

Working with the Health and Safety Regulator

Before reading this guide you should be familiar with or refer in the first instance to [Massey University Accident Procedures](#) and flow charts on the reporting of accidents, illnesses and incidents. These will explain if and when you need to call the regulator.

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Who is the Regulator?

New Zealand's work health and safety Regulator under the Health and Safety at Work Act 2015 (HSW) is:

- WorkSafe New Zealand (WorkSafe),
- other government agencies (called designated agencies) that are designated to carry out health and safety regulatory functions for certain sectors such as: the Civil Aviation Authority (CAA) for aircraft, Maritime NZ for ships.

WorkSafe is the Regulator that Massey will most commonly interact with.

The full list of other designated agencies can be found [at S16 of the HSWA](#).

When will a WorkSafe Inspector visit Massey?

The role of Inspectors is to ensure duty holders comply with health and safety law. Inspectors have extensive powers and can visit at any reasonable time meaning whenever people are working on Campus. Inspectors don't need to be invited or need an appointment.

Inspectors are likely to visit usually as a result of a complaint, notifiable event, or to undertake a proactive workplace assessment.

The Inspectorate works in two teams:

1. **Investigation Inspector:** is only likely to visit if there is a notifiable event (serious injury, illness or incident) emergency, or a complaint that WorkSafe would like to

investigate. They may also visit a site upon request by a Health and Safety representative for a review of a Provisional Improvement Notice.

2. **Assessment Inspector:** will carry out a workplace assessment usually as part of proactive targeted area by WorkSafe such as machine guarding, working at heights, vehicles, agriculture, asbestos and hazardous substances. They may also visit if they have been notified that there is a serious hazard that could cause immediate harm.

- If a health and safety Inspector comes on site please advise your Campus Health and Safety Advisor as soon as possible.

Reporting Notifiable Events to WorkSafe

Massey is legally obliged to report these events immediately to WorkSafe and Managers at Massey carries out this obligation on behalf of Massey.

- By telephone Ring 0800 030 040 or
- In writing Email healthsafety.notification@worksafe.govt.nz. Forms and alternative ways to notify can be found through the website www.worksafe.govt.nz

The site of the accident should be preserved and secured (if there is one). Do not disturb the site until an Inspector gives permission. Depending on the circumstances an inspector may give permission to release the site by phone.

- Please advise the Campus Health and Safety Advisor if you notify a Regulator of an event or need assistance in notifying.
- College PVC or AVC, Campus Registrar and University Registrar must be notified of serious events ASAP.

How does WorkSafe process Notifications?

Notifications or complaints are processed in a central Response Team. This unit decides what will be investigated and allocates events to an Inspector. Only a portion of notifications will be investigated by WorkSafe.

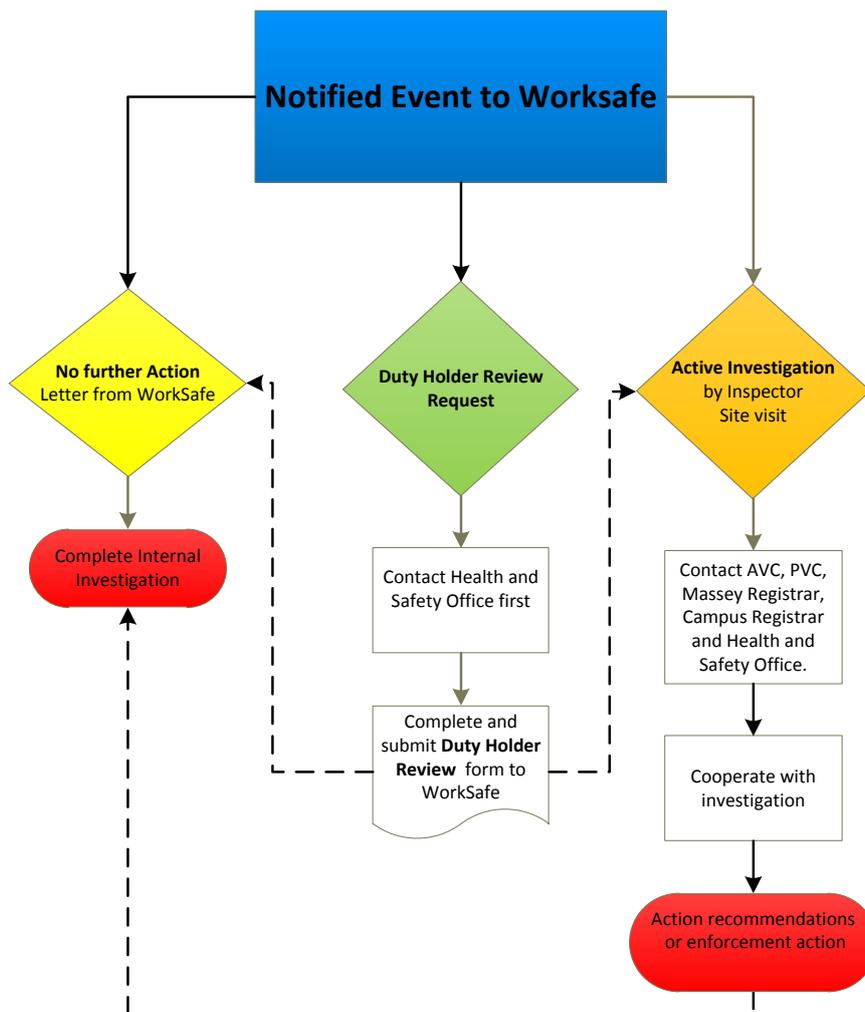
The severity of the event will determine the speed in which WorkSafe responds. A fatality or major event will see inspectors on site ASAP.

