WORKSAFEACT

OFFICE OF THE WORK HEALTH AND SAFETY COMMISSIONER

WORKERS' COMPENSATION COMPLIANCE AND ENFORCEMENT POLICY

INTRODUCTION

WorkSafe ACT aims to secure the safety of all workers in all workplaces through fair and firm regulatory activities. Our overall approach, objectives and priorities are outlined in the *WHS Compliance and Enforcement Policy 2025-2029* and *Strategic Plan 2025-29*.

Along with work health and safety legislation, WorkSafe ACT also regulates the ACT's private sector[1] workers' compensation scheme. As the regulator, WorkSafe ACT must ensure compliance through effective and appropriate monitoring and enforcement. This Workers' Compensation Compliance and Enforcement Policy (the Policy) outlines how WorkSafe ACT promotes compliance and responds to non compliance with the *Workers Compensation Act 1951* (WC Act) and associated instruments. The Policy is intended for ACT employers, including small businesses, to support their understanding of legal obligations and WorkSafe ACT's role and enforcement approach.

When a workplace injury or illness occurs, it is critical that workers have access to timely support to minimise impact and enable workers to recover and return to work. This is the role of workers' compensation, a type of insurance that provides workers with essential support if they become injured or ill because of work. It is compulsory for all employers in the ACT to hold a workers' compensation insurance policy.

WorkSafe ACT is committed to a clear, consistent, and fair compliance approach. We maintain high standards of proactive and responsive regulation to ensure employers understand and meet their workers' compensation obligations. This ensures injured workers receive financial, medical, and rehabilitation support, and can achieve a timely, safe and durable return to work.

By outlining our aims, principles, and enforcement approach, this Policy promotes openness, accountability, and collaboration across the scheme. It explains WorkSafe ACT's role in the system and highlights the legal and financial consequences of non-compliance, reinforcing our commitment to safeguarding the integrity of the workers' compensation system.

The Policy aligns with the WC Act, *Workers Compensation Regulation 2002* (WC Regulation) and contributes to national objectives under Safe Work Australia's nationally endorsed *National Return to Work Strategy 2020–2030*.

This Policy complements the *WHS Compliance and Enforcement Policy 2025-29* and highlights the connection between WHS and workers' compensation and WorkSafe ACT's commitment across these areas.

The Policy will be monitored, reviewed, and updated as necessary to ensure it continues to meet stakeholder needs and legislative requirements.

1 ACT public-sector workers' compensation is managed by the ACT government as a licensed self-insurer under the *Safety, Rehabilitation and Compensation Act 1988*

WORKERS' COMPENSATION IN THE ACT

The ACT scheme is privately underwritten, which means approved private sector insurers provide workers' compensation policies to ACT employers. A list of currently licensed insurers is available on WorkSafe ACT's website.

A key feature of the ACT workers' compensation system is the separation of regulatory and administrative functions. WorkSafe ACT regulates the scheme but does not provide insurance and is not involved in the claims management process. Where there are disagreements about claim determinations, parties can access a separate dispute resolution process. This separation allows WorkSafe ACT to focus on compliance and enforcement activities.

Note that workers compensation for ACT public sector workers is managed under the Commonwealth Safety, Rehabilitation and Compensation Act 1988. More information is available here.

The ACT scheme is 'no-fault', which means an injured worker can receive statutory benefits (e.g., medical expenses, weekly compensation, and permanent impairment payments) without needing to prove fault or negligence that was responsible for the injury. The scheme prioritises timely support and rehabilitation to facilitate a safe, durable and sustainable return to work. In the event of a fatality, dependants may be entitled to lump sum payments, funeral expenses and other benefits.

All ACT employers must hold a current and valid workers' compensation insurance policy. This is a mandatory, legally enforceable duty under the WC Act. Penalties for non-compliance can include infringement notices, default notices, cease business orders, and premium recoveries (the amount that should have been paid in premiums had the employer's business been properly insured and a penalty amount to deter future avoidance).

WHAT DOES 'NO-FAULT' MEAN?

Workers can receive compensation for workplace injuries without needing to prove that the injury resulted from negligence. Compensation may still apply even if the injury was caused by the worker's serious misconduct, where the misconduct results in death or permanent disability. This differs from a common law claim for damages, which usually requires proof of negligence in connection with the injury, loss and damage suffered by a person.

