) \$2160
WHS Regulation 2011	303(3)	Construction work- Work Method Statements	8072	PCBU failed to ensure that a copy of safe work method statement was readily accessible to worker engaged by PCBU to carry out high risk construction work for the period prescribed	(I) \$432 (C) \$2160
WHS Regulation 2011	304(3)	Construction work- Excavation work	8074	Person with management or control failed to provide current underground essential services information to person engaged to carry out excavation work	(I) \$432 (C) \$2160
WHS Regulation 2011	304(5)	Construction work- Excavation work	8075	Person with management or control failed to ensure current underground essential services information was available for inspection for relevant period as prescribed	(I) \$144 (C) \$720
WHS Regulation 2011	306(1)	Construction work- Excavation work	9004	PCBU failed to ensure that, when excavating a trench at least 1.5 metres deep, the work area was secured from unauthorised access, including inadvertent access	(I) \$720 (C) \$3600
WHS Regulation 2011	306I(7)	Construction work- Falls	8076	PCBU failed to ensure that enough distance was available for person using fall arrest harness system to fall without hitting an object, the ground or another surface, other than a vertical surface	(I) \$720 (C) \$3600
WHS Regulation 2011	306K(2)	Construction work- Ladder Safety	8077	PCBU used, or allowed another person to use, single or extension ladder to gain access to a place in a manner that is not permitted, or to undertake construction work that is not permitted	(I) \$720 (C) \$3600
WHS Regulation 2011	306L(3)	Construction work- Ladder Safety	8078	PCBU used, or allowed another person to use, single or extension ladder for construction work in a manner that is not permitted; or without prescribed control	(I) \$720 (C) \$3600

				measure, and without the ladder being secured as prescribed	
WHS Regulation 2011	306O(5)	Construction work- Ladder Safety	8079	PCBU failed to ensure platform supported by trestle ladders is no higher than 5 metres and has an unobstructed surface at least 450mm wide along length of platform	(I) \$720 (C) \$3600
WHS Regulation 2011	306P(2)	Construction work- Scaffolding	8080	PCBU erected, or allowed another person to erect scaffolding where a person could fall at least 3m for housing construction work, or 2m for other construction work, while erecting the scaffolding, without having control measures or fall arrest system as prescribed in s306P	(I) \$720 (C) \$3600
WHS Regulation 2011	306Q(2)	Construction work- Scaffolding	9006	PCBU failed to use the prescribed control measures when dismantling scaffolding resulting in a risk of a person falling 3 metres in housing construction work or 2 metres in construction work that is not housing construction work	(I) \$720 (C) \$3600
WHS Regulation 2011	312	Construction work- Safe Work Method Statements	8082	PC failed to take all reasonable steps to obtain copy of safe work method statement for high risk construction work before relevant work commenced	(I) \$432 (C) \$2160
WHS Regulation 2011	313(3)	PCBU Management plan	8085	PCBU failed to ensure that a copy of WHS management plan was readily accessible to person who was to carry out construction work connected with project for prescribed period	(I) \$432 (C) \$2160
WHS Regulation 2011	315A(2)	Construction work- Amenities	8087	PC failed to ensure amenities were maintained in hygienic, safe and serviceable condition with relevant systems as prescribed	(I) \$720 (C) \$3600
WHS Regulation 2011	315F(3)	Construction work- Falling objects	8088	(For construction work other than civil/housing construction work) PC failed to ensure correct barricade or hoarding was erected as prescribed	(I) \$720 (C) \$3600
WHS Regulation 2011	315G(3)	Construction work- Falling objects	8089	For measured angle of 75° or more, other than in demolition work or work erecting or dismantling formwork, PC failed to ensure implementation of at least 1 prescribed additional control measure before construction work starts	(I) \$720 (C) \$3600
WHS Regulation 2011	315L(3)	Construction work- Falling objects	8090	PC failed to ensure implementation of a prescribed control measure before lifting load over adjoining area	(I) \$720 (C) \$3600
WHS Regulation 2011	316	Construction work- General Induction	8091	PCBU failed to ensure provision of general construction induction training to worker as prescribed	(I) \$432 (C) \$2160
WHS Regulation 2011	346(1)	Hazardous Chemicals	9011	(a) PCBU failed to ensure that a register of hazardous chemicals used, handled or stored at the workplace is prepared and kept at the workplace (b) PCBU failed to ensure that the register of hazardous chemicals is maintained so that the information in the register is up to date	(I) \$720 (C) \$3600
WHS Regulation 2011	346(3)	Hazardous Chemicals	9012	PCBU failed to ensure that the hazardous chemical register is readily available to any worker using, handling or storing a hazardous	(I) \$432 (C) \$2160

				chemical or anyone else likely to be affected by a hazardous chemical at the workplace	
WHS Regulation 2011	419(1)	Asbestos Management	9013	PCBU must not carry out, direct or allow a worker to carry out work involving asbestos, except as expressly allowed for under s 419	(I) \$720 (C) \$3600
WHS Regulation 2011	425(1)	Asbestos Management	8106	Person with management or control failed to ensure that asbestos register was prepared and kept at workplace	(I) \$432 (C) \$2160
WHS Regulation 2011	446(1)	Asbestos Management	9014	PCBU must not use, direct or allow a worker to use high-pressure water spray or compressed air on asbestos/ACM	(I) \$432 (C) \$2160
WHS Regulation 2011	446(3)	Asbestos Management	9015	PCBU must not use, direct or allow a worker to use power tools, brooms or any implements that cause the release of airborne asbestos into the atmosphere, unless the use of the equipment is controlled	(I) \$432 (C) \$2160
WHS Regulation 2011	449	Asbestos Management	8120	Person with management or control failed to ensure that PCBU carrying out demolition/refurbishment was given copy of asbestos register before work commenced	(I) \$720 (C) \$3600

SCHEDULE 2- Summary of the evidence for each offence that must be identified before the issue of an infringement notice

Notifiable incident– record keeping	
Elements of s38(7) of the WHS Act	Evidentiary Notes
A person conducting a business or undertaking	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
to whom a notifiable incident has occurred	Identify specific notifiable incident(s). A notifiable incident means the death of a person; or a serious injury or illness of a person; or a dangerous incident. See WHSA s35
must keep a record for at least 5 years from the day that notice of the incident is given to the regulator.	Identify the specific incident(s) notified to the regulator. Search CISr records, view documents kept at the workplace. Confirm that there is a record kept by the PCBU for those incidents notified for at least 5 years. e.g. view documents, make inquiries.

HSR role – reasonable time	
Elements of s70(2) of the WHS Act	Evidentiary Notes
A person conducting a business or undertaking	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must allow a health and safety representative	Identify the HSR. Correct legal name and address. Determine that the person is a HSR in accordance with Act. See WHSA Part 5 Div 3
to spend the time reasonably necessary	Identify the time allowed the HSR to exercise their powers and functions e.g. make inquiries, inspect documents Determine if this time is the amount reasonably necessary to exercise their powers and functions in the relevant circumstances.
to exercise his or her powers and perform his or her functions under this Act.	Identify the specific powers and functions exercised by the HSR and the relevant circumstances e.g. make inquiries, inspect documents. See WHSA s68

Improvement notice – non compliance	
Elements of s193 of the WHS Act	Evidentiary Notes
The person	The person named on the improvement notice. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. Site address details (offence location-where the person has not complied with the notice). Date and time

To whom an improvement notice is issued	The notice must have been properly issued. Identify evidence which proves the issue or service of the improvement notice. See WHSA s209
Must comply with the notice within the period stated in the notice.	The evidence of the failure to comply must show that the contravention has not been remedied by the compliance date. There must be evidence that the contravention stated on the notice still exists after the compliance date.

Air monitoring – where exposure standards apply	
Elements of s50(1) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
Must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace	Identify if air monitoring has been carried out to determine the airborne concentration of a specified substance or mixture at the workplace e.g. air monitoring records. For 'air monitoring' see Safe Work Australia- Workplace Exposure Standards for Airborne Contaminants 2013 (SWA Standard); and Safe Work Australia – Guidance on the Interpretation of Workplace Exposure Standards for Airborne Contaminants 2013 (SWA Guide)
To which an exposure standard applies	Confirm that the exposure standard applies to the airborne concentration of the specified substance or mixture at the workplace. See Safe Work Australia- Workplace Exposure Standards for Airborne Contaminants 2013 (SWA Standard); and Safe Work Australia – Guidance on the Interpretation of Workplace Exposure Standards for Airborne Contaminants 2013 (SWA Guide)
if – (a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard OR (b) monitoring is necessary to determine whether there is a risk to health.	Confirm if either of the circumstances apply. (a) Identify on what reasonable grounds the person is certain that the exposure standard is not being exceeded e.g. previous test results, reports from competent persons, published information about the substance. OR (b) Determine if monitoring is necessary to determine the risk to health. e.g. medical certificates for health issues associated with the substance. Published information about the substance.

