

The perceived “concerning weak” enforcement practices of both the Department of Water and Environment Regulation (DWER) and the Department of Mines, Industry Regulation and Safety, WA (DMIRS) remain a matter of parliamentary discussion and media scrutiny.

The implementation timeframe of each agency to take action to meet audit recommendations varies from first quarter 2023 to December 2023,¹ meaning businesses can expect to start experiencing those regulators increasing compliance and enforcement action, including their scrutiny and propensity for prosecution of alleged infractions. With this in mind, it is timely for businesses to consider:

- Whether they have adequate policies and procedures in place for management of “dawn raids”.
- Their policies and procedures for internal investigations and whether those provide the maximum possible protection by legal professional privilege.
- How they might respond if they receive a notice for production of documents, answering of questions or attendance at an interview.

This short article provides some short guidance about dawn raids. See our [short guidance](#) about internal investigations and notices for document production and interviews.

So called “dawn raids” – unannounced investigations by regulatory agencies entering and searching premises of a business to inspect operations, question staff and/or inspect and seize materials and documents – are highly stressful for businesses. The stress of the experience and the protection of the businesses’ interests are best served by a company having in place policies and procedures (including a response plan) and undertaking training so that staff likely to be involved know what to do. It is to be kept in mind that the staff likely to be involved are not limited to legal counsel and senior management, but are also likely to include support staff (such as reception, records management and IT) and operational personnel.

Both DWER and DMIRS have powers of entry and powers to require information and inspect documents for specified purposes. It must be kept in mind that in many cases it is an offence not to comply or not to cooperate. That said, there are still steps that can be taken to minimise risks.

While not intended as a comprehensive guide, some key tips include:

Things To Do

- Check the identity cards of the investigators and the details of the statutory power being exercised, and the purpose of their exercise of power (and ask for copies of any documents relating to the above).
- Immediately request legal representation including attendance during any interviews.
- Ensure that there is supervision and shadowing of the investigators at all times and careful notes taken of what they are doing, questions asked and answers given (initially by the first responder and then by in-house or external legal counsel).
- Keep answers to questions brief and accurate. Qualify answers where necessary and unless asked to provide an opinion, keep answers to facts.
- Carefully consider whether any documents sought are subject to legal professional privilege. If so, ask for those documents to be kept separate and not inspected pending full assessment of privilege, and clearly state that rights to claim privilege over the documents are reserved.
- Voice objections if the investigation appears to be exceeding the stated and legislatively permitted purpose.
- If possible, obtain at least two copies of any documents reviewed (alternatively ask that a copy be provided as soon as possible) or taken and a receipt of what is seized.
- Consider whether a public press release or communications to employees about confidentiality regarding the dawn raid is appropriate.
- Have legal counsel prepare a report of what occurred during the dawn raid and consider if internal investigations are required.

¹ Compliance with Mining Environmental Conditions, Office of the Auditor General

Things To Not Do

- Obstruct the search.
- Unnecessarily volunteer information.
- Lie or seek to mislead the investigators.
- Sign written statements prepared by the investigators if they are not an accurate reflection of the oral statements provided and otherwise do not reflect the position accurately.
- Destroy documents or evidence.

Information obtained during dawn raids is often critical in decisions to prosecute and then plays a key role as evidence during any prosecution. Being well prepared and having the right advisers can make a difference. Our team has experience in assisting clients respond to both DWER and the DMIRS investigations in a way that minimises risks to the business and favourably positions the business in respect of further enforcement action (and experience defending enforcement proceedings at trial if they are commenced).

Contacts



Rebecca Heath

Partner, Perth
T +61 8 9429 7476
E rebecca.heath@squirepb.com



Hamish Donovan

Associate, Perth
T +61 8 9429 7421
E hamish.donovan@squirepb.com



Graeme Slattery

Partner, Sydney
T +61 2 8248 7876
E graeme.slattery@squirepb.com



Tom Haystead

Senior Associate, Sydney
T +61 2 8248 7807
E tom.haystead@squirepb.com