



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2021-314

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	31
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: no-reply@act.gov.au
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Thursday, 11 November 2021 11:15:56 AM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:

First Name:

Last Name:

Business/Organisation:

Address:

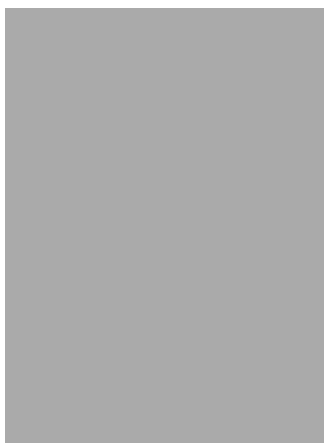
Suburb:

Postcode:

State/Territory:

Phone/mobile:

Email address:



Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

All and any documents dealing with, recording or referring to attendance, by WorkSafe ACT inspectors at a construction site located at CIT Campus – Woden: Bus Layover and Enabling Works (the Site), and operated by Canberra Contractors Pty Ltd, including but not limited to: file notes, contact records, access records, log books, and notices issued in relation to that site. All and any documents dealing with, recording or referring to contact by Canberra Contractors Pty Ltd or their employees or agents and WorkSafe ACT and its employees or agents, including WorkSafe ACT inspectors, in relation to or dealing with a construction site located at CIT Campus – Woden: Bus Layover and Enabling Works (the Site), and operated by Canberra Contractors Pty Ltd, including but not limited to: file notes, contact records, access records, log books, and notices issued in relation to that site. This request is for documents dated, made or created, between 1 June 2021 and 11 November 2021.

I do not want to access the following documents in relation

to my request::

Thank you.

Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2021-314



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 11 November 2021, in which you sought access to documents relating to a construction site located at CIT campus in Woden.

Specifically, you are seeking: *"All and any documents dealing with, recording or referring to attendance, by WorkSafe ACT inspectors at a construction site located at CIT Campus – Woden: Bus Layover and Enabling Works (the Site), and operated by Canberra Contractors Pty Ltd, including but not limited to: file notes, contact records, access records, log books, and notices issued in relation to that site. All and any documents dealing with, recording or referring to contact by Canberra Contractors Pty Ltd or their employees or agents and WorkSafe ACT and its employees or agents, including WorkSafe ACT inspectors, in relation to or dealing with a construction site located at CIT Campus – Woden: Bus Layover and Enabling Works (the Site), and operated by Canberra Contractors Pty Ltd, including but not limited to: file notes, contact records, access records, log books, and notices issued in relation to that site. This request is for documents dated, made or created, between 1 June 2021 and 11 November 2021."*

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 9 December 2021 however, following third-party consultation, the due date is now 24 August 2021.

Decision on access

Searches were completed for relevant documents and 15 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision a schedule of relevant documents. This schedule provides a description of each document falling within the scope of your request and the access decision for each of those documents.

I have decided to grant full access to six documents and partial access to nine documents relevant to your request

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which [they] appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

(xiii) *Contribute to the administration of justice generally, including procedural fairness.*

Having considered the factors identified as relevant in this matter, I consider that release of information contained in these documents may contribute to the administration of justice generally by allowing you to have access to a WorkSafe ACT investigation report and associated documents associated with your access request. I am satisfied that this

factor favouring disclosure carries significant weight. However, this weight is to be balanced with the weight of factors favouring non-disclosure.

Factors favouring nondisclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
 - (ii) *Prejudice the protection of an individual's right to privacy or other rights under the Human Rights Act 2004.*

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially when dealing with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of a government process will be dealt with in a manner that protects their privacy. Considering the type of information (contact information) to be withheld from release, I am satisfied that the factors in favour of release can be met while protecting the personal information of the individuals involved. I therefore weight the factor for nondisclosure more highly than the factor in favour of release in this instance.

As a result, I have decided that release of private information (names, mobile phone numbers and email addresses of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*. I have also redacted mobile numbers of ACT government employees which will allow them to maintain personal privacy.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to most of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages being released is below the chargeable threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log between 3-10 days from the date of decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Katharine Stuart
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
23 December 2021



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

CMTEDDFOI2021-314

All and any documents dealing with, recording or referring to attendance, by WorkSafe ACT inspectors at a construction site located at CIT Campus – Woden: Bus Layover and Enabling Works (the Site), and operated by Canberra Contractors Pty Ltd, including but not limited to; file notes, contact records, access records, log books, and notices issued in relation to that site. All and any documents dealing with, recording or referring to contact by Canberra Contractors Pty Ltd or their employees or agents and WorkSafe ACT and its employees or agents, including WorkSafe ACT inspectors, in relation to or dealing with a construction site located at CIT Campus – Woden: Bus Layover and Enabling Works (the Site), and operated by Canberra Contractors Pty Ltd, including but not limited to: file notes, contact records, access records, log books, and notices issued in relation to that site. This request is for documents dated, made or created, between 1 June 2021 and 11 November 2021

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	E-mail from Canberra Contractors to Worksafe ACT with pictures	11 August 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
2	4-6	Workplace Visit Report 00084468	11 August 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
3	7-9	Letter from CFMEU to Mick Gentleman and Chris Steel MLA	7-September 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
4	10-12	Email between WorkSafe ACT officials	13-September 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
5	13	Meeting Invitation request between Worksafe ACT officials	23-September 2021	Full	N/A	Yes
6	14-16	Worksafe ACT Investigation Plan	27 September 2021	Full	N/A	Yes
7	17	E-mail from ACT Gov to CFMEU	7-October 2021	Full	N/A	Yes
8	18-19	Email trail between WorkSafe ACT officials	12-October 2021	Full	N/A	Yes
9	20-22	Email trail between WorkSafe ACT and CFMEU	12-17 October 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
10	23-26	Email trail between WorkSafe ACT and CFMEU	12-19 October 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
11	27-28	Draft Notice from Worksafe ACT to Canberra Contractors	21-October 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
12	29-32	Email trail between WorkSafe ACT and CFMEU	12-19 October 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes

13	33-35	Email trail between WorkSafe ACT and CFMEU	12-26 October 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
14	36-38	Worksafe ACT Investigation summary report	1 November 2021	Full	N/A	Yes
15	39-40	Worksafe ACT Draft Interview Questions	N/A	Full	N/A	Yes
Total No of Docs						
15						

From: Sch 2.2(a)(ii)
Sent: 11/08/2021 6:05 AM
To: "Foster, Michael" <Michael.Foster@worksafe.act.gov.au>
Subject: Canberra Contractors Woden site photos
Attachments: IMG_6162.JPG, IMG_6160.JPG

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Michael,

As discussed photos from today's CFMEU visit to Canberra Contractors Woden site.

Regards

Sch 2.2(a)(ii)

Risk Manager



☎ 02 6242 8122 | Sch 2.2(a)(ii)

📍 4/98 Vicars St MITCHELL ACT 2911

Sch 2.2(a)(ii)

If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately.

SE

S

SW

W

120

150

180

210

240

270

LS-002

☀ 197°S (T) ● 35°20'26"S, 149°5'14"E ±50m ▲ 593m



11 Aug 2021, 13:27:53



☼ 270°W (T) ● 35°20'24"S, 149°5'4"E ±65m ▲ 586m

11 Aug 2021, 13:19:28

Initial Information

Inspection Number: 00084468

Lead inspector: Michael FOSTER Inspector ID: P05771

Is there any accompanying inspectors: Yes

Alan CHIPPERFIELD

P05757

Shane Warren

Type of visit: Reactive

Date visit commenced: 11/08/2021

Legislation visit conducted under: WHS

Purpose of visit: Right of entry

Entity information

Type of entity: Business Entity

Name of individual or registered company: Canberra Contractors Pty. Limited

Trading as:

ACN:

ABN: 008583355

Industry Group: Construction

Address:

Contact Name:

Contact Number:

Contact Email:

Details of visit

Address: Irvine Street Phillip ACT 2606

Notification of entry to (as required by s164): PCBU

Were any potential breaches of the legislation identified? No

Inspector notes:

Location:

CIT Bus Layover package 1,
Irvine Street Phillip ACT.

PCBU:

Canberra Contractors Pty Ltd.

Contact-

Sch 2.2(a)(ii)

UNION/Organisers:

CFMMEU.

.....

About 12:19pm on Wednesday 11 August, 2021, the CIT Bus Layover package 1, Irvine Street Phillip ACT was as civil construction site under the control of Canberra Contractors Pty Ltd (the PCBU).

At that time union organisers and Permit Holders (PH) of the CFMMEU, [REDACTED] exercised their right of entry powers (ROE) to that site, pursuant to S117 of the Work Health and Safety ACT 2011 (the Act), citing S19 (Duty of Care) WHS Regulation S41 – “Duty to provide and maintain adequate and accessible facilities”.

The ROE Notice stated that the facilities on site were not being maintained.

The PH's were granted access to inspect the amenities and it was alleged that the floors were of an unsatisfactory standard (images attached).

The PCBU agreed to have the facilities cleaned.

The PH's then requested a full site inspection, based on the initial ROE documentation, however not additional identified breach was disclosed by the PH's. At the request of the PCBU, the PH's were asked to specify the additional area of concern, however the PH's left the site.

A short time later, the PH's returned to the site and served an additional S177 notice on the PCBU, citing S19 Act, Reg 214 – 215 “Separation and protection of moving plant and pedestrians”.

The area that was referenced to by the PH's was the car park of the site, directly adjacent to the site offices and facilities. This area is not an area that is used by mobile plant.

By agreement, the PCBU installed additional visual barriers above what was already in place .

A short time later the PH's left site.

About 2:10pm Inspectors FOSTER, CHIPPERFIELD and WARREN attended the site and engaged with the PCBU. No additional WHS risks were identified and the PCBU had already engaged cleaners to carry out additional cleaning of the facilities.

Nil further action required by WorkSafe ACT.

Disclaimer: The issues identified during this inspection are only indicative of compliance with the Work Health and Safety Act 2011, the Work Health and Safety Regulations 2011, the Dangerous Substances Act 2004 and the Workers Compensation Act 1951 on the date of the inspection. If compliance is identified during this inspection, it does not remove the obligation of any person to comply with any further requirement of the above mentioned Acts and Regulations.

Previous action

Previous notice/s issued (either written or verbal)? No

Contacts

Lead inspector email address: michael.foster@act.gov.au

Recipient/s of this form

Email: [REDACTED]@canberracontractors.com.au

Email 2:

Privacy Notice: The information collected for the purpose of the Work Health and Safety Act 2011 and is in accordance with the Information Privacy Act 2014. WorkSafe ACT prevents any unreasonable intrusion into person's

privacy in accordance with the Privacy Act 1988 (C'Wlth) and Information Privacy Act 2014. WorkSafe ACT provides identifiable information which can be disclosed to other law enforcement agencies and authorised organisation that have legal authority to request information under prescribed circumstances.

CFMEU

CONSTRUCTION

CFMEU ACT
Unit 7-10, 8 Cape Street
Dickson 2602
PO Box 498
Dickson 2602
Ph 02 6267 1599
Fax 02 6249 1247
ABN: 38 491 952 173

7 September 2021

Mick Gentleman MLA
Minister for Industrial Relations and Workplace Safety
By email: gentleman@act.gov.au

Chris Steel MLA
Minister for Transport and City Services
Minister for Skills
By email: steel@act.gov.au

Dear Ministers,

RE: CIT Campus – Woden: Bus Layover and Enabling Works

We write in relation to a recent incident which occurred Territory Government construction of the CIT Campus – Woden: Bus Layover and Enabling Works operated by Canberra Contractors Pty Limited (Canberra Contractors).