Confined space risk assessment – competent person	
Elements of s66(2) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must ensure that a risk assessment	Identify and copy the specific risk assessment for the specific confined space. The risk assessment must be written.

	See WHSR s66(3)
is conducted by a competent person	Identify the person who conducted the risk assessment. Legal name and address. Determine whether they are competent- a person who has acquired through training, qualifications or experience the knowledge and skills to carry out the task e.g. inspect qualifications, inquire about experience. See WHSR Schedule 19 (definition)
for the purpose of subsection (1). See WHSR s66(1) under part 3.1, manage risks associated with confined spaces including risks associated with entering, working in, on or in the vicinity of the confined space, (including a risk of a person inadvertently entering the confined space).	Review the risk assessment. Determine if it meets the purposes of WHSR s 66(1) e.g. does it manage the risks of the specific confined space in accordance with WHSR part 3.1? Make observations and inquiries. See WHSR s62

Confined space – system of work inc. communication and standby person	
Elements of s69 of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must ensure that a worker does not enter a confined space to carry out work	Identify how the PCBU has ensured that workers do not carry out work in confined spaces that is not in accordance with the communication and safety monitoring requirement stated below e.g. review systems of work, risk assessments, training and supervision. See WHSR s62
unless the person provides a system of work that includes— (a) continuous communication with the worker from outside the space; AND	Determine if the system of work provides for continuous communication with the worker from outside e.g. observations, inquiries documents.
(b) monitoring of conditions within the space by a standby person who is in the vicinity of the space and, if practicable, observing the work being carried out.	Identify if the system of work provides for monitoring of conditions within the space by a standby person who is in the vicinity of the space. Consider how different types of conditions might be monitored. Determine the practicability of the monitoring, including the observation of the work by the standby person e.g. observations, inquiries documents.

High risk work – evidence of HRW licence	
Elements of s85(1) of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5

	Site location where work is carried out (offence location). Date and time. See WHSA s8
must not direct or allow a worker to carry out high risk work for which a high risk work licence is required	Identify the specific worker who been directed or allowed to carry out specific HRW for which a HRWL is required e.g. inquiries, observations, documents. See WHSR Schedule 3
unless the person sees written evidence provided by the worker that the worker has the relevant high risk work licence for that work.	Determine whether the PCBU has seen written evidence that the worker holds the relevant high risk work licence for that high risk work e.g. copy of HRWL in PCBU's records, inquiries, documents. See WHSR Schedule 3

High risk work – training, certification or licence application	
Elements of s85(2) of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must not direct or allow a worker to carry out high risk work under sections 82(1) or 1A	Identify the specific worker who been directed or allowed to carry out specific HRW under either the circumstances stated in WHSR s82(1) OR 1A e.g. inquiries, observations, documents. See WHSR Schedule 3
unless the person sees written evidence provided by the worker that the worker—	Determine whether the PCBU has seen written evidence that is compliant with the types of work being undertaken, evidence required and timeframes as stated below e.g. training enrolment, certification, licence application, inquiries, other documents.
(a) for work carried out under section 82(1)—is undertaking the course of training mentioned in section 82(1)(a); or	Identify if specific work is being carried out by the worker under s82(1) e.g. enrolment documentation for licence certification training. See WHSR Schedules 3 and 4
(b) for work carried out under section 82(1A)(a)—holds the certification mentioned in section 82(1A); or	Identify if specific work is being carried out by the worker under s82(1A)(a) -person who holds a certification for a specified VET course for high risk work and is within 60 days from the issue of the certification e.g. inquiries, certificates, issue dates. See WHSR Schedules 3 and 4
(c) for work carried out under section 82(1A)(b)—has applied for the licence mentioned in that paragraph.	Identify if specific work is being carried out by the worker under s82(1A)(b) e.g. inquiries, certificates, licence applications, issue dates, any written notice to the worker concerning refusal of their application. See WHSR s91

High risk work licence - supervision	
Elements of s85(3) of the WHS Regulation	Evidentiary Notes

A person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must not direct or allow a worker to supervise high risk work as mentioned in sections 82(1) and 84	Identify the specific worker who been directed or allowed to supervise specific HRW undertaken by another specific worker as mentioned in either WHSR s82(1) or 84 e.g. make inquiries, observations, documents. See WHSR Schedule 3
unless the person sees written evidence that the worker holds the relevant high risk work licence for that high risk work.	Determine whether the PCBU has seen written evidence that the worker holds the relevant high risk work licence for that high risk work e.g. copy of supervisor's HRWL held by PCBU, inquiries, documents. See WHSR Schedule 3

General diving work - competencies	
Elements of s175(1) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
Must not direct or allow a worker to carry out general diving work	Identify the specific worker(s)- legal name and address. Confirm the specific work being undertaken is general diving work- e.g. observations, photographs, contracts. See WHSR Schedule 19 definitions Identify how the PCBU has directed or allowed the work- e.g. inquiries, contract documents, position description.
Unless the person sees written evidence provided by the worker	Written evidence of training, qualifications and/or experience. See WHSR s171, 172 or 173 Provided by the worker- e.g. statement, correspondence. Has the person (PCBU) seen the evidence? Date and time e.g. statement, documents.
That the worker has the relevant competencies required under this division	Determine whether the worker has the relevant competency e.g. training, qualifications and/or experience. See WHSR s171, 172 or 173

SWMS – prepared or already prepared by other person	
Elements of s299(1) of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time.

that includes carrying out high risk construction work	Identify the specific HRCW being undertaken e.g. inquiries, observations. See WHSR s291
must, before high risk construction work commences,	Confirm when the HRCW commenced e.g. make inquiries, view documents.
ensure that a safe work method statement for the proposed work— (a) is prepared; OR	Determine whether a specific SWMS was prepared by the PCBU before the specific HRCW commenced e.g. copy of SWMS, inquiries. OR Note: A SWMS is a document for the relevant HRCW that complies with WHSR s299(2), (3) and (4)
(b) has already been prepared by another person.	Determine whether a specific SWMS was prepared by another person before the specific HRCW commenced e.g. copy of SWMS, inquiries.

SWMS – arrangements for ensuring SMWS is followed	
Elements of s300(1) of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time.
that includes carrying out high risk construction work	Identify the specific HRCW being undertaken e.g. inquiries, observations. See WHSR s291
must put in place arrangements	Identify any specific arrangements that have been put in place e.g. information for relevant workers, training, supervision e.g. make inquiries, inspect training records, documents.
for ensuring that high risk construction work is carried out in accordance with the safe work method statement for the work.	Identify how the work is to be carried out in accordance with the specific SWMS e.g. what control measures are required. See WHSR s299 Determine if the arrangements put in place will ensure that the HRCW will be carried out in accordance with the specific SWMS e.g. inquiries, documents. See WHSR s299

SWMS – work stopped	
Elements of s300(2) of the WHS Regulation	Evidentiary Notes
If high risk construction work is not carried out in accordance with the safe work method statement for the work,	Identify, for the relevant time, the specific SWMS for the work. See WHSR s299 Identify the specific HRCW carried out at the relevant time e.g. inquiries, documents, observations. See WHSR s291 Site location where construction work is carried out (offence location). Date and time.
The person See WHSR s300(1) A person conducting a business or undertaking that includes carrying out high risk construction work	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5

must ensure that the work— (a) is stopped immediately or as soon as it is safe to do so; and	Determine whether the work was stopped immediately or as soon as it was safe to do so at the relevant time e.g. inquiries, observations.
(b) resumed only in accordance with the statement.	Identify whether the specific HRCW was resumed after the relevant time e.g. make inquiries, observations. If the work was resumed, determine if the work when resumed was in accordance with the specific SWMS e.g. make inquiries, SWMS, observations.

SWMS – copy to PC	
Elements of s301 of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time.
that includes carrying out high risk construction work in connection with a construction project must,	Identify the specific HRCW being undertaken e.g. inquiries, observations. See WHSR s291 Confirm the HRCW is being carried out in connection with a specific construction project e.g. inquiries, contracts, documents. See WHSR s292
before the high risk construction work commences,	Identify when the HRCW commenced for the project e.g. inquiries.
ensure that a copy of the safe work method statement for the work is given to the principal contractor.	Determine when/if a copy of the SWMS was given to the PC for the project. See WHSR s299 Identify the PC. Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address.