WORKSAFE ACT'S ROLE

WorkSafe ACT regulates the workers' compensation scheme to ensure employers and insurers meet their duties. Our core functions are to:

- Educate and support employers, workers, and insurers about their obligations
- Promote compliance and enforce the WC Act
- Licence and oversee approved insurers and self-insurers to ensure they meet financial and administrative standards, and
- Investigate potential non-compliance and take proportionate action.

(*Detailed legislative powers are set out at the end of this Policy*)

INSURER AND SELF-INSURER OBLIGATIONS

WorkSafe ACT regulates private sector insurers and self-insurers[2] to ensure the workers' compensation scheme operates effectively and workers receive appropriate support following a workplace injury or illness, regardless of who they work for or where they work.

To ensure compliance with the WC Act and the WC Regulation, insurers must:

- Meet licensing requirements and adhere to approved protocols, including ensuring that premiums charged by insurers are reasonable and not excessive
- Support employers to meet obligations, including in implementing injury management programs and return-to-work plans
- Provide injured workers with a statement outlining their rights and responsibilities under their personal injury plan
- Provide clear information about their rights, responsibilities, claims processes, and entitlements. They must also inform employers of their duties to provide wage and policy details within or soon after issuing the policy, and
- Keep records and provide information to WorkSafe ACT when requested.

If an insurer breaches its licence conditions, WorkSafe ACT may take enforcement action, including imposing additional conditions, revoking or suspending the licence. These measures ensure transparency and accountability in managing workers' compensation claims and help protect the rights of injured workers.

EMPLOYER OBLIGATIONS

Employers in the ACT have a range of legal obligations under the workers' compensation laws, including:

- Maintain workers' compensation insurance: This is the most fundamental obligation. Employers must hold a current workers' compensation insurance policy for all their workers.
- Accurately declare wages: Employers must declare their total wages to their licensed insurer. This includes providing an estimate for the policy period and actual figures after the policy is renewed or cancelled. Supplying false or misleading wage information or omitting details (especially if it results in a lower premium), is an offence under the WC Act..
- Maintain a register of injuries (applies to a mine, quarry, factory, workshop, office or shop): Employers must keep a register of injuries in a workplace location that is easily accessible to all workers. This register must be properly maintained and tampering with the register is also an offence. If an injury occurs, the worker, or someone acting on their behalf, may record it in this register. If an injury is recorded as soon as possible after it occurs, the entry is considered formal notice of the injury to the employer.
- Develop and display a return-to-work program: Employers must establish and display a written return-to-work program in consultation with workers and other relevant parties. It must be consistent with their insurer's injury management program and must outline the policies and procedures for rehabilitation and supporting an injured worker's return to work.
- Return-to-work coordinator: Self-insurers and employers with an annual insurance premium of $200,000 or more must appoint and maintain a return-to-work coordinator. This coordinator must be accredited.

2 A self-insurer is an employer approved by the WorkSafe ACT to directly manage and fund their workers' compensation claims, rather than purchasing a policy from an external insurer.

WHO IS CONSIDERED A WORKER

The nature of work has evolved over time, and the WC Act has adapted to reflect these changes. While traditional employer-worker arrangements still exist and are covered, the legislation also includes specific provisions for a wide variety of other work arrangements (e.g., regular contractors, casuals, trainees, outworkers and labour hire workers).

In general, platform and gig workers are considered independent contractors and are not covered under the WC Act. However, some may be deemed workers if their engagement resembles an employment relationship. Determining who is a "worker" in these non-traditional roles is no longer solely based on the existence of a formal contract of service, it now places significant emphasis on the details, frequency, and overall nature of the working relationship.

If employers are in doubt about whether they are required to hold a workers' compensation policy, they should seek independent legal advice.

When a worker is injured, employers must adhere to a series of time-sensitive obligations.

- Make claim forms available for injured workers.
- Record the injury: The employer must ensure the injury and the date was reported is recorded in the workplace register of injuries. This action is considered formal notice of the injury.
- Notify the insurer within 48 hours of becoming aware of the injury: This is a critical step and failure to do so makes the employer liable for any weekly compensation payments to the worker until the insurer is notified. This direct financial consequence reinforces the importance of timely administrative action.
- Forward claim forms to the insurer within seven days of receipt.
- Pay initial weekly compensation: In some cases, employers may be required to make initial payments to the injured worker. The insurer will typically reimburse these payments once the claim is accepted. The employer cannot use the worker's personal or annual leave in place of workers' compensation.
- Provide suitable employment: Employers have an obligation to provide suitable employment for workers who are totally or partially incapacitated and who request work within six months of the injury, unless it is unreasonable to do so.
- Participate in injury management and rehabilitation: Employers must cooperate with their insurer's injury management program and actively support the development and ongoing review of the injured worker's personal injury plan. This includes providing vocational rehabilitation where required and working collaboratively with the worker, their treating medical practitioners , and any rehabilitation provider to facilitate a safe and timely return-to-work.

