Mick Gentleman MLA
Manager of Government Business
Minister for Business
Minister for Fire and Emergency Services
Minister for Industrial Relations and Workplace Safety
Minister for Multicultural Affairs
Minister for Police and Crime Prevention

Member for Brindabella

Mr Michael Hiscox
Chair
Work Health and Safety Council
Via email: ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au

Dear Mr Hiscox,

I am writing to you as Chair of the Work Health and Safety Council to provide support for an independent review into workplace culture at the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

As you would be aware, WorkSafe ACT functions as an independent entity to ensure that they would remain unaffected by influence from government agencies and officials that may be regulated by it. In establishing the independence of the Office an additional layer of oversight was afforded to the Work Health and Safety Council, which is further outlined in the Work Health and Safety Act.

I am concerned by the matters raised by current and former WorkSafe employees over the past few weeks, and by the risks similarly identified and raised by the Community and Public Sector Union, including at ACT Labor Conference this past weekend. I would hope that your fellow Council members feel similarly, as we all have a vested interest in ensuring safe and healthy workplace for all Canberrans.

Noting the specificity of independence in the design of WorkSafe ACT, and the additional layer of oversight granted to the Council, I believe that it is in the best interests of the public that the Council, which as you know is comprised of both employer and employee representatives, has the opportunity to discuss recommendations for actions to take regarding these matters.

For this reason, I am writing to suggest that discussion of an independent review be added to the agenda at the next meeting of the Work Health and Safety Council. Should the outcome of this discussion be to pursue an independent review, please know that I would be fully supportive of this endeavour.

ACT Government

Mick Gentleman MLA
Manager of Government Business
Minister for Business
Minister for Fire and Emergency Services
Minister for Industrial Relations and Workplace Safety
Minister for Multicultural Affairs
Minister for Police and Crime Prevention

Member for Brindabella

Yours sincerely,

Mick Gentleman MLA
31/7/2024

Office of Minister Mick Gentleman MLA
6205 0218 | gentleman@act.gov.au

WORK HEALTH AND SAFETY COUNCIL

ACT Government

Agenda Item xx

For decision

General Guidelines for Prosecutions

Prepared by: Bill Smith

Resolution:

That Members:

- **Agree** to the draft revised *General Guidelines for Prosecutions* at Attachment A.

Background

The *Work Health and Safety (Prosecution) Guidelines 2018 (No 1)* (the 2018 Guidelines) were notified and commenced in 2018.

The Guidelines provide information about the way work health and safety (WHS) offences are prosecuted by the regulator.

Issues

WorkSafe ACT was established (1 July 2020) as an independent, prescribed Territory authority headed by the Work Health and Safety (WHS) Commissioner who is the Territory's WHS Regulator. Noting it has been five years since the 2018 Guidelines commenced, WorkSafe ACT has undertaken a review to ensure they remain contemporary.

As a result of the review WorkSafe ACT has identified several elements within the 2018 Guidelines that could be updated to better reflect policy and procedures; the Guidelines have been amended to:

- refence the *WorkSafe ACT Compliance and Enforcement Policy 2020-2024* rather than the National Compliance and Enforcement Policy
- acknowledge and reflect the WHS Commissioner's ability to commence proceedings for an offence against the *Work Health and Safety Act 2011*
- state that the WHS Commissioner can commence a proceeding or may refer a matter to the Director of Public Prosecutions, and
- state that where the WHS Commissioner decides to commence a proceeding, the WHS Commissioner will be required to follow the process for starting criminal proceedings within Ch 3 of the *Magistrates Court Act 1930* (Magistrates Court Act).

Although Worksafe ACT does not consider the proposed amendments to be significant we are seeking the view and endorsement of members before progressing any of the proposed changes.

Next Steps

If members support the proposed changes the revised Guidelines instrument will be published on the ACT legislation register. In addition, the WorkSafe ACT Compliance and Enforcement Policy 2020-2024 will be updated to reflect the changes to the Guidelines and also notified and published on the ACT legislation register.

Attachment

Attachment A – Revised General Guidelines for Prosecutions

WORKSAFE ACT SAFE + HEALTHY WORKPLACES

GENERAL GUIDELINES FOR PROSECUTIONS

WORK HEALTH AND SAFETY ACT 2011

June 2023

These guidelines provide information about the way work health and safety (WHS) offences are prosecuted by the regulator. These guidelines are published pursuant to section 230(3)(a) of the *Work Health and Safety Act 2011*.

The WHS Commissioner is the regulator and is an independent statutory office holder for the Australian Capital Territory (ACT). The Office of the WHS Commissioner (known as WorkSafe ACT) administers the work health and safety laws in the ACT including the:

- *Work Health and Safety Act 2011* (WHS Act), and
- *Work Health and Safety Regulation 2011.*

Copies of these laws are available at www.legislation.act.gov.au.

A revised *WorkSafe ACT Compliance and Enforcement Policy 2020-2024* was approved on xxxxxxx June 2023. The Policy outlines the aims of compliance and enforcement as well as the compliance and enforcement tools available to WorkSafe ACT. The Policy also sets outs general information about prosecutions, including the criteria used to determine whether to initiate prosecution and the timeframes for initiating such action.

Courts

Prosecutions for breaches of WHS laws are heard in the ACT Magistrates Court and ACT Supreme Court. Civil penalty provision matters are dealt with in the civil jurisdictions of those courts.

Prosecution initiation

Where the regulator considers that a prosecution should be initiated, the WHS Commissioner may commence proceedings for an offence against the WHS Act. In commencing a proceeding under the WHS Act, s 230 provides two methods for doing so:

1. the WHS Commissioner can commence a proceeding in its own right pursuant to s 230(1) of the Act, or
2. the WHS Commissioner may refer a matter to the Director of Public Prosecutions (DPP) under s 230(2) for the DPP to consider commencing a proceeding on behalf of the WHS Commissioner. Information about the DPP, including its Prosecution Policy, may be found at www.dpp.act.gov.au.

Where the WHS Commissioner decides to commence a proceeding in accordance with s 230(1) of the WHS Act, the WHS Commissioner will be required to follow the process for starting criminal proceedings within Ch 3 of the *Magistrates Court Act 1930* (Magistrates Court Act). This includes laying information in accordance with Pt 3.3 of the Magistrates Court Act.

The court process

Information about the court process in the ACT Magistrates Courts, ACT Supreme Court and ACT Court of Appeal can be found at www.courts.act.gov.au.

Sentencing options

The WHS laws set out a range of sentencing options that may be used. The following orders may be applied in addition to any penalty imposed for an offence:

- adverse publicity orders
- orders for restoration
- work health and safety project orders
- court-ordered WHS undertakings, and
- training orders.

Appeals

Appeals from decisions of the Magistrates Court and Supreme Court are governed by the Magistrates Court Act, the *Supreme Court Act 1933* and related legislation.

Records of court process and decisions

Decisions of the courts are recorded and available online at www.courts.act.gov.au.

Publication of prosecution outcomes

Prosecution outcomes may be published by WorkSafe ACT, including the publication of summaries of those outcomes on the WorkSafe ACT website www.worksafe.act.gov.au/

Recording of convictions

The court will decide whether a conviction will be recorded against a defendant. Prior convictions may influence the court in its findings and/or in determining the level of any penalty.

Requests for a prosecution to be brought

The WHS laws outline certain circumstances in which a person may request the regulator refer a matter to the DPP. Information about the circumstances in which such requests can be made and the process for initiating such request can be obtained by contacting WorkSafe ACT by email at – worksafe@worksafe.act.gov.au

Information about the status of court proceedings

The WHS Commissioner will ensure all impacted and injured parties of the status and updates relating to the relative and respective court proceedings.

Australian Capital Territory

Workers Compensation (Director-General) Delegations 2020 (No 1)

made under the

***Workers Compensation Act 1951* and *Public Sector Management Act 1994*, section 20 (Delegation by Director-General)**

---

1 Name of instrument

This instrument is the *Workers Compensation (Director-General) Delegations 2020 (No 1)*.

2 Commencement

This instrument commences on the day after it is made.

3 Delegations—Act, section

I, Head of Access Canberra, delegate those of my powers and functions under the *Workers Compensation Act 1951* identified in column 1 of table 1 of schedule 1 to the persons occupying or performing the duties, from time to time of the position specified in the corresponding row of column 3 of table 1 of schedule 1.

4 Revocation

This instrument revokes the *Workers Compensation (Appointments and Delegations) 2019 (No 1)* signed on 9 July 2019.

David Pryce
Head of Access Canberra
November 2020

Note 1: The Head of Access Canberra is authorised to exercise functions of the Directors General under the Territory laws that have been declared by the responsible Minister: see section 21 of the Public Sector Management Act 1994.

Note 2: The power to appoint inspectors and delegate the functions under the Workers Compensation Act 1951 are declared in NI2017-465, Public Sector Management (Head of Access Canberra Functions) Declaration 2017 (No 1).

Workers Compensation (Director-General) Delegations 2020 (No 1)

Schedule 1

Table 1 – Director-General Delegations under the *Workers Compensation Act 1951*

Column 1	**Column 2**	**Column 3**
Section(s)	**Function**	**Position numbers**
All sections, except for sections 110, 166C, 188, 201, 210 and 221		P46665, WHS Commissioner E1149, Deputy WHS Commissioner P35631, Senior Director
Section 147	Issuing default and cease business notices for not holding compulsory insurance	P05507 P05737 P05546
Section 188	Appointing inspectors	P46665, WHS Commissioner

Australian Capital Territory

Workers Compensation (Appointments and Delegations) 2019 (No 1)

made under the

***Workers Compensation Act 1951*, section 188 (Appointment of inspectors); and *Public Sector Management Act 1994* section 21(4) (The head of Access Canberra may delegate a declared function to a public servant or another person)**

---

1 Name of instrument

This instrument is the *Workers Compensation (Appointments and Delegations) 2019 (No 1)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Appointment

I, Head of Access Canberra appoint the persons occupying the positions identified in table 1 of schedule 1 as inspectors for the *Workers Compensation Act 1951*.

4 Statement of Eligibility

I am satisfied that the persons currently occupying the positions identified in table 1 of schedule 1 have met the conditions identified in section 188(2) of the *Workers Compensation Act 1951*.

5 Delegation

I, Head of Access Canberra delegate those of my powers and functions under the *Workers Compensation Act 1951* identified in column 1 of table 2 of schedule 1 to the persons occupying or performing the duties, from time to time of the position specified in the corresponding row of column 3 of table 2 of schedule 1.

6 Revocation

I revoke the *Workers Compensation (Appointments and Delegations) 2017 (No 1)* instrument signed on 31 May 2017.

David Snowden
Head of Access Canberra
9 July 2019

Note 1: The Head of Access Canberra is authorised to exercise functions of the Directors General under the Territory laws that have been declared by the responsible minister: see section 21 of the Public Sector Management Act 1994.

Note 2: The power to appoint inspectors and delegate the functions under the Workers Compensation Act 1951 are declared in NI2017-465, Public Sector Management (Head of Access Canberra Functions) Declaration 2017 (No 1).

SCHEDULE 1

Table 1 – Appointment of Inspectors

Column 1
Position Number
P05507
P05737
P05546
P13862

Table 2 – Delegations of the *Workers Compensation Act 1951*

Column 1	Column 2	Column 3
Section/s	**Function**	**Position Numbers**
All sections of the *Workers Compensation Act 1951*		E105 E141 E218 E617 E847 E1077 E1005
147	Issuing default and cease business notices for not holding compulsory insurance	P35631 P05507 P05737 P05546 P13862

Australian Capital Territory

Legislation (Workers Compensation) Delegation 2021 (No 2)

Notifiable instrument NI 2021–

made under the

***Legislation Act 2001*, section 254A (Delegation by Minister)**

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1 Name of instrument

This instrument is the *Legislation (Workers Compensation) Delegation 2021 (No 2)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Delegation

(1) I delegate my functions under the *Workers Compensation Act 1951* identified in column 1 of schedule 1 to this instrument, to each person, occupying or performing the duties, from time to time, of a position specified in the corresponding row of column 3 of schedule 1 of this instrument.

(2) I delegate my functions under the *Workers Compensation Regulation 2002* identified in column 1 of schedule 2 to this instrument, to each person, occupying or performing the duties, from time to time, of a position specified in the corresponding row of column 3 of schedule 1 of this instrument.

4 Revocation

This instrument revokes the following instruments:

(a) the *Workers Compensation Delegation 2011 (No 1)* dated 27 September 2011; and

(b) the *Legislation (Workers Compensation) Delegation 2021 (No 1)* [NI2021-266].

Mick Gentleman
Minister for Industrial Relations and Workplace Safety

SCHEDULE 1

Workers Compensation Act 1951

Column 1	Column 2	Column 3	Column 4
Sections	**Functions**	**Position number**	**Position description**
88(3)	Insurer to establish etc injury management program	P46665 E1149 P35631 P48222	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director
110(1)	Return to work guidelines	E900	Director-General
111	Obligation of Minister	E900 P46665 E1149 P35631 P48222	Director-General WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director
114	Unreasonableness in stopping payments	P46665 E1149 P35631 P48222	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director
164(2)	Provision of information to Minister	E900	Director-General
201(1) & (2)	Medical referees	E900	Director-General
210	Apportioning costs of administering workers compensation and safety legislation	E900	Director-General
210A	Notice of apportioned liability	E900 E00727 P18350	Director-General Executive Group Manager, Workplace Safety and Industrial Relations Senior Director, Regulatory Policy
221(1)	Determination of fees	E900	Director-General

Schedule 2

Workers Compensation Regulation 2002

Column 1	Column 2	Column 3	Column 4
Section	**Functions**	**Position Number**	**Position Description**
16	Minister may approve rehabilitation providers	P46665 E1149 P35631 P48222	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director

Australian Capital Territory

Workers Compensation Delegation 2011 (No 1)

made under the

Legislation Act 2001, s 254A (Delegation by Minister)

---

1 Name of instrument

This instrument is the *Workers Compensation Delegation 2011 (No 1)*.

2 Commencement

This instrument commences on the day it is signed.

3 Delegation of functions under the *Workers Compensation Regulation 2002*

The Minister delegates the following functions to the person who occupies the position of Director-General, Chief Minister and Cabinet:

a) *Workers Compensation Act 1951*, sections:
   a. 88(3)
   b. 110(1)
   c. 111
   d. 164(2)
   e. 201(1) & (2)
   f. 210
   g. 221(1)

b) *Workers Compensation Regulation 2002*, section 7(1)

Note 1 The *Legislation Act 2001* defines 'occupy', in relation to a position, to include hold the position, act in the position, or exercise the functions of the position.
Note 2 The Director-General may subdelegate a function delegated to the Director-General – see *Public Sector Management Act 1994*, s36.

Katy Gallagher
Minister for Industrial Relations
27 September 2011

ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	2 November 2020	TRIM No: CMTEDD2020/5486 File No:
To	Head of Access Canberra	
From	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject	Delegation and Appointments – *Workers Compensation Act 1951*	

Critical date and reason

1. **URGENT, 11 November 2020** – to support the regulatory operations of the new independent Office of the Work Health and Safety Commissioner's in relation to workers' compensation laws in the Territory.

Recommendations

2. That you:
    a. **sign** the revised Workers Compensation (Director-General) Delegations 2020 (No 1)) instrument (Attachment A);
    b. **note** that the previous Head of Access Canberra delegations and appointments under the *Workers Compensation Act 1951* will be revoked; and
    c. **note** that the WHS Commissioner will make the inspector appointment instrument once provided with the delegation.

David Pryce..... / /

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. The Office of the Work Health and Safety (WHS) Commissioner, known as WorkSafe ACT, was established on 30 April 2020 and commenced governance as an independent statutory authority with effect from 1 July 2020.

4. Since being established, all work safety regulatory operations were shifted to WorkSafe ACT, and more specifically, the WHS Commissioner. This change from Director-General to WHS Commissioner functions was given effect and limited to work safety laws, including the *Work Health and Safety Act 2011* and other work safety laws. It did not include a legislative reassignment of workers' compensation regulatory functions despite these functions also being performed by WorkSafe ACT.

5. The *Employment and Workplace Safety Legislation Amendment Act 2020* (EWSLA Act), notified on 9 July 2020, was the legislative vehicle later used to shift workers' compensation regulatory functions of the Director-General over to the WHS Commissioner.

Issues

6. The EWSLA Act has staged commencement periods and relevantly, the workers' compensation amendments will not commence until 9 January 2021.

7. Due to the longer than anticipated time between establishing the new WorkSafe ACT governance model and giving legislative effect to the regulator's functions for workers' compensation, the WHS Commissioner and WorkSafe ACT is not able to effectively perform their role as regulator for the *Workers Compensation Act 1951* (WC Act).

8. The current delegation and appointments instrument, the *Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)* (Attachment B), provided WorkSafe ACT with delegated powers to regulate and enforce workers' compensation legislative obligations. This delegation was made under the old WorkSafe governance model and does not allow the WHS Commissioner or Deputy WHS Commissioner to exercise regulatory functions under the new WorkSafe ACT governance model.

9. A new delegation instrument has been prepared for your signature as Head of Access Canberra (Attachment A). This instrument would only be required to support the regulatory functions of WorkSafe ACT in relation to workers' compensation until 9 January 2021, and would:

    a. revoke the current *Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)*;

    b. remove all previous delegates and non-WorkSafe ACT position numbers;

    c. delegate the respective Director-General functions to the:

        i. WHS Commissioner

        ii. Deputy WHS Commissioner

        iii. Senior Director, Compliance and Enforcement

d. delegate the appointment of inspectors to the WHS Commissioner.

10. Once the new delegation instrument has been signed by you, the WHS Commissioner will arrange for the appointment of inspectors in line with the suitability requirements under s188 of the WC Act.

Consultation

11. WorkSafe ACT has been consulted in drafting the attached instruments and the WHS Commissioner supports the re-appointment of current WorkSafe ACT inspectors for the purposes of the WC Act.

12. The ACT Government Solicitor's Office has advised that you, as Head of Access Canberra, have the power to make the attached delegations and appointment of inspectors. The Head of Service has been briefed on the issue and considers this power to more appropriately rest with you.

Work Health and Safety

13. Nil.

Financial

14. Nil.

Risks/ Sensitivities

15. Retaining the current delegations until the EWSLA Act workers' compensation changes commence by 9 January 2021 would unduly restrict the regulator's operational activities, including review mechanisms, associated with the WC Act between now and January 2021.

Media

16. Not applicable.

Michael Young

Action Officer: Ellen Lukins

Phone: x53874

Attachments

Attachment	Title
Attachment A	New: Workers Compensation (Director-General) Delegations 2020 (No.1)
Attachment B	Current: Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)

Australian Capital Territory

Work Health and Safety (Office of the Work Health and Safety Commissioner) Statement of Expectations 2020

Notifiable instrument NI2020–

made under the

Work Health and Safety Act 2011, Schedule 2, Division 2.2.5, Section 2.39 (Ministerial statement of expectations)

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1 Name of instrument

This instrument is the *Work Health and Safety (Office of the Work Health and Safety Commissioner) Statement of Expectations 2020.*

2 Commencement

This instrument commences on the day after notification.

3 Statement of Expectations

I make the Statement of Expectations as provided in the Schedule.

4 Consultation

I confirm that the Work Health and Safety Council has been consulted about the priorities and initiatives for the Office of the Work Health and Safety Commissioner in accordance with schedule 2, division 2.2.5, section 2.39 (2) of the *Work Health and Safety Act 2011.*

Suzanne Orr MLA
Minister for Employment and Workplace Safety

01/07/20

Schedule
(see s3)

Statement of Expectations 2020

Office of the Work Health and Safety Commissioner

Introduction

This Statement of Expectations is made in accordance with schedule 2, division 2.2.5, section 2.39 of the *Work Health and Safety Act 2011* to describe priority activities and initiatives for the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

The activities and initiatives set out in this Statement have been developed in consultation with the ACT Work Health and Safety Council and are intended to inform the operation and management of WorkSafe ACT for the next 12 months.

Priority activities and initiatives

The establishment of the independent Office of the Work Health and Safety Commissioner (the Office) is a significant reform and opportunity to improve workplace safety across the ACT. Everyone has the right to a safe workplace with fair conditions. Safety is everyone's responsibility and the Office has an integral role in driving an outstanding work safety culture in the ACT through its regulatory compliance and enforcement activities, and advice to government, workers and employers.

In driving an outstanding safety culture across the ACT, the Office should focus on the expectations outlined in this statement over the next 12 months. Industry and community engagement is integral to cultural change so these priority initiatives and activities should be planned and implemented in partnership with ACT workers, trade unions, employers and representative bodies.

- *Present and Emerging Work Health and Safety Risks*

  Our work practices and environments have changed significantly over the past decades and will continue to change into the future. As a result, the Government is focussed on ensuring our workplace health and safety laws are diligently updated to make sure they reflect the social, environmental and economic challenges of the day and provide the Office with a regulatory response that is in line with community expectations.

  It is important to acknowledge the growing impact of psychosocial risks in the workplace and as our awareness of these impacts grows, it is vital that this area is prioritised in the Office's regulatory response.

  Occupational Violence is another area of concern to the safety of working people. The impacts of actions from third parties to the wellbeing of workers is increasingly being recognised across all industries. It is important to make sure this is an area prioritised under the Office's regulatory response.

  Our climate is changing which is resulting in the physical nature of our worksites changing too. Extreme heat, unpredictable weather and natural disasters are all having an impact on working conditions. The changing work environments in turn bring new risks to the health and safety of workers across the ACT requiring a regulatory response.

The economic indenture of individuals has long been an unacceptable work practice, yet we still face troubling instances of forced economic exploitation. While focus is traditionally on overseas instances and supply chain impacts, it is important to make sure that within our own jurisdiction, we are doing everything we can to prevent the exploitation of workers. Whether this exploitation be through modern day slavery or another practice, a focus should be placed on preventing any such activity, particularly where the health and safety of these workers is put at risk.

The Government is committed to strengthening the regulatory response to workplace exposure to silica dust and establishing industrial manslaughter as an offence under work health and safety legislation, and will welcome advice from the Office on these matters.

- *Construction Sector*

  The construction sector remains one of the highest risk industries in the ACT. The poor results from the three compliance audits this year alone have demonstrated a worrying disregard for safety. The deaths of two workers at the beginning of the year have left no doubt of the need to improve the safety culture across the industry.

  WorkSafe ACT initiatives to improve the safety culture should include an ongoing compliance program across the construction sector in the ACT. Recommendations for regulatory change to improve safety will be actively welcomed by Government and considered accordingly.

- *Operation of the Office*

  WorkSafe ACT inspectors should be welcome at workplaces, where they are perceived by workers and employers alike to be effective at undertaking compliance and enforcement activity under work health and safety legislation. This activity should be the number one priority of the Commissioner and Office. Inspectors should also be a source of trusted and expert advice on work health and safety and workers' compensation.

  Importantly, the inspectorate should be able to provide assistance across all of the areas it regulates, including work health and safety, workers' compensation, dangerous goods and workplace privacy.

  WorkSafe ACT stakeholders expect to be able to engage with the Office using digital platforms that are accessible by all devices. WorkSafe ACT should also be in a position to capture and analyse data to inform compliance and enforcement activity.

  To ensure that WorkSafe ACT compliance and enforcement activities are targeted and tailored, it will be important for WorkSafe to anticipate and understand the nature of changing work practices and critically, the impact that such change has on work health and safety.

  A statement describing changes in the ACT safety risk profile and performance and highlighting related WorkSafe ACT initiatives should be prepared annually for tabling in the Legislative Assembly.

Initiatives to help achieve this outcome should focus on identifying sources of data and other business intelligence and building or accessing analytic capability. Evidence and analysis should also be used extensively when planning compliance and enforcement activities.

Initiatives to increase the inspectorate's capacity and capability should focus on increasing inspectorate awareness of key risks across all sectors and ensuring that the guidance provided to industry is contemporary, accessible and tailored to the needs of the people they are assisting.

WorkSafe ACT should focus on identifying non-compliance and addressing it through the application of the full range of compliance tools at WorkSafe's disposal, including prosecutions. WorkSafe's compliance and enforcement policy should provide accessible and transparent advice so that persons conducting a business or undertaking are aware of WorkSafe's approach.

Initiatives to assist in achieving this should include development of new and improved ways to access information and WorkSafe services including provision of a user friendly and informative website, enhanced inspectorate and licensing systems and other online services.

- *Implement outstanding recommendations of the 2018 Independent Review*

  The ACT Government has accepted all recommendations made by the Independent Review of the ACT's work safety compliance infrastructure, policies and procedures. Work to implement the recommendations has progressed well to date, however a number of actions remain outstanding.

  WorkSafe ACT should remain focused on fully implementing the recommendations of the review and ensure that consequent improvements to WorkSafe governance, technology, compliance and enforcement, and licensing arrangements are fully realised and effective.

- *Engagement with the ACT Work Health and Safety Council*

  The ACT Work Health and Safety Council (WHS Council) plays an important role in advising the Minister and Government on matters relating to work health and safety in the ACT. The Office should engage productively with the WHS Council of which the WHS Commissioner is a member.

  The WHS Council has indicated it would like to see the regulatory efforts of the Office focus on the following priority areas: industrial manslaughter; improved psychological health for workers in the Territory; implementation of recommendations from the 2018 Model Work Health and Safety Laws Review; improved work health and safety for workers in industries, including but not limited to, construction, education, health care and human services; preventing diagnoses of silicosis amongst ACT workers; prevention of occupational violence; and support for young and older workers. The WHS Council has also identified working in extreme climate conditions (such as extreme heat, cold or smoky environments) and COVID-19 as areas that require the close attention of WorkSafe ACT, with a view to assisting industry in building its capability to manage.

The WHS Council and ACT Government are committed to achieving a target of zero workplaces fatalities in the ACT and the Office should play a role in ensuring this target is achieved. Initiatives to reduce rates of injuries and fatalities should also be focused on the National Work Health and Safety Strategy 2012-2022 targets, particularly the reduction of at least 30 per cent in the incidence rate of claims resulting in one or more weeks off work and musculoskeletal disorders resulting in one or more weeks off work.

The Office should consider and respond accordingly to the priorities of the WHS Council to ensure the operations of the Office are responsive to issues identified by employee and employer representatives in the Territory.

Reporting against the Statement of Expectations

In line with schedule 2, section 2.41 (2) (c) of the WHS Act, WorkSafe should report on its approach to implementing the priority activities and initiatives set out in this Statement.

WORK HEALTH AND SAFETY COUNCIL

ACT Government

TERMS OF REFERENCE

PURPOSE/LEGISLATIVE MANDATE

The WHS Council is established under the *Work Health and Safety Act 2011* (the WHS Act). The Minister for Employment and Workplace Safety is the portfolio Minister.

FUNCTIONS AND POWERS

The WHS Council provides advice to the Minister on matters relating to work health and safety (WHS), workers' compensation, workplace relations, bullying in the workplace and other workplace psychosocial matters generally. It also inquires into, and reports to the Minister on, matters referred to the WHS Council, as well as specific matters as set out in the WHS Act.