SWMS – revision reqt	
Elements of s302 of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking	Confirm the PCBU must keep a SWMS. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time. See WHSR s299
must ensure that a safe work method statement is reviewed and, as necessary, revised	Determine whether a specific SWMS has been reviewed and as necessary revised in the circumstances stated below e.g. inquiries, SWMS before and after any review or revision.
if relevant control measures are revised under section 38.	Identify specific control measures relevant to the SWMS that have been revised in any of the circumstances stated in WHSR s38 e.g. when a notifiable incident occurs because of

	the risk; or when a HSR requests a review e.g. inquiries, documents, observations. See WHSR s38
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SWMS – readily accessible	
Elements of s303(3) of the WHS Regulation	Evidentiary Notes
The person See WHSR 303 (1) This section applies if a person conducting a business or undertaking must keep a copy of a SWMS.	Confirm the PCBU must keep a SWMS. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time. See WHSR s299
must ensure that for the period for which the statement must be kept under this section	Determine the relevant period for which the SWMS must be kept e.g. inquiries, documents. See WHSR s303(1) and (2)
a copy is readily accessible to any worker engaged by the person to carry out the high risk construction work.	Identify where copies of the specific SWMS are kept e.g. inquiries, documents, databases. Identify specific workers engaged by the person to carry out the specific HRCW relevant to the SWMS e.g. engagement documentation for relevant workers, inquiries. Determine whether the copy of the SWMS is readily accessible to the workers e.g. inquiries, observations, See WHSR s291, 299

Excavation work - underground essential services information	
Elements of s304(3) of the WHS Regulation	Evidentiary Notes
The person with management or control of the workplace	Confirm the person has management or control of the workplace where the excavation work is carried out. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time See WHSR s289
must provide the information obtained under subsection (2)	Determine if the person has provided specific information about current underground essential services for the excavation work and adjacent area e.g., inquiries, documents See WHSR s304(2)
To any person engaged by the person to carry out the excavation work.	Identify whether the information has been provided to all persons engaged to carry out the excavation work e.g. inquiries, documents See WHSR s306(2) See WHSR sched 19 definitions

Excavation work - underground essential services information available for inspection	
Elements of s304(5) of the WHS Regulation	Evidentiary Notes
The person with management or control of the workplace	Confirm the person has management or control of the workplace where the excavation work is carried out.

	<p>Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5</p> <p>Site location where construction work is carried out (offence location). Date and time. See WHSR s289</p>
must ensure that the information mentioned in subsection (2)	<p>Determine if the person has obtained specific information about current underground essential services for the excavation work and adjacent area e.g., inquiries, documents See WHSR s304(2)</p>
is available for inspection under the Act	<p>Identify whether the information is available for inspection under the Act e.g. inquiries, documents.</p>
for the period stated in subsection (6).	<p>Determine whether the information is available for the period of the excavation work or, if there has been a notifiable incident, for two years from the incident e.g. make inquiries, view documents See WHSR s304(6)</p>

Trenches - secured from unauthorised access	
Elements of s306(1) of the WHS Regulation	Evidentiary Notes
A person conducting a business or undertaking	<p>Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5</p> <p>Site location where construction work is carried out (offence location). Date and time See WHSR s289</p>
who proposes to excavate a trench at least 1.5m deep	<p>Measure the depth of the trench or proposed trench and determine that it is at least 1.5m deep e.g. measurements, inquiries, observations. See WHSR sched 19 definitions</p>
must ensure, so far as is reasonably practicable	<p>Determine whether the 'work area is secured from unauthorised access' SFARP, including the risks and likelihood of unauthorised access e.g. inquiries, observations, photographs. See WHSR s306(2) and WHSA s18</p>
that the work area is secured from unauthorised access (including inadvertent entry).	<p>Identify what, if any, specific controls exist to secure the work area from unauthorised access e.g. inquiries, observations, documents.</p>

Fall arrest harness system – fall distance	
Elements of s306I(7) of the WHS Regulation	Evidentiary Notes
<p>A person conducting a business or undertaking</p> <p>This section applies if a fall arrest harness system is used as a control measure to perform construction work. See WHSR s306A definitions</p>	<p>Ensure limitations to the application of this section do not apply.</p> <p>Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5</p> <p>Site location where construction work is carried out (offence location). Date and time See WHSR s289</p>

must ensure there is enough distance available	Measure the distance that any person using the fall arrest harness from any place could fall and the distance from the same places to any object, the ground or non-vertical surface that the person could hit e.g. measurements, inquiries, observations. Determine if there is enough distance available. See WHSR s306I(8) matters to be taken into account.
for a person using the system	Identify the specific person(s) and system being used e.g. inquiries, observations, photographs. See WHSR s306A definitions
to fall to prevent the person hitting an object, the ground or another surface, other than a vertical surface.	Using measurements and determination made (see above), identify the specific circumstance(s) where a person using the system is at risk of hitting an object or surface.

Ladders – access 3 points of contact/construction other than permitted work	
Elements of s306K(2) of the WHS Regulation	Evidentiary Notes
The person See WHSR 306K (1) This section applies if a person conducting a business or undertaking intends to perform construction work that involves a single or extension ladder.	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time. See WHSR s289
must not use, or allow another person to use,	Confirm whether the PCBU has used the ladder OR has allowed another person to use the ladder. If another person is identified- Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address e.g. make inquiries, observations
the ladder	Identify the specific ladder being used. Ensure it is a single or extension ladder e.g. observations, photographs.
(a) to gain access to a place, unless the person using the ladder has at least 2 hands and 1 foot, or 2 feet and 1 hand, on the ladder from when the person is fully on the ladder to when the person is leaving the ladder; OR	Confirm whether the ladder is being used to gain access to a place and whether the person using the ladder has the necessary points of contact and that this is maintained for the necessary time when on the ladder e.g. observations, photographs, inquiries. OR
(b) to do construction work, other than to gain access to a place under paragraph (a), unless the work is permitted work.	Identify whether the person is doing construction work other than to gain access and determine whether the work is permitted work e.g. observations, photographs, inquiries. See WHSR s289 and s306A definitions- permitted work

Ladders – additional control measures	
Elements of s306L(3) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking See WHSR 306L (1) This section applies if a person conducting a business or undertaking intends to perform construction work that involves a ladder. AND	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5

<p>WHSR s306L(2) Subsection (3) applies if the construction work is permitted work, and, in doing the work, a person could fall—</p> <p>(a) for housing construction work—at least 3m; or</p> <p>(b) otherwise—at least 2m.</p> <p>See WHSR s306A definitions- permitted work</p>	<p>Site location where construction work is carried out (offence location). Date and time.</p> <p>See WHSR s289</p>
<p>must not use, or allow another person to use,</p>	<p>Confirm whether the PCBU has used the ladder OR has allowed another person to use the ladder. If another person is identified- Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address e.g. inquiries, observations</p>
<p>the ladder, if it is a single or extension ladder, unless—</p>	<p>Identify the specific ladder being used. Ensure it is a single or extension ladder e.g. observations, photographs.</p>
<p>(a) the person using the ladder—</p> <p>(i) has at least 3 limbs holding, wrapped around or standing on the ladder in any combination; or</p> <p>Example— holding the ladder with 1 hand while standing on it with 2 feet</p> <p>(ii) is prevented from falling by a control measure, for example, a strap commonly known as a pole strap;</p> <p>or</p> <p>(iii) is using a fall arrest harness system that is not attached to the ladder; AND</p>	<p>Identify whether at the relevant time any of the three stated controls were in place e.g. observations, photographs, inquiries. AND</p> <p>Note the limitation created by WHSR s306L(4)</p>
<p>(b) the ladder is secured—</p> <p>(i) at or near the top to prevent it moving; or</p> <p>Examples—</p> <ul style="list-style-type: none"> • tying the top of the ladder to a plate fixed to the top of a wall frame • clamping the top of the ladder to structural steel. <p>(ii) at or near the bottom to prevent it moving.</p> <p>Examples—</p> <ul style="list-style-type: none"> • tying the bottom of the ladder to pegs in the ground. • a person, other than the person using the ladder, holding the ladder in position near the bottom of the ladder. 	<p>Identify whether at the relevant time either of the two stated controls to secure the ladder were in place e.g. observations, photographs, inquiries.</p>

Platform supported by trestle ladders	
Elements of s306O(5) of the WHS Regulation	Evidentiary Notes
<p>The person conducting a business or undertaking must ensure</p> <p>See WHSR 306O (1) This section applies if a person conducting a business or undertaking is performing construction work on a platform supported by trestle ladders.</p> <p>See WHSR 306O (4) limits the application of this section</p>	<p>Ensure limitations to the application of this section do not apply.</p> <p>Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address.</p> <p>See WHSA s5</p> <p>Site location where construction work is carried out (offence location). Date and time.</p> <p>See WHSR s289</p>

(a) the platform has an unobstructed surface at least 450mm wide along the length of the platform; AND	Identify specific platform supported by trestle ladders and used for construction work. Confirm type of construction work and measure distance a person could fall. See WHSR s306A definitions Determine whether the platform has an unobstructed surface at least 450mm wide along its length of the platform e.g. observations, measurements. OR
(b) the platform is not higher than 5m.	Determine whether the platform is higher than 5m e.g. observations, measurements.