Two of our officials attended the site having received complaints that the amenities (toilet blocks and meal areas) were not clean or hygienic. Both officials held all relevant right of entry permits under both the Fair Work Act 2009 (Cth) and the Work Health and Safety Act 2011 (ACT). Upon attendance at the site our officials inspected the amenities accompanied by a person believed to be [Sch 2.2\(a\)\(ii\)](#), a director of Canberra Contractors.

While conducting the inspection of the amenities our officials identified other hazards posing risks of serious injury as a result of the failure of the Company to ensure appropriate physical barriers between the heavy machinery operating on the site and the amenities area and associated pedestrian traffic areas. At the time our permit holders first noted this issue, the heavy machinery operational area was only delineated by star pickets. The relevant regulatory standard requires that the PCBU must ensure that mobile plant does not collide with pedestrians by means of appropriate physical barriers. Our permit holders asked to be able to inspect this area. [Sch 2.2\(a\)\(ii\)](#) refused to allow our permit holders to inspect the areas associated with the physical barriers, notwithstanding their right to do so under s 118(5) of the WHS Act.

Our permit holders then waited for another officer of the Company to arrive. They provided this second officer with further notices under s117 of the WHS Act, even though they were not required to do so and had an existing right under the notices they had already given to the company. This person proceeded to refuse to allow our permit holders to inspect the hazard they had identified.

We note that these matters appear to us to constitute hindering and obstructing our permit holders in contravention of the Fair Work Act 2009 and the Work Health and Safety Act 2011. We advise

that it is our intention to pursue these matters in the appropriate Court. However, we also note that this is not the first occasion on which Canberra Contractors has hindered and obstructed our permit holders and that:

- a. In *CFMEU v Canberra Contractors* [CAG90/2018] FCA 2020, Canberra Contractors **admitted to a contravention of s 501 of the Fair Work Act 2009 and a contravention of s 502 of the Fair Work Act 2009** and was fined by the Federal Court for both contraventions. These two contraventions related to the company's repeated refusal to allow permit holders under the *Work Health and Safety Act 2011* to inspect their sites despite well-founded fears for the safety of their employees and the general public;
- b. In *CFMEU v Canberra Contractors* [CAG25/2020] FCA 2021, Canberra Contractors **admitted to a contravention of s 502 of the Fair Work Act 2009** and was fined by the Federal Court, again for hindering and obstructing permit holders attempting to exercise rights under the *Work Health and Safety Act*.

In addition, we draw your attention to the following matters in which the company has contravened other workplace laws:

- a. In *Steven Brown v Canberra Contractors Pty Limited and Sutherlands Communication Services Pty Ltd* [2014] ACTSC 30, Canberra Contractors was found by the court to be liable for **negligence leading to a serious injury**;
- b. In *R v Canberra Contractors Pty Ltd* [2016] ACTSC 13, Canberra Contractors was convicted under s31(1) of the *Work Safety Act 2008* for **negligence leading to the death of Wayne Vickery**.

Finally, we note that these matters of hygiene and safety were raised with the Union at a time when site safety and hygiene is a significant public health issue as a result of the Covid-19 pandemic. Among other things we note that our officials observed and in some cases photographed:

- Floors in both the meal rooms and toilets had significant mud and dirt on them.
- Paper waste sitting on the floors in the toilets.
- Waste bins in the toilets which were not lined with bags. We note that the Safe Work Australia Covid-19 Safety guidelines for the Construction Industry state that "wastes (including used paper towels) should be double bagged and set aside in a safe place for at least 72 hours before disposal into general waste facilities."
- Tables in the meal rooms which had not been wiped for sufficient amount time that a film of dirt with areas where workers had brushed the dirt away from their meals was visible.
- There did not appear to be soap or hand sanitiser available in the meal areas.
- There was no hand sanitiser available in the toilets.
- The toilets appeared to be blocked or not able to be flushed in a functional way.

It is clear that these areas were not being cleaned in accordance with Safe Work Australia guidelines, which require

- Cleaning of amenities between meal breaks, and
- routine site cleaning of frequently touched surfaces (including toilets and table tops) to occur at least twice daily, or more frequently if dirty.

It goes without saying that during the current Covid-19 pandemic the reputational risk to the Territory Government as a result of failures of hygiene standards on Territory Government construction projects is more than merely notional. The Construction Industry looks to the government as a source of best practice, and it is clear that this site has failed to meet minimum standards on any level. Ordinarily, the Union would attempt to exercise a degree of review over these issues, however our capacity to do so is limited by the obstructive, and law breaking, behaviour of the company

Taking these matters into account we ask you to advise us as a matter of urgency what steps the Territory Government will take to regulate the behaviour of your contractor on this site. We say that this is a company with a significant a repeated history of disregard for workplace health and safety laws and which moreover has admitted on two separate occasions that it has broken the law and prevented the Union from exercising its rights to inspect suspected contraventions of the WHS Act.

We note that we raised these matters with WorkSafe ACT at the time of the inspection and that we have also raised them with the Secure Local Jobs Registrar as a breach of the Secure Local Jobs code, and we are not requesting assistance with further referrals of this kind. In addition, we note that the complaints processes open to us through the courts and the code are often post fact complaint mechanisms which take no account of the ongoing operation of the site while those complaints are dealt with. In the circumstances, we say that the onus is on the Territory Government to take a degree of responsibility as the manager of this contract for the manner in which this site is operated as a matter of urgency.

Yours sincerely,



Acting Secretary
CFMEU, Construction & General Division
ACT Divisional Branch

cc:
Duncan Edghill
Chief Projects Officer
Major Projects Canberra
By email - Duncan.Edghill@act.gov.au

From: "Foster, Michael" <Michael.Foster@worksafe.act.gov.au>
Sent: 13/09/2021 2:06 AM
To: "Grey, Brooke" <Brooke.Grey@worksafe.act.gov.au>
Subject: Canberra Contractors.