In addition, and without limiting the matters that the Council advises on generally, the WHS Council also advises the Minister on the:

- operation of the WHS Act and associated laws;
- approval of codes of practice, and the variation of codes of practice, under section 274 (Approved Codes of Practice) of the WHS Act;
- provision of education and training in relation to WHS;
- promotion of WHS;
- operation of the *Workers Compensation Act 1951*;
- approval of a protocol, or an amendment to a protocol, under the *Workers Compensation Act 1951*;
- provision of education and training in relation to workers' compensation;
- operation of the *Dangerous Substances Act 2004*; and
- operation of the *Workplace Privacy Act 2011*.

The WHS Council also provides advice to the Minister in relation to the development of:

- documents made by the WHS Commissioner, including the compliance and enforcement policy and strategic plan;
- the statement of expectations issued by the Minister; and
- matters arising from a review by the WHS Council, of the published annual report for the Office of the WHS Commissioner (known operationally as WorkSafe ACT).

The Chair of the WHS Council will also provide a statement for inclusion in the Office's annual report. The Chair and the Deputy Chair will be consulted as part of the appointment process for the WHS Commissioner.

COUNCIL MEMBERSHIP

The WHS Council is made up of 12 Members:

- **ten** appointed Members:
  - **five** Members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employees; and
  - **five** Members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employers; and
- **two** ex-officio members:
  - the WHS Commissioner; and
  - the Public Sector Workers Compensation Commissioner.

ACTING MEMBERS

The Minister may appoint a person to act as a WHS Council Member during a vacancy in the office or during any period when a relevant Member is absent from duty or from the Territory. Acting Members are appointed following the same process for appointing Members to the Council. Acting Members are able to act as a Member if they are appointed under the same provisions as the vacant or absent Member's office.

Acting Members will be invited to attend WHS Council meetings to ensure maximum representation of Members at all meetings should a Member be unable to attend and achieve a quorum where necessary.

TERMS AND CONDITIONS OF APPOINTMENT

WHS Council Members are appointed for a term of four years. A Member may be re-appointed if they are still eligible for that position. However, a person who has been an appointed member of the WHS Council for eight consecutive years is not eligible for reappointment.

Members are not remunerated, except for the Chair, so long as they are not a public servant (or employed in the public sector).

CHAIR AND DEPUTY CHAIR

The appointed Members of the WHS Council must elect a Chair and a Deputy Chair. The Chair and Deputy Chair must be elected for not longer than two years.

If the Chair is elected from the Members appointed after consultation with employee representatives, then the Deputy Chair must be elected from the Members appointed after consultation with employer representative group and vice versa.

QUORUM AND VOTING AT COUNCIL MEETINGS

Before the WHS Council can conduct business, a quorum is required. A quorum of the WHS Council is constituted by six appointed Members, so long as there are:

- three Members from each category of appointed Members (Schedule 2, section 2.3 (1) (a) and (b) of the WHS Act); and
- two of the Members in each category must **not** be Acting Members.

At a meeting of the WHS Council, each appointed Member, including the Chair has a vote on each question to be decided. Each question put to a meeting is decided by a majority of the appointed Members present and voting.

MEETINGS

Four meetings of the WHS Council are scheduled each year.

Additional meetings may also be held to progress specific matters. Only the Minister and Chair have the power to call a meeting of the WHS Council. At least five days' notice must be given of the meeting in writing, stating the date, time and place of the meeting and the matters to be considered. If the Chair receives a written request from five WHS Council Members, a meeting must be called.

MINUTES

Minutes must be kept of all meetings. The purpose of the minutes is to record agreed decisions and actions required. Draft minutes of each meeting will be endorsed by the Chair and distributed to Members as soon as possible after each meeting for comment.

Approval of the most recent draft minutes will be considered out of session following a meeting of the Council within a reasonable time.

Should a meeting occur without a quorum present, the minutes will be taken as a record of the discussion of Members present. As no decision can be made the minutes will be circulated to Members for noting.

COMMUNIQUE

For each meeting of the WHS Council, a communique from the Chair of the WHS Council will be circulated to Members for comment before being published on the Workplace Safety and Industrial Relations Group, CMTEDD website.

ACT Government

WORK HEALTH AND SAFETY COUNCIL

Operation and Accountability Guidelines 2019

Chief Minister Treasury and Economic Development Directorate

December 2019

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WORK HEALTH AND SAFETY COUNCIL

1. Introduction

This guide has been developed for appointed Members of the Work Health and Safety (WHS) Council. It provides information on the statutory provisions which apply to the WHS Council and its Members, appointment processes and meeting procedures.

The guide is also applicable to members of any Reference Group or Advisory Committee established by the WHS Council.

2. Functions and Powers

The WHS Council is established by the *Work Health and Safety Act 2011* (the WHS Act)[1]. The Minister for Employment and Workplace Safety is the portfolio Minister.

The objects of the WHS Act are to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant; and
- providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and
- encouraging union and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- promoting the provision of advice, information, education and training in relation to work health and safety; and
- securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
- ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
- providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- maintaining and strengthening the national harmonisation of laws relating to work health and safety to facilitate a consistent national approach to work health and safety in the ACT.

[1] The WHS Act was amended in December 2019 with the commencement of provisions under the *Work Health and Safety Amendment Act 2019*, which established the new Work Health and Safety Council.

Under the WHS Act, the WHS Council provides advice to the Minister on matters relating to work health and safety (WHS), workers' compensation, workplace relations, bullying in the workplace and other workplace psychosocial issues. It also inquires into, and reports to the Minister on, matters referred to the WHS Council, as well as specific matters as set out in the WHS Act.

In addition, and without limiting the matters that the Council advises on generally, the WHS Council advises the Minister on the following matters:

- operation of the WHS Act and associated laws;
- approval of codes of practice, and the variation of codes of practice, under section 274 (Approved Codes of Practice) of the WHS Act;
- provision of education and training in relation to WHS;
- promotion of WHS;
- operation of the Workers Compensation Act 1951;
- approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;
- provision of education and training in relation to workers' compensation;
- operation of the *Dangerous Substances Act 2004*; and
- operation of the *Workplace Privacy Act 2011*.

The WHS Council also provides the Minister with advice in relation to the development of:

- documents made by the WHS Commissioner, including the compliance and enforcement policy and strategic plan;
- the statement of expectations issued by the Minister; and
- matters arising from a review by the WHS Council, of the published annual report for the Office of the WHS Commissioner (known operationally as WorkSafe ACT).

The Chair of the WHS Council will, each year, provide a statement for inclusion in the Office of the WHS Commissioner's (the Office) annual report. The Chair and the Deputy Chair must also be consulted as part of the appointment process for the WHS Commissioner.

3. Advisory Committees

The WHS Council may establish any Advisory Committee/s it considers necessary to assist in the exercise of its functions.[2] Such a committee may decide how to exercise its functions, subject to any direction by the WHS Council.[3]

The WHS Council must, if requested by the Minister, constitute an advisory committee to assist it in the exercise of its functions in relation to any matter referred by the Minister about WHS.[4]

[2] WHS Act Sch 2, s 2.16(1)
[3] WHS Act Sch 2, s 2.16(3)
[4] WHS Act Sch 2, s 2.16(2)

4. WHS Council Business Plan

A Business Plan for the WHS Council is to be agreed by Members every two years, commencing on and ending with the elected term of the Chair and Deputy chair. Each Business Plan should encompass the functions established in the WHS Act and link timeframes with specific meeting dates.

The Business Plan should have reference to the Office's Strategic Plan and include priorities, required actions and timeframes for completion, and forms the foundation of meeting agendum - decisions and actions are recorded against these priorities. The Plan is to be reviewed by Members annually.

5. Secretariat

The Workplace Safety and Industrial Relations Group, CMTEDD, provides secretariat support for the WHS Council. The Secretariat is responsible for:

- managing action items associated with the WHS Council Business Plan;
- minuting meetings;
- drafting and publishing the communique;
- developing draft agendas in consultation with appointed Members;
- drafting reports and briefs of advice for WHS Council consideration, including any papers sent out of session; and
- arranging for any correspondence to and from the WHS Council (noting that correspondence from the WHS Council is to be from the Chair of the Council).

MEMBERSHIP

6. Council Membership

The WHS Council is made up of 12 Members:

- **ten appointed Members**:
  - **five** Members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employees[5]; and
  - **five** Members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employers[6]; and
- **two ex-officio Members**[7]:
  - the WHS Commissioner; and
  - the Public Sector Workers Compensation Commissioner.

7. Acting Members

The Minister may appoint a person to act as a WHS Council Member during a vacancy in the office or during any period when a relevant Member is absent from duty or from the Territory. Acting Members

[5] WHS Act Sch 2, s2.3 (1) (a)
[6] WHS Act Sch 2, s2.3 (1) (b)
[7] WHS Act Sch 2, s2.3 (1) (c) & (d)

are appointed following the same process for appointing Members to the Council. Acting Members are able to act as a Member if they are appointed under the same provisions as the vacant or absent Member's office.

Acting Members will be invited to attend WHS Council meetings to ensure maximum representation of Members at all meetings should a Member be unable to attend and achieve a quorum where necessary[8].

An Acting Member has the same functions and responsibilities as a Member of the WHS Council.

8. Terms and Conditions of Appointments

The WHS Council Members are appointed for a term of four years[9]. A person may be re-appointed if they are still eligible for that position[10]. However, a person who has been an appointed Member of the WHS Council for 8 consecutive years is not eligible for reappointment[11]. Appointed Members are not remunerated, except for the Chair, so long as they are not a public servant (or employed in the public sector).

8.1 Media

Any media inquiries and comments relating to any WHS Council business, discussions and decisions must be referred to the Secretariat.

The Secretariat will table all media inquiry responses relating to the business of the WHS Council at the next meeting of the Council.

8.2 Confidentiality

In order to advise the Minister on legislative and policy matters, Members are often provided with confidential information. Where a document is provided in confidence, it may note:

- that the document is confidential and Members may not disclose the content of the document to any other person or organisation. This confidentiality status will only be attached in limited circumstances, and often where the document will be released for public exposure at a later date; or
- that the document is confidential, however Members may disclose the content of the document (including showing the document) to relevant advisors or organisations on a confidential basis. This is for the purposes of assisting the Member to form a position on the content of the document only.

In either case, Members are not permitted to make copies of documents provided in confidence or distribute them for public consumption or make commentary.

[8] Legislation Act s209 and s221(1)
[9] WHS Act Sch2, s2.4(2)
[10] Legislation Act s208(1)(b) & (c)
[11] WHS Act Sch 2, s2.4(3)

Information imparted to Members in a more informal manner may also be confidential, for example, a verbal briefing on a proposed policy direction or a report that has yet to be released. Again, Members may disclose this information to relevant advisors or organisations on a confidential basis but should not disseminate it to the public, including the media.

Members should also familiarise themselves with the confidentiality requirements outlined in section 271 of the WHS Act. The provision makes the unauthorised disclosure of information obtained in certain circumstances an offence.

Where Members are in doubt as to whether information is confidential, they should assume that it is and seek the guidance of the Chair before disclosing that information to the public.

8.3 Disclosure of Interest

Members must disclose the nature of any material interest in an issue being considered, or about to be considered, by the WHS Council. This disclosure must be made at a WHS Council meeting as soon as practicable after the relevant facts come to the Member's knowledge.[12] Any other WHS Council Member who also has a material interest in the issue must not be present when the WHS Council is considering its decision.[13]

The disclosure must be recorded in the WHS Council's minutes and, unless the WHS Council otherwise decides, the Member must not be present when the WHS Council considers the issue or take part in a decision on the issue.[14] The Chair is responsible for reporting disclosed WHS Council interests to the Minister within three months.[15]

8.4 Liability

WHS Council Members are protected from civil liability "for anything done or omitted to be done honestly and without recklessness in the exercise of a function under a Territory law; or in the reasonable belief that the act or omission was in the exercise of a function under a territory law."[16] This liability attaches to the Territory instead.[17]

9. Leave of Absence

The Minister may grant leave of absence to the Chair or Deputy Chair. The WHS Council may grant a leave of absence to a Member.[18]

[12] WHS Act Sch 2, s 2.7(1).
[13] WHS Act Sch 2, s 2.7(3).
[14] WHS Act Sch 2, s 2.7(2)
[15] WHS Act Sch 2, s 2.8
[16] WHS Act Sch 2, s 2.15(1)
[17] WHS Act Sch 2, s 2.15(2)
[18] WHS Act Sch 2, s 2.6

10. Resignation

An appointed Member of the WHS Council may resign at any time from the Council. Resignations must be in writing and sent to the Minister.[19]

11. Termination of Appointment

The Minister has the power to terminate the appointment of a Member of the WHS Council on certain grounds.[20]

The Minister **must** end an appointment if the appointed Member:

- has become bankrupt or personally insolvent agreement;
- has failed to comply with section 2.7 (Disclosure of Interest) without reasonable excuse;
- has at any time been convicted, in Australia, of an offence punishable by imprisonment for one year or longer AND the Minister is satisfied that the conviction affects the Member's suitability as an appointed member of the WHS Council; or
- has, at any time been convicted, outside Australia, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer AND the Minister is satisfied that the conviction affects the Member's suitability as an appointed member of the WHS Council.[21]

The Minister **may** end an appointment if they become aware that the appointed Member:

- is absent from three consecutive meetings of the WHS Council (other than on leave approved under section 2.6 of the Act);
- contravenes a Territory law, or, misbehaves; or
- has a physical or mental incapacity, if the incapacity substantially affects the exercise of the Member's functions.[22]

PROCESSES AND PROCEDURES

12. Meetings

Only the Minister and Chair have the power to call a meeting of the WHS Council. At least five days' notice must be given of the meeting in writing, stating the date, time and place of the meeting and the matters to be considered. If the Chair receives a written request from four WHS Council Members, a meeting must be called.[23]

[19] Legislation Act s 210
[20] WHS Act Sch 2, s 2.9
[21] WHS Act Sch 2, s 2.9(2), subject to s 2.9(4)
[22] WHS Act Sch 2, s 2.9(3)(d).
[23] WHS Act Sch 2, s 2.10.

Four meetings of the WHS Council are scheduled each year. Additional meetings may also be held to progress specific matters.

Meetings may be conducted using any combination of communication methods that allow Members to hear what each other member is saying (for example, by phone or by satellite link). Similarly, a valid resolution may be made if all appointed Members agree to the proposed resolution in writing or by electronic communication.[24]

12.1 Out-of-Session Matters

Matters that require a decision of the WHS Council can be dealt with out-of-session. Papers will be distributed via email and, subject to WHS Council agreement, appointed Members will have 10 working days (wherever possible) from the date of distribution to consider the matter and reply to the Secretariat. If agreement is not reached, the matter will be referred to the next regular meeting, or, a special meeting may be called.

12.2 Role of the Chair

The Chair shall preside at all meetings where they are present. If the Chair is absent, the Deputy Chair will preside at the meeting. If both the Chair and the Deputy are absent, the Members present shall elect a Member present to preside[25] (subject to a quorum[26]).

12.3 Role of Members

The Members shall represent the broader interests of employees/employers/

Industry whom they represent rather than individual organisations. Members shall also actively participate in any of the WHS Council activities in relation to WHS matters.[27]

12.4 Agenda Papers

The Secretariat is responsible for coordinating agenda papers. Members wishing to place an item on the agenda can notify the Chair or the Secretariat. Agenda papers will be provided to Members as early as practicable or at least one week prior to meetings, wherever possible. Papers will also be emailed to acting Members.

12.5 Minutes

Minutes must be kept of all meetings.[28] The purpose of the Minutes is to record agreed decisions and actions required. Draft Minutes of each meeting will be endorsed by the Chair and distributed to Members as soon as possible after each meeting for comment within 7 days.

[24] WHS Act Sch 2, s 2.14.
[25] WHS Act Sch 2, s 2.11.
[26] WHS Act Sch 2, s2.12
[27] WHS Act Sch 2, s 2.2.
[28] WHS Act Sch 2, s 2.14(5).

Approval of the most recent draft Minutes will be considered out of session by Members who attended the meeting. Members will have 14 days to approve the draft Minutes after they are circulated. If a Member does not provide a written response within 14 days, that Member will be taken to have approved the Minutes.

Should a meeting occur without a quorum present, minutes will be taken as a record of the discussion of Members present. As no decision can be made the minutes will be circulated to Members for noting.

12.6 Communique

A communique from the Chair will be produced and published after each meeting of the WHS Council.

The draft communique will be circulated to Members of the WHS Council as soon as possible after a meeting of the Council. To facilitate a timely publication of the final communique, Members will have 5 working days to comment on the draft communique before it is published on the CMTEDD website.

12.7 Quorum and Voting

Before the WHS Council can conduct business, a quorum is required. A quorum of the WHS Council is constituted by six appointed Members, so long as there are:

- three Members from each category of appointed Members (Schedule 2, section 2.3 (1)(a) and (b) of the WHS Act); and
- two of the Members in each category must **not** be acting WHS Council Members.[29]

At a meeting of the WHS Council, each appointed Member has a vote on each question to be decided.[30] Each question put to a meeting is decided by a majority of appointed Members present and voting, including the Chair[31]. Ex-officio Members (non-appointed Members) do not have a vote at meetings of the Council.

The Chair should, as far as possible, attempt to resolve any potential for deadlock in votes prior to Members' voting.

12.8 Attendance at meetings by active observers

Observers will be allowed to attend meetings of the WHS Council by invitation of the Chair for the purpose of providing advice to Council Members when discussing matters.

Observers will be bound by these Guidelines and in particular, the confidentiality and disclosure of interests when attending a meeting.

[29] WHS Act Sch 2, s 2.12
[30] WHS Act Sch 2, s2.13 (1)
[31] WHS Act Sch 2, s2.13 (2)

13. Appointment Processes

The Minister will make appoint Members to the WHS Council based on a four-year cycle. An appointed Member may only be re-appointed once so as not to serve on the Council for more than eight years. [32]

The appointed Members of the WHS Council must elect a Chair and a Deputy Chair. The Chair and Deputy Chair must be elected for not longer than two years. If the Chair is elected from the Members appointed under the employee representative group, then the Deputy Chair must be elected from the Members appointed under the employer representative group and vice versa.[33]

13.1 Nominations

Appointments made under Schedule 2, section 2.3(1)(a) of the WHS Act can only be made by the Minister after consultation with the people or bodies as the Minister considers represent the interests of employees.[34]

Appointments made under Schedule 2, section 2.3(1)(b) of the WHS Act can only be made by the Minister after consultation with the people or bodies as the Minister considers represent the interests of employers.[35]

The same consultation requirements for Members also apply to the appointment of Acting Members.[36]

The Minister usually begins this process by writing to peak employer and employee bodies seeking nominations. In doing so, the Minister will draw the attention of nominating organisations to the Government's policy of encouraging the participation of women and representatives of indigenous and multicultural communities.

To ensure diversification on the Council, the Minister may also advertise vacancies on the WHS Council membership on the ACT Diversity Register. Applications through the ACT Diversity Register may be considered provided that consultation has already taken place under Schedule 2, section 2.3(1). The appointment of applicants through the diversity register will only be made where their experience aligns with either employee interests (Schedule 2, section 2.3(1)(a)) or employer interests (Schedule 2, section 2.3(1)(b)).

13.2 Cabinet Consideration

Government policy requires that all appointments to full-time or part-time statutory offices on boards, commissions and advisory bodies must be brought before Cabinet. Cabinet must endorse all appointments before they are made.

Proposed appointments must be accompanied by brief summary of the relevant skills and experience of the appointee and information about any remuneration. Cabinet also requires information about the gender balance on councils, as well as representation of indigenous and multicultural communities.

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[32] WHS Act Sch2, s2.4
[33] WHS Act Sch 2, s2.5
[34] WHS Act Sch 2, s2.3
[35] WHS Act Sch 2, s2.3
[36] Legislation Act S 209(2)

13.3 Legislative Assembly Standing Committee consultation

Consultation with the relevant ACT Legislative Assembly Standing Committee is not required for appointments to the WHS Council.

Section 227 (2) of the Division 19.3.3 of the *Legislation Act 2001* provides a number of exceptions[37] for appointments that do not require Standing Committee consultation. In the case of the WHS Council, the relevant exception is that the only function of the Council is to provide advice to the Minister, it does not make regulatory or administrative decisions.

13.4 Appointment and Notification

Appointments of public servants are prepared as a notifiable instrument and notified on the ACT Legislation Register. In accordance with the ACT Government's "Governance Principles: Appointments, Boards and Committees in the ACT"[38] an Explanatory Statement is not required for a notifiable instrument.

13.5 Disclosure of Interests by Nominees

All appointees are to provide the Secretariat with written confirmation that there is nothing in the private affairs or financial affairs of the nominee that would conflict with their public duties or otherwise cause embarrassment to the Government.

Written confirmation that the appointee has notion in their private or financial affairs that would conflict with the public duties as a Member of the WHS Council or cause embarrassment to the Government must be provided within 30 days of their appointment.

13.6 Election of the Chair and Deputy Chair

The appointed Members of the WHS Council must elect a Chair and a Deputy Chair. The Chair and Deputy Chair must be elected for not longer than two years.

If the Chair is elected from the Members appointed under section 2.3(1)(a), then the Deputy Chair must be elected from the Members appointed under section 2.3(1)(b) and vice versa.[39]

The election of the Chair is to rotate between the two appointed Member groups. If the previous Chair was a Member who was appointed under section 2.3(1)(a)[40], then the next Chair will be a Member who was appointed under section 2.3(1)(b)[41] and vice versa.

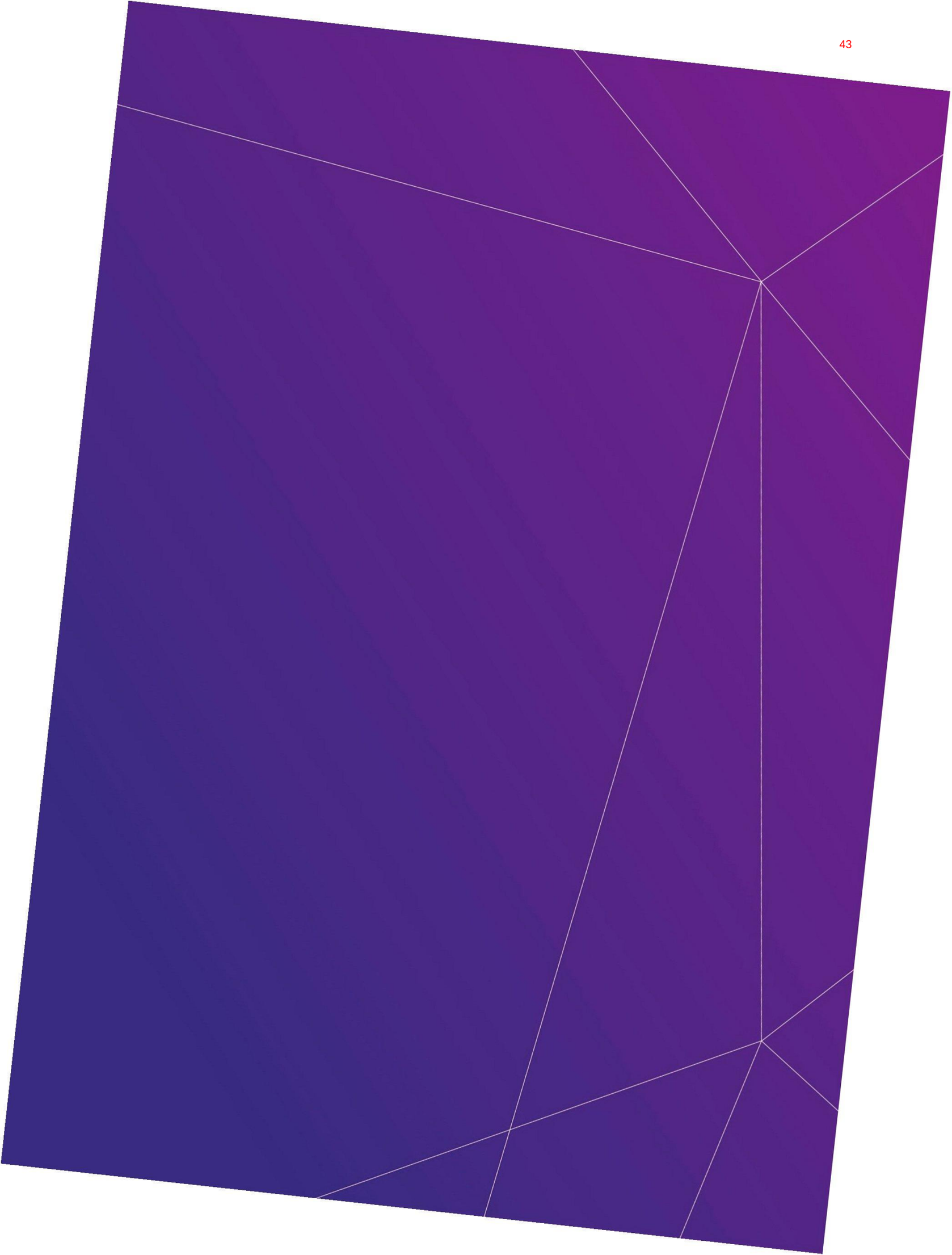
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[37] Legislation Act s227(2)
[38] *Governance Principles: Appointments, Boards and Committees in the ACT: Page No: 13 (Table 1-Determining a method of appointment).*
[39] WHS Act, Sch 2, s2.5
[40] WHS Act
[41] WHS Act

FURTHER INFORMATION

Further information may be obtained by contacting the WHS Council Secretariat. Members may also wish to review the following additional information:

- Schedule 2, Part 2.1 of the *Work Health and Safety Act 2011*: https://www.legislation.act.gov.au/View/a/2011-35/current/PDF/2011-35.PDF;
- *Work Health and Safety Amendment Act 2019*; and
- Part 19.3 of the *Legislation Act 2001*, http://www.legislation.act.gov.au/a/2001-14/current/pdf/2001-14.pdf



QTON No. 187

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2024-2025
Ms Nicole Lawder MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Miss Laura Nuttall MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by: Ms Nicole Lawder MLA

Addressed to: Minister for Industrial Relations and Workplace Safety

Redirected to: N/A

Reference: Uncorrected Hansard Transcript p. 25

In relation to: Bullying and harassment claims at WorkSafe ACT

Hearing Date: 2 August 2024

QTON lodgement date: 5 August 2024

Answer Due Date: 8 August 2024

THE CHAIR: Great. Thank you. Do you have bully and harassment, the number of claims each year or perhaps over the past five years?

Mrs Agius: Sorry, could I clarify? Do you mean from our staff—

THE CHAIR: Yes.

Mrs Agius: Complaints from our staff? We will take that on notice.

Mick Gentleman MLA: The answer to the Member's question is as follows:

Over the past 5 financial years (01/07/2019 to 30/06/2024), there were less than five reported incidences of bullying or harassment of WorkSafe staff recorded on the whole of ACT Government WHS incident management system.

For privacy reasons, the figure of *less than five* has been used in this answer as a substitute for the actual number. This is consistent with other ACT Government WHS incident reporting practices.

The public sector workers' compensation self-insurer advises that during the same period there were nil compensable workplace injuries or diseases suffered by WorkSafe staff attributed to bullying or harassment.