The WorkSafe Response Unit will decide on one of three options.

Response	Information	Comments
1. No further Action	Typically for less serious events. WorkSafe will send a letter advising of no further action.	WorkSafe could re open the case if it is reviewed.

<p>2. Event allocated to an Inspector.</p> <p>and/or</p>	<p>Active Investigation can include:</p> <ul style="list-style-type: none"> • on site visit • information requests • interviews • taking photos • taking exhibits etc 	<p>For very serious events the inspector will be on site as soon as possible.</p> <p>In less serious events or complaints the inspector may make contact with Massey first before coming on site.</p>
<p>3. Duty Holder review:</p>	<p>Inspector requests Massey to complete an investigation using The Duty Holder Review Form forwarding findings to WorkSafe for review.</p> <p>N.B. An inspector will not usually or necessarily visit the site for this process.</p>	<p>The Duty Holder Review process is voluntary. Massey will cooperate wherever possible but this process may not always be the best option for Massey.</p> <p>If you are requested to carry out a Duty Holder review please contact the Campus Adviser first</p>

Flow Chart to Show: Outcomes if WorkSafe is notified.



What Powers does an Inspector have?

The University encourages employees and workers to co-operate with the WorkSafe Inspector(s). There is also a new duty under HSW (S:176) for workers and others to give “all reasonable assistance” to the inspector while they are exercising their powers. It is an offence not to assist and it is an offence to obstruct an inspector.

Inspectors have a lot of powers as set out below. Any inspector may (S: 168 Powers of Entry and Inspection):

- at any reasonable time, enter any workplace;
- conduct examinations, tests, inquiries, and inspections, or direct Massey or a person who is or appears to be in charge of the workplace to conduct examinations, tests, inquiries, or inspections;
- be accompanied and assisted by any other person and bring into the workplace any equipment necessary to carry out the inspector’s functions;
- take photographs and measurements and make sketches and recordings;
- require Massey or a person who is or appears to be in charge of the workplace to ensure that the workplace or any place or thing in the workplace specified by the inspector is not disturbed for a reasonable period pending examination, test, inquiry, or inspection;
- require Massey or a person who is or appears to be in charge of the workplace to:
 - (i) produce information relating to the work, the workplace, or the workers who work there; and
 - (ii) produce information relating to Massey’s compliance with relevant health and safety legislation; and
 - (iii) permit the inspector to examine and make copies of, or take extracts from, the information;
- require Massey or a person who is or appears to be in charge of the workplace to make or provide statements, in any form and manner that the inspector specifies.
- remove and seize any material substance or thing. (including computer files) for the purpose of—
 - (a) monitoring conditions in the workplace; or
 - (b) determining the nature of any material or substance in the workplace; or
 - (c) determining whether relevant health and safety legislation has been, is being, or is likely to be complied with; or
- (d) gathering evidence to support the taking of enforcement action (S172)

Power to deal with cause of imminent danger

Inspectors also now have the power under S: 170 to seize, destroy, or take any other action to reduce or remove material; substance, structure, or thing in a workplace that the inspector believes is defective or hazardous to a degree that it is likely to be a cause of **imminent danger**

Power to require name and address

An Inspector can now under the HSW require a person to give them their name and address if the inspector finds a person is or has committed an offence.

Privacy and WorkSafe

During an Investigation an Inspector cannot take, view or copy any information that relates to a person's health status without that person's consent. A worker or employee also has the right to refuse any document containing personal health information to be released to the inspector. The details of the information reported in the notification form are prescribed in the health and safety legislation. The Privacy Act, S:7, allows for providing such information that is prescribed by other legislation. It is important to ensure the employee worker is aware that the incident, including personal information has or will be notified to WorkSafe.

Who can be interviewed by WorkSafe?

An inspector only has the power to **require** Massey or a person who is or appears to be in charge of the workplace to give a statement and to provide information.

For the University that person will be: The Registrar, Campus Registrar, Pro Vice-Chancellor or Assistant Vice-Chancellor, or nominee.

The privilege of self-incrimination, (that is you don't have to say anything that may incriminate yourself) does not apply to Body Corporates, only to natural persons. (S:60 of the Evidence Act.)

Case law from the Court of Appeal in the Bull and Speedy case (**CA554/2011 [2013] NZCA 175.**) clarifies Inspectors powers when **requiring** an interview from an organisation or person in charge.