Scaffolding – controls while erecting scaffolding	
Elements of s306P(2) of the WHS Regulation	Evidentiary Notes
Person See WHSR 306P(1) person must be a PCBU who intends to perform construction work that is the erecting of scaffolding. Note: Section 306P (3) limits the application of this section	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time. See WHSA s8
must not erect the scaffolding	Identify specific scaffolding that has been erected e.g. observations, inquiries, contractual documents. See WHSR sched 19 definitions
or allow another person to erect the scaffolding	Identify if another person has been allowed to erect the scaffold. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address.
if housing construction work and a person could fall at least 3m in erecting the scaffolding; OR	Identify if the work is housing construction work and a person could fall at least 3m erecting the scaffolding e.g. observations, measurements, photographs, sketches, inquiries, site plans. See WHSR s306A definitions
if not housing construction work and a person could fall at least 2m in erecting the scaffolding.	Identify if the work is NOT housing construction work and a person could fall at least 2m erecting the scaffolding e.g. observations, measurements, photographs, sketches, inquiries, site plans. See WHSR s306A definitions

Scaffolding – controls while dismantling	
Elements of s306Q(2) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking See WHSR 306Q (1) person must be a PCBU who intends to perform construction work that is the erecting of scaffolding. Note: Section 306Q (3) limits the application of this section	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where construction work is carried out (offence location). Date and time. See WHSA s8

must not dismantle the scaffolding	Identify specific scaffolding that has been dismantled e.g. observations, inquiries, contractual documents. See WHSR sched 19 definitions
or allow another person to dismantle the scaffolding	Identify if another person has been allowed to dismantle the scaffold. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address.
if housing construction work and a person could fall at least 3m in dismantling the scaffolding; OR	Determine if the work is housing construction work and a person could fall at least 3m dismantling the scaffolding e.g. observations, measurements, photographs, sketches, inquiries, site plans. OR See WHSR s306A definitions
if not housing construction work and a person could fall at least 2m in dismantling the scaffolding.	Determine if the work is NOT housing construction work and a person could fall at least 2m dismantling the scaffolding e.g. observations, measurements, photographs, sketches, inquiries, site plans. See WHSR s306A definitions

SWMS – PC to obtain copy	
Elements of s312 of the WHS Regulation	Evidentiary Notes
The principal contractor for a construction project.	Evidence that the person is a principal contractor for the specific construction project. See WHSR s292 and 293 Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address. Site address details (offence location). Date and time.
must take all reasonable steps to obtain a copy of the safe work method statement relating to high risk construction work	Identify specific high risk construction work for which a SWMS is required. See WHSR s291 and 299 Confirm whether the PC has obtained a copy e.g. inquiries. If not, identify if the PC has taken all reasonable steps to obtain a copy e.g. inquiries, documents. Note: The WHS management plan contains arrangements for cooperation between persons conducting a business or undertaking at the construction project workplace, including in relation to the preparation of safe work method statements, see s309(2)(b) and (e).
before the high risk construction work commences.	Confirm when the specific high risk construction work commences.

WHS management plan – kept for relevant period & readily accessible	
Elements of s313(3) of the WHS Regulation	Evidentiary Notes
Person See WHSR 313(1) person must be a principal contractor for a construction project.	Evidence that the person is a principal contractor for the specific construction project. See WHSR s292 and 293 Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address. Site address details (offence location). Date and time.
must ensure that for the period for which the WHS management	Identify the period for which the plan must be kept- ‘until the project to which it relates is completed’. See WHSR s313(1)

plan must be kept under this section,	Confirm that the document kept is the relevant WHS management plan. See WHSR s309
a copy is readily accessible to any person who is to carry out construction work in connection with the construction project.	Identify the location of the WHS management plan. Determine that it is readily accessible to any relevant person e.g. inquiries with subcontractors, workers.

Amenities - maintenance & system (PC)	
Element of s315A(2) of the WHS Regulation	Evidentiary Notes
Principal contractors	Evidence that the person is a principal contractor for construction work. See WHSR s289 and 293 Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address. Site address details (offence location). Date and time.
Must ensure that an amenity provided under schedule 5A	Identify the specific amenity(s) that has been provided by the PC under schedule 5A- e.g. observations, photographs.
is maintained in a hygienic, safe and serviceable condition	Identify how each amenity is not either in a hygienic, safe or serviceable condition- e.g. observations, photographs, statements. OR
including by ensuring that there is a system for: a) inspecting and cleaning the amenity; and b) if the amenity has facilities to dispose of sanitary items for females- the adequate and hygienic disposal of the sanitary items.	Determine if there is no system for inspecting or cleaning the amenity e.g. observations, statements. OR If the amenity has facilities to dispose of sanitary items for females- evidence that there is not adequate and hygienic disposal of the sanitary items e.g. observations, statements.

Falling objects – PC additional controls	
Element of s315F(3) of the WHS Regulation	Evidentiary Notes
Before the work starts Note: Section 315F (1) limits the application of this section	Ensure limitations to the application of this section do not apply. Identify when the construction work started.
the principal contractor	Evidence that the person is a principal contractor for construction work. See WHSR s289 and 293 Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address. Site address details (offence location). Date and time.
must ensure that— (a) if the measured angle is not more than 15°—a barricade or hoarding at least 900mm high that surrounds the structure is	Determine the proposed line and measured angle e.g. inquiries, plans, documents, measurements. See WHSR s315F(2) If the measured angle $\leq 15^\circ$ confirm any barricade or hoarding complies with this section e.g. observations, measurements. See WHSR s315C OR

erected along the proposed line; OR	
(b) if the measured angle is more than 15 ⁰ but not more than 30 ⁰ —a hoarding at least 1,800mm high is erected along the proposed line; OR	If the measured angle >15 ⁰ and ≤30 ⁰ confirm any hoarding complies with this section e.g. observations, measurements. See WHSR s315C OR
(c) if the measured angle is more than 30 ⁰ but less than 75 ⁰ —a hoarding at least 1,800mm high that is fully sheeted with timber, plywood, metal or sturdy synthetic sheets is erected along the proposed line; OR	If the measured angle >30 ⁰ and <75 ⁰ confirm any hoarding complies with this section e.g. observations, measurements. See WHSR s315C OR
(d) if the measured angle is 75 ⁰ or more— (i) a hoarding at least 1,800mm high that is fully sheeted with timber, plywood, metal or sturdy synthetic sheets and that is not part of a gantry is erected along the proposed line; or (ii) a gantry is erected under section 315G(3)(a).	If the measured angle ≥75 ⁰ confirm any hoarding complies with this section e.g. observations, measurements. OR See WHSR s315C Confirm whether any gantry has been erected and determine if it complies with s315G(3)(a). e.g. observations, inquiries, measurements, documents. See WHSR 315C, 315G(3)(a) and 315K

Falling objects – additional controls for PC	
Element of s315G(3) of the WHS Regulation	Evidentiary Notes
Principal contractors Note: Sections 315G (1) and (2) limit the application of this section	Ensure limitations to the application of this section do not apply. Evidence that the person is a principal contractor for construction work. See WHSR s289 and 293 Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address. Site address details (offence location). Date and time
must ensure that at least 1 of the following control measures is used before construction work starts	Identify when the construction work started.
(a) a gantry is erected along the proposed line adjacent to the sides of each part of the structure from which an object could fall; OR	Confirm whether any gantry has been erected adjacent to the relevant sides provides adequate protection and determine if the gantry complies with s315K e.g. observations, inquiries, measurements, documents. AND See WHSR 315C, 315K and 315L(4)

(b) the adjoining area is closed under section 315M at least to the extent necessary to prevent objects falling on or otherwise hitting persons; OR	Identify whether the adjoining area has been closed under section 315M to the extent necessary e.g. inquiries, copies of written approvals from the authority or person who controls the area, observations of any measures required by any authorities with control of the area. AND See WHSR s315M
(c) a catch platform with perimeter containment screening complying with section 315I is installed— (i) along the sides of each part of the structure from which an object could fall; AND (ii) not more than 1m below— (A) if the structure has storeys—the storey of the structure from which an object could fall; OR (B) if the structure does not have storeys—the surface from which an object could fall.	Confirm whether any catch platform and its containment screening is installed in compliance with this section and determine if the containment screening complies with s315I e.g. observations, inquiries, measurements, documents. AND See WHSR 315C, 315I and 315D if the containment screening includes mesh.