Approved for circulation to the Select Committee on Estimates 2024-2025

Signature: Date:

By the Minister for Industrial Relations and Workplace Safety, Mick Gentleman MLA

From: "Bunt, Jacquie" <Jacquie.Bunt@act.gov.au> on behalf of "CMTEDDMedia" <CMTEDDMedia@act.gov.au>
Sent: 18/07/2024 6:48 PM
To: "Young, Michael" <Michael.Young@act.gov.au>; "CMTEDDMedia" <CMTEDDMedia@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>; "Irvine, Lisa" <Lisa.Irvine@act.gov.au>; "Turner, Mikaela" <Mikaela.Turner@act.gov.au>; "Hempenstall, Alana" <Alana.Hempenstall@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Winn, Sinead" <Sinead.Winn@act.gov.au>
Subject: RE: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT

OFFICIAL

Thanks Michael,

Is the below a fair response to the questions?

QUESTIONS:

- **Can you confirm whether WorkSafe ACT and its leaders are answerable to anybody?**

  The tripartite WHS Council has a statutory function of monitoring the operations of the regulator and advising the appointing Minister about that performance.

  The WHS Council was established under Schedule 2 Part 2.1 of the *Work Health and Safety Act 2011* (WHS Act) to advise the Minister on WHS matters in the ACT.

  The WHS Council is comprised of twelve appointed members:

  - five members following consultation with *employee* representatives;
  - five members following consultation with *employer* representatives; and
  - two ex-officio members: the WHS Commissioner and the Public Sector Workers Compensation Commissioner.

- **What scope is there for an independent external review of the situation or Assembly scrutiny?**
  If necessary, the tripartite WHS Council are empowered to issue a vote of no confidence (to which the Minister must respond).

- **Isn't the lack of training, inexperience of staff, especially investigators, and culture issues exposing WorkSafe and the Territory to risk, and significant workplace incidents not being dealt with appropriately?**
  The WHS Council has a direct line to the appointing Minister and is empowered to inquire into any concerns as well as review the regulator's performance quarterly.

Thanks,
Jacquie

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Thursday, July 18, 2024 5:06 PM
To: CMTEDDMedia <CMTEDDMedia@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>; Turner, Mikaela <Mikaela.Turner@act.gov.au>; Hempenstall, Alana <Alana.Hempenstall@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Winn, Sinead <Sinead.Winn@act.gov.au>; Bunt, Jacquie <Jacquie.Bunt@act.gov.au>
Subject: RE: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT

OFFICIAL

Hi Jacqui

Thanks for this. Some thoughts and suggestions:

- Gentleman is the portfolio Minister and appoints the WHS Commissioner. Also his office has been involved in preparing responses on similar questions from the RiotAct and Canberra Times (David P coordinated those last week). I would suggest the query be transferred
- I did prepare some material that is responsive to the governance questions. Gentleman's office would be best placed to determine whether and how to use that.
    - In short, the tripartite WHS Council has a statutory function of monitoring the operations of the regulator, advising the appointing Minister about that performance and is even empowered to issue a vote of no confidence (to which the Minister must respond).
- I would not propose a direct answer to 3, other than to refute the offensive assumptions. However general comments about the role of the WHS Council do address it. I.e. a tripartite representative body is empowered to inquire into concerns like those, convenes to review the regulator's performance quarterly and has a direct line to the appointing minister. Membership includes unions and employer peak bodies – can send you the list if needed.

Let me know if you need more.

Michael

Michael Young | Executive Group Manager
02 6205 3095| michael.young@act.gov.au
Work Safety Group | Office of Industrial Relations & Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Bunt, Jacquie <Jacquie.Bunt@act.gov.au> **On Behalf Of** CMTEDDMedia
Sent: Thursday, July 18, 2024 4:34 PM
To: Young, Michael <Michael.Young@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>
Subject: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT
Importance: High

OFFICIAL

Good Afternoon Michael,

Not sure if you're the best placed to assist with the below – just had a request from SMOS office to provide responses to the questions below. Are you able to assist or point me in the best direction?

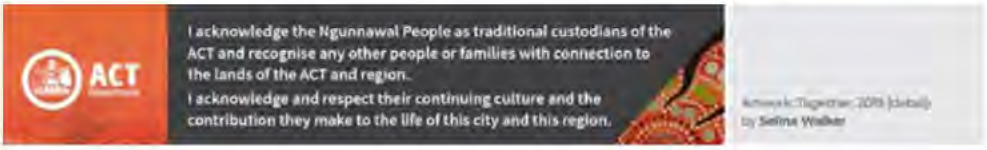
QUESTIONS:

- Can you confirm whether WorkSafe ACT and its leaders are answerable to anybody?
- What scope is there for an independent external review of the situation or Assembly scrutiny?
- **<CAN CMTEDD ANSWER THIS?>** Isn't the lack of training, inexperience of staff, especially investigators, and culture issues exposing WorkSafe and the Territory to risk, and significant workplace incidents not being dealt with appropriately?

The Minister's office will answer the other questions (email chain below).

Thanks,
Jacquie

Jacqueline Bunt – Media and Public Relations
24/7 CMTEDD Media Line: 0466 937 557
Email: CMTEDDMedia@act.gov.au
Communications & Engagement | Chief Minister Treasury and Economic Development Directorate | ACT Government
220 London Circuit, Canberra City | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au



From: Inman, Mick <Mick.Inman@act.gov.au>
Sent: Thursday, July 18, 2024 4:21 PM
To: CMTEDDMedia <CMTEDDMedia@act.gov.au>; Rogers, Tamerra <Tamerra.Rogers@act.gov.au>
Subject: RE: WorkSafe ACT

OFFICIAL

In red.
Not sure if you can answer the one in yellow re: training?

From: Bunt, Jacquie <Jacquie.Bunt@act.gov.au> **On Behalf Of** CMTEDDMedia
Sent: Thursday, July 18, 2024 4:16 PM
To: Inman, Mick <Mick.Inman@act.gov.au>; Rogers, Tamerra <Tamerra.Rogers@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>
Subject: RE: WorkSafe ACT

OFFICIAL

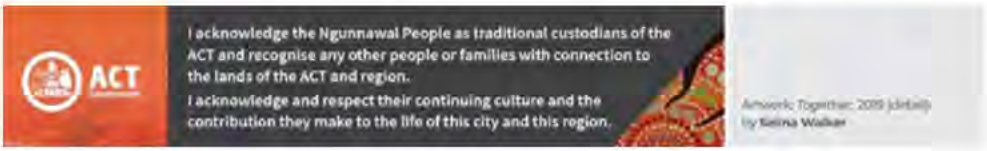
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Apologies, can you highlight exactly which question you'd like us to follow-up with?

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From: Inman, Mick <Mick.Inman@act.gov.au>
Sent: Thursday, July 18, 2024 4:12 PM
To: Rogers, Tamerra <Tamerra.Rogers@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>
Subject: FW: WorkSafe ACT

Hi team,

We can answer Q1 and Q3, ie the ones related to the Minister.

Could you please provide [redacted] to a response to the questions around scrutiny and governance?

Thanks. Mick

From: Sch 2.2(a)(ii)
Sent: Thursday, July 18, 2024 1:19 PM
To: Inman, Mick <Mick.Inman@act.gov.au>; Dynon, Kaarin <Kaarin.Dynon@act.gov.au>
Subject: WorkSafe ACT

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 Mick,
For the Minister,
Do you still have confidence in WHS Commissioner Jacquleine Agius and believe morale there is "quite high" given the revelations from multiple former employees, and more recent and even current staff.
Can you confirm whether WorkSafe ACT and its leaders are answerable to anybody, such as yourself, or the Assembly?
How can a minister turn a blind eye to the following:
Former staff and the CPSU have alleged

- the abuse of the complaints process (Preliminary Assessments) to silence and hound 'problem" staff out of the organisation
- appointments without merit selection
- bullying and harassment
- unlawful practices
- a secret, unfounded campaign against male staff
- inadequate training
- toxic culture
- inadequate support for staff

Recent and current staff members say these things are still happening.

There are claims that:

- The Commissioner often uses intimidatory language and threatens staff with dismissal for talking about workplace issues
- Inspectors lack training and are not working to the law
- Notices are written to maximise stats to boost the image of the authority
- Appointments don't follow merit procedures
- No accountability
- Complaints go nowhere
- Staff turnover is "crazy"
- Constant organisational change

What scope is there for an independent external review of the situation or Assembly scrutiny?

Isn't the lack of training, inexperience of staff, especially investigators, and culture issues exposing WorkSafe and the Territory to risk, and significant workplace incidents not being dealt with appropriately?

Best regards,

Sch 2.2(a)(ii)



From: "Bunt, Jacquie" <Jacquie.Bunt@act.gov.au> on behalf of "CMTEDDMedia" <CMTEDDMedia@act.gov.au>
Sent: 19/07/2024 9:59 AM
To: "Young, Michael" <Michael.Young@act.gov.au>; "CMTEDDMedia" <CMTEDDMedia@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>; "Irvine, Lisa" <Lisa.Irvine@act.gov.au>; "Turner, Mikaela" <Mikaela.Turner@act.gov.au>; "Hempenstall, Alana" <Alana.Hempenstall@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Winn, Sinead" <Sinead.Winn@act.gov.au>
Subject: RE: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT

OFFICIAL

Thank you – that looks great.

I can put the info you provided below as 'background only' for the MO and highlight it's not for distribution on our end but for their awareness if they'd like WorkSafe to contribute to the response.

Appreciate your assistance.

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Friday, July 19, 2024 9:36 AM
To: CMTEDDMedia <CMTEDDMedia@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>; Turner, Mikaela <Mikaela.Turner@act.gov.au>; Hempenstall, Alana <Alana.Hempenstall@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Winn, Sinead <Sinead.Winn@act.gov.au>
Subject: RE: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT

OFFICIAL

Hello Jacqui

I have suggested some changes to 2 and 3. First one looks good to me.

Also - Being a non voting member of the WHS Council, I am aware that WorkSafe invests significant funds in training its inspectorate. It would be jarring to describe these in the CMTEDD response, given the tone of it is pointing out the independence of the body from influence by CMTEDD – however the MO may want to give WorkSafe the opportunity to respond to the more offensive aspects of the highlighted question.

Michael

From: Bunt, Jacquie <Jacquie.Bunt@act.gov.au> **On Behalf Of** CMTEDDMedia
Sent: Thursday, July 18, 2024 6:48 PM
To: Young, Michael <Michael.Young@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>; Turner, Mikaela <Mikaela.Turner@act.gov.au>; Hempenstall, Alana <Alana.Hempenstall@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Winn, Sinead <Sinead.Winn@act.gov.au>
Subject: RE: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT

OFFICIAL

Thanks Michael,

Is the below a fair response to the questions?

QUESTIONS:

- **Can you confirm whether WorkSafe ACT and its leaders are answerable to anybody?**

  The tripartite WHS Council has a statutory function of monitoring the operations of the regulator and advising the appointing Minister about that performance.

  The WHS Council was established under Schedule 2 Part 2.1 of the *Work Health and Safety Act 2011* (WHS Act) to advise the Minister on WHS matters in the ACT.

  The WHS Council is comprised of twelve appointed members:

  - five members following consultation with *employee* representatives;
  - five members following consultation with *employer* representatives; and
  - two ex-officio members: the WHS Commissioner and the Public Sector Workers Compensation Commissioner.

- **What scope is there for an independent external review of the situation or Assembly scrutiny? Isn't the lack of training, inexperience of staff, especially investigators, and culture issues exposing WorkSafe and the Territory to risk, and significant workplace incidents not being dealt with appropriately?**
  The WHS Council meets quarterly with voting members that are representatives of ACT employers and employees. A function of the Council is to advise the appointing Minister on the performance of the WHS Commissioner. The Council may also establish advisory committees to assist in the exercise of its functions.

  These arrangements were legislated at the time the Office of the WHS Commissioner was established to balance the need for accountability and oversight of the WHS Commissioner with the need to provide for the independence of the office from influence by Government entities that it regulates.

  BACKGROUND ONLY – Not for distribution:
  WorkSafe invests significant funds in training its inspectorate. They should have information regarding funding of their training budget and what type of training is done.

Thanks,
Jacquie

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Thursday, July 18, 2024 5:06 PM
To: CMTEDDMedia <CMTEDDMedia@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>; Turner, Mikaela <Mikaela.Turner@act.gov.au>; Hempenstall, Alana <Alana.Hempenstall@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Winn, Sinead <Sinead.Winn@act.gov.au>; Bunt, Jacquie <Jacquie.Bunt@act.gov.au>
Subject: RE: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT

OFFICIAL

Hi Jacqui

Thanks for this. Some thoughts and suggestions:

- Gentleman is the portfolio Minister and appoints the WHS Commissioner. Also his office has been involved in preparing responses on similar questions from the RiotAct and Canberra Times (David P coordinated those last week). I would suggest the query be transferred
- I did prepare some material that is responsive to the governance questions. Gentleman's office would be best placed to determine whether and how to use that.

- In short, the tripartite WHS Council has a statutory function of monitoring the operations of the regulator, advising the appointing Minister about that performance and is even empowered to issue a vote of no confidence (to which the Minister must respond).

- I would not propose a direct answer to 3, other than to refute the offensive assumptions. However general comments about the role of the WHS Council do address it. I.e. a tripartite representative body is empowered to inquire into concerns like those, convenes to review the regulator's performance quarterly and has a direct line to the appointing minister. Membership includes unions and employer peak bodies – can send you the list if needed.

Let me know if you need more.

Michael

Michael Young | Executive Group Manager
02 6205 3095| michael.young@act.gov.au
Work Safety Group | Office of Industrial Relations & Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

---

From: Bunt, Jacquie <Jacquie.Bunt@act.gov.au> **On Behalf Of** CMTEDDMedia
Sent: Thursday, July 18, 2024 4:34 PM
To: Young, Michael <Michael.Young@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>
Subject: MEDIA ENQUIRY - RIOTACT: WorkSafe ACT
Importance: High

OFFICIAL

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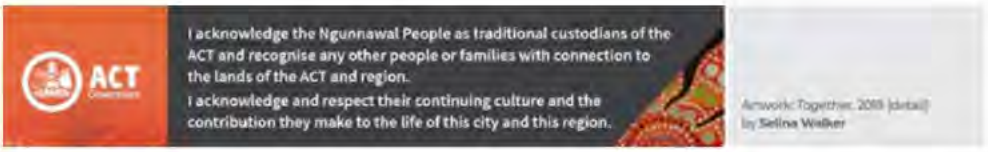
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Subject: RE: WorkSafe ACT

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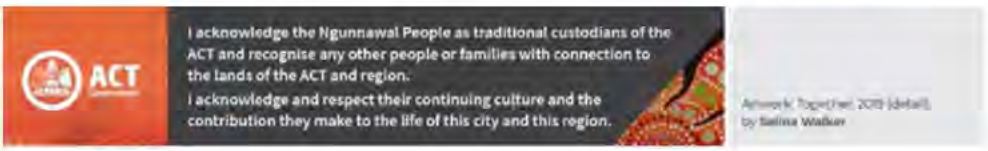
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Subject: FW: WorkSafe ACT

Hi team,

copy

copy

QTON No. 187

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2024-2025
Ms Nicole Lawder MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Miss Laura Nuttall MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by: Ms Nicole Lawder MLA

Addressed to: Minister for Industrial Relations and Workplace Safety

Redirected to: N/A

Reference: Uncorrected Hansard Transcript p. 25

In relation to: Bullying and harassment claims at WorkSafe ACT

Hearing Date: 2 August 2024

QTON lodgement date: 5 August 2024

Answer Due Date: 8 August 2024

THE CHAIR: Great. Thank you. Do you have bully and harassment, the number of claims each year or perhaps over the past five years?

Mrs Agius: Sorry, could I clarify? Do you mean from our staff—

THE CHAIR: Yes.

Mrs Agius: Complaints from our staff? We will take that on notice.

Mick Gentleman MLA: The answer to the Member's question is as follows:

Over the past 5 financial years (01/07/2019 to 30/06/2024), there were less than five reported incidences of bullying or harassment of WorkSafe staff recorded on the whole of ACT Government WHS incident management system.

For privacy reasons, the figure of *less than five* has been used in this answer as a substitute for the actual number. This is consistent with other ACT Government WHS incident reporting practices.

The public sector workers' compensation self-insurer advises that during the same period there were nil compensable workplace injuries or diseases suffered by WorkSafe staff attributed to bullying or harassment.

Approved for circulation to the Select Committee on Estimates 2024-2025

Signature:  Date: 9/8/2024

By the Minister for Industrial Relations and Workplace Safety, Mick Gentleman MLA

From: "CMCD DLO" <CMCDDLO@act.gov.au>
Sent: 09/08/2024 9:45 AM
To: "LA Committee - Estimates" <LACommitteeEstimates@parliament.act.gov.au>
Cc: "CMCD DLO" <CMCDDLO@act.gov.au>; "CMTEDD, Assembly Coordination" <AssemblyCoordination@act.gov.au>
Subject: Estimates QTON 187 ANSWER - CMTEDD - Bullying and harassment claims at WorkSafe ACT - LAWDER
Attachments: Estimates QTON 187 ANSWER - CMTEDD - Bullying and harassment claims at WorkSafe ACT - LAWDER.PDF
Importance: High

Good morning Secretary,

See attached a signed response to the below QTON:

- **Estimates QTON 187 ANSWER - CMTEDD - Bullying and harassment claims at WorkSafe ACT – LAWDER**

Kind regards,

Isabelle Howse | Directorate Liaison Officer | CMTEDD
Phone: Teams | Email cmcddlo@act.gov.au
Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra ACT 2601 | www.act.gov.au

Chief Minister
Minister for Climate Action
Minister for Industrial Relations and Workplace Safety
Minister for Community Services, Seniors and Veterans
Minister for Government Services and Regulatory Reform
Special Minister of State

WORK HEALTH AND SAFETY COUNCIL

ACT Government

Agenda Item 6.2 — For discussion

Minister's Statement of Expectation 2024-25 for WorkSafe ACT - consultation

Prepared by Stakeholder Engagement and Governance, Policy Branch, Work Safety Group

Resolution:

In undertaking consultation with Members in relation to the next Statement of Expectations to be set by the Minister for Industrial Relations and Workplace Safety for the Office of the Work Health and Safety Commissioner (WorkSafe ACT), Members are asked to:

- **consider and provide** suggestions for priority activities for inclusion in the 2024-25 Statement of Expectations - Office of the Work Health and Safety Commissioner (WorkSafe ACT).

Background

Under schedule 2, section 2.39 (2) of the *Work Health and Safety Act 2011* (the WHS Act), the Minister for Industrial Relations and Workplace Safety is required to make a Statement of Expectations at least once every 12 months setting out the priority activities and initiatives for the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

Relevantly, the Minister must consult with the Work Health and Safety Council (WHS Council) before making the Statement of Expectations which is a notifiable instrument on the Legislation Register.

The Statement of Expectations must not include specific direction about the exercise of a regulatory function under the WHS Act, however it can include general directions about the priority activities and initiatives for WorkSafe ACT, and any information the Minister believes will assist WorkSafe ACT in implementing the Statement of Expectations.

Issues

In November 2023, the Minister for Industrial Relations and Workplace Safety issued the current 2023 Statement of Expectations (Attachment A). The WorkSafe ACT Statement of Operational Intent 2023 was subsequently notified in December 2023 (Attachment B).

In summary, the main priorities of the 2023-24 Statement of Expectation were to:

- address present and emerging WHS risks including:
    - worker fatalities

  - psychosocial hazards in the workplace
  - persons conducting business or undertakings (PCBUs) in supply chains
  - the impacts of climate change in the workplace
  - health and safety of workers in vulnerable populations
  - health and safety impacted by changes in workforce demographic and size; and
  - improving work health and safety in small businesses.
- continued focus on improving the safety culture of the construction industry and on work health and safety compliance within the ACT Government
- continuing to improve the operational effectiveness and increased capability development of WorkSafe ACT
- ensuring the accountability indicators of WorkSafe ACT remain contemporary, linked to outcomes and aligned with the strategic objectives of the regulator; and
- engagement with the WHS Council.

The WHS Council is encouraged to consider the following questions:

- Are there certain priority activities and initiatives from the 2023-24 Statement of Expectations that should be rolled over into the 2024-25 Statement of Expectations?
- Are there new priority activities and initiatives that should be included into the 2024-25 Statement of Expectations?
- Are there other comments or considerations required in the development of the 2024-25 Statement of Expectations?

The information provided by Members of the WHS Council will inform the development of the 2024-25 Statement of Expectations.

Next steps

Once the Statement of Expectations is made it will be notified on the ACT Legislation Register.

Associated with the Statement, schedule 2, section 2.39 (2) of the WHS Act sets out the process for making the Statement of Operational Intent developed by WorkSafe ACT in response. Once made, this will also be available on the ACT Legislation Register.

Attachment

Attachment	Attachment Title
Attachment A	2023 Minister's Statement of Expectations
Attachment B	Statement of Operational Intent 2023 – WorkSafe ACT

Australian Capital Territory

Work Health and Safety (Office of the Work Health and Safety Commissioner) Statement of Expectations 2023

Notifiable instrument NI2023–676

made under the

***Work Health and Safety Act 2011*, Schedule 2, Division 2.2.5, Section 2.39 (Ministerial statement of expectations)**

---

1 Name of instrument

This instrument is the *Work Health and Safety (Office of the Work Health and Safety Commissioner) Statement of Expectations 2023*.

2 Commencement

This instrument commences on the day after notification.

3 Statement of Expectations

I make the Statement of Expectations as provided in the Schedule.

4 Consultation

I confirm that the Work Health and Safety Council has been consulted about the priorities and initiatives for the Office of the Work Health and Safety Commissioner in accordance with schedule 2, division 2.2.5, section 2.39 (2) of the *Work Health and Safety Act 2011*.

5 Revocation

This instrument revokes the *Work Health and Safety (Office of the Work Health and Safety Commissioner) Statement of Expectations 2022* [NI2022-504].

Mick Gentleman MLA
Minister for Industrial Relations and Workplace Safety

1 November 2023

ACT Government

Ministerial Statement of Expectations 2023

Office of the Work Health and Safety Commissioner

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Introduction

The Office of the Work Health and Safety Commissioner (WorkSafe ACT) is established under the *Work Health and Safety Act 2011* (the WHS Act) as an independent, prescribed Territory authority headed by the Work Health and Safety Commissioner (WHS Commissioner) who is the Territory's WHS Regulator.

WorkSafe ACT supports the WHS Commissioner in administering the Territory's work, health, and safety related legislation by providing information, advice, and support as well as compliance and enforcement activities.

In accordance with schedule 2, division 2.2.5, section 2.39 of the WHS Act, the Minister for Industrial Relations and Workplace Safety (the Minister) must make a statement to the WHS Commissioner about the priority activities and initiatives for WorkSafe ACT at least once every 12-months.

This statement does not include specific direction about the exercise of a regulatory function under the Act but may include general directions about the priority activities and initiatives for WorkSafe ACT, and any information that the Minister believes will assist with the implementation of the statement.

As required by the Act under section 2.39 (2), the ACT's Work Health and Safety Council (WHS Council) was consulted on the priority activities and initiatives set out in the following *Statement of Expectations 2023* (the Statement) – which repeals the previous *Statement of Expectations 2022* [NI2022-504].

Priority activities and initiatives

Everyone has the right to a safe workplace with fair conditions. Safety is everyone's responsibility and WorkSafe ACT has an integral role in driving an outstanding work safety culture in the ACT through its regulatory compliance and enforcement activities, and advice to government, workers, and employers.

In driving an outstanding safety culture across the ACT, WorkSafe ACT should focus on the expectations outlined in this Statement over the next 12-months. This Statement recognises the significant and ongoing nature of the priorities highlighted in the previous statement and *WorkSafe ACT's 2020-2024 Strategic Plan*.

Industry and community engagement is integral to improving cultural change. Priority initiatives and activities should be planned and implemented taking into consideration the views of ACT workers, trade unions, employers, their representative bodies and the WHS Council.

Present and Emerging Work Health and Safety Risks

Safe Work Australia's *Australian Work Health and Safety (WHS Strategy) 2023-2033* (the Strategy) aims to respond to key WHS challenges and risks across Australia over the next ten-years and sets a unifying national goal to reduce worker fatalities, injuries and illness.

The Territory contributes to outcomes under the national WHS Strategy through the identified National priorities and challenges, those being:

- worker fatalities
- psychosocial hazards in the workplace
- the existence of more complex supply chains
- evolving climate related risks
- health and safety vulnerable populations
- hybrid work arrangements
- health and safety impacted by workforce size changes
- small business.

The ACT Government is committed to achieving a target of zero workplace fatalities and WorkSafe ACT is integral to preventing work related serious injury, disease and fatality.

Targeting attention and activities to those industries with the highest rates of injury and illness, particularly where there is a history of fatality would assist in reducing work related fatality.

WorkSafe ACT should also ensure that the supports available to families in the event of a workplace death or serious injury continue to meet community expectations and deliver better outcomes for families impacted by workplace deaths or serious workplace injuries.

In September 2023, the ACT Government strengthened the Territory's work health and safety laws to better protect workers from workplace psychosocial hazards by releasing a new *ACT Managing Psychosocial Hazards at Work Code of Practice* and associated Regulation amendments, which commence on 27 November 2023.

WorkSafe ACT should continue its work in this important area and continue to influence improvements in the mental health of Canberrans through education, and compliance and enforcement.

Work related violence, sexual harassment and sexual assault are hazards which should be appropriately risk managed to ensure the health and safety of working people. The recommendations of the Work Health and Safety Council's Preventing and Managing Work-Related Violence Report, through its Work-Related Violence Advisory Committee, is acknowledged as is the ongoing national focus on these issues. WorkSafe ACT should prioritise educating workplace participants of their obligations and ensuring compliance with these obligations.

Persons Conducting a Business or Undertaking (PCBUs) have an important role in ensuring workplaces are safe, particularly within a supply chain in an organisation. The WHS Act imposes health and safety duties on all PCBUs in the Territory, as well as duties to their officers and workers. All PCBUs are required to be aware of their health and safety duties under the WHS Act, and are responsible for the elimination of risks and hazards that might contribute to unsafe workplaces.

The scope of global supply chains is increasing. This is associated with increasing consumer demand for a wider array of goods and influenced by recovery from unprecedented pressures from COVID-19 on supply chains. With broadening scope and more participants within global supply chains, PCBUs must consider WHS risks more systematically and ensure there is clarity in relation to their WHS duties and responsibility.

WorkSafe ACT should prioritise raising awareness of PCBUs of their duties under the WHS Act in these respects.

A warming planet and changing environment means that our physical worksites are also changing. Extreme temperatures, unpredictable weather and natural disasters are all having an impact on working conditions. Changing work environments in turn bring new risks to the health and safety of workers across the ACT requiring a regulatory response.

The recent updates to guidance materials by WorkSafe ACT on the impacts of climate change in the workplace is acknowledged.

WorkSafe ACT should continue its work in this area, including promoting awareness of climate change impacts on the workplace and maintaining guidance materials to improve industry capability to manage these issues in the workplace.

Health and safety of workers in vulnerable populations

PCBUs must consider the needs of all workers in designing safe work systems. Some factors known to impact workers' WHS vulnerability include being younger, being from a culturally and linguistically diverse (CALD) background and working alone or in isolation. One size fits all communication approaches and generic WHS practices can expose workers to limited WHS capability development and greater workplace risks.