Briefly the Court of Appeal found:

- The Inspector is entitled to stipulate, either by name or position or both, the person or persons who are to answer enquiries or make a statement. Any other construction of S:31 (HASE 1992 Act) would enable a company to defeat its purpose, such as by nominating an officer or employee who knew nothing about the subject matter of the enquiry.
- The Inspector does not have to furnish detailed questions or allegations to be made before an interview.
- That there can be no limitation read into the word "conditions" which has a broader meaning than physical conditions and can include hours of work, harassment, intimidation.

Interviewing a worker

An Inspector is likely to want to interview people who can assist in the investigation such as: the injured person, witnesses, technical people, health and safety reps, managers. Workers and other persons are required to assist the inspectors but need to be mindful that they should only discuss facts or direct observation or experience within their area of responsibility, role and work activity.

An inspector cannot require a worker to make a statement, therefore giving a statement is voluntary. Inspectors can require someone speaking on behalf of Massey or person in charge to make a statement.

Any worker or other persons talking to an inspector should be mindful that they have the rights of the privilege of self-incrimination, that is a natural person doesn't have to say anything that may incriminate themselves. (S:60 of the Evidence Act.) If a question is put to a worker and the answer is likely to incriminate themselves, they can decline to answer it.

- If a worker agrees to be interviewed they can request to be accompanied by a support person, union rep or H & S representative.
- Ideally support people should be someone independent of Massey University management because as an investigation unfolds there could be a conflict of interest that develops.
- What you say is likely to be recorded and can be used as evidence.
- You should request a copy of the recording and your statement. (You may be refused this)

Fatality arising from work

Such an event is extremely serious and the AVC, PVC, Registrar and Health and Safety Advisor must be notified ASAP. Massey will put into place an emergency response that will include legal assistance, corporate communications, appropriate cultural social support, including a blessing of the site.

Police and WorkSafe will be investigating with the Police usually arriving first. Police investigate to ensure a crime has not been committed and on behalf of the Coroner. It is usual for Police at some point to hand the site over to WorkSafe.

You must cooperate with Police and WorkSafe, make witnesses available but follow the rights of workers who can choose not be interviewed. Make interview rooms available.

Take photos, interview witnesses as soon as you can, gather as much information as you can about the event. Ensure you have the assistance of the Health and Safety Advisor and or legal advice.

WorkSafe will work collaboratively with other agencies and the Police to ensure that investigations are carried out in the most expedient and robust manner. For example, in some cases it may be possible for agencies to share information, such as witness statements, to ensure that witnesses are not subjected to multiple interviews by different agencies. In many cases this is not always possible and Massey staff may need to be interviewed by more than one Agency, including the University.

What enforcement tools are used by the regulator?

An inspector may use any of these tools below. A breach of any of the requirements in these notices could result in a fine for Massey or other persons. WorkSafe has produced an [Enforcement Policy](#) which explains enforcement tools in more detail.

If an inspector issues any one of these tools please contact the Campus Health and Safety Advisor.

Type of Enforcement tool	Brief Description
Directive Letter And Verbal Direction	Usually for minor issues. Directive letters and verbal direction are used when an inspector identifies a breach that does not require a statutory notice. These are not prescribed in HSW.
Improvement notice	Issued if there is or likely to be a contravention of a provision of the Act or Regulations. A timeframe is given to remedy the issue. Notices must be displayed.
Prohibition notice	An activity is stopped by the Inspector if there is a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard. Notices must be displayed.
Non Disturbance Notice	Inspector may require the preservation and non-disturbance of an accident site or the operation of plant. Cannot exceed 7 days. The inspector can issue subsequent notices which may extend the site to beyond 7 days. Notices must be displayed.
Remedial Action	If a person fails to comply with a prohibition notice then the Regulator can take action to make the place safe and recover the cost from Massey. Any such action must be notified in writing.
Enforceable Undertakings	An enforceable undertaking is an alternative to prosecution. When agreed to by the Regulator, it allows a person to voluntarily enter a binding agreement to take action to remedy an alleged breach of the law. An enforceable undertaking implements system-wide change to prevent future breaches of the law. Changes will typically be substantial, and should deliver a more effective regulatory outcome.
Infringement Notice	Infringement notices may be issued by the regulator for prescribed specific offences listed in the regulations. The law does not require the regulator to give prior warning before issuing an infringement notice. The notice requires a fee to be paid.
Prosecution	WorkSafe's objective in prosecuting is to deter non-compliance with the laws it is responsible for enforcing. Prosecution action may be taken whether or not a breach has resulted in death, injury, illness or disease actually occurring. WorkSafe's prosecution decisions are made in accordance with the WorkSafe's <i>Enforcement Policy</i> and the Solicitor General's <i>Prosecution Guidelines</i> . Under certain circumstances private prosecutions may also be taken in relation to an offence.

What if I have issues with an Inspector?

Inspectors are also human and at times may make mistakes. If you are unhappy with an Inspectors processes or actions then you should advise the Massey Health and Safety Manager or Campus Health and Safety Advisor. Massey may approach WorkSafe to discuss any issues or to seek a review.

References

For more detailed information please refer to the following.

- Introduction to the Health and Safety at Work Act 2015 – WorkSafe Special Guide March 2016
- Enforcement Policy – WorkSafe April 2016
- Health and Safety at Work Act 2015