OFFICIAL: Sensitive - Legal Privilege

Good morning Brooke,

As discussed, this was the summary I wrote after attending a complaint by Canberra Contractors in relation to the conduct of the CFMEU, happy to discuss:

Description

Location:

**CIT Bus Layover package 1,
Irvine Street Phillip ACT.**

PCBU:

Canberra Contractors Pty Ltd.

Contact:

Sch 2.2(a)(ii)

UNION/Organisers:

CFMMEU.

.....
About 12:19pm on Wednesday 11 August, 2021, the CIT Bus Layover package 1, Irvine Street Phillip ACT was as civil construction site under the control of Canberra Contractors Pty Ltd (the PCBU).

At that time union organisers and Permit Holders (PH) of the CFMMEU, exercised their right of entry powers (ROE) to that site, pursuant to S117 of the Work Health and Safety ACT 2011 (the Act), citing S19 (Duty of Care) WHS Regulation S41 – "Duty to provide and maintain adequate and accessible facilities".

The ROE Notice stated that the facilities on site were not being maintained.

The PH's were granted access to inspect the amenities and it was alleged that the floors were of an unsatisfactory standard (images attached).

The PCBU agreed to have the facilities cleaned.

The PH's then requested a full site inspection, based on the initial ROE documentation, however no additional identified breach was disclosed by the PH's.

At the request of the PCBU, the PH's were asked to specify the additional area of concern, however the PH's left the site.

A short time later, the PH's returned to the site and served an additional S177 notice on the PCBU, citing S19 Act, Reg 214 – 215 "Separation and protection of moving plant and pedestrians".

The area that was referenced to by the PH's was the car park of the site, directly adjacent to the site offices and facilities (images attached).

This area is not an area that is used by mobile plant.

By agreement, the PCBU installed additional visual barriers above what was already in place .

A short time later the PH's left site.

About 2:10pm Inspectors FOSTER, CHIPPERFIELD and WARREN attended the site and engaged with the PCBU.

No additional WHS risks were identified and the PCBU had already engaged cleaners to carry out additional cleaning of the facilities.

Nil further action required by WorkSafe ACT.





Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



ACT
Government

We acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. We pay our respects to them, and to the Elders both past and present.

From: "Grey, Brooke" <Brooke.Grey@worksafe.act.gov.au>
Sent: 23/09/2021 5:56 AM
To: "Smithers, Tyrone" <Tyrone.Smithers@worksafe.act.gov.au>; "Foster, Michael" <Michael.Foster@worksafe.act.gov.au>
Subject: CFMEU Right of Entry Investigation
Attachments: Ltr to Ministers Steel&Gentleman 07092021.pdf, Canberra Contractors.

Microsoft Teams meeting

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Major Investigations Team Investigation Plan

Date created: 27 September 2021

Matter number: CFMEU Right of Entry

Priority: Medium

PART A: INFORMATION ABOUT CASE

Allocated Case Officer:	Lead: Tyrone Smithers
Complaint Type:	Right of entry dispute
How was alleged breach identified?	<input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Investigation <input type="checkbox"/> Workplace visit Complaint has been made to the Ministers office by the CFMEU.
Complaint Priority as determined by Insp SMITHERS.	This investigation is a medium priority.
Complainant (if appropriate):	CFMEU
Respondent: PCBU	Canberra Contractors
Timeframe to complete investigation:	TBA
Inspection	<input checked="" type="checkbox"/> Conducted <input type="checkbox"/> To be conducted
Objectives	To establish whether or not the PCBU committed offences against the WHS ACT 2011.
Background	<p>About 12:19pm on Wednesday 11 August 2021, the CIT Bus Layover package 1, Irvine Street Phillip ACT was as civil construction site under the control of Canberra Contractors Pty Ltd (the PCBU).</p> <p>At that time union organisers and Permit Holders (PH) of the CFMEU, [REDACTED] exercised their right of entry powers (ROE) to that site, pursuant to S117 of the Work Health and Safety ACT 2011 (the Act), citing S19 (Duty of Care) WHS Regulation S41 – “Duty to provide and maintain adequate and accessible facilities”. The ROE Notice stated that the facilities on site were not being maintained.</p> <p>The PH’s were granted access to inspect the amenities and it was alleged that the floors were of an unsatisfactory standard. The PCBU agreed to have the facilities cleaned.</p> <p>The PH’s then requested a full site inspection, based on the initial ROE documentation, however no additional identified breach was disclosed by the PH’s.</p> <p>At the request of the PCBU, the PH’s were asked to specify the additional area of concern, however the PH’s left the site.</p>

	<p>A short time later, the PH's returned to the site and served an additional S177 notice on the PCBU, citing S19 Act, Reg 214 – 215 "Separation and protection of moving plant and pedestrians".</p> <p>The area that was referenced to by the PH's was the car park of the site, directly adjacent to the site offices and facilities. This area is not an area that is used by mobile plant.</p> <p>By agreement, the PCBU installed additional visual barriers above what was already in place.</p> <p>A short time later the PH's left site.</p> <p>About 2:10pm WorkSafe ACT Inspectors FOSTER, CHIPPERFIELD and WARREN attended the site and engaged with the PCBU.</p>
<p>Alleged complaint including legislation alleged breach relates to.</p> <p>WHS Act s145</p>	<p>A letter dated the 07 September 2021 was addressed to Mick Gentlemen MLA and Chris Steel MLA from the CFMEU.</p> <p>The contents of the letter detail that the CFMEU permit holders attended the Canberra Contractors site and were refused entry to inspect a further hazard they had identified.</p> <p>The CFMEU believes this constitutes hindering and obstructing a permit holder and is in contravention of the WHS Act.</p> <p>The matter has been referred to WorkSafe ACT to further investigate.</p>
Statute of limitations	2 years from 11 th August 2021
Relevant legislation to utilise to investigate the allegation include Act and Section of Powers to use	-this investigation will be conducted under the provisions of the WHS Act.
Is initial compliance action required now	No.
Legislative provision which permits the compliance action	N/A
How will the investigation be conducted? Include what actions conducted when and evidence sought	<ol style="list-style-type: none"> 1. Evaluate the incident. 2. Engage with relevant witnesses from the CFMEU, Canberra Contractors and WorkSafe ACT. 3. Offer relevant parties the opportunity to participate in a record of conversation. 4. Review Permits held by CFMEU. 5. Verify duties of the PCBU under the Act 6. Refer findings to the CMP.
Risk Management Identify any risk factors and how these will be managed and treated	As identified
Other information	