WorkSafe ACT should continue to support stakeholders and PCBUs to engage in WHS communication and practices that promote WHS knowledge and understanding in and of all worker populations.

Hybrid work arrangements

The COVID-19 pandemic sparked a shift to working from home and more flexible working arrangements across a range of occupations. Hybrid work models may change or create new WHS risks, including psychosocial risks, that PCBUs need to manage.

WorkSafe ACT should continue its work in this area, including promoting awareness of safe hybrid work practices and potential risks and impacts on workers.

Health and safety impacted by workforce demographic and size changes

It is recognised that workplaces may be affected by changes in workforce demographics, size and staffing shortages that can adversely impact worker health and safety. In particular, psychosocial hazards such as low staffing levels contribute to hazards such as poor workplace support and violence and aggression in the workplace. Workforce size/shortages have an acute impact of safety particularly in service areas that must continue operating, which in turn places a greater importance on upstream design of work and systems of work to manage these risks to effectively manage hazards in the workplace, not limited to psychosocial hazards.

WorkSafe ACT should continue to support stakeholders and PCBUs to engage in WHS practices that address health and safety where there are ongoing workforce shortages, particularly in service sectors.

Small business – improving work health and safety

Small businesses frequently have fewer resources to dedicate to understanding WHS requirements and obligations than larger ones.

WorkSafe ACT should provide tailored and targeted materials and information that better support small business in achieving health and safety outcomes and building working environments with a positive safety culture. This would complement work already done by the regulator in supporting small businesses in understanding their health and safety duties when employing young workers.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Priority industries

In the national WHS Strategy, the construction industry and public administration industry are both highlighted as high-risk industries. These industries are also priorities in the ACT.

The ACT construction industry continues to experience a higher frequency rate of serious injury claims than the national average, an upward trend comparative to previous years which is consistent with the national trend.

The ACT public administration industry continues to experience a frequency rate of serious claims marginally below the national average, however risk levels should be improved.

These frequency rates are considered to be a good general indication of WHS trends.

Construction Industry

The construction industry is consistently one of the highest risk industries nationally and in the ACT. WorkSafe ACT should maintain its strong and ongoing focus on construction industry safety standards and compliance across residential, commercial and civil construction sectors.

WHS compliance within ACT Government

It is important that ACT Government directorates and agencies lead by example in meeting their duties and obligations under the WHS Act.

WorkSafe ACT should focus on facilitating WHS compliance within the ACT Government utilising appropriate and proportionate education, awareness, compliance and enforcement activities.

Operation and performance of WorkSafe ACT

Operation

Effective compliance and enforcement play a critical role in promoting compliance with work injury and safety laws, as well as embedding good WHS practices in all work across all industries.

WorkSafe ACT should remain focused on ensuring its governance and operations remain contemporary and are effective. WorkSafe ACT should continue to ensure that recent improvements to WorkSafe's operations, particularly capability development, are fully realised and effective.

WorkSafe ACT should be a source of trusted and expert information on compliance with WHS and workers' compensation obligations.

Importantly, stakeholders should be able to access information across all of the areas WorkSafe ACT regulates, including WHS, workers' compensation, hazardous substances, dangerous goods, licensing, and workplace privacy.

Stakeholders expect to be able to engage with WorkSafe ACT using digital platforms that are accessible by all devices. WorkSafe ACT should also be in a position to capture and analyse data to inform compliance and enforcement activity.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Performance

WorkSafe ACT should ensure that its accountability indicators remain contemporary, are linked to outcomes and align with the strategic objectives of the regulator. In particular, the accountability indicators should align with a strong community and workplace presence of the regulator, an awareness of the regulator and demonstrate the regulator's capability building investments.

Engagement and reporting

Engagement with the WHS Council

The WHS Council plays an important role in advising the Minister and Government on matters relating to WHS in the ACT. The Work Health and Safety Commissioner is an ex-officio member of the WHS Council and should ensure WorkSafe ACT's activities are responsive to issues identified by employee and employer representatives in the Territory.

Reporting against the Statement of Expectations 2023

In line with schedule 2, section 2.41 (2) (c) of the WHS Act, WorkSafe ACT should report on its approach to implementing the priority activities and initiatives set out in this Statement within its Annual Report.

WORK HEALTH AND SAFETY COUNCIL

ACT Government

Mr Mick Gentleman MLA
Minister for Industrial Relations and Workplace Safety
ACT Legislative Assembly
Via email: GENTLEMAN@act.gov.au

Dear Minister Gentleman

On 10 July 2024, the ACT Work Health and Safety (WHS) Council held an extraordinary meeting to discuss concerns that under current legislative rules applying to evidence in a legal proceedings, complainants of sexual assault and sexual harassment matters are not automatically protected from public identification in a proceeding relating to a sexual-based WHS offence.

Council now writes to advise of recommendations made that:

- complainants of a workplace sexual harassment or assault matter (the complainant) in relation to an alleged work health and safety breach should be provided with the same protections during legal proceedings as are afforded to complainants in relation to a sexual offence proceeding; and
- the complainant may however consent to the publication of information about their identity in relation to a legal proceeding for a WHS breach.

Council urges timely action from Government in developing a legislative proposal that would address these recommendations and understands the issues involve legislation within the Attorney-General's portfolio.

Thank you for your consideration of these matters in ensuring the effective operation of the ACT's work safety laws to better protect the safety of workers in the Territory.

Yours sincerely

Sch 2.2(a)(ii)

Mr Michael Hiscox
Chair
Work Health and Safety Council
30/07/2024

Mick Gentleman MLA
Manager of Government Business
Minister for Business
Minister for Fire and Emergency Services
Minister for Industrial Relations and Workplace Safety
Minister for Multicultural Affairs
Minister for Police and Crime Prevention

Member for Brindabella

Mr Michael Hiscox
Chair
Work Health and Safety Council
Via email: ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au

Dear Mr Hiscox,

I am writing to you as Chair of the Work Health and Safety Council to provide support for an independent review into workplace culture at the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

As you would be aware, WorkSafe ACT functions as an independent entity to ensure that they would remain unaffected by influence from government agencies and officials that may be regulated by it. In establishing the independence of the Office an additional layer of oversight was afforded to the Work Health and Safety Council, which is further outlined in the Work Health and Safety Act.

I am concerned by the matters raised by current and former WorkSafe employees over the past few weeks, and by the risks similarly identified and raised by the Community and Public Sector Union, including at ACT Labor Conference this past weekend. I would hope that your fellow Council members feel similarly, as we all have a vested interest in ensuring safe and healthy workplace for all Canberrans.

Noting the specificity of independence in the design of WorkSafe ACT, and the additional layer of oversight granted to the Council, I believe that it is in the best interests of the public that the Council, which as you know is comprised of both employer and employee representatives, has the opportunity to discuss recommendations for actions to take regarding these matters.

For this reason, I am writing to suggest that discussion of an independent review be added to the agenda at the next meeting of the Work Health and Safety Council. Should the outcome of this discussion be to pursue an independent review, please know that I would be fully supportive of this endeavour.

ACT Government

Mick Gentleman MLA
Manager of Government Business
Minister for Business
Minister for Fire and Emergency Services
Minister for Industrial Relations and Workplace Safety
Minister for Multicultural Affairs
Minister for Police and Crime Prevention

Member for Brindabella

Yours sincerely,

Mick Gentleman MLA
31/7/2024

Office of Minister Mick Gentleman MLA
6205 0218 | gentleman@act.gov.au

WORK HEALTH AND SAFETY COUNCIL

ACT Government

Mr Mick Gentleman MLA
Minister for Industrial Relations and Workplace Safety
ACT Legislative Assembly
Via email: GENTLEMAN@act.gov.au

Dear Minister

Thank you for your correspondence of 31 July 2024 regarding workplace culture at the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

I have asked that these issues be added to the agenda for the next meeting of the Work Health and Safety Council (the Council), scheduled to be held on 22 August 2024, to allow Council members the opportunity to raise/articulate any issues regarding the performance of WorkSafe ACT.

As a non-voting member of the Council, the Work Health and Safety Commissioner (the Commissioner) will also have the opportunity to respond and address any concerns raised at a subsequent meeting of the Council.

Out of an abundance of caution, I note the role of the Council under the *Work Health and Safety Act 2011* is advisory. While the Council does have the ability to inquire into matters referred by the Minister, the Council does not have the ability to compel people or to direct the Commissioner.

Thank you for raising these matters for Council's consideration and I look forward to providing the Council's advice in due course.

Yours sincerely

Sch 2.2(a)(ii)

Mr Michael Hiscox
Chair
Work Health and Safety Council
14/08/2024

From: "Allars, Alex"
Sent: 04/04/2023 11:15 AM
To: "Parker, Penelope" <Penelope.Parker@worksafe.act.gov.au>; "Challenger, Matt" <Matt.Challenger@act.gov.au>
Cc: "Grey, Amanda" <Amanda.Grey@worksafe.act.gov.au>
Subject: RE: WorkSafe ACT Staffing Matters

OFFICIAL: Sensitive - Personal Privacy

Hi Penny

Thanks so much for the update and advice about the CPSU.

I will pass this on to Luke.

Please reach out if I can assist further.

Best wishes
Alex

Alex Allars | Executive Branch Manager *(she/her)*
Whole of Government Industrial Relations & Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Phone: +61 2 620 59987| Mobile: Sch 2.2(a)(ii) | Email: Alex.Allars@act.gov.au | Web: Home - ACT Government
220 London Circuit Canberra City ACT 2601 |GPO Box 158 Canberra ACT 2601

From: Parker, Penelope <Penelope.Parker@worksafe.act.gov.au>
Sent: Tuesday, 4 April 2023 8:53 AM
To: Challenger, Matt <Matt.Challenger@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>
Cc: Grey, Amanda <Amanda.Grey@worksafe.act.gov.au>
Subject: WorkSafe ACT Staffing Matters

OFFICIAL: Sensitive - Personal Privacy

Good morning Matt and Alex

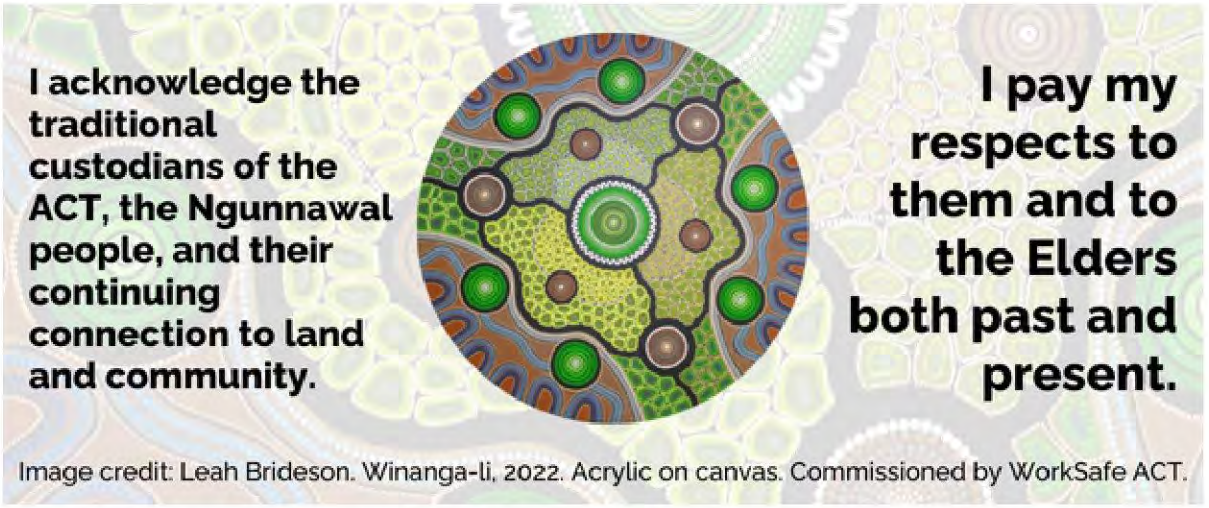
Thank you for your time yesterday to discuss the several staffing issues across WorkSafe ACT.

I have discussed the concerns you raised yesterday with the acting Work Health and Safety Commissioner, Ms Amanda Grey, and we have agreed not to proceed with the external provider. We will conduct the Preliminary Assessments internally within WorkSafe ACT, however will identify a referral delegate from another Directorate within the ACTPS. There are too many conflictions present to nominate an internal delegate, particularly given one of the complaints relates to the WHS Commissioner. In this instance, a nominated WorkSafe reviewer will conduct the PA and prepare a report for the referral delegate.

Happy for the decision to conduct an internal PA to be communicated with Mr Smyth from CPSU.

Warm regards,

Penny Parker | Assistant Director - HR and Corporate
P: 02 6207 9819| E: penelope.parker@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



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Information Brief

WorkSafe ACT culture

Minister with responsibility for	Minister for Skills, Training and Industrial Relations
Matter Type	Key 'hot topic' issue
Action Required by	n/a
Recommendation/s	That you: • **note** your predecessor's commitment to update the ACT Legislative Assembly on actions taken in response to matters reported in the media alleging poor workplace culture at WorkSafe ACT • **note** the ACT Work Health and Safety Council considered the matter and did not go as far as recommending an independent review, but rather encouraged consideration of action to *maintain community and staff confidence* in the reputation of the regulator and *noted* the form of action would be for you, the responsible Minister to determine, and • **note** that your views will be sought to determine next steps in response.
Background	• Media reports were made around July 2024 alleging poor workplace culture at WorkSafe ACT, the ACT's work safety regulator.[1] • The Office of the Work Health and Safety Commissioner was established in 2020 as an independent authority in response to recommendations of a *2018 independent review of the ACT's work safety compliance infrastructure, policies and procedures*. • The Minister is only able to give directions of a general nature, specifically, the Minister is not able to give directions in

[1] Wall of silence from ACT Government, WorkSafe on toxic culture claims | Riotact (the-riotact.com); Former employee takes WorkSafe ACT to court alleging he was sacked after complaining about regulator's own workplace culture - ABC News; Former staff allege WorkSafe purged experienced investigators, targeting 'toxic male culture' | Riotact (the-riotact.com)

		relation to a particular investigation or particular regulatory action.
Key Stakeholders		• WorkSafe ACT, the Work Health and Safety Commissioner and WorkSafe ACT staff • Community and Public Service Union (CPSU) • Work Safety Group, Office of Industrial Relations and Workforce Strategy • ACT Work Health and Safety Council
Decision	☐ Noted ☐ Agreed ☐ Agreed (further information required) ☐ Not Agreed/Please discuss	☐ Responsible Minister to attend (further information required) ☐ Defer to Directorate

Minister's signature:_____Date:___/___/___

Advisory text:

- Legislating the independence of the ACT work safety regulator was a design decision responsive to calls on the government to insulate the work safety regulator from the potential influence of government agencies and officials that it regulates.
- A safeguard to balance independence from influence by other government agencies, was provided via tasking the ACT's tripartite WHS Council with monitoring and advising the Minister about the performance of WorkSafe and the WHS Commissioner.
- Membership of the WHS Council comprises appointed employee and employer representatives, as well as ex-officio representatives from government and the WHS Commissioner.

OFFICIAL SENSITIVE

ACT Government

MINISTERIAL BRIEF

Chief Minister, Treasury and Economic Development Directorate

To:	Minister for Skills, Training and Industrial Relations	**Tracking No.: CMTEDD2024/5152**
Date:	18/12/2024	
From:	Executive Group Manager, Work Safety Group	
Subject:	Response to WorkSafe ACT culture concerns	
Critical Date:	10/01/2025	
Critical Reason:	For information in response to concerns raised by the Work Safety Council	

Recommendations

That you:

1. **note** WorkSafe ACT's participation in the whole of government psychosocial safety climate survey (PSC-12) to identify robust predictors of psychosocial safety in workplaces; and

Noted / Please Discuss

2. **note** the planned activities in 2025 for continued understanding, identification and action to mitigate any potential psychosocial risk factors in WorkSafe ACT, including ongoing support and accountability for 12 months following the survey.

Noted / Please Discuss

Michael Pettersson MLA 8/1/25

Minister's Office Feedback

Background

1. In mid-2024, local media reported current and past allegations raised by the CPSU and former and current WorkSafe ACT employees of bullying, inadequate training and support, and a negative workplace culture under the leadership of the Work Health and Safety Commissioner.

Issues

Work Health and Safety Council response

2. In response to a letter from your predecessor to the Work Health and Safety Council requesting the Council to consider and provide advice in relation to this matter, the Council considered the issues raised at meeting 19 held on 22 August 2024.

3. The Council wrote providing its advice to your predecessor on 12 September 2024, with the consideration of this advice now resting with you as Minister for Skills, Training and Industrial Relations.

4. In considering the matter, the Council was generally uneasy about inquiring into matters thought to be the role of an independent reviewer and did not consider themselves equipped with the necessary information to determine the veracity of any claims about a possible poor workplace culture at WorkSafe ACT.

5. As such, the form of any response was left to you as Minister to decide.

6. Aware of the claims being made however, the Council did consider that a transparent response was required both to preserve the regulator's reputation and maintain community and staff confidence.

7. Since then, the Work Health and Safety (WHS) Commissioner has agreed for WorkSafe ACT to participate in the ACT public sector (ACTPS) psychosocial safety climate survey. An approach that is particularly recognised for organisations looking to actively identify and improve known predictors of psychosocial safety associated with workplace climate, leadership and worker participation in matters about their safety.

Psychosocial Safety Climate Survey and participation

8. In late 2024, Work Safety Group conducted a validated whole of government survey (the Psychosocial Safety Climate survey or PSC-12) to measure lead indicator factors that robustly predict psychosocial safety across ACTPS workplaces.

9. This activity is part of a suite of work being led to support the Head of Service and Directors General to meet their due diligence obligations by providing them with data to assist them to understand their psychosocial risk profile, to inform preventative programs and activities, and to upskill the understanding of psychosocial safety more generally across the Service.

10. Work Safety Group invited the WHS Commissioner to agree to a WorkSafe ACT agency level analysis and reporting which would provide an opportunity to receive a WorkSafe ACT specific report that identifies the psychosocial safety climate of the agency.

11. The Commissioner agreed to this arrangement and actively promoted and encouraged staff to participate.

Continued improvement, planning and action

12. The survey results are currently being analysed by the Centre for Workplace Excellence at the University of South Australia (UniSA), who led the administration of the PSC-12 to the ACTPS. Preliminary findings are expected in late January 2025.

13. In February 2025, the WHS Commissioner and Deputy Commissioner of WorkSafe ACT will be invited along with Directors General and Deputy Directors General to attend a face-to-face briefing with experts from UniSA to be provided with their survey results, understand what these mean for their directorate and leadership, and consider what is required to improve psychosocial safety climate in their workplaces.

14. Following this, in March 2025, senior executives from WorkSafe ACT will also participate in workshops with UniSA to develop a tailored action plan that clearly articulates material and achievable actions to improve psychosocial safety climate, in consultation with their workers. Workshops will be facilitated to support peer learning, shared opportunities to address actions together, and continue to improve capability in leading psychosocial risk management.

15. Ongoing accountability, learning and capability building for executives will be supported by 12 months of monthly Community of Practice meetings led by UniSA, to continue to monitor progress, troubleshoot difficulties, and determine solutions for continuing to identify opportunities to enhance psychosocial safety climate.

16. This process broadly follows the structure of a successful program piloted by Comcare in 2019-2020, with 88% of participating groups significantly improving the psychosocial safety climate of their workgroup by the end of the trial and 90% of leaders identifying that their understanding of psychosocial safety had improved.

Financial Implications

17. Delivery of the PSC-12 survey, workshops and the monthly Community of Practice is funded by Work Safety Group, OIRWS.

Consultation

Internal

18. Consultation occurred within Work Safety Group and across the Office of Industrial Relations and Workforce Strategy to understand the approach being taken and any interactions or distinctions between other pieces of work underway.

Cross Directorate

19. Consultation on the PSC-12 approach was undertaken with a range of directorate representatives such as the WHS Leads, the Chief Operations Officer Group, and Strategic Board.

External

20. Unions were advised by Work Safety Group of the proposed PSC-12 approach, including being informed once the survey went live, and encouraged to support member participation in the activity.

Work Health and Safety

21. The PSC-12 activity is designed to support Directors General and equivalent senior executive, such as the WHS Commissioner with information and understanding to support them to meet their due diligence obligations.

Benefits/Sensitivities

22. The PSC-12 process provides an opportunity for the first lead indicator (predictive) assessment of known psychosocial safety outcomes in workplaces, to inform Directors General and equivalent executive of psychosocial safety risks in their workforce.

Communications, media and engagement implications

23. WorkSafe ACT will be supported by Work Safety Group to participate in the results briefing, workshop and community of practice to ensure results are well understood, a plan to address areas of concern is in place, and ongoing monitoring and accountability of results occurs. This approach will position WorkSafe ACT to respond and address any potential media interest, should this eventuate.

Signatory Name:	Michael Young	Phone:	6205 3095
Action Officer:	Rebecca Parton	Phone:	6205 9482

ACT Government

QUESTION TIME BRIEF

CM25/11943

6

Portfolio/s: Workplace Safety & Industrial Relations

Workplace Culture at WorkSafe ACT

Talking points:

- I am aware of media reports relating to WorkSafe ACT's workplace culture that were made around July 2024.
- I am also aware of my predecesssor's undertaking to update this Assembly on actions taken in relation to this matter.
- I am not yet able to provide a detailed update to the Assembly.
- I do note that the tripartite ACT Work Health and Safety Council considered the matter at its 22 August 2024 meeting and provided my predecessor with their advice.
- I am currently giving careful consideration to that advice.
- I am able to say that the advice of the WHS Council did not go so far as to make any recommendations, however did urge action to ensure the maintenance of community and staff confidence in the work safety regulator.

Background Information:

- The Office of the Work Health and Safety Commissioner was established in 2020 as an independent authority in response to recommendations of a 2018 independent review of the ACT's work safety compliance infrastructure, policies and procedures.
- Securing the independence of the ACT work safety regulator was a design objective of the reforms and responsive to calls on the government to insulate the work safety regulator from the potential influence of government agencies and officials that it regulates.
- A safeguard to balance independence from influence by other government agencies, was to task the ACT's tripartite WHS Council with monitoring and advising the Minister about the performance of WorkSafe and the WHS Commissioner.
- Amongst other matters, advisory functions held by the WHS Council under schedule 2, section 2.2 of the *Work Health and Safety Act 2011* include:

Cleared as complete and accurate:	25/02/2025	
Cleared for public release by:	Executive Group Manager	Ext: 75001
Contact Officer name:	Michael Young	Ext: 53095
Lead Directorate	Chief Minister, Treasury and Economic Development	
Trim Ref:	CM25/11943	

  - advising about matters including, but not limited, to the performance of the office of the WHS commissioner and the WHS commissioner; and
  - on any matters arising from the Council's review and consideration of WorkSafe ACT's annual report published each year.

- The WHS Council is an advisory body and not a governance board.
- Membership of the WHS Council comprises appointed employee and employer representatives, as well as ex-officio representatives from government and the WHS Commissioner.
- Communiques from meetings of the Council are released and published on the CMTEDD webpage.

Compliance and enforcement activities – **independence from directions**

- The WHS Commissioner as the regulator must act independently in carrying out functions under the WHS Act and the Minister is only able to give directions of a general nature. Specifically, the Minister is not able to give directions in relation to a particular investigation or particular regulatory action.
- Regulatory action of WorkSafe ACT is guided by its published Compliance and Enforcement Policy which is available on the ACT Legislation Register.
- WorkSafe ACT employees are ACT Public Sector employees and have access to a range of whole of government tools and resources to support their health and safety at work.

QUESTION TIME BRIEF

Portfolio/s: Workplace Safety & Industrial Relations

ISSUE: Workplace Culture at WorkSafe ACT

Talking points:

- I am aware of recent media reports relating to WorkSafe ACT's workplace culture.
- The Office of the Work Health and Safety Commissioner was established in 2020 as an independent authority in response to recommendations of a *2018 independent review of the ACT's work safety compliance infrastructure, policies and procedures*.
- Securing the independence of the ACT work safety regulator was a design objective of the reforms and responsive to calls on the government to insulate the work safety regulator from the potential influence of government agencies and officials that it regulates.
- A safeguard to balance independence from influence by other government agencies, was to task the ACT's tripartite WHS Council with monitoring and advising the Minister about the performance of WorkSafe and the WHS Commissioner.
- The Council convenes quarterly and reviews performance reports from the regulator.
- WorkSafe ACT employees are ACT Public Sector employees and have access to a range of whole of government tools and resources to support their health and safety at work, including:
    - access to mechanisms available under the *Public Sector Management Act*; and
    - their enterprise agreement to address workplace relations issues and grievances that they may have.

Cleared as complete and accurate:	~~22/08/2024~~30/08/2024	
Cleared for public release by:	Deputy Director-General	Ext: 75001
Contact Officer name:	Michael Young	Ext: 53095
Lead Directorate:	Chief Minister, Treasury and Economic Development	
Trim Ref:	CM24/98242	

QUESTION TIME BRIEF

Background Information:

- Advisory functions held by the WHS Council under schedule 2, section 2.2 of the *Work Health and Safety Act 2011* are:
    - advising the Minister on WHS, workers' compensation and bullying and harassment matters (schedule 2, section 2.2 (1)(a) of the WHS Act):
        - including, but not limited, to the performance of the office of the WHS commissioner and the WHS commissioner (schedule 2, section 2.2 (2)(aa) of the WHS Act);
    - inquiring and reporting to the Minister on matters referred to the Council in relation to WHS, workers' compensation and bullying and harassment matters (schedule 2, section 2.2 (1)(b) of the WHS Act); and
    - advising the Minister and the WHS commissioner on any matters arising from the Council's review and consideration of WorkSafe ACT's annual report published each year (schedule 2, section 2.2 (1)(c) of the WHS Act).
- The WHS Council is an advisory body and not a governance board.
- Membership of the WHS Council comprises appointed employee and employer representatives, as well as ex-officio representatives from government and the WHS Commissioner.
    - representative members on the Council comprise a broad membership from unions and industry peak officials, including CFMEU, UnionsACT, CPSU, Master Builders Association, YMCA Canberra, and Canberra Business Chamber.
- Communique's from meetings of the Council are released and published on the CMTEDD webpage.

WHS Commissioner appointment

- The Work Health and Safety Commissioner is appointed by the Executive (2 or more Ministers) after consultation with the chair and deputy chair of the WHS Council and an open and accountable selection process.
- The selection process leading to the appointment in April 2020 of the current WHS Commissioner, Jacqueline Agius followed the process as required by statute.
- The elected Chair and Deputy Chair of the WHS Council at the time were consulted in relation to the selection process. The selection panel comprised tripartite representation of employer, employee representatives from the WHS Council and an independent panel member.

Compliance and enforcement activities – **independence from directions**

- The WHS Commissioner as the regulator must act independently in carrying out functions under the WHS Act and the Minister is only able to give directions of a

Cleared as complete and accurate:	~~22/08/2024~~30/08/2024	
Cleared for public release by:	Deputy Director-General	Ext: 75001
Contact Officer name:	Michael Young	Ext: 53095
Lead Directorate:	Chief Minister, Treasury and Economic Development	
Trim Ref:	CM24/98242	

general nature. Specifically, the Minister is not able to give directions in relation to a particular investigation or particular regulatory action.