Falling objects – additional controls for PC	
Element of s315L(3) of the WHS Regulation	Evidentiary Notes
Principal contractors Note: Sections 315L (1) and (2) limit the application of this section	Ensure limitations to the application of this section do not apply. Evidence that the person is a principal contractor for construction work. See WHSR s289 and 293 Correct legal name. ABN or ACN if applicable. Registered address or principal place of business. Not a PO Box or site address. Site address details (offence location). Date and time.
must ensure that, before the work starts—	Identify when the construction work of lifting a load over the adjoining area started.
(a) the adjoining area is closed under section 315M at least to the extent necessary to prevent objects falling on or otherwise hitting persons in the adjoining area; OR	Identify whether the adjoining area has been closed under section 315M to the extent necessary e.g. inquiries, copies of written approvals from the authority or person who controls the area, observations of any measures required by any authorities with control of the area. AND See WHSR s315M
(b) a gantry is erected that provides adequate protection to persons in the adjoining area against falling objects if the load were to fall.	Confirm whether any gantry erected provides adequate protection and determine if the gantry could withstand the force of a falling load e.g. observations, inquiries, measurements, documents See WHSR s 315C, 315K and 315L(4)

General construction induction training	
Elements of s316 of the WHS Regulation	Evidentiary Notes

The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time See WHSA s8
must ensure that general construction induction training is provided	Confirm any training provided is 'general construction induction training' e.g. inquiries with PCBU or workers, certification, training cards See WHSR sched 19 definitions Confirm that there is a register of hazardous chemicals
to a worker engaged by the person who is to carry out construction work,	Identify the specific workers engaged by the PCBU to perform the specific construction work e.g. Inquiries, documents.
if the worker— (a) has not successfully completed general construction induction training; or	Confirm whether specific workers have successfully completed general construction induction training e.g. inquiries, certification, training cards. AND See WHSR sched 19 definitions
(b) successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.	Identify whether any general construction induction training was completed more than two years previously AND, for those specific workers whether they have carried out construction work in those two years e.g. inquiries, certification dates, training cards dates.

Hazardous chemical register	
Elements of s346(1) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace Note: Section 346 (4) limits the application of this section	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must ensure that— (a) a register of hazardous chemicals used, handled or stored at the workplace is prepared and kept at the workplace; AND	Identify specific hazardous chemicals used, handled or stored at the workplace e.g. observations, inquiries. See WHSR sched 19 definitions Confirm that there is a register of hazardous chemicals prepared for and kept at the workplace e.g. document Note: The register must comply with WHSR s346(2).
(b) the register is maintained to ensure the information in the register is up to date.	Confirm the register is maintained to ensure the information is up to date e.g. inquiries, observations.

Hazardous chemical register – readily accessible	
Elements of s346(3) of the WHS Regulation	Evidentiary Notes
The person See WHSR s346(1) the person conducting a business or undertaking at a workplace.	Ensure limitations to the application of this section do not apply.

Note: Section 346 (4) limits the application of this section	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must ensure that the register is readily accessible to — (a) a worker involved in using, handling or storing a hazardous chemical; AND	Identify the location of the register. Confirm that it is readily accessible to: (a) a specific worker(s) involved in using, handling or storing a hazardous chemical; OR Note: The register must comply with WHSR s346(2).
(b) anyone else who is likely to be affected by a hazardous chemical at the workplace.	(b) anyone else who is likely to be affected by a hazardous chemical at the workplace e.g. observations, inquiries.

Asbestos work	
Elements of s419(1) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace Note: Sections 419 (3) , 419(4) and 419(5) limit the application of this section	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time. See WHSA s8
must not carry out, or direct or allow a worker to carry out	Identify whether the PCBU has carried out, directed or allowed a worker to do the work at the offence location e.g. inquiries, observations, documents.
Work involving asbestos	Determine whether the work involves manufacturing, supplying, transporting, storing, removing, using, installing, handling, treating, disposing of or disturbing asbestos or ACM e.g. Observations, inquiries, sampling, testing.

Asbestos register – prepared and kept	
Elements of s425(1) of the WHS Regulation	Evidentiary Notes
The person with management or control of a workplace Note: Section 425 does not apply to a workplace that is domestic premise - see section 421(2). Note: Sections 425 (4) and 425(6) limit the application of this section.	Ensure limitations to the application of this section do not apply. Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s20(1) Site location where work is carried out (offence location). Date and time. See WHSA s8.
Must ensure that a register (an asbestos register) is prepared and	Confirm that there is an asbestos register prepared for and kept at the workplace. See WHSR s425(3).

kept at the workplace.	
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Asbestos or ACM – limit use of equipment	
Elements of s446(1) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time See WHSA s8
must not use, or direct or allow a worker to use, either of the following	Identify whether the PCBU has used, directed or allowed a worker to do the work at the offence location e.g. inquiries, observations, documents.
on asbestos or ACM	Identify the work is done on either asbestos or ACM e.g. sampling, testing, asbestos register.
(a) high-pressure water spray; (b) compressed air.	Confirm the work involves the use of either high-pressure water spray or compressed air e.g. observations, inquiries. Note: WHSR s446 (1)(a) does not apply to the use of a high pressure water spray for fire fighting or fire protection purposes.

Asbestos or ACM – limit use of equipment	
Elements of s446(3) of the WHS Regulation	Evidentiary Notes
The person conducting a business or undertaking at a workplace	Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. See WHSA s5 Site location where work is carried out (offence location). Date and time See WHSA s8
must not use, or direct or allow a worker to use, any of the following equipment: (a) power tools; (b) brooms; (c) any other implements that cause the release of airborne asbestos into the atmosphere.	Identify whether the PCBU has used, directed or allowed a worker to use any of the specified equipment e.g. inquiries, observations, documents.
on asbestos or ACM	Identify the work is done on either asbestos or ACM e.g. sampling, testing, asbestos register.
unless the use of the equipment is controlled	Identify if the use of the equipment is controlled e.g. inquiries, observations, design documents. See WHSR s446(4)

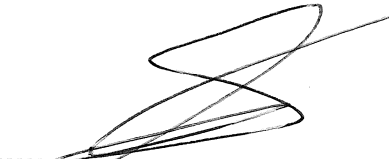
Asbestos – copy of asbestos register prior to demolition or refurbishment	
Elements of s449 of the WHS Regulation	Evidentiary Notes

<p>The person with management or control of a workplace</p>	<p>Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. <small>See WHSA s20(1)</small> Site location where work is carried out (offence location). Date and time <small>See WHSA s8.</small></p>
<p>Must ensure that the person conducting a business or undertaking who carries out the demolition or refurbishment</p>	<p>Identify the PCBU carrying out the specific demolition OR refurbishment. <small>See WHSR s447</small> Correct legal name. ABN or ACN if applicable. Registered address or Principal place of business. Not a PO Box or site address. <small>See WHSA s5</small></p>
<p>is given a copy of the asbestos register</p>	<p>Identify the asbestos register for the site and when it was given to the PCBU undertaking the demolition or refurbishment. e.g. copy of register, correspondence , statements. <small>See WHSR s425</small></p>
<p>before the demolition or refurbishment is commenced.</p>	<p>Identify when the demolition or refurbishment commenced.</p>


Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as PJW-2 in the statement of Paul Jeffrey Watts affirmed at Brisbane on 27 February 2026



Paul Jeffrey Watts



Witness (Lawyer)

Employee Complaint Notification Form

For any assistance with the form or the process please contact OIR HR at hr@oir.qld.gov.au