Case Officer: Tyrone Smithers

Date: 27/09/2021

Manager: Brooke Grey

Date: 28/9/2021

☒ Supported:

☐ Not supported

Insert comments :

Category 3 charge – s33

- ☐ The accused has a WHS duty;
- ☐ The accused fails to comply with that duty.

Category 2 charge – s32

- ☒ The accused has a WHS duty;
- ☐ The accused fails to comply with that duty;
- ☐ The failure exposed an individual to a risk of death, or serious injury or illness.

Category 1 charge – s31

- ☐ The accused has WHS duty;
- ☐ The accused engages in conduct;
- ☐ The accused intended to engage in the conduct;
- ☐ The conduct exposed an individual to whom the duty was owed to a risk or death, or serious injury

or illness;

- ☐ The accused was reckless that the conduct would expose the individual to the risk of death, or

serious injury or illness;

- ☐ The accused did not have a reasonable excuse to engage in the conduct that exposed an individual to the risk.

From: "Smithers, Tyrone"
Sent: 07/10/2021 2:28 AM
To: "actqueries@cfmeu.org" <actqueries@cfmeu.org>
Subject: Right of Entry dispute - Canberra Contractors

OFFICIAL

Good Afternoon,

I was wanting to get in contact with [REDACTED]

Are you able to send through email details for both.

Kind regards, Tyrone.

Tyrone Smithers | Investigator

EMAIL: Tyrone.Smithers@worksafe.act.gov.au

Office of the Work Health and Safety Commissioner

GPO Box 158 Canberra ACT 2601



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

WORKSAFEACT

From: "Foster, Michael"
Sent: 12/10/2021 1:06 AM
To: "Agius, Jacqueline" <Jacqueline.Agius@worksafe.act.gov.au>
Subject: RE: CFMEU contact

Thank you Jacqui,
I will make contact now.
Mick.

From: Agius, Jacqueline <Jacqueline.Agius@worksafe.act.gov.au>
Sent: Tuesday, 12 October 2021 11:40 AM
To: Foster, Michael <Michael.Foster@worksafe.act.gov.au>
Subject: FW: CFMEU contact

As discussed

Jacqueline Agius | Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Agius, Jacqueline
Sent: Tuesday, 12 October 2021 11:12 AM
To: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>
Subject: CFMEU contact

Ho Brooke

The legal manager at CFMEU is Rosalind Read:

Rosalind Read
Senior Legal Officer
CFMEU Construction & General Division ACT Branch
Unit 7-10/8 Cape Street
Dickson ACT 2602
m: [REDACTED]
ph: 02 6267 1599
e: [REDACTED]@cfmeu.org

Jacqueline Agius | Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



ACT
Government

I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.



From: "Foster, Michael"
Sent: 17/10/2021 9:31 PM
To: "Rosalind Read" [REDACTED]@cfmeu.org>
Cc: "Grey, Brooke" <Brooke.Grey@worksafe.act.gov.au>; "Smithers, Tyrone" <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

OFFICIAL: Sensitive

Good morning Rosalind,

Thank you for the response and the sharing of information.

I was hoping to be able to meet with [REDACTED] this week, however I am advised that our return to work COVID plan is yet to be finalised.

With that in mind, we are hoping to be able to conduct face to face meetings next week -to be confirmed.

Tyrone Smithers and Shane Warren will now take the statements, and they will engage with you directly to arrange a convenient time.

In the meantime, will it be possible for us to pick up the footage/photos from your office in preparation? We can supply a USB if needed.

Thanks again,
Mick.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 | Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



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From: Rosalind Read [REDACTED]@cfmeu.org>
Sent: Friday, 15 October 2021 10:55 AM
To: Foster, Michael <Michael.Foster@worksafe.act.gov.au>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

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Dear Mick, further to our conversation this week I have attached for your reference a copy of our pleading as filed in the Federal Circuit Court in relation to this matter, the pleading sets out the events as they occurred.

Our officials are able to provide WorkSafe with statements in relation to these events. However, for the purpose of providing those statements they will be assisted in any interview by one of the CFMEU legal team (either myself or Tom Fischer who is copied into this email.)

We are able to organise a time to provide those statements next week.

In relation to the video recorded at the time of the events in question, as the files are too large to email we will provide you with a USB drive in person.

Regards, Rosalind Read

Rosalind Read
Senior Legal Officer
CFMEU Construction & General Division ACT Branch
Unit 7-10/ 8 Cape Street
Dickson ACT 2602
m: [REDACTED]
ph: 02 6267 1599
e: [REDACTED]@cfmeu.org

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From: Foster, Michael [<mailto:Michael.Foster@worksafe.act.gov.au>]
Sent: 12 October 2021 13:03
To: Rosalind Read [REDACTED]@cfmeu.org>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>
Subject: Canberra Contractors

OFFICIAL: Sensitive

Good afternoon Rosalind,

Thank you for your time on the phone earlier.