- Regulatory action of WorkSafe ACT is guided ~~carried o~~by its ~~ut in a manner that is co~~published ~~nsistent with the articulated and transparent approach in WorkSafe ACT's~~ Compliance and Enforcement Policy which is available on the ACT Legislation Register ~~and published on~~ .

Compliance and enforcement activities – **construction industry**

- The construction industry is ~~consistently year on year~~ consistently one of the two ~~one of the~~ highest risk industries in the ACT.

  ~~Poor work safety practices in the construction industry are evidenced in workers' compensation data with the industry having one of the highest representation in accepted lost-time injury workers' compensation claims (between 300 and 370 annually) compared to other ACT industries.~~

- The construction industry is also nationally recognised as a priority industry – with the ~~, if you refer to the~~ current nationally endorsed Australian Work Health and Safety Strategy identifying it as ~~t continues to be~~ a high priority industry where workers face the higher rates of harm.

- This is why in setting broad and general Ministerial Expectations for WorkSafe ACT annually, the construction industry continues to be identified as a priority area for the regulator in the ACT. ——

Cleared as complete and accurate:	~~22/08/2024~~30/08/2024	
Cleared for public release by:	Deputy Director-General	Ext: 75001
Contact Officer name:	Michael Young	Ext: 53095
Lead Directorate:	Chief Minister, Treasury and Economic Development	
Trim Ref:	CM24/98242	

From: Michael Hiscox
To: Lukins, Ellen
Cc: ACTWorkHealthandSafetyCouncil.Secretariat
Subject: RE: Letter to the Chair of the Work Health and Safety Council
Date: Wednesday, 14 August 2024 7:36:11 AM
Attachments: image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
image009.png
image010.png
Letter from Chair to Minister Gentleman - Worksafe review (004).pdf

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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.

Thanks, Ellen.

Signed letter attached. I left a message for Greg Harford at his office yesterday morning but haven't heard back yet. If I don't hear from him by today it might be best if secretariat reaches out to him.

Thanks, Michael

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Assistant Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)

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: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, August 13, 2024 11:55 AM
To: Michael Hisco Sch 2.2(a)(ii)
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Hi Michael

I'm comfortable the edits are consistent subject to a small tweak to remove 'typically' in relation to the advisory function of the Council (as attached).

Functions to be able to 'inquire and report' to the Minister on matters referred to it are also considered to be advisory in nature, ie the Council is not a decision-making body like a typical governing board.

Let me know if you'd like to discuss.

Cheers,
EL

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

From: Michael Hiscox Sch 2.2(a)(ii)
Sent: Tuesday, August 13, 2024 10:33 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

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I've made a small edit. Is this consistent with the Council's powers under the Act?

Thanks, Michael

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Assistant Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)



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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, August 12, 2024 4:31 PM
To: Michael Hiscox Sch 2.2(a)(ii)
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Thanks Michael, amended and attached for your signature.

Cheers,
Ellen

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Michael Hiscox Sch 2.2(a)(ii)
Sent: Monday, August 12, 2024 4:27 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

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Thanks, Ellen.

I think that letter looks good. One suggested edit for para 4 – I think it may be better to remove language reflecting on the nature of the Council. We have the role of providing advice but we also have the role to inquire, which some might describe as an investigation.

Our powers of inquiry though are limited and we do not have the ability to direct the Commissioner. I think clarifying that point will be useful for both the Minister and the Council more generally.

I'll give Greg a call tomorrow.

Thanks, Michael

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Acting Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)



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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, August 12, 2024 3:57 PM
To: Michael Hisco Sch 2.2(a)(ii)
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Hi Michael

I have attached Greg's business details below for you:

Sch 2.2(a)(ii)

Also, a revised reply letter to the Minister is attached for your consideration/signature as requested – it essentially now acknowledges receipt of the letter and that Council will discuss at the 22 Aug meeting.

It maintains the note out of caution regarding the functions of the Council and items that were suggestive of a broader Council view have been removed as these have not yet had the benefit of Council consideration/endorsement.

If you are comfortable with the draft letter please return signed and the Secretariat can send to the Minister.

Happy to discuss

Kind regards,
Ellen

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

From: Michael Hisco Sch 2.2(a)(ii)
Sent: Monday, August 12, 2024 11:48 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

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Ok that sounds like a good approach.

Do you have a contact number for Greg?

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Acting Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)

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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Friday, August 9, 2024 12:53 PM
To: Michael Hiscox Sch 2.2(a)(ii)
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Hi Michael

Appreciate your quick consideration of the proposed approach discussed.

Yes, that summary is an accurate one, noting that a subsequent meeting would only be necessary were Council members did wish to put issues on the table at the meeting. We'll amend the reply letter and provide for review as requested.

Re the paper the Secretariat will prepare:

- happy to prepare as you've set out, noting any summary will be general and high level given the contents of various media has been highly speculative/not-substantiated, I'd like to include the Council functions in this Aug meeting paper to assist in scope of any discussions at that meeting and as part of this note that matters for discussion would be general (given the functions of the Council) and not specific to individual matters or matters currently before the court
- as issues raised by Council would be discussed at the meeting these would be reflected in the minutes rather than the paper circulated prior.

I would propose the paper be marked expressly as confidential so that it is limited to Members and may not be passed to any other person or organisation per the Operational Guidelines for the Council. As such, we would distribute separately to the usual combined papers so it will not be received by acting Members. This will also facilitate a clear discussion at the meeting before this item is discussed to deal with any actual or potential conflicts.

In terms of the conflict question, this involves a direct or indirect material interest being:

material interest—a council member has a ***material interest*** in an issue if the member has—

(a) a direct or indirect financial interest in the issue; or

(b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.

If a material interest is raised, the legislative provisions are activated and remaining voting members must consider and vote (majority of votes required for a decision) on whether the member who raised the interest can remain. If members don't consider it to be a material interest the legislative provisions around voting do not activate.

Members are there being appointed in a personal capacity representing the interests of employers or employees as the case may be. Given this they are not directly representing their organisation.

I would propose though re procedure at the meeting that Maddy (as member) be asked to disclose any (direct or indirect/actual or perceived) interest (given the CPSU references) and that members actively consider materiality/and decide whether it is considered material and/or presence for all/part (eg the discussion but not voting) of the item for probity/governance reasons.

For awareness, I would suggest letting the Deputy Chair (Greg Harford) ahead of the papers being circulated. Noting such conversations, including the contact with Maddy, should make note that confidentiality will be attached to the agenda item restricting it to members only, so should not be publicly discussed or shared further within their organisation.

We will separately discuss with the Commissioner the proposed approach for the meeting ahead of any papers being circulated.

Hope that assists with the questions you had and happy to discuss further if needed.

Kind regards,
Ellen

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) Ellen.Lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Michael Misc Sch 2.2(a)(ii)
Sent: Friday, August 9, 2024 11:08 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

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Hi Ellen, Michael

Thanks for the phone call the other day regarding the best path forward with regard to the Minister's request.

I have considered the advice from the secretariat. I agree with the approach that the secretariat recommended and see it as the most prudent way to ensure the Council can properly consider the matter and provide sound advice to the Minister.

My understanding of this approach is that:

- At the next meeting the Council will consider the issues raised in the Ministers' letter and give Council members the opportunity to raise issues themselves.
- At the following meeting, the Commissioner will have the opportunity to respond to issues raised, outline steps taken to address the issues and outline any additional actions the Commissioner is intending to take.

Is this an accurate summary? If so can you please amend the correspondence I provided to reflect the above approach and send to the Minister's office.

As discussed, I think a brief paper will assist the Council in considering the issues. This should summarise the available media reporting, issues raised by Council members, and the Council's powers/functions under the Act. It might be that the parts of the paper relating to our powers/functions can be left to a subsequent meeting as presumably this would be where a decision would be made regarding whether an independent review should occur.

I would appreciate some advice from secretariat on who should remain in the meeting for consideration of this matter. Presumably the Commissioner should be absent for at least some parts but there may also be other conflicts.

I agree with your suggestion that we should let the Commissioner know this is the approach we are recommending to the Minister. Given the CPSU are mentioned by name, I

will also contact Maddy Northam and advise her this is the approach I am recommending. Please let me know if you think any other Council members should be notified prior to the papers being circulated.

Let me know if you would like to discuss further.

Thanks, Michael

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Acting Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)



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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, August 6, 2024 2:36 PM
To: Michael Hisco Sch 2.2(a)(ii)
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Hi Michael

Around 4 works – probably call my mobil Sch 2.2(a)(ii) would be best and can pop on speaker as I'll bring Michael Young along.

Talk then,

Ellen

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Michael Hiscox Sch 2.2(a)(ii)
Sent: Tuesday, August 6, 2024 2:32 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: Re: Letter to the Chair of the Work Health and Safety Council

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Ive got a Telehealth appointment at 3 which I assume they wont be on time for. Im catching a flight around 4:30 but if I give you a call at 4 or so would that work?

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Assistant Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)



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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, August 6, 2024 2:10:05 PM
To: Michael Hiscox Sch 2.2(a)(ii)

Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Hi Michael

Thanks for reaching out on this, since our Chair's pre-briefing with yourself we have had the opportunity to consider – would it be possible to catch up this afternoon and discuss some more – anytime after 3pm is fine for me if you have a preferred time?

Thank you,
Ellen

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHI Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Michael Hiscox Sch 2.2(a)(ii)
Sent: Tuesday, August 6, 2024 1:24 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: RE: Letter to the Chair of the Work Health and Safety Council

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Hi Ellen

I'm intending to write back to the Minister regarding this request. I'm seeking to get some clarification so as to allow the Council to consider the matter properly.

Can someone from Secretariat review and identify if there are any significant concerns with this correspondence?

Also, I appreciate that some of these issues might put yourself or other WSG employees in an awkward position given you might also have to provide advice to the Minister on how these arrangements work. If you have any concerns about perceptions of conflicts of interest please let me know and I'm happy to correspond with the Minister's office directly rather than seeking advice from WSG.

I'd like to send back later today if possible. Feel free to give me a call if you would prefer to discuss over the phone.

Thanks, Michael

CFMEU
Construction & General Division
ACT Branch

Michael Hiscox
ACT Acting Secretary

7-10/8 Cape Street
Dickson ACT 2602
Sch 2.2(a)(ii)

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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, August 1, 2024 3:08 PM
To: Michael Hiscox Sch 2.2(a)(ii)
Cc: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: Fw: Letter to the Chair of the Work Health and Safety Council

OFFICIAL

Hi Michael

As discussed at today's meeting - the Secretariat has received this corro (yet to be updated on the draft agenda noting correspondence only received this morning).

We ask that you please treat with sensitivity noting we are still seeking more context at the directorate level and can provide some guidance re functions of the Council in response.

Thank you,
Ellen

Ellen Lukins

Executive Branch Manager | Policy Branch

& WHS Council/LHL Advisory Committee Secretariat

02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au

Work Safety Group | Office of Industrial Relations and Workforce Strategy

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Winn, Sinead <Sinead.Winn@act.gov.au>
Sent: Thursday, August 1, 2024 8:50 AM
To: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: Letter to the Chair of the Work Health and Safety Council

Dear Secretariat

Please find attached correspondence from Minister Gentleman for the consideration of the Chair.

Warm regards

Sinead Winn (she/her)

Adviser – Industrial Relations and Workplace Safety

Office of Minister Mick Gentleman MLA | Member for Brindabella

Minister for Police and Crime Prevention | Minister for Fire and Emergency Services

Minister for Multicultural Affairs | Minister for Industrial Relations and Workplace Safety Minister for Business | Manager for Government Business

E: sinead.winn@act.gov.au | M Sch 2.2(a)(ii)

ACT Legislative Assembly, 196 London Circuit, Canberra ACT 2601

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Michael Pettersson MLA
Minister for Business, Arts and Creative Industries
Minister for Children, Youth and Families
Minister for Multicultural Affairs
Minister for Skills, Training and Industrial Relations
Member for Yerrabi

Jacqueline Agius
Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
By email: Jaqueline.agius@act.gov.au

Our ref: CMTEDD2025/4290

October 2025

Dear Ms Agius

Thank you for your email of 30 September 2025 advising of your updated interests declaration.

I note that the declaration is being made within section 2.25 of schedule 2 of the *Work Health and Safety Act 2011* (WHS Act) and the obligations applying to your statutory office role as the appointed Work Health and Safety Commissioner.

I have reviewed the information you have provided me. Based on your role as the independent work safety regulator for the ACT and the nature of the interest disclosed, I consider that it may give rise to a perceived conflict of interest in certain instances.

The nature of this conflict being in relation to regulatory activities and functions performed by you that may be perceived to influence compliance and enforcement outcomes and decisions of the regulator, specifically within the construction industry and any direct regulatory activities involving your husband's workplace. In particular, while I am aware that inspectors do undertake regulatory activities independently, as the WHS Commissioner and regulator you maintain the legislated power to direct your staff (including inspectors) under section 162 and section 2.34, schedule 2 of the Act.

Given this, I look forward to receiving your advice about appropriate and transparent strategies that will be implemented to ensure any perceived conflict is adequately managed.

I note your ongoing obligations to declare interests annually (or earlier if there is a change) to the Executive (as appointer) under the WHS Act, including reviewing any disclosed conflicts and thank you for your commitment in this regard.

Yours sincerely

Michael Pettersson MLA
Minister for Skills, Training and Industrial Relations

ACT Legislative Assembly
London Circuit, GPO Box 1020,
Canberra ACT 2601

+61 2 6205 1436
pettersson@act.gov.au

michael_pettersson
petterssonmla

Michael Pettersson MLA
Minister for Business, Arts and Creative Industries
Minister for Children, Youth and Families
Minister for Multicultural Affairs
Minister for Skills, Training and Industrial Relations
Member for Yerrabi

Jacqueline Agius
Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
By email: Jaqueline.agius@act.gov.au

Our ref: CMTEDD2025/4290

24October 2025

Dear ~~Ms Agius~~ Jacquie,

Thank you for your email of 30 September 2025 advising of your updated interests declaration.

I note that the declaration is being made within section 2.25 of schedule 2 of the *Work Health and Safety Act 2011* (WHS Act) and the obligations applying to your statutory office role as the appointed Work Health and Safety Commissioner.

I have reviewed the information you have provided me. Based on your role as the independent work safety regulator for the ACT and the nature of the interest disclosed, I consider that it may give rise to a perceived conflict of interest in certain instances.

The nature of this conflict being in relation to regulatory activities and functions performed by you that may be perceived to influence compliance and enforcement outcomes and decisions of the regulator, specifically within the construction industry and any direct regulatory activities involving your husband's workplace. In particular, while I am aware that inspectors do undertake regulatory activities independently, as the WHS Commissioner and regulator you maintain the legislated power to direct your staff (including inspectors) under section 162 and section 2.34, schedule 2 of the Act.

Given this, I look forward to receiving your advice about appropriate and transparent strategies that will be implemented to ensure any perceived conflict is adequately managed.

I note your ongoing obligations to declare interests annually (or earlier if there is a change) to the Executive (as appointer) under the WHS Act, including reviewing any disclosed conflicts and thank you for your commitment in this regard.

Yours sincerely

Michael Pettersson MLA
Minister for Skills, Training and Industrial Relations

ACT Legislative Assembly
London Circuit, GPO Box 1020,
Canberra ACT 2601

+61 2 6205 1436
pettersson@act.gov.au

michael_pettersson
petterssonmla

QTON No. 185

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2024-2025
Ms Nicole Lawder MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Miss Laura Nuttall MLA

ANSWER TO QUESTION TAKEN ON NOTICE
DURING PUBLIC HEARINGS

Asked by: Ms Nicole Lawder MLA

Addressed to: Minister for Industrial Relations and Workplace Safety

Redirected to: N/A

Reference: Uncorrected Hansard Transcript pp 24–25

In relation to: Preliminary assessments at WorkSafe ACT

Hearing Date: 2 August 2024

QTON lodgement date: 5 August 2024

Answer Due Date: 8 August 2024

THE CHAIR: The article seems to be based from former employees and the CPSU making a number of accusations about the organisation. One is the abuse of preliminary assessments to silence and hound problem staff out of the organisation. Could you tell the committee how many preliminary assessments have been initiated each year within WorkSafe since the organisation began?

Mrs Agius: I will need to take that on notice.

[...]

THE CHAIR: Of those, could you tell me, how many were substantiated and how many resulted in what types of the actions, you talk about written reprimand, transfer, financial penalty, how many of those may have resulted in any of those outcomes, and are you able to provide staff turnover rates?

Mrs Agius: Yes. I can tell you that now. Our retention rates are lower than the overall ACT government. Our retention rates are—I think it is 16.1.

Ms Grey: Yes.

Mrs Agius: Whereas the overall ACT government retention rates are at 18.

Mick Gentleman MLA: The answer to the Member's question is as follows:

Preliminary assessments conducted since WorkSafe ACT was established:

Year	Number of preliminary assessments
2020	7
2021	10
2022	8
2023	19
2024	5
Total	49

Reason for preliminary assessment	Number of preliminary assessments
Management initiated process	9
Complaint from staff about other staff	27
Complaint from an external stakeholder about staff behaviour	13
Total	49

Preliminary assessment outcomes:

Outcome of preliminary assessment	Number
No further action	18
Formal counselling	19
Referred to Professional Standards Unit	6
Dismissal	2
Unresolved (staff left ACTPS before finalisation)	3
Financial penalty	1
Total	49

Approved for circulation to the Select Committee on Estimates 2024-2025

Signature: Date: 9/8/2024

By the Minister for Industrial Relations and Workplace Safety, Mick Gentleman MLA

From: "CMCD DLO" <CMCDDLO@act.gov.au>
Sent: 09/08/2024 9:39 AM
To: "LA Committee - Estimates" <LACommitteeEstimates@parliament.act.gov.au>
Cc: "CMCD DLO" <CMCDDLO@act.gov.au>; "CMTEDD, Assembly Coordination" <AssemblyCoordination@act.gov.au>
Subject: Estimates QTON 186 ANSWER - CMTEDD - Preliminary assessment at Worksafe ACT - LAWDER
Attachments: Estimates QTON 186 ANSWER - CMTEDD - Preliminary assessment at Worksafe ACT - LAWDER.PDF
Importance: High

Good morning Secretary,

See attached a signed response to the below QTON:

- **Estimates QTON 186 ANSWER - CMTEDD - Preliminary assessment at WorkSafe ACT - LAWDER**

Kind regards,

Isabelle Howse | Directorate Liaison Officer | CMTEDD
Phone: Teams | Email cmcddlo@act.gov.au
Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra ACT 2601 | www.act.gov.au

Chief Minister
Minister for Climate Action
Minister for Industrial Relations and Workplace Safety
Minister for Community Services, Seniors and Veterans
Minister for Government Services and Regulatory Reform
Special Minister of State

From: "ACTWorkHealthandSafetyCouncil.Secretariat"
Sent: 26/07/2022 5:28 PM

Sch 2.2(a)(ii)

Cc: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: Confidential Final Report - WorkSafe ACT Prosecutions Review
Attachments: CONFIDENTIAL Final Report - Conduct of WHS Prosecutions in the ACT 30 June 2022.pdf

OFFICIAL

Dear all

Please see attached the report on the *WorkSafe ACT Prosecutions Review* undertaken by Marie Boland, for discussion at the WHS Council meeting on 17 August 2022. **This report is confidential and not for further distribution. Members are not to disclose the report to any other person or organisation.**

It is intended that Ms Boland will present the report to the WHS Council at the next meeting on 17 August 2022. Please note that the WHS Commissioner has indicated that she will not be present during the presentation.

A covering agenda paper is being prepared by WorkSafe ACT and will be circulated to WHS Council members on 10 August 2022 together with papers to be circulated for the next meeting.

Thank you

Regards

Andrew Hogan
(from the WHS Council Secretariat)
Email: ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au

Andrew Hogan | Senior Director, Workplace Safety and Industrial Relations
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Conduct of Work Health and Safety Prosecutions Review (WorkSafe ACT)

Commissioned by WorkSafe ACT
Independent review conducted by Marie Boland

Final Report

WORKSAFE ACT

June 2022

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Executive Summary

Over the last four months I have had the privilege of consulting with business organisations and associations, unions, community organisations, small business owners, legal practitioners, ACT government officers, and investigation managers and prosecutors from other work health and safety (WHS) jurisdictions about the current conduct of WHS prosecutions in the Australian Capital Territory (ACT).

I met with the ACT's WHS Commissioner, the Deputy WHS Commissioner, and WorkSafe ACT staff to hear about their practical experience of working within the current framework for progressing WHS prosecutions. I also met with the Supervising Lawyer (Work Safety) from the ACT's Office of the Director of Public Prosecutions (DPP) and the Solicitor-General for the ACT.

I benefited significantly from conversations with Ms Kay Catanzariti and I acknowledge her continued commitment to and advocacy for improving prosecution outcomes where breaches of WHS laws lead to the death of a worker.

I thank all the individuals and organisations for meeting with me and for sending me written comments and submissions. I particularly thank the staff at WorkSafe ACT who provided me with the support I needed to finalise and deliver this report to the WHS Commissioner for her consideration.

Over the years, WHS regulators, including WorkSafe ACT have been the subject of numerous reviews and recommendations. Most of these reviews have focussed on the relevant WHS regulator's internal inspection and investigation regimes. They have tended to stop at the door of the WHS regulator without moving outside to consider the role of external agencies which in many jurisdictions play a key role in ensuring successful WHS prosecution outcomes (for example Offices of the Director of Public Prosecutions or Crown /Government Solicitor's Offices).

This review takes that next step and focusses on the ACT's processes and procedures when external WHS prosecution advice is being sought and external decisions to prosecute are being made.

Consistent with the terms of reference for the review, I considered whether the ACT's prosecution decision making processes and procedures and the legislative and policy frameworks surrounding them support four key criteria:

- the object of the *Work Health and Safety Act 2011* (ACT) (WHS Act) to secure compliance through effective and appropriate compliance and enforcement measures
- the independence and accountability of the WHS Commissioner
- the principles underpinning WorkSafe ACT's *Compliance and Enforcement Policy 2020-2024* to ensure the highest standard of integrity (including consistency and transparency) in prosecutorial decision making
- the delivery of WorkSafe ACT's *Strategic Plan 2020-2024* to create an exemplary regulator and ensure firm and fair enforcement against non-compliance

It is clear to me from the feedback I received that **the conduct of WHS prosecutions in the ACT can be improved.** No one I consulted suggested the current framework is operating at optimum efficiency, effectiveness, transparency, or consistency.

The purpose of prosecution generally is to deter non-compliance with the laws and hold persons who breach those laws to account. Participants in this review considered neither purpose was

being met in the ACT in the context of WHS law. Fundamentally, **it is not clear to the community at large how and why WHS prosecution decisions are made.** This has led to anecdotal propositions which have become well established opinions that it is only where there has been a very serious incident resulting in a worker's death (and most likely in construction) that a WHS prosecution will be commenced in the Territory.

I am recommending the development of a publicly available WHS prosecution policy which states clearly how prosecution decisions are made and highlights the breaches expected to result in prosecution action. Importantly, any WHS prosecution policies should continue to comply with the Director of Public Prosecutions, *Prosecution Policy of the Australian Capital Territory*. I am also recommending prosecution priorities are included in WorkSafe ACT's legislatively required statement of operational intent. These recommendations are discussed in more detail at Part 1 of this report.

Many stakeholders asked for more open reporting of prosecutions and their outcomes. I am therefore recommending prosecution data is made available on WorkSafe ACT's website including prosecution and court summaries. A role for the WHS Council to monitor prosecution data, including success rates is also recommended. These recommendations are discussed in detail at Part 1 of this report.

I have also made recommendations about performance measures which are also discussed at Part 1 of this report.

It is essential the ACT community has confidence in the way WorkSafe ACT conducts its prosecutions. Where there are breaches of the WHS laws, everyone has the right to expect these breaches are dealt with by the WHS regulator in a timely manner (and well within the two-year statute of limitations). Everyone also has the right to expect the WHS regulator will make decisions to prosecute consistent with the object of the laws it is regulating, its publicly identified policies and strategic plans and in the public interest.

The ACT Government has invested heavily to fulfil its vision of creating an independent, agile, exemplary WHS regulator. The creation of the statutory role of the WHS Commissioner is central to achieving this vision. Critically, the ACT Government has also legislated to reinforce the independence and accountability of the WHS Commissioner for all decisions made to enforce the WHS Act.

I find **the WHS Commissioner's lack of control over the management of WHS prosecution decision making compromises the ACT Government's vision for an independent, agile, exemplary WHS regulator which will deliver better WHS outcomes for the Territory.** It limits the WHS Commissioner's ability to maintain the momentum on the cultural change currently underway at the WHS regulator and risks undermining the consequential objective of creating a more dynamic WHS culture across ACT workplaces

I also find **providing the WHS Commissioner with the authority to decide whether to prosecute for WHS law breaches and with the flexibility to choose where to seek prosecution advice is the final critical element required to deliver an independent, agile, exemplary WHS regulator.**

I am therefore recommending a new model for conducting WHS prosecutions in the ACT which provides the WHS Commissioner with that control and flexibility. It is discussed at Part 5 of this report.

There are other issues which affect WHS prosecution outcomes that were raised with me during consultations but lie outside the scope of this review. Many stakeholders are still concerned about the quality of investigations and the accountability of WorkSafe ACT within that context.

Others raised issues around the lack of a dedicated Industrial Magistrate within the ACT to hear WHS matters. Concerns were also raised about sentencing outcomes and the lack of national sentencing guidelines to promote consistency across the WHS jurisdictions and support deterrence.

The need to maintain harmonisation of WHS laws was also raised as an important issue for many participants. Whilst I consider that the current wording of the WHS Act facilitates the proposed new model for conducting WHS prosecutions, to avoid doubt, I am recommending that Part 13, Division 1 of the WHS Act (Legal Proceedings, General Matters) is amended to reflect the model WHS Act provisions. This recommendation is discussed in more detail at Part 5 of this report.

There is currently no consistency across jurisdictions in the operational frameworks used to manage WHS prosecutions. Some WHS regulators have in-house prosecutors, some refer matters to the relevant Director of Public Prosecutions or Crown Solicitor's Office, others seek external counsel assistance to undertake WHS trial advocacy.

However, across the country there are WHS prosecutors who are gaining extensive specialist WHS expertise either as in-house prosecutors within WHS regulators or within the Office of the WHS Prosecutor in Queensland. There is capacity to further develop what is an emerging community of practice which will assist in achieving consistent approaches to WHS prosecution decision making across the harmonised jurisdictions and elevate the prosecution of WHS law breaches as a significant area of legal practice into the future.

Finally, it is important to note this review's recommendations are proposed on the basis they will optimise WHS outcomes for the ACT's workers and employers and ensure the community has faith in its WHS regulator to make prosecution decisions efficiently, effectively, transparently, and consistently.

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Recommendations

Efficiency

Recommendation 1:
Implement an efficiency performance measure which requires briefs of evidence to be assessed within 120 days of referral.

Effectiveness

Recommendation 2:
Implement an effectiveness performance measure which requires 90% of prosecutions to result in a conviction with the conviction rate being the percentage of defendants convicted in prosecutions which proceeded to a decision or verdict.