This form is best completed electronically

This form is to be completed by an employee lodging a formal complaint under OIR's Employee Complaints Policy

The following decisions cannot be the subject of an employee complaint:

- a decision about the policy, strategy, nature, scope, resourcing or direction of the department
- a decision to discipline
- a decision to retire an employee on the grounds of ill health under Chapter 5, part 7 of the Public Service Act 2008
- a decision that is the subject of another complaint by the same employee under OIR's Employee Complaints Policy or an industrial instrument

I have made reasonable efforts to resolve the matter verbally with my supervisor/manager

- Yes. I have attached all relevant details of this discussion and the actions taken to address the matter
- No. If you have not raised this matter for discussion first with your manager and/or director, your written complaint may not be accepted

I wish to lodge an employee complaint because I have an honest belief based on reasonable grounds that:

- an administrative decision is unfair or unreasonable
- the conduct or behaviour of an employee, agent or contractor is unfair or unreasonable or constitutes sexual harassment or workplace harassment
- the decision, conduct or behaviour has had a significant and direct adverse effect on me

Details of the employee lodging the complaint

Employee Name

Paul Jeffery WATTS

Employee Number and Classification

6033623

Position title

Principal Inspector Construction (AO6.4)

Business unit

Workplace Health and Safety Qld

Address (where you would like correspondence sent)

L1/38 Leonard Crescent Brendale 4500

Email

Telephone

Signature

Date lodged

6/7/20

22-06-2020

Please provide the following details on this form or provide as an attachment if details cannot fit below

The administrative decision, alleged conduct or alleged behaviour that is the subject of your complaint.

I am writing to make a complaint regards the conduct of Helen Burgess. At 7.18 am on the 18-06-2020 I was called by Acting Operations Manager Mark Murphy and we spoke for about 19 minutes regards a direction by Helen Burgess where I was being directed by Helen Burgess through Murphy to issue an infringement notice to CPB Contractors Pty Ltd at the Albert St Station construction site of the cross river rail. The direction was made verbally to Murphy by Burgess following me issueing an improvement notice to the company on 15-06-20 where the company had failed to install a sanitary bin in the female toilet. The duty to have a sanitary bin installed is a duty set out in regulation and my notice was issued against the regulation. I explained it is my understanding that not having a sanitary bin installed does not make the toilet unhygenic. I discussed the issue with Mark Murphy and refused to issue the infringement notice because as an Inspector I did not and could not form a reasonable belief that the company had committed and infringing offence. I explained this to Mark Murphy and explain my reasons for not issueing and infringement as I could not see any way that an infringement could be issued in these circumstances as evidence does not exist to support the infringement notice. I refused to issue the infringement.

At 8.24 am I received another call from Murphy which lasted about 1 minute regards the direction where he stated verbatim what Burgess had stated to him " This is a priority infringement and if you do not issue the notice you are in breach of the CMEP". I refused as I did not believe the notice would be legal. I am still unaware of the implications of the threat (To be in breach of the CMEP) and have asked for clarity on this but to date have had no clarification provided.

Note: Murphy mentioned that Helen Burgess had spoken to Beau about this issue. Murphy abruptly said " I may have gotten the name wrong"

The actions you have taken to resolve the matter so far:

I have formally reported this issue through HR this time as I have informally complained about the conduct of Burgess previously.

The action/s you believe will resolve your complaint:

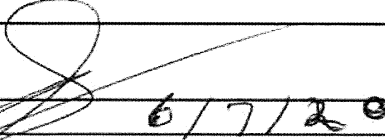
Helen Burgess to comply with Departmental policy and procedures, for example obtain legal advice on suitability of infringement notices before threats made to Inspectors.

The outcomes you want from submitting this complaint:

Helen Burgess to act in professional manner and within the requirements of the Public Service Code of Conduct

Signature

Date lodged


6/7/20

22-06-2020

Employee Assistance Program

Being involved in a complaint process can be a difficult time for employees. The Employee Assistance Program (EAP) is a free, confidential and voluntary counselling service. It aims to assist all staff with resolution of personal and work related problems which may affect their work or quality of life.

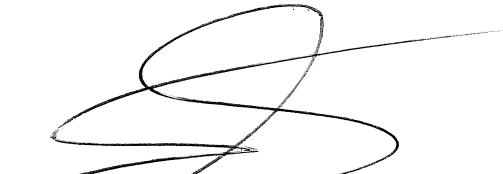
To arrange an appointment with an EAP counsellor phone SMG Health on **1800 273 865**

Privacy Statement: Office of Industrial Relations is collecting the information on this form for the purpose of addressing your complaint. The department may forward some of this information to an external consultant for assistance if the issue cannot be resolved internally. Your personal details will not be disclosed to any other third party without your consent unless required to do so by law.


Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as PJW-3 in the statement of Paul Jeffrey Watts affirmed at Brisbane on 27 February 2026



Paul Jeffrey Watts



Witness (Lawyer)



Date:	26-06-2020	Statement Number:	1
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STATEMENT OF A WITNESS			
Name of witness (in full)	Paul Jeffrey WATTS		
Address	Level 1, 38 Leonard Crescent Brendale 4500		
Email address	[REDACTED]		
Occupation	Principal Inspector (Construction)		
Phone number	Home	Business	Mobile 0438184110
Inspector taking statement	Christopher COXON		
Regional office	BNSC	Phone	

Paul Jeffery WATTS states:

1. On Monday the 15-06-2020 I was directed to a construction workplace at Albert Street Station where CPB Contractors Pty Ltd are the principal contractor in response to a union complaint and request for assistance through Helen BURGESS.
2. I arrived at the workplace in company of Inspector William HARRIS at 11.25 am after arranging to pick him up at the Brendale office and arranging parking at the Myer Centre in the city.
3. HARRIS called ahead and completed the Covid 19 risk assessment with Project Manager Joshua SIMS
4. Upon arrival we met CFMMEU organisers Andy BLAKLEY and Shaun DESMOND and I showed my Inspector ID and observed their 117 forms which both stated safe work method statements not reflecting high risk work, unsafe access and egress, unsafe systems of work, out of date lift register.
5. I met the principal contractors representatives Safety Advisor Sue SALARNIS, area supervisor Shane WORMALD and industrial relations advisor Tan TRUONG and showed my Inspector ID.
6. DESMOND AND BLAKLEY raised concerns about the traffic management at the front of the site and I had a conversation with the traffic controller Denis HARROLD and took photographs.
7. DESMOND initially stated that this is a priority infringement and I advised I would consider the evidence and if this came into the priority infringement category as I did not have evidence to that affect at the time.
8. After a lengthy conversation with the parties I agreed to review the MUTCD requirements and continue my enquiries into this matter. This matter was subject to a further complaint by the CFMMEU to Helen BURGESS where it was alleged an improvement notice should have been issued regards this

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Inspector taking statement

Version 2.0 (February 2013)

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Witness

Continued statement of:

- matter however Inspector Antony LACKEY had been asked to consider the evidence due to his knowledge of the MUTCD as provided by senior Safety Coordinator for CPB CONTRACTORS PTY LTD Mark TAYLOR and the system of work found to meet the MUTCD.
9. Upon entry to the work area the CFMMEU Organisers raised a concern about the 10 yearly inspection for a 100t mobile crane owned by LCR CRANES AND RIGGING PTY LTD at which time I spoke with the company site supervisor Jamie BROWN who emailed me a series of documents on the crane. I agreed to continue my enquiries regards the crane after speaking with Inspector John CARMOSINO and Stuart DAVIS. An improvement notice was later issued to the company. This matter resulting in a series of calls from BURGESS to MURPHY to me requesting additional information on the cranes maintenance for about 1 week.
 10. While in the area of the crane BLAKLEY raised an issue that a male worker had used the female toilet immediately in the area and I approached a worker seen leaving the toilet Joe PIPPIA and explained what he had done and PIPPIA was apologetic.
 11. I photographed the front of the toilet with female decal which was somewhat hard to identify and the inside of both toilets where I observed a cleaning register with a note made for 15-06-2020 and the toilets were clean and tidy. I raised the issue of additional signage for the female toilet with the principal contractor's representatives and have been informed that this has been done.
 12. The issue of no female sanitary bin in the female toilet was raised by DESMOND who stated "this is a priority infringement" at which time my response was "I do not think so and would look into it"
 13. We walked further into site and the CFMMEU raised the matter of slips trips and falls in the access way due to some water after rain the previous night at which time I tested the concrete surface and found it not to be slippery. WORMALD stated that workers are supplied with gum boots for wet areas but wearing them is optional.
 14. I found the work area to have become very noisy and both HARRIS and I got ear plugs and fitted them and CBP CONTRACTORS PTY LTD staff also used hearing protection.
 15. I observed other site workers in the area not use hearing protection.
 16. I walked into an area near to the workshop and found 2 soft slings around a load of rods with minor rip in the outer sheath and the second sling looking dirty and not appearing in the best condition. I counselled the LCR Cranes AND RIGGING PTY LTD dogger and the slings were removed from service by WORMALD.
 17. As the area remained noisy I explained the requirement to use hearing protection to BLAKLEY and DDESMOND who basically refused to use the personal protective equipment (PPE) at which time I raised the matter with the IR Advisor TRUONG who went and got ear plugs and BLAKLEY used the PPE however DESMOND did not use hearing protection at any time during the visit.
 18. I entered the workshop area that has electrical tools and equipment in the area and found water about 1 to 2 inches deep. I found no work in the workshop but did find 1 lead in water and steps to an adjacent work area

