

# ENFORCEMENT POLICY



Tasmania  
Explore the possibilities  
Department of Justice



## Please note

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Workplace Health and Safety Act 1995*, the *Workplace Health and Safety Regulations 1998* and any other relevant legislation. Copies of the legislation can be purchased from Print Applied Technology: call (03) 6233 3289 or freecall 1800 030 940. It is also available on the Internet at [www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au)

This guide was produced by staff from WorkCover Tasmania and Workplace Standards Tasmania.

We welcome your feedback on this guide.  
Send to: [wstinfo@justice.tas.gov.au](mailto:wstinfo@justice.tas.gov.au)

## Context ● ● ● ● ●

The Department of Justice contributes to a just and safe society by providing systems and services for the promotion and maintenance of rights and responsibilities and the resolution of disputes, for the benefit of the Tasmanian community.

Workplace Standards Tasmania, a division of the Department of Justice, has a strategic focus on improving standards of safety, health and fairness in workplaces, buildings and energy infrastructure in Tasmania.

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

## Purpose ● ● ● ● ●

The purpose of this Policy is to provide guidelines for Workplace Standards Tasmania staff and to provide insight for the general public about how Workplace Standards Tasmania administers the legislation it is responsible for. Workplace Standards Tasmania administers a number of Acts and their associated regulations, the main ones being:

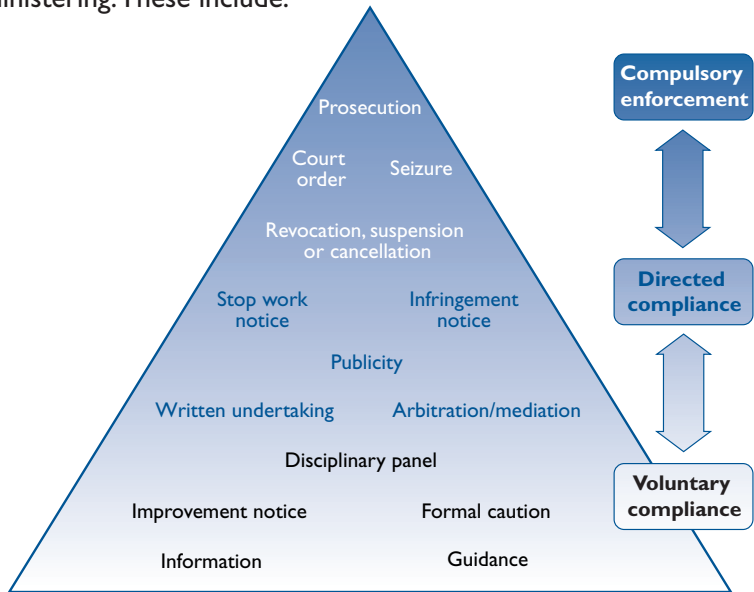
- *Building Act 2000*
- *Dangerous Goods Legislation*
- *Electricity Industry Safety and Administration Act 1997*
- *Gas Act 2000*
- *Gas Pipelines Act 2000*
- *Industrial Relations Act 1984*
- *Long Service Leave Act 1976*
- *Occupational Licensing Act 2005*
- *Security-Sensitive Dangerous Substances Act 2005*
- *Workers Rehabilitation and Compensation Act 1988*
- *Workplace Health and Safety Act 1995.*

In administering these laws, Workplace Standards Tasmania seeks to facilitate compliance in order to achieve the following outcomes:

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

## Facilitate compliance ●●●●●

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



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

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

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

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

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

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

## Information

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

- media campaigns
- publications
- internet website
- a telephone helpline service
- the Inspectorate.

## Guidance

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

## Notices

Where an inspector identifies a contravention of an Act or Regulations and this is not rectified immediately and the circumstance does not or is not likely to cause an immediate risk to workplace health and safety, the inspector may issue a notice requiring remedial work.

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

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

## Formal caution

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

## Disciplinary panel and show cause notice

When a failure to comply with the *Occupational Licensing Act 2005* involving a licence holder is alleged, the Administrator can issue a notice to the licence holder to show cause why disciplinary action should not be taken against them. After consideration of the matter by a disciplinary panel, the Administrator may take one or more specific actions against the licence holder, including suspension or cancellation.

## Referral to the Tasmanian Industrial Commission

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

## Infringement Notice

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

## Seizure

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

## Court order

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

## Mediation and arbitration

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

## Written undertaking

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

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

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

## Publicity

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

## Prosecution

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

## Guiding principles ●●●●●

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

- consistency: Workplace Standards Tasmania will endeavour to ensure that similar circumstances lead to similar outcomes
- transparency: Workplace Standards Tasmania is committed to open and transparent dealings with obligation holders. By establishing and publishing our policies, obligation holders will have a better understanding of what is expected of them and what they may expect from Workplace Standards Tasmania
- proportionality: enforcement options will be proportional to the seriousness of the offence. More serious offences will warrant more severe enforcement options. An organisation's previous record and previous interventions by Workplace Standards Tasmania may also influence the appropriate enforcement option employed.

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

In all its activities (including compliance and enforcement) Workplace Standards Tasmania and its staff will adhere to The State Service Principles and The State Service Code of Conduct being respectively at section 7 and 9 of the State Service Act 2000 (see annex 1).

## Further information ●●●●●

Further information about Workplace Standards Tasmania's Enforcement Policy may be obtained by:

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




Roy Ormerod  
General Manager  
3 December 2008

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

## Extracts from the State Service Act 2000


### Section 7 – The State Service Principles

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

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

## Section 9 – The State Service Code of Conduct

- (1) An employee must behave honestly and with integrity in the course of State Service employment.
- (2) An employee must act with care and diligence in the course of State Service employment.
- (3) An employee, when acting in the course of State Service employment, must treat everyone with respect and without harassment, victimisation or discrimination.
- (4) An employee, when acting in the course of State Service employment, must comply with all applicable Australian law.
- (5) For the purpose of subsection (4),  
“Australian law” means –
  - (a) any Act (including this Act) or any instrument made under an Act; or
  - (b) any law of the Commonwealth or a State or Territory, including any instrument made under such a law.
- (6) An employee must comply with any standing orders made under section 34 and with any lawful and reasonable direction given by a person having authority to give the direction.
- (7) An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee’s State Service employment.
- (8) An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee’s State Service employment.
- (9) An employee must use Tasmanian Government resources in a proper manner.
- (10) An employee must not knowingly provide false or misleading information in connection with the employee’s State Service employment.

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- (11) An employee must not make improper use of –
    - (a) information gained in the course of his or her employment; or
    - (b) the employee’s duties, status, power or authority –in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.
  - (12) An employee who receives a gift in the course of his or her employment or in relation to his or her employment must declare that gift as prescribed by the regulations.
  - (13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.
  - (14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.
  - (15) An employee must comply with any other conduct requirement that is prescribed by the regulations.
  - (16) For the purposes of this section, a reference to an employee includes a reference to an officer and a reference to State Service employment includes a reference to an appointment as an officer and an arrangement made under section 46(1)(a).





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