OUR APPROACH TO COMPLIANCE AND ENFORCEMENT

WorkSafe ACT's compliance and enforcement strategy is risk-based and intelligence-led, with enforcement actions targeted at areas of greatest risk and potential harm.

Key priorities include:

- Ensuring employers maintain a valid workers' compensation policy and accurately declare wages, and
- Ensuring injured workers receive the support they need. Employers are expected to record and report injuries promptly, cooperate with insurers, and assist workers in returning to work safely.

KEY PRINCIPLES

All compliance and enforcement actions taken by WorkSafe ACT are guided by the following principles to ensure transparency, consistency, and fairness. Our actions align with our strategic priorities outlined in the *WorkSafe ACT Strategic Plan 2025–2029*.

Consistency and Fairness

Our compliance decisions are based on published policies, ensuring outcomes are predictable and fair. Enforcement actions are transparent and explained, while maintaining confidentiality where required.

Education and Support

Our priority is to help employers understand and meet their workers' compensation obligations through clear guidance.

Proportionality and Targeted Action

Our enforcement response reflects the seriousness of non-compliance, the employer's history, and the potential impact on injured workers.

WorkSafe ACT takes regulatory action where an offence has been detected, and a penalty is necessary to:

- Address the seriousness of the breach
- Remove any financial benefit gained through non-compliance, ensuring that employers do not profit from failing to meet their legal obligations
- Ensure accountability for non-compliance, particularly where there is evidence of negligence, deliberate avoidance of obligations, or disregard for previous guidance or enforcement action
- Promote fairness and deterrence by applying a proportionate response that penalises unlawful conduct and discourages similar behaviour by others
- Support strategic priorities, including protecting vulnerable workers and maintaining confidence in the workers' compensation system.

COMPLIANCE AND ENFORCEMENT TOOLS

To implement these principles effectively, WorkSafe ACT uses a range of compliance and enforcement tools.

INFRINGEMENT NOTICES

An infringement notice is a type of on-the-spot fine issued by a WorkSafe ACT inspector when they reasonably believe a person has breached the WC Act.

It is a formal penalty used to respond to breaches without proceeding through a full court process. Infringement notices are intended to be a quick and direct way to enforce the law, making it clear that non-compliance has consequences.

WorkSafe ACT inspectors can issue infringement notices for a range of offences under the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*. There are 25 listed offences, which may apply to individuals or bodies corporate, with penalties varying depending on the offence.

Common offences include:

- Failing to maintain workers' compensation insurance
- Providing false or misleading wage declarations
- Not maintaining a register of injuries.

WORKSAFE ACT'S ESCALATION PATHWAYS WHEN RESPONDING TO UNINSURED EMPLOYERS

In addition to issuing an infringement notice, WorkSafe ACT follows a structured escalation process to ensure compliance from employers who do not hold a current insurance policy.

It is also important to achieve compliance rather than simply penalise the employer.

If an employer fails to hold a compulsory insurance policy issued by a licensed insurer, WorkSafe ACT may:

Issue a default notice, requiring the employer to obtain a policy within 10 business days.	Issue a second default notice, if the employer fails to comply, providing an additional 10 business days to obtain a policy.	Issue a cease business notice if non-compliance continues for a total of 20 business days from the first notice. This notice directs the employer to stop trading and takes effect five business days after it is issued.

→ 10 days → 10 days → 5 days

PREMIUM RECOVERY

Premium recovery is the process WorkSafe ACT uses to recover unpaid workers' compensation insurance premiums from employers who either do not hold a valid policy or under-report wages to reduce their premium.

The recovered funds are deposited into the ACT's Default Insurance Fund, which provides workers' compensation to injured workers whose employers were uninsured at the time of their injury.

WorkSafe ACT actively seeks to recover unpaid workers' compensation premiums from employers who:

- have failed to hold a compulsory insurance policy, or
- have under-reported wages to reduce their premium amount.