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Inspector taking statement

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Witness

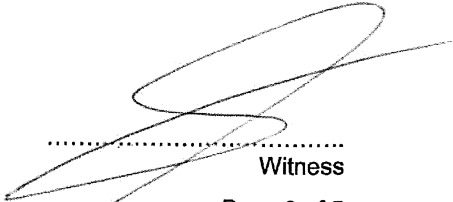
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Continued statement of:

- made of formply and slippery. I explained concerns and clean up commenced.
19. The CFMMEU organizers raised a concern about the emergency eye wash stations that were on site and in process of being installed however not yet operational. Further to this I found that the locations of first aid kits were not clearly signposted and I found kits somewhat hard to find although staff were clearly aware of locations. I found no emergency exit signage was identified on access and egress ways.
 20. I observed the kit contents in company of SALARNIS and found that eye wash saline and other first aid supplies was reasonably available in the kits. In addition, SALARNIS stated that a first aid room is available at the site office level on site.
 21. In company HARRIS, SALARNIS, BLAKLEY and DESMOND I conducted a debrief with project manager Joshua SIMS. Note that BLAKLEY and DESMOND were very reluctant to wait for SIMS as they wanted to leave the area.
 22. During the debrief I explained the notices being issued to the parties regards improvement notices to CPB CONTRACTORS PTY LTD on use of hearing protection in noisy environment, safe access and egress in workshop area, emergency signage and requirement to have sanitary bin in female toilet. In addition, at that time I explained additional enquiries were being conducted into the traffic guidance scheme and signage at front of site and the issue of 10 yearly inspection on the LCR CRANES AND RIGGING PTY LTD crane.
 23. I had conversations regards the sanitary bin in the female toilet issue with Inspector HARRIS where I said that if the toilet had been unhygienic then I would not hesitate to issue an infringement and should there have been for example a used tampon or sanitary pad in the toilet area then this in my opinion would constitute unhygienic, but this was not the case as both male and female toilets clean and well maintained.
 24. I later had a conversation with John CARMOSINO where he stated that he has an email from hygienist COWARD which relates more to things like faecal matter as a hygiene issue.
 25. I completed writing and sending the notices via email to Joshua SIMS at 19.22 on the 15-06-2020.
 26. On the 18-06-2020 at 7.18 I received a call from Mark MURPHY Acting OM for Construction Brendale and Logan who asked about the sanitary bin in the female toilet where I had issued an improvement notice.
 27. I had a lengthy conversation of about 19 minutes with MURPHY regards the issue and how my understanding of legislation had been applied to the situation that I was in on site at Albert Street on the 15-06-2020 where from the outset the CFMMEU organisers had been asking for priority infringement notices to be issued.
 28. Mark MURPHY told me that Helen BURGESS had called him and directed him to call me and direct me to issue an infringement notice to CPB Contractors PTY LTD where no sanitary bin had been provided in the female toilets.

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Inspector taking statement

Version 2.0 (February 2013)

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Witness
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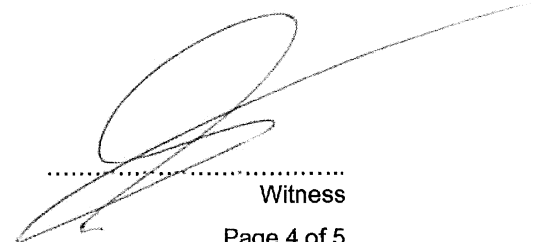
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29. I explained to MURPHY that I found the toilets in a very clean condition and a register on the wall showing cleaning done that morning on the 15-06-2020.
30. I explained that if the female toilet had used tampons or sanitary pads in the area I would have issued an infringement notice.
31. I explained to MURPHY that my understanding of legislation does not make the failure to provide a sanitary bin in female toilets a priority infringement offence and that the appropriate improvement notice had been issued to have a sanitary bin installed.
32. I explained that my reasonable belief and my understanding of legislation would not allow me to issue an infringement notice regards this matter as the I believe the notice would be illegal.
33. MURPHY stated he was doing what he was directed to do by Burgess.
34. I refused to issue an infringement notice for an offence where no reasonable belief of the offence can be formed and legal basis exists in my opinion.
35. At 8.24 on the 18-06-20 MURPHY again called me regards this matter and explained "she has been chewing my ear again" as he had spoken to Helen BURGESS who had insisted that a priority infringement notice be issued as the fact no bin was provided makes the toilet unhygienic.
36. MURPHY stated Helen had been speaking to Beau about this matter but quickly said "I may have gotten the name wrong"
37. MURPHY stated that I will tell you what Helen said verbatim " This is a priority infringement and if you do not issue the notice you are in breach of the CMEP". This to me is a serious threat which would result in harsh disciplinary action
38. I refused as I believe the notice to be illegal. Note that I do not want to be involved in a ABCC enquiry in the future.
39. Murphy said that he thought I would feel that way but had to formalise it with me.
40. I felt very intimidated by the threat made by BURGESS and I then called Remi ARMSTRONG from the Together Union, leaving a message. I called Marc DENNETT who responded by text saying I will call you in 20 minutes and I called admin officer Christine NEWINGTON asking for her to find and send a copy of the formal complaints form to me via email.
41. I later spoke to Marc DENNETT who said he tended to agree with me but the issue had apparently been sent to the "lawyers" for an opinion. I believe this is a course of action available to BURGESS prior to directing an Inspector to issue a priority infringement.
42. I did not sleep well that night and only got about 2 hrs sleep due to the stressful situation and not having any knowledge of what the threat actually meant "to be in breach of the CMEP". To me it means some sort of harsh disciplinary action being taken against me by my employer.

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Inspector taking statement

Version 2.0 (February 2013)

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Witness



Page 4 of 5

Continued statement of:

PRIVACY STATEMENT The Department of Justice and Attorney-General (the Department) is collecting your personal information for the purpose of a Workplace Health and Safety/ Electrical Safety/ Safety in Recreational Water Activities investigation in accordance with the *Work Health and Safety Act 2011*, *Safety in Recreational Water Activities Act 2011*, *Electrical Safety Act 2002*. The Department may be required to disclose your personal information to others in the course of legal proceedings related to the investigation, or as otherwise authorised by law. Further information on our privacy policy is available at www.justice.qld.gov.au

Witness Acknowledgment

I acknowledge that:

- (a) This written statement by me dated (INSERT) and contained in the pages numbered 1 to (INSERT) is true to the best of my knowledge and belief; and
- (b) I make this statement knowing that, if it were admitted as evidence, I may be liable to prosecution for stating in it anything that I know is false.¹

J B Leonard
Crescent 26/6/20 Friday June
Bouldon 4500 NSW
Signed at (INSERT ADDRESS) this (INSERT DAY) of (INSERT MONTH) (INSERT YEAR)

Witness signature: _____

Signature witnessed by: Inspector (INSERT NAME)


Inspector: _____

¹ Note: This witness jurat satisfies the requirements of s.110A(6C)(c) of the *Justice Act 1886* in the event that the statement is required for use in committal proceedings under s.110A of the said Act.