As discussed, WorkSafe ACT are making enquiries in relation to an incident that occurred on Wednesday 11 August, 2021, the CIT Bus Layover package 1,

where your organisers may have been obstructed.

In order for our investigation to proceed further, I would like to offer [REDACTED] the opportunity to provide my investigators with a statement in relation to the conduct of the PCBU on the day.

This statement is made voluntarily and it will be electronically recorded, and will be in a format that can be tendered as evidence if required at a later date.

Also, I would request that any images of the alleged contraventions on the site, video footage of the interaction between the two parties, or any relevant information be made available to the investigators to assist with their enquires.

I will be on personal leave from 20 October, so if you are able to provide me with an indication of how you would like to proceed in the next few days, I will be able to co-ordinate the investigation team accordingly.

If you wish to discuss any aspect of this matter, please contact myself directly on Sch 2.2(a)(ii)

Looking forward to your response,

Regards,

Mick Foster.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 | Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

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From: [REDACTED]@cfmeu.org>
Sent: 19/10/2021 2:51 AM
To: "Foster, Michael" <Michael.Foster@worksafe.act.gov.au>; "Rosalind Read" <[REDACTED]@cfmeu.org>
Cc: "Grey, Brooke" <Brooke.Grey@worksafe.act.gov.au>; "Smithers, Tyrone" <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

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Dear Michael,

Rosalind has asked me to assist you in getting the footage/photos required as I'm back in the office this week and can more easily access the server. If you can drop by a USB that's safe for your system, I'll upload what we have as soon as possible and provide.

Yours sincerely,

[REDACTED]

From: Foster, Michael [mailto:Michael.Foster@worksafe.act.gov.au]
Sent: Monday, 18 October 2021 8:31 AM
To: Rosalind Read [REDACTED]@cfmeu.org>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

OFFICIAL: Sensitive

Good morning Rosalind,

Thank you for the response and the sharing of information.

I was hoping to be able to meet with [REDACTED] and [REDACTED] this week, however I am advised that our return to work COVID plan is yet to be finalised.

With that in mind, we are hoping to be able to conduct face to face meetings next week -to be confirmed.

Tyrone Smithers and Shane Warren will now take the statements, and they will engage with you directly to arrange a convenient time.

In the meantime, will it be possible for us to pick up the footage/photos from your office in preparation? We can supply a USB if needed.

Thanks again,
Mick.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 | M: Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

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From: Rosalind Read [REDACTED]@cfmeu.org>

Sent: Friday, 15 October 2021 10:55 AM

To: Foster, Michael <Michael.Foster@worksafe.act.gov.au>

Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>

Subject: RE: Canberra Contractors

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In relation to the video recorded at the time of the events in question, as the files are too large to email we will provide you with a USB drive in person.

Regards, Rosalind Read

Rosalind Read
Senior Legal Officer
CFMEU Construction & General Division ACT Branch
Unit 7-10/8 Cape Street
Dickson ACT 2602
m: [REDACTED]
ph: 02 6267 1599
e: [REDACTED]@cfmeu.org

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From: Foster, Michael [<mailto:Michael.Foster@worksafe.act.gov.au>]

Sent: 12 October 2021 13:03

To: Rosalind Read [REDACTED]@cfmeu.org>

Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>

Subject: Canberra Contractors

OFFICIAL: Sensitive

Good afternoon Rosalind,

Thank you for your time on the phone earlier.

As discussed, WorkSafe ACT are making enquiries in relation to an incident that occurred on Wednesday 11 August, 2021, the CIT Bus Layover package 1,

where your organisers may have been obstructed.

In order for our investigation to proceed further, I would like to offer [REDACTED] the opportunity to provide my investigators with a statement in relation to the conduct of the PCBU on the day.

This statement is made voluntarily and it will be electronically recorded, and will be in a format that can be tendered as evidence if required at a later date.

Also, I would request that any images of the alleged contraventions on the site, video footage of the interaction between the two parties, or any relevant information be made available to the investigators to assist with their enquiries.

I will be on personal leave from 20 October, so if you are able to provide me with an indication of how you would like to proceed in the next few days, I will be able to co-ordinate the investigation team accordingly.

If you wish to discuss any aspect of this matter, please contact myself directly on Sch 2.2(a)(ii)

Looking forward to your response,

Regards,

Mick Foster.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 | Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

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Work Health and Safety Act 2011

Section 155(2)

NOTICE TO GIVE INFORMATION TO WORKSAFE ACT

To: [REDACTED]

Canberra Contractors Pty Ltd

4/98 Vicars Street

Mitchell ACT 2911

Phone: 02 6242 8122

Email: [REDACTED] [@canberracontractors.com.au](mailto:[REDACTED]@canberracontractors.com.au)

I, Mr Tyrone SMITHERS, pursuant to section 155 of the *Work Health and Safety Act 2011*, have reasonable grounds to believe that you are capable of producing documents in relation to a possible contravention of section 145 of the *Work Health and Safety Act 2011*, namely as a result of a right of entry dispute occurring on the 11 August 2021 at the CIT Bus Layover Package 1, Irvine Street Phillip in the Australian Capital Territory.

I require you to produce the documents set out in the attached schedule to me via return email at tyrone.smithers@worksafe.act.gov.au on or before 05 November 2021.

Signed.....

Authorised delegate of WorkSafe ACT

Date: 21 October 2021

This warning and information forms part of the Notice under Section 155(2) of the *Work Health and Safety Act 2011*

WARNING

A person who refuses or fails to comply with this Notice without a reasonable excuse, may be liable to prosecution and, if found guilty, liable to a maximum penalty of \$10,000 for individuals and \$50,000 for a body corporate.

Under section 172 of the *Work Health and Safety Act* (the WHS Act), a person is not excused from answering a question or providing information or a document on the grounds of self incrimination or on the grounds that it may expose that person to a penalty. However, any information provided by an individual is not admissible as evidence in criminal or civil proceedings against that individual other than proceedings arising out of the false or misleading nature of the answer, information or document.