Data collection and reporting

Recommendation 3:
Collect investigation and prosecution timeline data and provide regular reports to the WHS Council on the length of time taken from notification of an incident to filing of charges and on the outcomes of prosecutions.

Recommendation 4:
Publish detailed prosecution reports, court summaries and data on the WorkSafe ACT website like the reports and data currently provided by the Office of the WHS Prosecutor in Queensland.

Transparency and consistency

Recommendation 5:
Develop a prosecution policy which states clearly how prosecution decisions are made and highlights the breaches expected to result in prosecution action.

Recommendation 6:
Incorporate prosecution priorities into the statement of operational intent.

A new model for the ACT

Recommendation 7:
Establish an in-house prosecution team comprising one senior prosecutor, two junior prosecutors, a legal graduate, and a paralegal.

Recommendation 8:
Amend the *Law Officers (General) Legal Services Directions 2012* (ACT) to allow the WHS Commissioner to seek prosecution advice from external counsel without the need for approval from the Chief Solicitor of the ACT.

Recommendation 9:
Amend the *Law Officers (General) Legal Services Directions 2012* (ACT) to allow the WHS Commissioner to use external counsel to progress WHS prosecutions through the relevant courts.

Recommendation 10:
Amend the *Law Officers (General) Legal Services Directions 2012* (ACT) to allow the WHS Commissioner to establish an in-house prosecution team within WorkSafe ACT.

Recommendation 11:
Ensure that all Industrial Manslaughter offences are prosecuted by the DPP.

Recommendation 12:
Amend section 230 of the WHS Act to reflect the original wording of the model WHS Act.

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Introduction

I was engaged by the WHS Commissioner to review the legislative, policy and operational framework currently being used in the Australian Capital Territory to initiate, run, and manage work health and safety prosecutions (Review).

I was also asked to make recommendations about the preferred approach to conducting WHS prosecutions into the future and to identify any consequential legislative changes arising from those recommendations.

The Review had two stages.

During stage one, I considered the WHS laws, operational policies, procedures, and staffing structures supporting the conduct of WHS prosecutions in the Australian Capital Territory (ACT). I examined other jurisdictional models with a particular emphasis on Queensland, Western Australia, and Victoria. I considered previous reviews and commentaries on WorkSafe ACT's approach to compliance and enforcement of WHS laws and undertook preliminary consultations.

This work helped shape a Discussion Paper which was publicly released in May 2022 with a call for submissions on the issues raised and the questions asked within it.[1] The Discussion Paper provides important details about WHS prosecution models which support the analysis in this final report.

In the preliminary consultation I grouped the feedback from stakeholders into four key themes:

1. Independence and control
2. Consistency and efficiency
3. Skills and resourcing
4. The public interest

I found these themes remained dominant throughout the broader consultation process and I have retained them as headings in this report to present my summaries of stakeholder feedback.

Stage two of the Review involved the distribution of the Discussion Paper with an invitation to provide feedback to me on its contents. I also continued to meet with stakeholders including face to face meetings during a two-day visit to Canberra. For completeness, during stage two I examined the Comcare, New South Wales, South Australian, Northern Territory and Tasmanian approaches to managing WHS prosecutions.

In preparing this final report and framing recommendations I considered the feedback from all participants. In assessing the merits of any calls for change, I was guided by the Terms of Reference for the Review[2] and particularly whether proposals would:

- support the compliance and enforcement object of the WHS Act
- optimise the independence and accountability of the WHS Commissioner
- help deliver WorkSafe ACT's strategies of ensuring fair and firm enforcement against non-compliance with WHS laws
- create an exemplary regulator
- reinforce the principles of consistency and transparency upon which WorkSafe ACT's compliance and enforcement policy is built

[1] The Discussion Paper is available at https://www.worksafe.act.gov.au/initiatives/work-health-and-safety-prosecutions-review

[2] See Appendix A.

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1. Current Model[3]

There have been several independent reviews of WorkSafe ACT's compliance and enforcement activities, including the conduct of investigations, over the years[4].

The amendments to the WHS Act which created the independent statutory role of WHS Commissioner, and the most recent structural changes made to WorkSafe ACT are a result of recommendations made by the 2018 review of WHS compliance, infrastructure, policies, and procedures undertaken by the Nous Group[5] (the Nous Review).

The Nous Review reported in relation to WHS prosecutions:

> '*stakeholders expressed strong views that the limited resources available to WorkSafe ACT for investigations has in the past resulted in a failure to properly investigate serious incidents, a failure to prosecute matters and a failure to lay charges within the statutory time limits*'[6]. However, it also noted '*processes for conducting and documenting investigations have been significantly improved over the past 12 months.*[7]

Whilst it didn't specifically consider in detail the operational practice and processes used by WorkSafe ACT to refer briefs of evidence to the Office of the Director of Public Prosecutions (DPP) for a decision whether to prosecute matters, the Nous Review recommended WorkSafe ACT '*continue to improve procedures and expand investigative skills to support successful enforcement outcomes*[8].

1.1. Stakeholder responses

Significant concerns about the ACT's WHS prosecution record, consistent with those reported in the Nous Review, continue to be raised by all stakeholders who contributed to this Review.

Whilst there is recognition from all those consulted of the improvements that are demonstrably being made to the compliance and enforcement activities of WorkSafe ACT, there is still widespread unease about the low numbers of WHS prosecutions being conducted in the Territory.

There is a general view amongst many stakeholders it is in the public interest for the ACT to see more successful WHS prosecutions finalised through the courts. One stakeholder said:

> '*if there were more successful prosecutions, it would act as a powerful deterrent and is likely to make industry snap to attention*'.

Another stakeholder went so far as to say:

> '*there are no consequences for breaching WHS laws in the ACT*'.

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[3] Details of the current legislative, policy and operational framework which supports the conduct of work health and safety prosecutions in the ACT are provided in Part One of the Discussion Paper.
[4] See for example, '*Getting Home Safely*', *Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* 2012 and the most recent review undertaken by the Nous Group - *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018.
[5] Nous Group - *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018
[6] Nous Group - *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018 p 56.
[7] Nous Group - *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018 p 56.
[8] Nous Group - *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018 p 59.

A third suggested:

> *'the current narrative is that there will be no prosecutions unless something terrible happens'.*

Significant concerns were raised about the fact that past prosecutions in the ACT have largely been in the construction industry which represents a small portion of the ACT's workforce (4.9%)[9].

Many stakeholders considered WorkSafe ACT, and prosecutors should be focussing more attention on breaches of WHS laws in industries like health and education services and the public service. These are sectors where significant harm is reported and significant numbers of workers compensation claims arise from workplace risks such as sexual harassment, bullying and occupational violence.

Whilst recognising there are inefficiencies and issues with the existing ACT WHS prosecution system, some stakeholders questioned whether *'the concerns identified are systemic to the* [current] *framework or are more related to the actual implementation of the framework and associated policies.'*

The importance of completing successful prosecutions as both a punishment for past breaches and a deterrent against future breaches was emphasised by a WHS prosecutor who manages an in-house WHS prosecution team:

> *'a regulator has to do **enough*** [emphasis added] *prosecutions and they need to be managed efficiently, effectively and transparently'.*

1.1.1. Independence and control

Much work has been done and government investment made in the ACT over the past few years to establish an independent statutory office to regulate WHS more effectively. However, several stakeholders expressed a view that *'the ability of the WHS Commissioner to be independent is diminished by having an external prosecutor who makes the final decision on whether to prosecute'.*

The WHS Commissioner's perceived lack of independence is linked to further perception regulatory prosecutions are not a significant focus for the DPP.

This in turn is feeding a common view the current system of referring briefs of evidence to the DPP for a decision on whether to prosecute breaches of WHS laws doesn't work.

Several legal practitioners with experience of working in the ACT's WHS jurisdiction suggested regulatory prosecutions are not a central priority for the DPP and an alternative model should be implemented.

Many stakeholders want the WHS Commissioner to retain control of the management of WHS matters from the moment an incident is notified to the regulator through to the final decision to prosecute and on to the completion of the matter through the courts.

However, there are other stakeholders who, whilst understanding the WHS Commissioner's frustrations about not being able to manage WHS matters along the entire path from incident notification to prosecution outcome, consider segregation is needed between the WHS regulator and the prosecutor. One relevantly noted:

> *'Currently the Commissioner can make the decision to refer the matter to the DPP … that should be enough … otherwise conflicts of interest could undermine the process'.*

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[9] Master Builders, Australian Capital Territory, *Construction Data and Forecasts*, February 2022 accessed at https://mba.org.au/wp-content/uploads/2022/04/ACT_Building-Construction_March-2022.pdf

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Another submitted:

> *'a body responsible for regulatory oversight of an industry should not be directly involved in potential prosecutions. It is important that there is a degree of 'distance' between those undertaking investigations and interacting – sometimes frequently – with those who may be subject to prosecutions'.*

It is important to note the DPP's Supervising Lawyer (Work Safety) reinforced the DPP's support for the current model which is consistent with the ACT jurisdiction's broader approach to regulatory prosecutions.

I was also informed by the Supervising Lawyer (Work Safety) that since November 2019 the DPP has only refused to prosecute one matter which WorkSafe ACT wanted to prosecute and that was due to a DPP assessment there were insufficient prospects of conviction.

1.1.2. Consistency and efficiency

There is a shared view amongst stakeholders the current system of managing WHS prosecutions is leading to inconsistencies and inefficiencies with it being described as '*cumbersome, complex and overly bureaucratic*'.

I was informed the two-year statutory deadline for investigating and laying charges often runs right down to the final weeks and days before a decision to prosecute is made by the DPP.

A family advocate reinforced delays in prosecution decision making adds '*significant trauma to the victim's family*' with critical '*victim of crime counselling and support only provided when charges are filed*'. Others noted it also adds significant trauma to '*injured workers, the alleged offender and the workmates.*'

Time and again stakeholders emphasised those being investigated should not have to wait two years for a decision. A legal practitioner stressed filing charges '*two days before the two-year statute of limitations runs out is just not good enough … two years is too long – the deterrent effects are lost*'.

Linked to the general concerns about timelines are specific operational issues raised by WorkSafe ACT staff such as briefs of evidence being sent to the DPP but not being considered for several months. I was advised this often leads to '*very late requests for more work to be done on prosecution files (that is, close to the two-year deadline) and often it is too late to gather the evidence required*'.

The Supervising Lawyer (Work Safety) clarified delays:

> *'can be attributable to many factors including the timing of the receipt of the brief from Work Safe ACT to the DPP, requests by the DPP to WorkSafe to obtain further evidence which will inform the decision to institute a prosecution based on prospects of conviction and will inform the particulars of the charge (which cannot be amended past the statutory limitation period except in certain circumstances), the timing of the receipt of that further evidence from WorkSafe to the DPP, the DPP's current practice to draft the statement of facts and the particulars of the charge (as matters have previously failed when WorkSafe drafted the charges) and whether other matters have higher priority in terms of either an impending court deadline or in terms of the expiration of a statutory limitation period'.*

1.1.3. Skills and resourcing

There is a strong view particularly amongst stakeholders from WorkSafe ACT and other WHS regulators consulted that those prosecuting WHS matters should have significant WHS knowledge and experience.

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It was highlighted WHS is a '*niche area of the law*', '*DPP prosecutors are not safety specialists, and generally have a criminal law background*' and '*they do safety prosecutions so rarely* [in the ACT] *that they don't build up the experience and knowledge*'.

Some stakeholders advised '*we have found that the specific complexities of WHS law, for example chains of responsibility, are not well appreciated by staff, who largely specialise in Crimes Act proceedings and a number of important prosecutions have either been dropped or settled inappropriately as a result*'.

An alternative view was presented by some legal practitioners who consider prosecutors '*can learn WHS, whereas WHS legal practitioners cannot necessarily learn the trial (particularly advocacy) skills*.'

I was advised the DPP has access to over 40 prosecutors at various levels of experience, who while they may not know about WHS can support with legal issues. There is a dedicated Supervising Lawyer for Work Safety based with the DPP who liaises with WorkSafe Act on WHS prosecution matters.

Importantly I received considerable feedback that dedicated WHS prosecutors may not offer the 'silver bullet' required to address the low number of successful prosecutions in the ACT. As one stakeholder noted:

> '*I support dedicated WHS prosecutors, but it won't overcome a sloppy brief of evidence or necessarily address failures right along the chain*'.

1.1.4. The public interest

All stakeholders consulted agree it is important WHS prosecution decision making remains consistent with the *Office of the Director of Public Prosecutions Policy and Guidelines*. However, there was some discussion about whether there should also be specific public interest criteria in the context of WHS and if yes what the criteria should be.

One stakeholder emphasised:

> '*there must not be a difference between the public interest test for WHS offences and the public interest test for* [other] *criminal offences' … this would be contradictory to the ACT Human Rights framework and fundamental rights of ACT citizens … however this does not mean that the current system is perfect and achieving the balance of public interest*'.

A family advocate reinforced the '*interests of victims and families should be an important part of the public interest test*'.

Several stakeholders noted:

> 'it *may often be in the public interest to prosecute for lower order breaches such as not complying with a notice, not paying an infringement fine or for repeat offending*'.

There is significant stakeholder support for specific WHS public interest criteria to be considered when a decision is being made about whether to prosecute for a breach of WHS laws. There is also support for more prosecutions of bullying and sexual harassment matters where breaches of WHS laws can be proven.

The Supervising Lawyer (Work Safety) advised the DPP currently has the capacity to run these types of cases. I was also advised:

> '*the office has never refused to prosecute a WHS matter based on the public interest test as the public interest would ordinarily militate for the institution or the continuation of a prosecution. If a WHS matter is not proceeded with or is discontinued, it would ordinarily be on the basis of insufficient prospects of conviction*'.

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Several stakeholders submitted it is equally in the public interest that '*the regulator should be accountable for its decision making and communication about prosecution decision making should be transparent*'. In this context several contributors to the Review considered WorkSafe ACT should '*report as transparently as does the Office of the Work Health and Safety Prosecutor in Queensland*'.

1.2. Discussion and recommendations

In 2012, the '*Getting Home Safely' Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* (Getting Home Safely Inquiry) suggested:

> '*companies are operating in an environment where they can 'roll the dice', only paying the price, and that price is often a very low one if something goes wrong*'.[10]

Arguably, the dice is still worth rolling. There have been 15 prosecutions resulting in a conviction, order, or agreement in the ACT since the Getting Home Safely Inquiry with fines totalling $757,000.[11] Most of these prosecutions have been in the construction industry where there has been a fatality or very serious physical injury.

Currently, in the ACT, there is only a small chance of prosecution for non-compliance with WHS laws, particularly where breaches involve bullying, sexual harassment, occupational violence, and non-compliance with WorkSafe ACT notices. Indeed, previous reviews noted WorkSafe ACT inspectors themselves placed a lower priority on investigations of breaches where there is no fatality presuming they were unlikely to be prosecuted.[12]

The Getting Home Safely Inquiry emphasised:

> '*effective and credible regulation is a fundamental motivator of employer behaviour and therefore a vital element in any effective WHS jurisdiction*'[13].

Whilst acknowledging the important role of education and inspection, it places the third element of an effective regulatory regime - enforcement - on an equal footing, concluding:

> '*there must be a credible prospect that there can and will be consequences associated with non-compliance*'[14].

The considerations, conclusions, and recommendations of the Getting Home Safely Inquiry remain relevant today. They were reinforced throughout this Review with everyone consulted agreeing the WHS regulator should be using prosecution (where appropriate) as an enforcement tool to punish past breaches of WHS laws and to deter future breaches.

I found a strong and consistent perception that currently WHS breaches which should be prosecuted are not being prosecuted, that the conduct of prosecutions is inefficient and statutory time limits are running out before a decision has been made on whether to prosecute. These views are held even when stakeholders have little knowledge of how the current prosecution processes operate and how decisions to prosecute are currently made.

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[10] *Getting Home Safely', Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* 2012 p 8.
[11] Safe Work Australia, *Comparative Performance Monitoring Report*, 17th edition, October 2015, p 19 and Safe Work Australia, *Comparative Performance Monitoring Report 23/Work Health and Safety Compliance and Enforcement*, p 16.
[12] I note these assessments were presented before the Nous review recommendations were implemented and before the recent changes at WorkSafe ACT.
[13] *Getting Home Safely', Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* 2012 p 60.
[14] *Getting Home Safely', Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* 2012 p 61.

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I also found a perception certain matters are not referred to the DPP because there is a presumption the DPP would not have the appetite to progress them.

It is a concern many stakeholders consider the current system for conducting prosecutions doesn't allow WorkSafe ACT to meet one of the key objectives of the WHS Act;

> '*securing compliance with* [the Act] *through effective and appropriate compliance and enforcement measures*'[15].

I note in this context some stakeholders offered the view the primary role of the WHS regulator is education and engagement with stakeholders, and it is therefore appropriate to leave the prosecution decision making role to the DPP. However, the functions of the regulator provided by the WHS Act are not listed in priority order; they are equally important.

The ACT's *Compliance and Enforcement Policy 2020-2024* (CEP) identifies the compliance and enforcement tools WorkSafe ACT will use to ensure duty holders are meeting their legal obligations in the following table[16]:

Aim	Compliance and Enforcement Tool
Voluntary compliance	Guidance
Deterring non-compliance	***Remedial actions:*** Improvement notice Prohibition notice ***Punitive actions:*** Injunctions Infringement notice
Sanctions (penalising an offender)	Prosecution Revoking, cancelling, or suspending authorisations
	Accept an enforceable undertaking[17]

In the National Compliance and Enforcement Policy (NCEP), upon which the CEP is based, these tools are identified in an enforcement pyramid[18]. This pyramid approach to regulatory compliance is used by WHS regulators nationally and in other jurisdictions such as environment, business, and financial regulation: The narrative supporting the enforcement pyramid points out lower-level enforcement actions are applied more frequently than higher level actions such as criminal proceedings.

[15] Work Health and Safety Act 2011 (ACT) s3(1)(e)
[16] WorkSafe Act, *Compliance and Enforcement Policy 2020-2024* p 9.
[17] Enforceable undertakings are an alternative to legal proceedings in some cases. An EU is voluntary and is initiated by the PCBU. An EU cannot be accepted for Category 1 offences.
[18] Accessed at https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws/national-compliance-and-enforcement-policy

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Commissioner Kenneth Hayne in his final report on the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, wrote about the regulatory pyramid, highlighting it '*reflects two very practical observations: not all contraventions of law are of equal significance and regulators do not have unlimited time or resources*.'

He further highlighted:

> '*it is wholly consistent with the analyses that are expressed by the metaphor of the regulatory pyramid that serious breaches of the law … call for the highest level of regulatory response. And this is what has been missing*'[19].

Arguably what was missing in the banking and financial regulatory jurisdiction is also what is currently missing in the ACT WHS jurisdiction.

I was advised that in the past eight months, two charges have been laid and two prosecutions have been tried in the ACT. There are currently four briefs of evidence with the DPP waiting for a decision whether to prosecute. Two of these briefs of evidence were referred to the DPP on 28 September 2021, one on 19 November 2021, and one on 4 March 2022. To date a statement of facts has been drafted for one of the four briefs, with further work yet to commence on the other three briefs[20].

I was also advised that between January 2021 and May 2022 there were approximately ten duty holders who had been identified as repeat offenders, 30 duty holders who had notified WorkSafe ACT of a WHS incident resulting in a serious injury, death, or dangerous incident and 91 duty holders where there had not been a serious injury or death, but where a notifiable incident had occurred. If only 10% of these matters were investigated with a view to prosecution and a decision was made to prosecute that would lead to thirteen matters before the courts.

The Getting Home Safely Inquiry highlighted:

> '*the demonstration of strong enforcement action such as prosecution will be significantly blunted by lengthy delays in bringing matters to finality undermining the value of one of its strongest deterrents*'[21] .

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[19] Royal Commission, *Misconduct in the Banking, Superannuation and Financial Services Industry*, 2019
[20] This information is current as at 23 June 2022.
[21] *Getting Home Safely', Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* 2012, p 63.

I note WorkSafe ACT has acknowledged that in the past incomplete briefs of evidence were often referred to the DPP which contributed to delays in prosecution decision making with a flow on effect of requests for information from the DPP being made close to the two-year deadline.

The two-year legislative timeframe for bringing WHS prosecutions is reflective of the reality of the practical requirements to finalise investigations in a timely manner so they can be efficiently and effectively prosecuted. It is a recognition it is more and more difficult to successfully prosecute matters the longer the period that elapses from the date of the relevant incident. As one stakeholder observed:

> '*the longer the timeframe between the incident occurring and any prosecution being commenced, the poorer the outcomes for the victim(s), the defendant(s), and the general public*'.

Timeliness is also essential for deterrence/prevention purposes because prosecutions elevate workplace/industry wide issues which have caused serious injury or death or have the potential to cause serious injury or death and highlight reasonably practicable measures that should be addressed.

I note significant improvements have been made at WorkSafe ACT over the last twelve months to increase investigation quality and efficiency. These include:

- the implementation of new investigation governance processes to support transparency in decision making with an associated tracking and referral system to the DPP
- the establishment of a Case Management Panel to oversee the governance processes
- management of investigation processes and the tracking system by an experienced senior director
- early engagement with persons conducting a business or undertaking (PCBUs) advising them of investigation progress including a letter identifying the process from the WHS Commissioner
- early formal engagement of expert witnesses
- brief of evidence templates
- key performance indicators which require completion of briefs of evidence within a set timeframe
- early engagement with injured workers, families and loved ones by a Family Liaison Officer
- improvements in the use of technology, for example drones
- improvements in the proper collection, handling, seizure, logging, and storage of evidence
- capability training in forensic photography, elements of offences
- development of an offences' identification manuals
- referral of full briefs of evidence to the DPP (noting it was common practice in the past to send partial briefs).

Whilst the processes for training and management of investigators and their work lies outside the scope of this Review, it is relevant to highlight the performance measures used by the Office of the WHS Prosecutor in Queensland (OWHSP) and WorkSafe Victoria which include measures for receipt of prosecution advice and prosecution decisions. WorkSafe Victoria has a performance measure of 12 months from the date of the incident to the date charges are issued. The OWHSP requires briefs of evidence to be assessed within 120 days of referral with pre-brief advice provided within 30 days of a request.

Consistent with the terms of reference for this Review, I placed significant weight on how the current conduct of WHS prosecutions supports the independence and accountability of the WHS Commissioner. Much legislative, policy and operational work has been done over the last year to give effect to Recommendation 21 of the Nous Review:

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> *'Establish WorkSafe ACT as an entity under the WHS Act using a single accountability governance model in which a commissioner is appointed as the regulatory authority and is accountable for all regulatory decisions'*[22].

Many stakeholders hold a strong view the current model for conducting WHS prosecutions doesn't allow the Commissioner to discharge her duties according to the WHS Act as the person accountable for all regulatory decisions using a single accountability governance model. I found this view persuasive.

However, countering it were the concerns raised by others that the WHS Commissioner is also responsible for engaging with stakeholders and therefore shouldn't be the one to decide whether to prosecute them. However, this is the case with all WHS regulators. They all have an education role as well as an enforcement role and most WHS regulators are responsible for making the final decision about whether to prosecute.

Irrespective of what model is used, and who makes the final decision, I found there is strong support for dedicated WHS prosecutors in the ACT whose only work is prosecuting WHS matters with no requirement to balance them against other non-WHS priorities.

However, this support was often accompanied by some doubt there will be enough WHS breaches to warrant dedicated WHS prosecutors in the ACT. One stakeholder held '*concerns about the efficacy of having a standalone prosecution team within WorkSafe ACT who would have sporadic high and low peaks of workload*'. Another noted '*it's not that there are not enough breaches in the ACT – it's that there are not enough breaches being prosecuted*'.

In reinforcing breaches of laws must carry consequences, in the context of financial and banking regulation, Commissioner Hayne stated:

> *'Prosecution policies have always recognised that there may be good public reasons not to pursue a particular case. But the starting point for consideration is and must always be that the law is to be obeyed and enforced. The rule of law requires no less. And adequate deterrence of misconduct depends upon visible public denunciation and punishment'*[23].

The same point can be made about other regulatory frameworks including WHS. Central to Commissioner Hayne's statement is of course the application of prosecution policies which ensure prosecution decision making is transparent and consistent.

Most stakeholders involved in this Review had little or no knowledge about how the decision to prosecute is made in the ACT. WorkSafe ACT's CEP paraphrases and explains the provisions of the WHS Act as they relate to prosecutions but does not go into any detail about how these provisions are applied in a policy and operational context in the ACT.

Key elements of the new approach to WHS regulation in the ACT are the statutorily required *Ministerial Statement of Expectations* and WorkSafe's *Statement of Operational Intent*. I found it interesting the word 'prosecution' does not appear in either.

I consider a publicly available prosecution policy would assist in explaining what breaches of the WHS laws are likely to be prosecuted in the ACT while reinforcing prosecution is a central component of WorkSafe ACT's compliance and enforcement approach.

In its *Prosecution Regulatory Function Policy*, WorkSafe New Zealand makes it clear it '*expects that prosecution would normally be recommended when one or more of the following circumstances apply*':

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[22] Nous Group, *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures, Final Report*, 27 August 2018, p 10.
[23] Royal Commission, *Misconduct in the Banking, Superannuation and Financial Services Industry*, 2019 p 430.

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- where non-compliance resulted in death
- the gravity of the offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it
- where there has been a reckless and/or negligent disregard of health and safety requirements
- where work has been carried out without an appropriate authorisation or license or in serious non-compliance with a safety case
- where a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk
- where there has been adverse conduct for a prohibited health and safety reason under Part 3 of the Health and Safety at Work Act (HSWA)[24]
- where a provisional improvement notice (which an inspector has not been required to review) has not been complied with
- where a breach of a worker participation or engagement duty is considered to have contributed to the occurrence of death or serious injury or the risk of death or serious injury
- where there has been a failure to comply with a notice or direction given by an inspector or WorkSafe, especially where the risk that was subject to the notice or direction:
    - still exists
    - was not remedied until a significant time after the date specified in the notice or direction
- where there has been coercion or inducement in breach of s92 of HSWA[25]
- where there has been a contravention of an enforceable undertaking
- where there has been an obstruction of an inspector while exercising their statutory powers
- where there is offending within an identified focus area for WorkSafe[26].

In effect, a list like this which should link to WorkSafe ACT's statutory objectives and enforcement priorities would provide a public interest framework to support WHS prosecution decision making (noting decisions would also be subject to DPP prosecution guidelines and public interest test).

I also consider prosecution priorities should be identified and included in the statement of operational intent. This would allow WorkSafe ACT, in consultation with the WHS Council to respond to emerging issues and link its prosecution decision making to strategic priorities. It would also reinforce prosecutions are likely even in situations where there has not been a workplace death or serious injury.