Under the WC Act, the unpaid amount is known as the *avoided premium*. For employers who do not hold a workers' compensation insurance policy, the avoided premium is the amount they should have paid in premiums to the insurer. For employers who have under-reported wages, the avoided premium is the difference between the premium they actually paid (based on the incorrect wage information) and the premium they should have paid had they reported wages accurately.

WorkSafe ACT has the authority to recover a penalty of up to two times the total amount of the avoided premium, known as the *recovery amount*. The recovery amount can be backdated for a maximum of five years (e.g. if an employer has not had a policy for five years, the recovery amount could be a maximum of double the avoided premium for each of the five years).

WorkSafe ACT has the discretion to set the recovery amount penalty at a lower amount, after considering factors such as the employer's compliance history and other relevant financial matters.

UNINSURED INJURED WORKERS AND THE ROLE OF THE DEFAULT INSURANCE FUND

The Default Insurance Fund (DIF) in the ACT acts as a crucial safety net within the workers' compensation system, ensuring injured workers receive compensation and benefits if their employer did not hold a workers' compensation policy or if the employer's insurer has collapsed and cannot meet claim costs.

The DIF is funded by levies on all licensed workers' compensation insurers and self-insurers in the ACT.

Employers who fail to hold a compulsory workers' compensation policy face significant consequences if a worker is injured. They remain legally responsible for all obligations under the WC Act and must notify the DIF within 48 hours of the injury. The DIF will pay the worker's entitlements but will then recover from the employer an amount equal to three times the total compensation paid. These amounts can be sought in addition to any premium recovery action undertaken by WorkSafe ACT.

Executive officers can be held personally liable for these debts. If a corporation is unable to pay the recovery amount, the regulator may recover the debt directly from a "culpable executive officer." This provision bypasses the limited liability protection of a corporate structure, holding individuals accountable for serious breaches.

PROSECUTION

Prosecution is the most serious enforcement action WorkSafe ACT can take. It is used for major breaches of the WC Act, such as failing to hold compulsory insurance or providing false information.

If convicted, employers may face large fines or imprisonment. Executive officers can also be held personally responsible if they were reckless or failed to prevent the breach.

The Act outlines various offences with substantial penalties, including high penalty units and potential imprisonment. For instance, failing to maintain a compulsory insurance policy or providing false information can lead to prosecution with penalties of up to 250 penalty units and two years' imprisonment.

Decisions to prosecute are not made lightly. They follow strict legal and ethical standards, which include an assessment of whether there is sufficient evidence and if the prosecution is in the public interest.

Beyond fines and imprisonment for the company, executive officers may also be held personally and criminally liable for corporate offences if they were reckless or failed to take reasonable steps to prevent the breach. This bypasses the limited liability of a corporate structure. Additionally, if a corporation is unable to pay a premium recovery amount, the regulator may recover that debt directly from a culpable executive officer.

After a conviction, a court may order an employer to publish a statement about the offence, which can cause significant reputational damage. The regulator may also publish information about convictions and penalties.

WORKSAFE ACT'S POWERS AND FUNCTIONS UNDER LEGISLATION

To fulfill our regulatory role, WorkSafe ACT inspectors exercise broad powers under the WC Act to facilitate effective investigations and ensure the integrity of enforcement activities. These powers include:

- Entry power: Inspectors may enter any place they reasonably believe is a workplace, at any time.
- Inspect and examine: Upon entry, inspectors may inspect the workplace, ask questions, request documents or items related to worker employment, and copy or take extracts from those documents.
- Request documents and ask questions: An inspector may, by written notice, require an employer to provide a statement of total wages paid to ACT workers and a statement setting out the number of ACT workers in each determined category. Inspectors may also require anyone on the premises to produce information relating to documents, things, or generally to worker employment. Failure to comply with an inspector's notice regarding information is an offence.
- Search for evidence: A magistrate may issue a warrant allowing inspectors to search premises for evidence of an offence, such as wage records or policy documents.
- Bring assistance: A warrant may authorise inspectors to enter premises with necessary assistance if required.
- Identification: When exercising powers of entry, inspectors are required to show their identity card to the occupier or employer if asked. They must also take all reasonable steps to notify the occupier and any employer on the premises of the entry and its purpose as soon as practicable, unless doing so would defeat the purpose for which the place was entered or cause unreasonable delay.

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