



## How SafeWork NSW Decides on Compliance & Enforcement Action

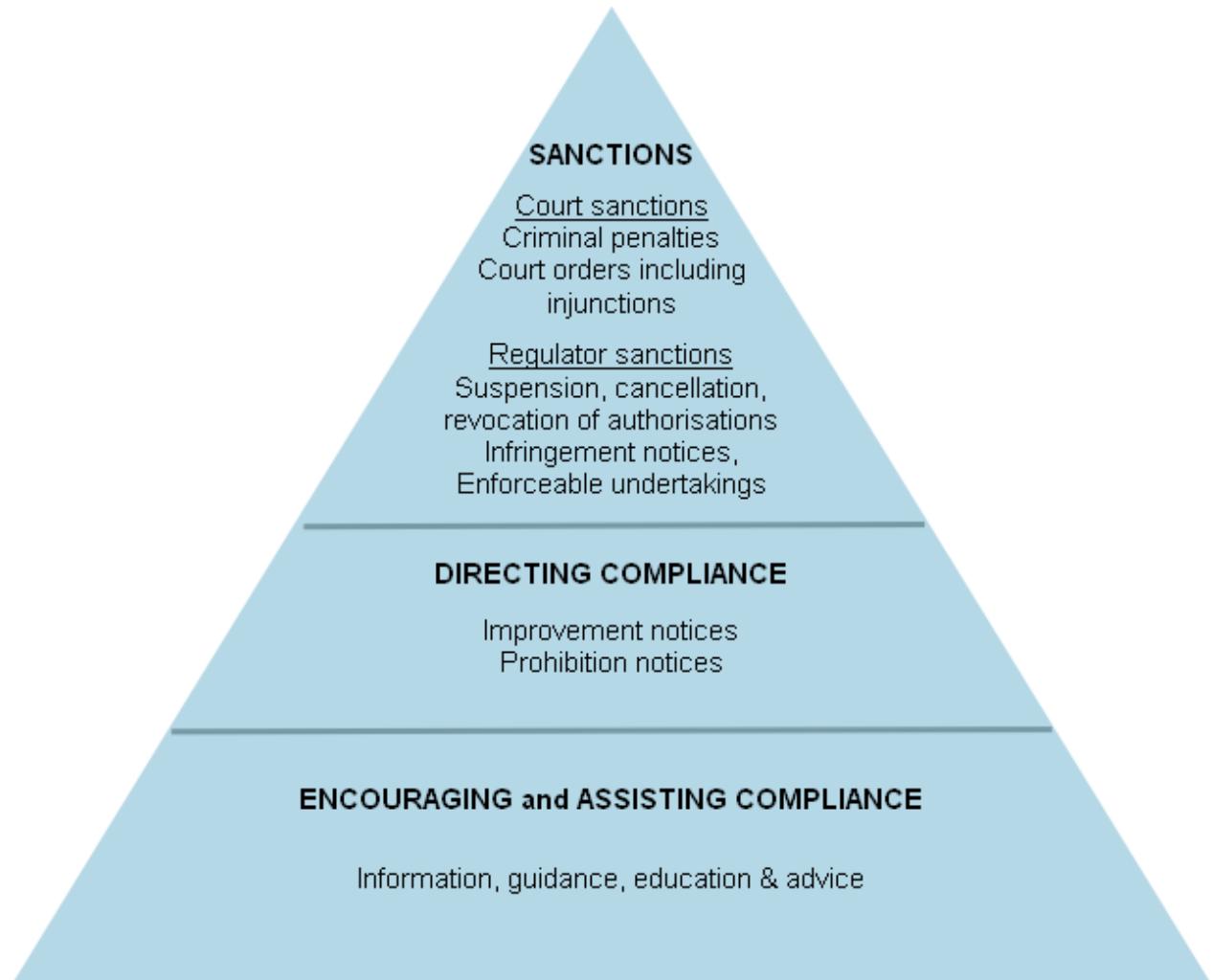
If a SafeWork NSW Inspector found evidence of a breach of WHS laws in a workplace, the SafeWork Inspector's next step would be predictable because it is covered in the National Compliance and Enforcement Policy.

On 10/8/2011, Commonwealth, State, and Territory Governments agreed that WHS Regulators would apply this Policy when monitoring and enforcing compliance with the WHS Act and Regulations. (The diagram and quotations in this article come from this Policy)

### Compliance & enforcement tools

*“A number of measures are available to regulators to compel a duty holder to remedy any identified contravention and to sanction a contravening duty holder. These measures may be used alone or in combination.”*

The tools that are available to the work health and safety regulators include those shown in “*the following diagram represents, in the general sense, the relative volume or proportionate use of these tools and the ability to escalate if an initial intervention does not achieve the desired outcome*”



## **Criteria which guide enforcement decision-making**

*"In deciding on the most appropriate action to take, the regulators are guided by the following considerations:*

- *the adverse effect, that is the extent of the risk, the seriousness of the breach and the actual or potential consequences*
- *the culpability of the duty holder, that is, how far below acceptable standards the conduct falls and the extent to which the duty holder contributed to the risk*
- *the compliance history and attitude of the duty holder*
- *if it is a repeat offence or there is a likelihood of the offence being repeated*
- *whether the duty holder was authorised to undertake certain types of work;*
- *impact of enforcement on encouragement or deterrence*
- *any mitigating or aggravating circumstances, including efforts undertaken by the duty holder to control risks*
- *whether the risk to health and safety is imminent or immediate, and*
- *whether the safety issue can be rectified in the presence of an inspector or the inspector is satisfied with a plan to remedy the breach."*

The Policy then goes on to give details of each tool and the reasons why it would be the one to use.

### **Recommendation**

We recommend that relevant persons in your workplace read this Policy as the greater awareness of the Inspector's considerations and method of operation will help WHS prevention efforts and enhance interactions with SafeWork Inspectors should the occasion arise.

### **Note:**

To see further details you can download a PDF copy of the National Compliance and Enforcement Policy at:

[http://www.workcover.nsw.gov.au/\\_data/assets/pdf\\_file/0019/18316/national-compliance-enforcement-policy-3723.pdf](http://www.workcover.nsw.gov.au/_data/assets/pdf_file/0019/18316/national-compliance-enforcement-policy-3723.pdf)

or

<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/618/National%20Compliance%20and%20Enforcement%20Policy.pdf>

You are welcome to download and distribute the article in your workplace if you feel it may be useful