I was able to gain significant amounts of information about WHS prosecution decision making, outcomes and trends from Queensland's OWHSP's annual reports, court reports and other data and statistics publicly available on its website[27]. It is generally acknowledged the deterrent and preventative impact of prosecutions is reinforced through this type of open and transparent reporting:

> *'Business leaders have a legislative duty to acquire and maintain up to date knowledge of work health and safety matters relevant to the nature of their operations. But without any visibility of the health and safety prosecutions that occur, it can be hard to grasp what can go wrong within your operations. Courts help refine what 'reasonably practicable' means in certain circumstances Reasonably practicable means that you should consider the likelihood and degree of harm of a hazard or risk. Whilst there may not have previously been*

[24] These provisions are like Part 6 of the WHS Act.
[25] This provision is like section 108 of the WHS Act.
[26] New Zealand Government, WorkSafe Mahi Haumaru Aotearoa, Prosecution Regulatory Function Policy, August 2020, p 17.
[27] https://www.owhsp.qld.gov.au

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an incident at your workplace if a significant incident has occurred across your industry, you should be aware of it'[28].

Many stakeholders wanted to '*encourage WorkSafe ACT to release as much data and educational information, including real-time incident reporting lessons learned, to assist all industries to learn from past mistakes*'.

To conclude, I am making several recommendations in the context of this discussion about the current conduct of WHS prosecutions in the ACT which will remain relevant irrespective of whether the current model continues or a new one is implemented.

Some of these recommendations, particularly those dealing with efficiency, effectiveness, and timeliness, will rely on the agreement and on-going co-operation of the DPP if the current model is maintained.

I find this reliance on another agency to manage performance measures which impact on the efficiency and effectiveness of the WHS regulator reinforces the concerns raised about the current operational model.

Summary

The current conduct of WHS prosecutions in the ACT

1. is inefficient and ineffective.
2. takes too long from the time of incident notification to the filing of charges.
3. lacks transparency.
4. lacks consistency.
5. limits the ability of the WHS Commissioner to meet her statutory duty to act independently.
6. results in too few prosecutions.

Efficiency

Recommendation 1:
Implement an efficiency performance measure which requires briefs of evidence to be assessed within 120 days of referral.

Effectiveness

Recommendation 2:
Implement an effectiveness performance measure which requires 90% of prosecutions to result in a conviction with the conviction rate being the percentage of defendants convicted in prosecutions which proceeded to a decision or verdict.

Data collection and reporting

Recommendation 3:
Collect investigation and prosecution timeline data and provide regular reports to the WHS Council on the length of time taken from notification of an incident to filing of charges and on the outcomes of prosecutions.

Recommendation 4:
Publish detailed prosecution reports, court summaries and data on the WorkSafe ACT website like the reports and data currently provided by the Office of the WHS Prosecutor in Queensland

[28] *Prosecutions: 2021 summary for NSW and Victoria accessed at* https://www.actionohs.com.au/prosecutions-2021-summary-for-nsw-and-victoria/

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Transparency and consistency

Recommendation 5:
Develop a prosecution policy which states clearly how prosecution decisions are made and highlights the breaches expected to result in prosecution action.

Recommendation 6:
Incorporate prosecution priorities into the statement of operational intent.

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2. An in-house prosecution team[29]

The in-house prosecution team model for conducting occupational health and safety prosecutions has been operating for several years in Victoria and has recently been established in Western Australia. As part of this Review, I had the opportunity to speak with those involved in investigation management and prosecution and those holding the position equivalent to the ACT's WHS Commissioner in in those jurisdictions about the pros and cons of this model. Local stakeholders in the ACT also provided me with comprehensive feedback about it.

2.1. Stakeholder responses

It was acknowledged by participants in this Review the in-house prosecution model gives ultimate control and responsibility for prosecution decision making to the WHS regulator. It was also acknowledged that under this model, WHS regulators in other jurisdictions have expanded the range of matters prosecuted and increased the numbers of successful prosecutions over the years.

This acknowledgement was accompanied by concerns:

- the ACT would not be able to source prosecutors with the necessary skills.
- there wouldn't be enough prosecutions to justify an in-house team.
- there should be a clear separation between those who investigate and those who make the decision to prosecute.

2.1.1. Independence and control

Victorian and Western Australian regulatory officers and prosecutors spoke about two key benefits of the in-house team model they considered important in the context of a WHS regulator's independence and control:

1. the ability for the WHS regulator to apply a risk based regulatory management approach to decision making about whether to prosecute; and
2. the ability to run test cases (which the DPP might be reluctant to run) allowing for the WHS regulator's strategic priorities to be aligned to prosecution decision making.

Many ACT stakeholders agree the WHS Commissioner should be in control of prosecution decision making so the current momentum on making positive change within the WHS regulator is maintained. Others noted the WHS regulator is accountable for prosecution decisions in the eye of the public *'so she needs to be able to make the decision'*.

It was stressed to me the DPP always takes account of WorkSafe ACT's view *'but that is only one factor amongst many'*. Prosecution decisions are made by the DPP based on DPP guidelines *'and* [the DPP] *is answerable to the community at large and not a particular interest group'*.

Some legal practitioners noted they could *'understand the difficulty the WHS commissioner has around public policy considerations and wanting to run prosecutions to change behaviour;* suggesting the DPP *'has a more purist approach'*.

2.1.2. Consistency and efficiency

Those who have experience of working with an in-house prosecution team in a WHS regulatory environment reinforced it leads to a consistent approach to prosecution decision making and quicker decision making. It was stressed in-house prosecution teams are also working to performance measures established by the WHS regulator which *'allows the regulator to closely monitor the timelines for consideration of briefs of evidence and decision making'*. It was also

[29] Details of the legislative, policy and operational framework which support the in-house prosecution team approach to work health and safety prosecutions in Western Australia and occupational health and safety prosecutions in Victoria are provided in Part Two of the Discussion Paper.

suggested in-house prosecutors are '*more likely*' to understand '*the importance of prosecution as a compliance tool and not an end in itself*'.

Many ACT stakeholders however, reinforced the sentiment '*an in-house prosecution team is all well and good but everything else needs to work – for example the quality of investigations, training, resources etc*'.

2.1.3. Skills and resourcing

Those operating in-house prosecution teams stressed the need for these teams to be staffed by experienced trial lawyers:

> '*an in-house team needs to be top-heavy – as a minimum I'd recommend five plus years of experience*'.

WorkSafe Victoria officers noted:

> '*in WorkSafe Victoria separation between in-house legal advisers and the in-house prosecutors is inherent in how they work. There is no blurring the lines. It is a productive relationship but not a conflict of interest*'.

Others operating under this model stressed:

> '*prosecutors play no role in directing the investigation nor in providing advice about appropriate tools to use to get information … there are strong governance frameworks internally to protect legal professional privilege*'.

ACT stakeholders raised the question of scale:

> '*will there be enough work in the ACT to justify the cost of a separate prosecution unit*'? *What supporting infrastructure would be needed and what is the cost/benefit analysis?*'

2.1.4. The public interest

Victorian and Western Australian contributors to this Review advised their in-house prosecutors are obliged to consider local DPP guidelines, but they also have specific criteria to further consider the public interest in the context of WHS.

A key public interest issue raised by ACT participants in the context of an in-house prosecution team related to the importance of keeping investigation roles separate from prosecution roles.

The '*need to distinguish between the person who brings the prosecution and the person who conducts the prosecution*' was emphasised regularly:

> '*it is important that there is a separation between those who make the decision to prosecute and those who provide legal advice to inspectors about their functions and powers and other issues*'.

Experienced legal practitioners considered these concerns could be addressed:

> '*there can be independence with an in house set up – with a sound governance framework there should be no problem*'.

The costs/benefits to the ACT community of funding a prosecution team within WorkSafe ACT, particularly when the size of the ACT WHS jurisdiction is considered was also raised regularly. Many stakeholders considered the ACT is too small to justify and support an in-house prosecution function in WorkSafe ACT with some suggesting this model '*can only work in large jurisdictions*.'

Others considered '*there will be enough work if there is more focus on prosecutions of recidivist duty holders, occupational violence and mental health injury*'

2.2 Discussion and recommendations

The ACT government has invested in a new approach to regulating WHS to create a more dynamic WHS culture across the ACT. Key to its success is the creation of an independent WHS regulator with regulatory authority vested in a single WHS Commissioner. According to the Nous Review this model '*best addresses the need for independent decision making and creates role clarity*'.[30]

The Nous Review noted:

> '*How a regulator is set up, directed, controlled, resourced and held to account – including the nature of the relationships between the regulatory decision maker, political actors, the legislature, the executive administration, judicial processes and regulated entities – builds trust in the regulator and is crucial to the overall effectiveness of regulation*'.

It further noted '*we consider that* ***role clarity and independence are the two principles most important*** [emphasis added] *for assessment of the design of the future governance arrangements for WorkSafe ACT*'[31].

There continues to be strong support for the role of the WHS Commissioner to be independent – for her to be able to exercise her regulatory functions without direction from anyone else, consistent with the provisions the WHS Act:

> '*The WHS commissioner is not subject to the direction of anyone else, and must act independently, in relation to the exercise of a function under this Act or another territory law under which the WHS commissioner exercises a function*'[32].

I consider the existence of an in-house prosecution team within WorkSafe ACT is the most effective model for ensuring the continued independence of the WHS commissioner as required by the WHS Act, an independence which will allow her to exercise all her regulatory functions efficiently, effectively, transparently and consistently.

I am persuaded by critiques of regulatory prosecution systems which rely on referral to an office of the DPP. In his paper, '*Prosecutors, Regulators, Trial by Jury and the Prosecutor's Discretion*', Remy Farrell suggests:

> '*the prosecution of regulatory offences by the DPP necessarily restricts the degree of regulation that can be brought to bear by a given regulator. Once it goes to the DPP it is no longer the regulator that is calling the shots in relation to the prosecution*'.[33]

The Australian Law Reform Commission noted:

> '*The major inconsistency relates to the basic objectives of the different bodies. The regulation of the marketplace, which is the focus of regulators like ASIC and the ACCC, is said to require immediate response to contraventions, restoration of the status quo and prevention of future problems, whereas the DPP is required to be concerned with the circumstances and culpability of a particular contravention in the past. It is obvious that these objectives may lead to contradictory views on how to deal with a case*'.[34]

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[30] Nous Group, *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018, p 75.
[31] Nous Group, *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018 p 70.
[32] Work Health and Safety Act 2011 (ACT) Schedule 2, section 2.23(1).
[33] Farrell, Remy BL, '*Prosecutors, Regulators, Trial by Jury and the Prosecutor's Discretion*', 11th Annual National Prosecutors' Conference, 24 April 2010, Dublin, Ireland p 2.
[34] *Australian Law Reform Commission Report* 95.

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Farrell notes the very different nature of the roles performed by a regulator who prosecutes and a DPP:

> '*The DPP role is limited to that of enforcing a set of pre-existing rules in relation to past behaviour. Regulators will be as interested if not more so in influencing future conduct. Considerations that will feed into the decisions to be made during the run of a case are also fundamentally different. The importance of prosecution as one of the weapons in the armoury of a regulator who is seeking to influence the manner in which a particular industry or sector behaves.* ***Unlike the DPP whose function is to respond to crime rather than to prevent it the regulator is more likely to be held accountable for failings in relation to prosecutions – and perhaps rightly so. As such regulators should be given a role commensurate with that degree of accountability***' [emphasis added].[35]

He also highlights:

> '*the role of the regulator frequently calls for a significant degree of expertise in a particular sector or industry. The expertise brought to bear by the office of the DPP is principally legal and forensic expertise of a somewhat more generic nature*'.

Even though the DPP makes the decisions whether to prosecute WHS breaches in the ACT, it is generally the WHS Regulator being criticised on the front page of the newspaper when a high profile WHS prosecution is unsuccessful or is not taken in the first place. It is rarely if ever, the DPP which bears the brunt of public backlash. I recommend that this public perception and indeed expectation that it is the WHS regulator making the prosecution decisions should be the structural and operational reality.

I am persuaded that the current conduct of WHS prosecutions in the ACT is not aligned with the public expectation or indeed the legislative provisions which designate the WHS Commissioner as the single responsible entity for WHS regulatory decision making.

Since the new structure for managing WHS in the ACT was implemented, the WHS Commissioner and WorkSafe ACT have developed detailed operational and strategic plans. Arguably, they cannot execute these plans to their fullest extent because responsibility for prosecution decision making, the highest level of the compliance and enforcement pyramid is held by the DPP.

I am also persuaded a significant advantage of an in-house prosecution team is it allows the regulator to apply a risk-based approach to prosecutions consistent with its strategic and regulatory priorities. Ultimately, in the context of the graduated enforcement underpinning compliance with the WHS Act it is the regulator who must be able to select the most appropriate enforcement response to any given breach.

As the Nous Review highlighted:

> '*modern regulators plan and target their activities through a strategic planning process that considers the changing environmental context, examines data and trends and identifies specific priorities for action based on that data analysis and risk assessment*'.[36]

This risk-based approach combined with the availability of its in-house prosecution team has enabled WorkSafe Victoria to focus its prosecutions on matters of importance to its enforcement strategy and matters that are likely to have an impact on a broader class of cases across industries or sectors.

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[35] Farrell, Remy BL, '*Prosecutors, Regulators, Trial by Jury and the Prosecutor's Discretion*', 11th Annual National Prosecutors' Conference, 24 April 2010, Dublin, Ireland p 5.
[36] Nous Group, *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures*, Final Report, 27 August 2018 p 38.

In practice, the presence of an in-house prosecution team in WorkSafe Victoria allows for the creation of a clear decision-making framework where there is an independent assessment of most breaches of its occupational health and safety laws as potential prosecutions.

A combination of DPP guidelines and the regulator's own strategic priority criteria provide the triaging framework to narrow down which matters will proceed to charges being filed. This model also means prosecution advice is being provided earlier than is currently the case in the ACT. This in turn over time enables investigators to develop their skills in relation to preparation of briefs of evidence, including identification of elements of offences, evidentiary issues, witness identification and lines of inquiry.

A decision-making framework combined with the management of performance measures within the WHS regulator from the time of incident notification to the decision to prosecute should assist with avoiding 'investigation drift' where matters are potentially left to sit for months with no action taken to progress them.

It should also result in more management emphasis internally on evidence analysis, certainty about which party will most likely be able to be successfully prosecuted and a clearer focus and targeting of the work required to be undertaken (and the evidence that needs to be gathered) to ensure the investigations process is more effective and efficient.

Finally, it will facilitate Work Safe ACT to broaden its focus and emphasis to a wider range of industries, for example health and community services, and beyond physical injuries to include psychosocial injuries that are cumulative including bullying, harassment, and mental health. An in-house prosecution team could also play a role in training investigators in respect of preparing briefs of evidence.[37]

I am recommending there be an in-house prosecution team (with five officers as identified in the recommendation below) which reports directly to the WHS Commissioner. I am also recommending the team operates within a flexible decision-making framework which gives the WHS Commissioner flexibility about where she seeks prosecution advice and support.

This flexible framework is discussed further in Part 5 of this report[38]. I note that the establishment of an in-house prosecution team at WorkSafe ACT may require amendments to the *Law Officers (General) Legal Services Directions 2012* (ACT). This is also discussed in Part 5.

Summary

The in-house prosecution team model:

- provides ultimate responsibility for prosecution decision-making to the WHS regulator.
- enables the WHS regulator to apply a risk-based approach to prosecutions.
- aligns prosecution decision-making to the WHS regulator's strategic priorities.
- allows for an assessment of most breaches of WHS laws as potential prosecutions.

An in-house prosecution team

Recommendation 7:
Establish an in-house prosecution team comprising one senior prosecutor, two junior prosecutors, a legal graduate, and a paralegal.

[37] I note the Office of the Work Health and Safety Prosecutor provides training to investigators in that jurisdiction, and it has been suggested in previous reviews of the ACT WHS framework the resources of the DPP could be drawn on to provide training.
[38] See page 31.

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3. An Independent Statutory Office[39]

The Office of the Work Health and Safety Prosecutor (OWHSP) is an independent prosecution office established under the Queensland WHS Act. Its role is to conduct and defend proceedings for breaches of Queensland's WHS laws.

The OWHSP operates independently of Queensland's DPP and WHS regulator. The OWHSP is headed by the Work Health and Safety Prosecutor (WHSP)[40]. In practice, this means the decision to commence a prosecution under the Queensland WHS Act is one ultimately for the WHSP.

The WHSP applies the DPP Guidelines to any decision taken to commence a prosecution and has regard to the views and priorities of the WHS regulator. Any general or specific guidelines issued by the OWHSP are read with, and subject to, the DPP Prosecution Guidelines.

As well as conducting legal proceedings for breaches of the Queensland WHS Act, the OWHSP also advises the WHS regulator on matters relating to it and provides training to investigators[41].

The OWHSP annual report[42] confirms the WHS regulator is responsible for operational decisions including as to whether an investigation is warranted, an investigation's scope, the ongoing management of the investigation, the prioritisation of investigations and the deployment of resources during investigations.

For most stakeholders who participated in this Review, the Queensland model is their preferred option if there is to be a change in how prosecutions are conducted in the ACT.

3.1. Stakeholder responses

Whilst the Queensland model is considered 'the ideal' for most participants in this Review, their support is couched by a consistent comment that the ACT is too small to resource an independent statutory office to exercise all functions in relation to WHS prosecutions. One stakeholder noted:

> '*the Queensland jurisdiction deals with exponentially more work health and safety incidents and injuries, and therefore prosecutions, than the ACT. It* [the QLD model] *is not fit for purpose in the ACT*'.

Others suggested the Queensland model could be adapted to suit the ACT context.

3.1.1. Independence and control

Some stakeholders highlighted the creation of an OWHSP, whilst ensuring WHS specialist prosecutors would be available and ensuring their expertise and skills would develop over the years, did not resolve concerns they held about the independence of the WHS Commissioner and her ability to have the final say on whether to prosecute breaches of WHS laws.

3.1.2. Consistency and efficiency

Everyone contributing to this Review was impressed by the level of efficiency, effectiveness, transparency, and consistency operating within the Queensland OWHSP[43]. '*It's fast and it's efficient*', was a common response to the QLD model.

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[39] Details of the legislative, policy and operational framework which supports the model of an independent statutory office of the Work Health and Safety Prosecutor operating in Queensland are provided in Part Two of the Discussion Paper.
[40] *Work Health and Safety Act 2011* (QLD) Schedule 2, ss25-32.
[41] Office of the Work Health and Safety Prosecutor Annual Report 2020-2021 p5.
[42] Office of the Work Health and Safety Prosecutor *Annual Report* 2020-2021
[43] I have recommended that whatever model is adopted in the ACT, the Queensland approach to prosecution data collection and reporting should be adopted.

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3.1.3. Skills and resourcing

Several contributors to the Review emphasised the staffing numbers in the Queensland OWHSP would not be a good use of resources in a much smaller jurisdiction like the ACT.

Others pointed to the fact the Northern Territory Government had considered the possibility of creating an independent statutory office for WHS prosecutions but formed the view this would be an inefficient use of resources in a small jurisdiction proposing '*that a similar conclusion would follow in the ACT*'.

To overcome this resourcing issue, some stakeholders suggested smaller jurisdictions like the Northern Territory, ACT and Tasmania could perhaps combine their resources and '*set up an OWHSP together*'. Another noted:

> '*the ACT is double the size of the NT and its employment base is larger – the ACT economy should support it* [an independent statutory WHS prosecution office].

3.1.4. The public interest

The main point made from a public interest perspective in relation to the Queensland model was that an independent statutory OWHSP ensures there is no 'capture' of prosecutors by the WHS regulator which was a concern for several stakeholders.

3.2. Discussion and recommendations

The OWHSP was established because of a review which highlighted concerns about the conduct of WHS prosecutions in Queensland, many of which are mirrored in this Review.

The *Best Practice Review of Workplace Health and Safety Queensland* [44] emphasised the WHS regulator needs to be prosecuting and the prosecution process needs to be efficient, effective, transparent, and consistent. The OWHSP operates to ensure:

1. WHS prosecution decisions are made by an experienced legal decision maker with expertise in WHS law.
2. The decision maker is an experienced trial advocate/barrister who can appear in court to prosecute and defend WHS matters.
3. The decision maker is also a senior public servant with management experience who can ensure timelines and KPIs are met.
4. There is a 'figurehead' who is publicly associated with WHS prosecution matters.
5. Prosecution results are identified and openly reported.

Before the establishment of the OWHSP, Queensland had an in-house prosecution team within its WHS regulator. The impact of the new model appears to be emerging now that the OWHSP has been in operation for three years with a significant rise in completed prosecutions in the 2020/2021 financial year.

Queensland Prosecutions Data[45]

2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
98	53	54	48	69	65	64	47	107

[44] *Best Practice Review of Workplace Health and Safety Queensland, Final Report* 3 July 2017

[45] *Comparative Performance Monitoring Report 23/Work Health and Safety Compliance and Enforcement* and Office of the Work Health and Safety Prosecutor, Annual Reports 2019-2021. It includes all prosecutions including those which were successful, unsuccessful, and withdrawn.

Between 2012 and 2019, the average time between an incident occurring and a decision by the WHS regulator in Queensland to prosecute in relation to an incident was 14 months[46]. In the financial year 2020/21, the average time between an incident occurring and a decision by the OWHSP to prosecute in relation to an incident was 202 days (approximately 6 and a half months).

The OWHSP annual reports, court reports and prosecution summaries also indicate the OWHSP has prosecuted many times where there has not been a fatality or serious injury. For example, it has prosecuted for a failure to notify the WHS Regulator when the duty holder was aware an incident was notifiable, obstruction of a WHS inspector and for exposing workers to silica dust[47].

The results coming out of the OWHSP in Queensland are impressive. However, I am persuaded by those with the knowledge and experience of living and working in the ACT and conclude the resources required to establish an independent statutory prosecution office in the ACT with its specialist prosecutors, support staff and administrative infrastructure would not be the best use of resources in a smaller jurisdiction.

I am also reluctant to recommend the removal of prosecution decision making from one office external to the WHS regulator (DPP) to another office external to the WHS regulator (an OWHSP).

In my consideration of whether to recommend the creation of an independent prosecution office for WHS matters in the ACT, I was also interested in Commissioner Haynes' comments when he pondered whether to recommend the establishment of an independent civil penalty enforcement agency in the context of regulating business and financial markets.

He said,

> *'the creation of a specialist civil enforcement agency would preserve all of ASIC's regulatory tools, save for the right to litigate in respect of civil penalty provisions. ASIC would be required to prepare a brief of materials to the new agency if a particular evidentiary threshold was reached. It would then be for the enforcement agency to make any decision about whether to commence proceedings. In other words, ASIC would act as the investigators but not make the decision to commence civil proceedings. There would be some benefits in such as arrangement. A specialised litigation agency would have to develop core skills in what is an increasingly specialised area of the law. This arrangement would repose responsibility for determining whether public interest considerations required action or no action in a professional body that would become skilled in making those judgements. Notwithstanding the prospect of those benefits, I do not recommend such a radical change. It may be that the removal of a regulatory tool as important as civil penalty litigation would have other effects on ASIC's work – because civil penalties were intended to be a feature of an enforcement regime that provided ASIC with gradations of sanctions based on 'strategic regulation theory' and the enforcement pyramid model'.*[48]

Given the terms of reference for this Review and the emphasis on the ability of the WHS Commissioner to secure compliance with the WHS Act through effective and appropriate compliance and enforcement measures; the independence and accountability of the WHS Commissioner; the principles underpinning WorkSafe ACT's *Compliance and Enforcement Policy 2020-2024* to ensure the highest standard of integrity (including consistency and transparency) in prosecutorial decision making; and the delivery of WorkSafe ACT's *Strategic Plan 2020-2024* to create an exemplary regulator and ensure firm and fair enforcement against non-compliance, I consider it is critical the WHS Commissioner is given the authority and independence to make decisions about when to use all of the enforcement tools at her disposal including prosecution.

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[46] *Best Practice Review of Workplace Health and Safety Queensland, Final Report* 3 July 2017
[47] Office of the Work Health and Safey Prosecutor, Annual Report, 2020-2021.
[48] Royal Commission, *Misconduct in the Banking, Superannuation and Financial Services Industry*, 2019 pp 428-29.

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This does not mean, however, that key elements of the OWHSP and how it operates cannot be incorporated into the ACT model. I note Recommendations 1-4 of this Review are intended to adapt several of the OWHSP's best practice approaches to the ACT context[49].

Summary

The independent statutory office of a WHS prosecutor model is:

1. considered ideal by many participants in this Review.
2. considered not fit for purpose in a smaller jurisdiction by most participants.
3. increasing WHS prosecution efficiency, effectiveness, transparency, and consistency
4. resulting in more prosecutions for a more diverse range of offences.
5. replacing one external prosecution office (DPP) for another (OWHSP).
6. a model that would limit the ability of the WHS Commissioner to use all the enforcement tools provided to her by the WHS Act.
7. more suited to larger jurisdictions.
8. a good example of prosecution data collection, reporting and performance management approaches.

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[49] See Part 1 of this report.

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4. Other Models

During my consultations, other models for conducting WHS prosecutions were raised as possible options for the ACT.

4.1 Government Solicitor's Office

It was proposed that a regulatory enforcement unit could be established within the Government Solicitor's Office (GSO) which would prosecute all regulatory offences across the Territory, and not just WHS matters. The GSO currently has a Regulation and Revenue unit which includes as a function '*Regulatory enforcement including civil penalties*.'

It was suggested that embedding a small team of specialist WHS prosecutors within a GSO based regulatory unit would be a cost-effective way of building WHS and other regulatory prosecution skills in the ACT. It would also apply a whole of government perspective to the problems/concerns raised by those contributing to this Review.

I note in the context of the GSO taking on WorkSafe ACT's prosecution matters the feedback from contributors to this Review that WorkSafe ACT is regularly asked to adjudicate WHS issues within Government agencies and directorates, for example, within ACT government hospitals, schools, and prisons. In these situations, it is likely that the GSO would be advising the relevant Government Departments on how to deal with the WHS regulator. I was further advised that these matters where there exists a clear conflict of interest could be briefed from the GSO to the external bar.

The proposed GSO model is like the model used in South Australia where the WHS regulator (and other regulators across the South Australian Government) refer briefs of evidence to a Solicitor from the Crown Solicitor's Office (CSO). Some CSO Solicitors are outposted to the relevant agency but continue to report directly to the CSO rather than the head of the agency within which they are placed.

I am not recommending the GSO model as part of this Review. Whilst I have considered the proposition that the GSO would likely be receptive to WorkSafe ACT's priorities, the model would in effect replace one external prosecution office (DPP) for another (GSO).

I also consider the conflicts of interest are problematic and reinforce the importance of ensuring that the WHS Commissioner can make WHS prosecution decisions independently.

4.2 Prosecution Panel

It was suggested that a prosecution panel, independent of WorkSafe ACT and the DPP, could make decisions about whether to prosecute based on the recommendation of the WHS Commissioner.

It was proposed this panel would be made up of a rotating group of people with expertise in industrial matters, WHS and law. It would consider the WHS Commissioner's recommendations and decide whether a prosecution should be commenced. If yes, WorkSafe ACT would then brief to external counsel to prosecute. It was suggested that this model is a cost-effective way to establish a variation on the Queensland model, providing for a prosecution decision maker independent of the WorkSafe ACT and the WHS Commissioner.