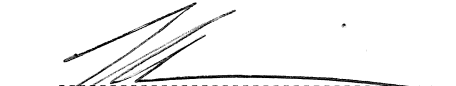
Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

ANNEXURE SHEET

This is the document referred to as PJW-4 in the statement of Paul Jeffrey Watts affirmed at Brisbane on 27 February 2026



Paul Jeffrey Watts



Witness (Lawyer)



13 August 2020

Mr Paul Watts
Principal Inspector
Construction Compliance and Field Services
Office of Industrial Relations
Level 1, 38 Leonard Crescent
Brendale Qld 4500

By email [REDACTED]

Dear Paul,

Confidential – Employee complaint

I refer to your Incident notification form and subsequent Employee complaint notification form both dated 22 June 2020. This matter was referred by OIR Health, Safety & Wellbeing to CFS for further inquiries to be made as an employee complaint. Your complaint concerns telephone interactions on 18 June 2020 between yourself and Mr Mark Murphy, Acting Operations Manager in which you allege Mr Murphy relayed a direction from Ms Helen Burgess, Director Construction Compliance and Field Services, to issue an infringement notice. You have stated that you held no reasonable belief to issue the notice, however you were told that to not issue the notice would be in breach of the Compliance Monitoring and Enforcement Policy (CMEP) and you stated that this action created a psychological hazard for you.

I have completed my inquiries regarding this matter and have decided appropriate actions to resolve this complaint. I delegated Mr Chris Coxon, Manager, Compliance Support Services to conduct inquiries on my behalf with relevant persons and attach a copy of his summarised investigation and findings.

I accept all the findings that Mr Coxon has determined, as outlined in Attachment 1.

I have taken advice from OIR Human Resources in relation to the findings and appropriate action to be taken to resolve the complaint.

Resolution

I acknowledge the difficult and sometimes contentious work that is undertaken by Construction Compliance and Field Services and the challenges this poses to both the inspectorate and their leaders. I also acknowledge the distress these exchanges may have caused all involved. It was appropriate that you raised your concerns, which after further advice, were found to be valid. I extend the same apology offered to you by Mr Murphy.

The clarification this exchange has led to is important. I have asked Mr Coxon to prepare an advice that has been published on the OIR intranet clarifying in part the difference between contraventions of 5A section 4(2) (a) rather than s315(A)(2) of the Regulation. This can be found in the "Inspectorate Policy and Support (IPS) Advice Library" (Record number U8-REC166).

Office of Industrial Relations
1 William Street Brisbane
GPO Box 69 Brisbane
Queensland 4001 Australia
Telephone 1300 362 128
Website www.worksafe.qld.gov.au
ABN 94 496 188 983

However, I do not consider the evidence supports that Ms Burgess behaved inappropriately in these circumstances. The nature of all of our roles in CFS is that we all have to make decisions based on interpretations of the many laws that we administer. It is not unusual that two reasonable persons presented with the same facts may interpret the relevant legislation differently, and it does not automatically follow that the person with the incorrect interpretation of the facts or evidence has conducted themselves inappropriately. In this case, Ms Burgess was relying on second hand information from other parties and initially formed a view that the contravention was of s315A(2) of the Regulation. Her subsequent statements concerning the actions that should result were consistent with this view. Her statements about the policy direction in the CMEP and expectations that all officers comply with policies were also consistent with this view. While your interpretation of the facts and legislation was ultimately shown to be correct, it does not automatically follow that Ms Burgess' was inappropriate, also having regard to the fact that the factual circumstances were being relayed to her by telephone from a third party. This matter was resolved with you promptly by Mr Murphy on the following day following receipt of the legal advice. I have seen no evidence that you were threatened or that you were treated in a manner that was not professional or respectful.

I acknowledge your comments regarding the effect that raising your concerns has had on you and realise that this may be a difficult time for you. Please be aware that you are entitled to support from OIR's Employee Assistance Program (EAP). The service is a free, confidential counselling and support service through an external provider SMG Health who can be contacted on 1800 273 865 at any time, 24 hours a day, 7 days a week. You have the choice of counselling provided via telephone, face-to-face, email or Skype.

I trust that you will also respect the confidentiality of the process and outcome.

In conclusion, I hope that you will be able to continue in your normal work as a valued member of the Construction Compliance and Field Services team and working with Ms Burgess. I will be taking no further action regarding this matter, and I consider it finalised.

If you require any further support in resolving this complaint, please do not hesitate to contact myself or OIR Human Resources.

Yours sincerely



Marc Dennett
Executive Director
Compliance and Field Services
Office of Industrial Relations

Attachments

- 1. Review of complaint matter and findings
- 2. Code of Conduct

Attachment 1 - Review of complaint matter and findings

The complaint

The complaint concerns circumstances arising from a site visit undertaken by Mr Paul Watts to a construction site for the Cross River Rail project, Albert St on 15 June 2020 (Assessment 465001). Mr Watts was accompanied by Inspector Mr William Harris. Following this visit, Mr Watts issued an improvement notice I2004829 to CPB Contractors Pty Ltd for a contravention in their capacity as a person conducting a business or undertaking (PCBU) concerning the provision for disposal of sanitary items for females as specified in part 5A section 4(2) (a) of the *Work Health and Safety Regulation 2011* (the Regulation).

On 18 June 2020 at 07:18, Mr Mark Murphy called Mr Watts. The call concerned the circumstances around the issue of improvement notice I2004829 and whether a priority infringement notice should have been issued for an offence under s315A(2) of the Regulation. Mr Watts stated that Mr Murphy had relayed a direction from Ms Helen Burgess to issue an infringement notice.

Mr Watts stated that he explained to Mr Murphy he believed there had been a contravention concerning the provision of disposal facilities of sanitary items but no offence concerning their maintenance under s315A(2). Mr Watts stated that he would therefore not issue an infringement notice.

Mr Watts stated that at 08:24, Mr Murphy called him again to advise Ms Burgess had told him that she believed there was an offence as the failure to provide disposal facilities of sanitary items made the toilet unhygienic. Mr Watts said that Mr Murphy had relayed from Ms Burgess that "This is a priority infringement and if you do not issue the notice, you are in breach of the CMEP". Mr Watts understood this to be "a serious threat which would result in harsh disciplinary action" and felt intimidated, though he still would not issue an infringement notice as he thought it would be unlawful.

Mr Watts subsequently contacted Mr Marc Dennett and a representative from the Together Union. Mr Watts has requested that in order to resolve his complaint, Ms Burgess should "comply with Policy and procedures, for example obtain legal advice on the suitability of infringement notices before threats are made to inspectors". Mr Watts has stated the outcome that he is seeking is for "Helen Burgess to act in a professional manner and within the requirements of the Public Service Code of Conduct".

Findings

I have considered the available evidence, including accounts of the telephone calls between Mr Watts and Mr Murphy, as well the telephone calls between Mr Murphy and Ms Burgess. I have also had regard to relevant email evidence regarding the subject matter of the alleged infringement. I find that the original advice provided to Mr Watts was that he should be directed to the organisational expectations contained in the CMEP and enforcement note for priority infringement offences. For clarity, the expectations include that inspectors are required to issue an infringement notice when they form a reasonable belief for offences identified as priorities.

It is likely that the precise intention of each party's communication may have been lost due to the communications between Ms Burgess and Mr Watts being relayed via Mr Murphy. However, I do not find the advice Mr Watts was given regarding following organisational policies constitutes "a serious threat which would result in harsh disciplinary action". On

balance, I find that Mr Watts was advised that management or disciplinary action may be taken for a failure to follow organisational policy. I find that this was a statement made as reasonable management action undertaken in a reasonable way.

After Mr Watts voiced his concerns to Ms Burgess on 18 June 2020, Ms Burgess sought further advice about the distinctions between possible contraventions under schedule 5A and s315A(2) of the Regulations. Given the fine legal distinction, I consider that this was a legitimate question and it was appropriate that she sought further advice. Ultimately, that advice was consistent with Mr Watts' view that he ought not issue an infringement notice. Facilities for the disposal of sanitary items had not been provided at all by the PCBU, rather than not being maintained. The contravention therefore was of part 5A section 4(2)(a) rather than s315(A)(2) of the Regulation. Accordingly, the issuing of an improvement notice rather than an infringement notice was the correct response as required by the CMEP. Mr Murphy confirmed that Ms Burgess asked him to advise Mr Watts the outcome of the legal advice (i.e. that Mr Watts had made the correct legal interpretation). Mr Murphy advised Mr Watts on 19 June 2020 via email that Mr Watts had made the correct legal interpretation. In this email, Mr Murphy stated that he acknowledged Mr Watts' distress and offered an apology for any concerns which he had felt as a result of being advised he needed to comply with the CMEP and directed him to support available through the Employee Assistance Program.



Chris Coxon
Manager
Compliance Services Support
Compliance and Field Services
Office of Industrial Relations

13 August 2020