Privilege

This Notice does not affect, and nothing in the WHS Act requires, a person to produce a document that would disclose information, or otherwise provide information, that is subject to legal professional privilege – see section 269 of the WHS Act.

If this Notice requires a person to appear personally, the person may attend with a legal practitioner.

It is an offence under section 268 of the *Work Health and Safety Act 2011* to give false and misleading information and/or produce a document that is known to be false or misleading. Maximum penalty of \$10,000 for individuals and \$50,000 for a body corporate.

Schedule – Required Documents

The documents you are required to produce pursuant to this written requirement are:

- i. A copy of all permits and paperwork produced by the CFMEU to Canberra Contractors relating to the right of entry dispute on the 11 August 2021.
- ii. A copy of all relevant CCTV and video footage held by Canberra Contractors relating to the right of entry dispute with the CFMEU on the 11 August 2021.
- iii. The name and contact details of any individual employed or contracted by Canberra Contractors that was directly involved in the right of entry dispute with the CFMEU on the 11 August 2021.
- iv. A copy of any Temporary Traffic Management Plan covering the site car park for the CIT Bus Layover Package.
- v. A copy of the cleaning schedule for the amenities at the CIT Bus Layover Package covering the week prior to and the week following the 11 August 2021.

From: "Foster, Michael"
Sent: 19/10/2021 3:56 AM
To: [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

OFFICIAL: Sensitive

Good afternoon [REDACTED],
Thanks for getting back to me. I will have Shane Warren drop off the USB, I will pass on your email address to him as well.
Thanks again,
Mick.

From: [REDACTED]@cfmeu.org>
Sent: Tuesday, 19 October 2021 1:51 PM
To: Foster, Michael <Michael.Foster@worksafe.act.gov.au>; Rosalind Read <[REDACTED]@cfmeu.org>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

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Yours sincerely,

[REDACTED]

From: Foster, Michael [<mailto:Michael.Foster@worksafe.act.gov.au>]
Sent: Monday, 18 October 2021 8:31 AM
To: Rosalind Read [REDACTED]@cfmeu.org>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>; [REDACTED]@cfmeu.org>
Subject: RE: Canberra Contractors

OFFICIAL: Sensitive

Good morning Rosalind,

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Mick.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 | Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

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GPO Box 158 Canberra ACT 2601

WORKSAFEACT



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From: Rosalind Read [redacted]@cfmeu.org>

Sent: Friday, 15 October 2021 10:55 AM

To: Foster, Michael <Michael.Foster@worksafe.act.gov.au>

Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [redacted]@cfmeu.org>; [redacted]@cfmeu.org>; [redacted]@cfmeu.org>

Subject: RE: Canberra Contractors

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In relation to the video recorded at the time of the events in question, as the files are too large to email we will provide you with a USB drive in person.

Regards, Rosalind Read

Rosalind Read
Senior Legal Officer
CFMEU Construction & General Division ACT Branch
Unit 7-10/ 8 Cape Street

Dickson ACT 2602
m: [REDACTED]
ph: 02 6267 1599
e: [REDACTED]@cfmeu.org

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From: Foster, Michael [<mailto:Michael.Foster@worksafe.act.gov.au>]
Sent: 12 October 2021 13:03
To: Rosalind Read <[REDACTED]@cfmeu.org>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>
Subject: Canberra Contractors

OFFICIAL: Sensitive

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If you wish to discuss any aspect of this matter, please contact myself directly on [REDACTED]

Looking forward to your response,

Regards,

Mick Foster.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 | Sch 2.2(a)(ii) | E: michael.foster@act.gov.au

Office of the Work Health and Safety Commissioner

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From: "Grey, Brooke"
Sent: 26/10/2021 3:28 AM
To: "Rosalind Read" [REDACTED]@cfmeu.org>
Cc: [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org
Subject: RE: Canberra Contractors

OFFICIAL

Good afternoon Rosalind,

When is the best time to call you to chat about the incident regarding Canberra Contractors? I would like to discuss sec 263 Civil Double Jeopardy of the WHS Act.

Thanks

Brooke Grey | Senior Director – Investigations and Psychosocial
P: 02 6205 0753 | [REDACTED] E: Brooke.Grey@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



From: Rosalind Read [REDACTED]@cfmeu.org>
Sent: Friday, 15 October 2021 10:55 AM
To: Foster, Michael <Michael.Foster@worksafe.act.gov.au>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org; [REDACTED]@cfmeu.org
Subject: RE: Canberra Contractors

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Dear Mick, further to our conversation this week I have attached for your reference a copy of our pleading as filed in the Federal Circuit Court in relation to this matter, the pleading sets out the events as they occurred.

Our officials are able to provide WorkSafe with statements in relation to these events. However, for the purpose of providing those statements they will be assisted in any interview by one of the CFMEU legal team (either myself or [REDACTED] who is copied into this email.)

We are able to organise a time to provide those statements next week.

In relation to the video recorded at the time of the events in question, as the files are too large to email we will provide you with a USB drive in person.

Regards, Rosalind Read

Rosalind Read
Senior Legal Officer
CFMEU Construction & General Division ACT Branch
Unit 7-10/ 8 Cape Street
Dickson ACT 2602
m: [REDACTED]
ph: 02 6267 1599
e: [REDACTED]@cfmeu.org

I acknowledge the traditional Aboriginal owners of country throughout the ACT and pay my respect to them, their culture and their Elders past, present and future.

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From: Foster, Michael [<mailto:Michael.Foster@worksafe.act.gov.au>]
Sent: 12 October 2021 13:03
To: Rosalind Read <[REDACTED]@cfmeu.org>
Cc: Grey, Brooke <Brooke.Grey@worksafe.act.gov.au>; Smithers, Tyrone <Tyrone.Smithers@worksafe.act.gov.au>
Subject: Canberra Contractors

OFFICIAL: Sensitive

Good afternoon Rosalind,

Thank you for your time on the phone earlier.

As discussed, WorkSafe ACT are making enquiries in relation to an incident that occurred on Wednesday 11 August, 2021, the CIT Bus Layover package 1,

where your organisers may have been obstructed.

In order for our investigation to proceed further, I would like to offer [REDACTED] the opportunity to provide my investigators with a statement in relation to the conduct of the PCBU on the day.

This statement is made voluntarily and it will be electronically recorded, and will be in a format that can be tendered as evidence if required at a later date.

Also, I would request that any images of the alleged contraventions on the site, video footage of the interaction between the two parties, or any relevant information be made available to the investigators to assist with their enquires.

I will be on personal leave from 20 October, so if you are able to provide me with an indication of how you would like to proceed in the next few days, I will be able to co-ordinate the investigation team accordingly.

If you wish to discuss any aspect of this matter, please contact myself directly on **Sch 2.2(a)(ii)**

Looking forward to your response,

Regards,

Mick Foster.

Michael Foster | Assistant Director | Major Investigations Team
P: 02 6207 3036 **Sch 2.2(a)(ii)** E: michael.foster@act.gov.au

Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



ACT
Government

*We acknowledge the traditional custodians of the ACT the Ngunnawal people,
and their continuing connection to land and community. We pay our respects
to them, and to the Elders both past and present.*

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Case Management Panel Investigation Summary Report

Date Monday 1 November 2021

To Case Management Panel

From Brooke Grey

Senior Director – Investigations and Psychosocial

Subject Investigation Summary Report –

Canberra Contractors Pty Limited (ACN 008 583 355) & CFMEU

Alleged Sec 145 – Person must not hinder or obstruct WHS entry permit holder

Recommendations

1. That CMP note this investigation summary and agree to close the investigation into the alleged obstruction and hinderance of CFMEU entry permit holders by Canberra Contractors Pty Limited
2. That the matter is not referred to the Director of Public Prosecution.

Feedback (as required)

Background

3. On Wednesday 11 August 2021, the CIT Campus – Woden Bus Layover and Enabling works, Irvine Street, Phillip was a civil construction site under the management and control of Canberra Contractors Pty Limited (PCBU).
4. At approximately 12:19pm, Union organisers and Permit Holders (PH) of the CFMEU, [REDACTED] and [REDACTED] exercised their right of entry powers under sec 117 of the Work Health and Safety Act 2011 (WHS Act) citing lack of adequate and accessible facilities.
5. [REDACTED] and [REDACTED] are Permit Holders under Sec 134 of the WHS Act 2011 and provided a sec 119 Notice of Entry.
6. The Permit Holders entered the site and during the course of their inspection of the matters set out in their notices pursuant to Sec 119 Notice of Entry observed a second hazard. They requested a full site inspection for the purposes of enquiring into mobile plant that was allegedly without physical barriers separating it from amenities area where there was pedestrian access. This was not within the scope of the original sec119 notices.
7. It is alleged that the Permit Holders were refused a second entry while the PCBU requested the attendance of WorkSafe ACT inspectors.
8. WorkSafe ACT inspectors attended the site and made enquiries with the PCBU. No enquires were conducted with the Permit Holders as they were no longer at the workplace.
9. The CFMEU commenced proceedings under the Fair Work Act 2009 civil remedy provisions on 30 September 2021.

Investigation Outcomes

10. The Major Investigations Team commenced initial inquiries into the matter and obtained footage of the alleged offence. They were advised by the CFMEU that a submission under the Fair Work Act 2009 regarding the alleged obstruction had been made.
11. Both the Fair Work Act and WHS Act 2011 right of entry provisions are civil penalty provisions and have like 'civil double jeopardy' prohibitions for conduct that is substantially similar. Under Sec 263 of the WHS Act 2011 –

Sec 263 Civil double jeopardy -

A court must not make an order against a person under section 259 (Proceeding for a contravention of a WHS civil penalty provision) for contravention of a WHS civil penalty provision if an order has been made against the person under a civil penalty provision under an Act of the Commonwealth or a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

12. The matter referred to the Federal Court is the same incident referred for an investigation under the WHS Act 2011

Enforcement Options

13. Due to sec 263 Civil Double Jeopardy provision of the WHS Act 2011 and the filing of the matter by the CFMEU in the Federal Court for the same alleged offence, it is recommended that this investigation be closed.

CFMEU

Training – Experience and qualifications

Time with CFMEU

Opening question: Tell me about your interaction with Canberra Contractors on the 11 August 2021

Back up question: Tell me about the right of entry dispute with Canberra Contractors from the 11 August 2021

Establish timeline

ID of persons involved. Roles of person?

Initial complaint – Explore

Permit – Explore. What does it entail, what are you entitled to?

What was the result?

Further inspection request – Explore

Tell me about the further inspection request

What were the grounds for that further request?

Observations – Explore

What is the decision-making process?

Reasoning for leaving the site?

Tell me about returning to the site?

Discussions – Who, what, when, where, why, how

Observations of plant?

What type of plant?

Location where plant was operating?

Tell me about the video recording?

Why was the visit only partially recorded?

Commented [WS1]: What were your observations on site at the time you visited?

Commented [WS2]: If you are denied entry to a workplace, do you consider that to be a "Right of Entry dispute?"

Commented [WS3]: What is the common practice for CFMEU Organisers in resolving a right of entry dispute?

Commented [WS4]: Was there any rectification activities undertaken whilst you were still at the location?

Tell me how you were obstructed?

What time did you leave the site?

Had WorkSafe attended the location at this time?

Had the matter been resolved when you left the location?

Commented [W55]: Were you informed that Worksafe had been contacted? Did you make contact with Worksafe to resolve the dispute?