I note that the *Best Practice Review of Workplace Health and Safety Queensland* considered the merits of a Prosecutions Panel. It reported

> '*the view of the review that the establishment of a prosecutions board* [panel] *is inappropriate due to conflicts of interest with potential members of such a board noting it is likely they would need to be legal practitioners. Additionally, a prosecutions board is considered to be an overly complex response to issues surrounding prosecutorial decision*

making and that there are other alternatives approaches to ensuring the efficacy and independence of the decision-making process'.[50]

I agree with these assessments of the Prosecutions Panel model, and I am not recommending this approach.

4.3 Work Health and Safety Tribunal

During discussions on the issues and concerns raised by this Review, and particularly in relation to concerns about broader issues such as sentencing and the lack of a designated Industrial Magistrate, it was suggested that a broader examination of the criminal justice framework as it relates to WHS prosecutions should be undertaken.

One suggestion in this broader context was to establish a separate tribunal with WHS Commissioners and Judges (and a counsel assisting) who can 'own' the WHS prosecution processes.

It was suggested this could lead to a more inquisitorial rather than adversarial approach to WHS matters and a stronger emphasis on restorative justice.

This section is included to ensure all ideas proposed are included and to sow the seeds for some further debate. I acknowledge that the tribunal concept lies outside the scope of this Review and am making no recommendation about it.

4.4 Other WHS jurisdictions

For completeness, I considered all the remaining WHS prosecution decision making frameworks in Comcare, New South Wales, Tasmania, and the Northern Territory.

Currently in the Comcare jurisdiction, prosecution briefs of evidence are referred to the DPP following a decision to prosecute by the regulator's enforcement committee. There is a capacity for Comcare to prosecute using in-house staff, but this has not happened to date. I was advised that Comcare may take advantage of this flexibility to use in-house prosecutors for less complex matters going forward. Comcare also has the capacity to engage external counsel advice/prosecutors without having to seek permission from an outside agency/office.

SafeWork New South Wales has an in-house prosecution team. It occasionally briefs prosecution matters to the external bar and in those matters retains the role of instructing solicitors. Those operating within this system identified a consistent and strategic approach to prosecution decision making as an important benefit of having an in-house prosecution team.

In Tasmania, a decision to prosecute is made by the DPP following consideration of a recommendation by WorkSafe Tasmania.

WorkSafe Northern Territory has a WHS prosecution stream which consists of a co-ordinator who provides legal support, prepares, and files complaints, information, summons documents, manages the carriage of court files and undertakes prosecutorial duties in the local court. Complex matters are referred to the DPP.

[50] *Best Practice Review of Workplace Health and Safety Queensland, p 70.*

5. A New Model for the ACT

I note that much work has been done over the last twelve months to improve the working relationship between WorkSafe ACT and the DPP and that WorkSafe ACT has improved the management of its investigations and the preparation of its briefs of evidence to ensure that the DPP can provide early advice on potential prosecutions.

I have made recommendations about efficiency, effectiveness, data collection and reporting which will build on these improvements. However, I consider that these alone will not resolve the issues highlighted during my Review.

I am therefore recommending a new model for the conduct of WHS prosecutions in the ACT.

It is important to note that my recommendation for a new model has as its objective achieving optimum outcomes for WorkSafe ACT's compliance and enforcement activities in the Territory. It should not be read as a criticism of the DPP or WorkSafe ACT officers currently responsible for the management of prosecution referrals and the provision of prosecution advice.

However, given everyone consulted considers the current conduct of WHS prosecutions in the ACT is deficient, I concluded that the best outcomes would not be achieved simply by placing new processes around or within the current operational frameworks. I am recommending an entirely new operational approach to the management of WHS prosecutions in the ACT.

During the stage two consultation for this Review, as well as the four broad areas of concern which emerged during stage one and which I presented in the Discussion Paper (independence and control, consistency and efficiency, skills and resourcing, and the public interest[51]) two other key issues emerged: These are:

- clarity and transparency; and
- effectiveness.

In recommending the new model I was guided by how best to address these six broad areas of concern, taking note of the ACT's size, the solid WHS regulatory foundations already embedded in the Territory because of the most recent amendments to the WHS Act, the creation of the WHS Commissioner's role and the establishment of a new structure within WorkSafe ACT.

I was also influenced by the OWHSP and the Victorian models and by those who have extensive experience in prosecuting WHS matters in other jurisdictions who advocated that to implement an effective WHS prosecution strategy the following personnel and roles are required, preferably all operating within the same agency:

1 an experienced legal decision maker
2. an experienced trial advocate/barrister
3. an experienced public servant/manager who can manage timelines, people etc
4. a figurehead who is clearly and publicly identifiable as the ultimate prosecution decision-maker

Having the right personnel embedded in WorkSafe ACT with the right decision-making authority will enhance the efficiency, effectiveness, transparency, consistency, and clarity regarding WHS prosecutions in the ACT.

The model I am proposing assigns all prosecution decision-making responsibilities to the WHS Commissioner. I consider this reinforces the intention of the model WHS Act which anticipates it is the WHS regulator making the initial decision whether to prosecute for breaches of WHS laws

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[51] *Conduct of Work Health and Safety Prosecutions Review* (WorkSafe ACT) Discussion Paper, May 2022 pp 20-22

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and provides for an independent external review of that decision by the DPP in situations where a decision not to prosecute is made.[52]

The model I am recommending is a hybrid model which seeks to adapt elements of other jurisdictional models to work within the smaller ACT jurisdiction. Its aim is to provide the WHS Commissioner with the flexibility to refer briefs of evidence to either an in-house prosecution team, external counsel or the DPP for prosecution advice prior to her making any decision whether to prosecute.

I am also recommending that the WHS Commissioner, once she has decided that a prosecution will be commenced, is given the flexibility to decide whether to instruct the DPP, an in-house prosecutor or external counsel to progress the matter through the courts on her behalf. Importantly, where the WHS Commissioner engages the DPP or external counsel for trial advocacy of a WHS prosecution matter, I am recommending WorkSafe ACT's internal prosecution team will remain the instructing solicitors for the matter.

It is important to note that I am recommending industrial manslaughter matters should always be referred to the DPP with WorkSafe ACT's in house prosecution team acting as instructing solicitors.

I note that New Zealand's WHS regulator, WorkSafe New Zealand, uses a combination of internal and external prosecutors. The decision whether to use an internal or external prosecutor is one made by the WHS regulator. WorkSafe New Zealand includes in its prosecution policy examples of situations where an external prosecutor may be instructed to lead or support a prosecution.

Reason	Example
To support WorkSafe's capacity to provide services	Where there are insufficient staff within a particular district or area of regulation to meet needs
Complex legal issues	Likely to require complex advocacy with national implications
High profile	Case is high profile with considerable media interest. This may be because of the defendant's identity, international aspects, or circumstances surrounding the case or the victims' identity.
Independence from WorkSafe required	When the case calls for independent advice or advocacy – for example when there is a perceived or actual conflict of interest.[53]

Whilst I consider that the current wording of the WHS Act raises no obstacles to the hybrid model, to avoid doubt and to maintain WHS harmonisation, I am recommending that section 230 of the WHS Act is amended and the original wording of the model WHS Act is reinstated.

[52] See sections 230 and 231 of the model WHS Act.
[53] New Zealand Government, *WorkSafe Mahi Haumaru Aotearoa, Prosecution Regulatory Function Policy*, August 2020, p 21.

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I note that the *Law Officers (General) Legal Services Directions 2012* (ACT) (Directions) states:

Legal Services (General) Directions

1. Provision of legal services

1.1 Subject to paragraphs 1.2, 1.3 and 1.4, all Territory legal work is to be performed by the Government Solicitor.

1.2 The Government Solicitor may outsource Territory legal work, or agree to an agency outsourcing Territory legal work, only with the approval of the Chief Solicitor.

Example The Chief Solicitor may approve the outsourcing of Territory legal work if there is a reasonable apprehension of a conflict of interest on the part of the Government Solicitor.

1.3 Paragraphs 1.1 and 1.2 do not apply to a Territory-owned corporation (TOC).

Use of in-house lawyers by agencies

1.4 Agencies may only engage an in-house lawyer if approved by the Attorney General, on the advice of the Chief Solicitor.

1.5 In-house lawyers are to perform a largely managerial function or provide advice and assistance where the availability of legal services on an immediate basis is integral to the delivery of the agency's core services and cannot be conveniently or appropriately provided by the Government Solicitor.

Clearly these Directions prevent the WHS Commissioner from seeking external counsel advice or engaging external counsel to run WHS prosecutions without the relevant permissions from the Chief Solicitor. They also limit the employment of in-house lawyers.

I am therefore recommending that the Directions are amended to exempt the WHS Commissioner from the prohibition on outsourcing legal work without the approval of the Chief Solicitor and the use of in-house lawyers without the approval of the Attorney-General (on the advice of the Chief Solicitor).

I am persuaded by the view it is critical for the WHS Commissioner to become the publicly identifiable figurehead for WHS prosecution decisions in the ACT. The many layers of approvals and authorisations external to WorkSafe ACT which currently exist to manage WHS prosecutions and the provision of legal advice I suggest detract from the ACT Government's objective of creating an independent, transparent, and accountable WHS regulator.

The concerns raised about the separation of investigation from prosecution decision making can be addressed with a strong internal governance model as evidenced by other WHS regulators which manage their own in-house prosecution teams.

I consider the proposed hybrid model will enable upskilling of an in-house prosecution team over the first few years of its operation when it could initially run less complex prosecutions whilst more complex prosecutions are run by either the DPP or external counsel. This in turn will enable upskilling across all WorkSafe Act staff in the identification of elements of offences, evidentiary issues, identifying witnesses and lines of inquiry and seriousness of offending.

Regular reporting to the WHS Council and to the community consistent with my Recommendations 3 and 4 will provide the opportunity to measure the effectiveness of the new model.

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Summary

The proposed new model:

1. allows the WHS Commissioner to seek prosecution advice from external counsel without having to seek the approval of the Chief Solicitor of the ACT.
2. allows the WHS Commissioner to decide whether to use an in-house prosecutor, a DPP prosecutor or an external prosecutor to progress WHS prosecutions.
3. ensures that any industrial manslaughter prosecutions continue to be undertaken by the DPP.
4. identifies the WHS Commissioner as the figurehead publicly associated with WHS prosecution decision making.
5. enables the creation of an in-house prosecution team which can undertake less complex prosecutions while building its skills.

A New Model for the ACT

Recommendation 8
Amend the *Law Officers (General) Legal Services Directions 2012* (ACT) to allow the WHS Commissioner to seek prosecution advice from external counsel without the need for approval from the Chief Solicitor of the ACT.

Recommendation 9
Amend the *Law Officers (General) Legal Services Directions 2012* (ACT) to allow the WHS Commissioner to use external counsel to progress WHS prosecutions through the relevant courts without the need for approval from the Chief Solicitor of the ACT.

Recommendation 10
Amend the *Law Officers (General) Legal Services Directions 2012* (ACT) to allow the WHS Commissioner to establish an in-house prosecution team within WorkSafe ACT.

Recommendation 11
Ensure that all Industrial Manslaughter offences are prosecuted by the DPP.

Recommendation 12
Amend section 230 of the WHS Act to reflect the original wording of the model WHS Act.

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Appendix A
Terms of Reference

The Review will consider whether the legislative, policy and operational frameworks within which work health and safety prosecutions are conducted in the Australian Capital Territory support:

(a) the object of the WHS Act to secure compliance through effective and appropriate compliance and enforcement measures;

(b) the independence and accountability of the WHS Commissioner;

(c) the principles underpinning WorkSafe ACT's *Compliance and Enforcement Policy 2020-2024* to ensure the highest standard of integrity (including consistency and transparency) in prosecutorial decision making; and

(d) the delivery of WorkSafe ACT's *Strategic Plan 2020-2024* to create an exemplary regulator and ensure firm and fair enforcement against non-compliance.

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Appendix B



Office of the Work Health and Safety Prosecutor
Business plan 2021-22

About us

The Office of the Work Health and Safety Prosecutor (OWHSP) is an independent prosecution office, established by the Queensland Parliament under the *Work Health and Safety Act 2011*. OWHSP conducts and defends proceedings under Queensland's workplace and resources health and safety laws.

Purpose

Our purpose is to provide an independent prosecution service which:

- meets the expectations of our client agencies and other stakeholders
- understands the priorities of our client agencies
- contributes to the safety of Queensland workers and members of the public.

Aim

We aim to:

- act with courtesy and professionalism
- ensure consistency in decision-making
- work as model litigants
- ensure the timely advice of decisions and outcomes to our stakeholders.

Strategic priorities

- Provide an efficient, effective and transparent prosecution service.
- Establish and maintain effective engagement with our stakeholders.
- Develop and recognise our people.

Performance measures

Effectiveness

- Compliance in applying the Guidelines of the Director of Public Prosecutions[1] in decisions to commence, not commence, continue or discontinue a prosecution 100%.
- Prosecutions[2] resulting in a conviction 90%.
- Defendants in defended summary hearings resulting in conviction 70%.
- Defendants tried on indictment and convicted 70%.

Efficiency

- Briefs of evidence assessed within 120 days of referral 100%.
- Pre-brief advice provided within 30 days 100%.

AEU21/6267

1 Namely the existence of a prima facie case, reasonable prospects of conviction and that a prosecution is in the public interest.

2 The conviction rate is the percentage of defendants convicted in prosecutions which proceeded to a decision or verdict. The calculation does not include defendants where the OWHSP determined not to commence a prosecution or discontinued a prosecution prior to decision or verdict. 'Conviction' includes any finding of guilt, and is not limited to prosecutions in which a conviction is recorded. It also includes prosecutions with multiple charges, where at least one charge is proven.

Queensland Government

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Appendix C
Key Terms

ACT	Australian Capital Territory
CEP	WorkSafe ACT's *Compliance and Enforcement Policy 2020-2024*
DPP	Office of the Director of Public Prosecutions
NCEP	National compliance and enforcement policy
Nous Review	Nous Group, *Independent review of the ACT's work safety compliance, infrastructure, policies and procedures, Final Report*, 27 August 2018.
OWHSP	Office of the Work Health and Safety Prosecutor, Queensland
Review	Conduct of Work Health and Safety Prosecutions Review (WorkSafe ACT) 2022
WHS	Work health and safety
WHS Act	*Work Health and Safety Act 2011* (ACT)
WHSP	Work Health and Safety Prosecutor (Queensland)
WorkSafe ACT	The Office of the Work Health and Safety Commissioner, who along with the staff of WorkSafe ACT constitutes WorkSafe ACT

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Appendix D
Consultation

Jacqueline Agius, Work Health and Safety Commissioner, WorkSafe ACT

Ashlee Berry, Member Services Director, Master Builders Association of the ACT

Anthony Brierley, General Manager, Australian Hotels Association (ACT Branch)

Alan Campbell, Special Counsel, Employment and Industrial Relations, ACT Government Solicitor

Martin Carrick, Practice Group Leader, Slater and Gordon Lawyers

Kay Catanzariti, Founder, Will it Your Way

Peter Collins, Director, Investigations, WorkSafe Victoria

Stuart Craig, Waste Away

Frances Crimmins, Chief Executive Officer, YWCA Canberra

Thomas Cullen, Legal Counsel, Australian Nurses and Midwifery Federation ACT

Merelle Du-Ve, Senior Legal Adviser, Comcare

Tom Fischer, Legal Officer, Construction, Forestry, Maritime, Mining and Energy Union, ACT Branch

Peter Garrisson AM SC, Solicitor General, ACT.

Amanda Grey, Deputy Work Health and Safety Commissioner, WorkSafe ACT

Brooke Grey, Senior Director, Investigations, WorkSafe ACT

Jillian Hamilton, Chief Executive Officer, Safety Governance Foundation

Brenton Higgins, Lead Organiser, Community and Public Sector Union (ACT Branch)

Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT and Civil Contractors Federation of the ACT

Wayne Huckstepp, Small Business Owner

Sofia Janakovic, Supervising Lawyer (Work Safety), Office of the Director of Public Prosecutions (ACT)

Lana Junakovic, General Manager, ACT Government Solicitor

Darren Kavanagh, WorkSafe Western Australia Commissioner

Ellen Lukins, Senior Director, Regulatory Policy, Workplace Safety and Industrial Relations, Chief Minister, Treasury and Economic Development Directorate | ACT Government

Madeline Northam, Regional Secretary, Community and Public Sector Union (ACT Branch)

Robyn Pearce, Executive Director, WorkSafe Tasmania

Rebecca Piesse, Senior Legal Officer, WorkSafe ACT

Dmitry Rozkin Director, Enforcement Legal WorkSafe Vic

Jackii Sheppard, Senior Director, Investigations and Operations, WorkSafe ACT

Beverley Smith, Senior Director, National Operations, Comcare

Zachary Smith, Organiser, Construction, Forestry, Maritime, Mining and Energy Union, ACT Branch

Tyrone Smithers, Assistant Director, Major Investigations Team, WorkSafe ACT

Chris White, SafeWork New South Wales

Anna Whitty, Chief Executive Officer, Northside Community Services

Michael Young, Executive Director, Workplace Safety and Industrial Relations, Chief Minister, Treasury and Economic Development Directorate | ACT Government

Australian Education Union, ACT Branch
Construction, Forestry, Maritime, Mining and Energy Union, ACT Branch
Housing Industry Association, ACT/Southern NSW
Master Builders Association of the ACT

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Appendix E
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From: "Lukins, Ellen"
Sent: 06/07/2021 6:30 PM
To: "MacLaughlan, Leanne" <Leanne.MacLaughlan@worksafe.act.gov.au>
Subject: Consultation: workers compensation delegations
Attachments: Attachment A - Updated Workers compensation Delegation 2021 (No 2).DOCX, Attachment B - Workers Compensation Delegation 2011 (No 1).PDF

OFFICIAL

Hi Leanne

We are in the process of updating our 2011 delegation instrument (attached for reference).

Just checking if you have any concerns re the attached updated delegation – they combine the earlier 2011 delegation and the current 2021 delegation. I think Kerry may have mentioned we were working on this?

All 2021 delegations to WorkSafe have been retained, the only change has been to transfer the delegation under the 2011 delegation direct to WorkSafe for s88(3) re provision of injury management programs and s111 re monitoring compliance with chapter 5.

Would be good to discuss tomorrow and please let me know if you have any concerns.

Thank you
EL

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government



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From: "Shepherd, Jackii" <Jackii.Shepherd@worksafe.act.gov.au>
Sent: 25/07/2022 3:02 PM
To: "ACTWorkHealthandSafetyCouncil.Secretariat" <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Cc: "Hogan, Andrew" <Andrew.Hogan@act.gov.au>; "Agius, Jacqueline" <Jacqueline.Agius@worksafe.act.gov.au>; "Abel, Jess" <Jess.Abel@worksafe.act.gov.au>; "Grey, Amanda" <Amanda.Grey@worksafe.act.gov.au>; "Smith, Bill" <Bill.Smith@act.gov.au>
Subject: Early Attachment - CONFIDENTIAL WHS Prosecutions Report
Attachments: CONFIDENTIAL Final Report - Conduct of WHS Prosecutions in the ACT 30 June 2022.pdf

OFFICIAL: Sensitive

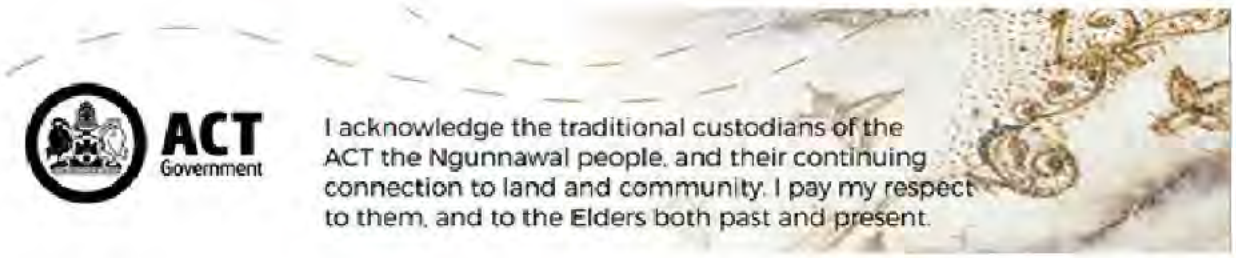
Hi Secretariat

Please find attached the Conduct of WHS Prosecutions in the ACT Report. The WHS Commissioner has requested that we provided this to WHS Council early in preparation for the upcoming August meeting discussion with Marie Boland and decision on whether to provide to the ACT Government for consideration and action.

Can you please provide this to the Council, noting it is CONFIDENTIAL and not to be further distributed at this time.

Kind regards,
Jackii

Jackii Shepherd | Senior Director, Communication, Capability & Occupational Hygiene
Phone: 02 6205 4654 | Sch 2.2(a)(ii) | EMAIL: jackii.shepherd@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601
WORKSAFEACT



From: Young, Michael
To: Lukins, Ellen
Subject: FW: WorkSafe ACT Response - Boland Prosecution Review
Date: Friday, 23 June 2023 2:49:15 PM
Attachments: image001.png
image002.png
2023-03-14 CONFIDENTIAL Final Report - Conduct of WHS Prosecutions in the ACT 30 June 2022.pdf
2023-03-14 WorkSafe ACT Response - Boland Prosecution Review.pdf

OFFICIAL

From: Young, Michael
Sent: Tuesday, 14 March 2023 5:01 PM
To: West, Damian
Cc: Lukins, Ellen ; Prowse, Fay
Subject: FW: WorkSafe ACT Response - Boland Prosecution Review

FYI

The WorkSafe document interprets the Government's policy around establishing WorkSafe as an independent prosecutor in a way that could (in the Minister/AG/CM's view) go beyond what was actually intended. This extract from p3 being the most obvious example.

> *The lack of control over the management of WHS prosecution decision making is inconsistent with the ACT Government's vision for WorkSafe ACT to operate as an independent WHS regulator. It restricts the WHS Commissioner's ability to positively influence a change in safety culture and risks and undermines the objective of creating safe workplaces across the ACT.*
>
> *Providing the WHS Commissioner with the authority to decide when to prosecute WHS breaches, and the flexibility to choose where to seek prosecution advice, is a critical element required to deliver the ACT Government's objective of a genuinely independent WHS regulator.*

This potentially wedges the govt policy response - setting up a position where it either needs to publicly correct/clarify the Commissioner's interpretation or accept the argument for unfettered prosecution power.

You may want to flag this in the Minister's meeting tomorrow? I note they plan to publish on 16 March.

Subject to your views, I propose to ask Jacqui (perhaps informally) to remove those two paras.

Thanks

Michael

From: Pocock, Alice <Alice.Pocock@worksafe.act.gov.au> **On Behalf Of** Agius, Jacqueline
Sent: Tuesday, 14 March 2023 3:56 PM
To: Young, Michael <Michael.Young@act.gov.au>
Subject: WorkSafe ACT Response - Boland Prosecution Review

OFFICIAL

Dear Mr Young,

In July last year I provided you with a copy of Marie Boland's report examining the prosecutions framework for breaches of the Work Health and Safety (WHS) and associated laws operating in the ACT – *Conduct of WHS Prosecutions in the ACT* (the Report). The Report included 12 recommendations relating to either WorkSafe ACT or the broader ACT Government.

Subsequently, my Office has considered the specific recommendations relating to WorkSafe ACT and also formed a position on the Report's proposed prosecution

model – noting that this will ultimately be a decision for Government. Please find attached for your information WorkSafe ACT's Response to the Report.

I am writing to advise that I intend to release both the Report and WorkSafe ACT's response publicly on 16 March 2023.

For your information, I am also providing WorkSafe ACT's response to Richard Glenn (JACS), the Office of the Minister of Industrial Relations and Workplace Safety Minister Mr Mick Gentleman, Mr Shane Drumgold SC (Director of Public Prosecutions), Mr Peter Garrison (ACT Solicitor General), the Office of the ACT Attorney General Mr Shane Rattenbury and the Office of Chief Minister Mr Andrew Barr in advance of the public release.

Stay safe

Kind regards,

Alice Pocock |
Executive Assistant to Jacqueline Agius , Work Health and Safety Commissioner and Labour Hire Licence Commissioner
P: 02 6205 9958 | E: alice.pocock@worksafe.act.gov.au
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WORK HEALTH AND SAFETY COUNCIL

ACT Government

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

Dear Minister

RE: workplace culture at the Office of the Work Health and Safety Commissioner

I am writing to advise of Council's consideration of your request dated 31 July 2024 to discuss matters relating to the consideration of an independent review of workplace culture at the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

This matter was discussed at meeting 19 of the Council held on 22 August 2024.

In considering the issue Members expressed a general unease about inquiring into whether or not there should be an independent review of WorkSafe ACT workplace culture. Relevantly, it is unclear, and the Council is unable to determine, the veracity of these claims. The Council discussed that the body is unable to function as an investigator and it would be inappropriate to do so.

Consequently, while Council members noted that generally media reports alone are not sufficient to warrant an independent review, it is also uncertain what threshold may be necessary to warrant recommending a review.

From your letter, Council is aware that concerns have been raised from current and former staff, and also of concerns that have been raised publicly in the media about alleged culture issues at WorkSafe ACT.

To make it clear, the Council did not express a judgement about the performance of the Work Health and Safety Commissioner in her role as the work safety regulator.

However, given the importance of maintaining community and staff confidence in the reputation of the work safety regulator, Council considers it prudent that action is taken to give the public assurance about the governance and regulatory activities of WorkSafe ACT.

Council considers the form of this response is for you to determine, whether that is an independent review or otherwise, as the Minister with responsibility for the *Work Health and Safety Act 2011*.

It is also recognised that this is likely a difficult and stressful time for all WorkSafe ACT staff, including the Commissioner, and appropriate supports should be offered.

Yours sincerely

Sch 2.2(a)(ii)

Michael Hiscox
Chair, ACT Work Health and Safety Council
12 September 2024

From: "Lukins, Ellen"
Sent: 03/11/2020 10:06 PM
To: "Young, Michael" <Michael.Young@act.gov.au>
Subject: FOR APPROVAL: WorkSafe ACT WC delegations
Attachments: Brief to HOAC_WorkSafe ACT WC Delegations.docx, Att A - revised - Workers Comp Delegations - Sept 2020 FINAL.docx, Att B_Current Workers Compensation Appointment and Delegations 2019 (No 1).pdf
Importance: High

OFFICIAL

Hi Michael

I'm assuming you might have already discussed this with Jacqui/Amanda – they've asked us to progress the WorkSafe workers comp delegations to Head of Access Canberra for signature as HOS has indicated this is preferred.

I've agreed with Amanda that we just seek HOAC signature on the delegations and then Jacqui can make the inspector appointment instrument – it will just mean a day where no inspector compliance activity can occur.

Briefing is attached for your approval, not on Trim as Access Canberra is not on TRIM (so can't reassign trim tree to David Pryce) – I'm going to check with their DLO (Kim Bailey) what their usual workaround is.

Let me know if you need anything added to the briefing and will confirm re progressing to HOAC.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government



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ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	2 November 2020	TRIM No: CMTEDD2020/5486 File No:
To	Head of Access Canberra	
From	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject	Delegation and Appointments – *Workers Compensation Act 1951*	

Critical date and reason

1. **URGENT, 11 November 2020** – to support the regulatory operations of the new independent Office of the Work Health and Safety Commissioner's in relation to workers' compensation laws in the Territory.

Recommendations

2. That you:
    a. **sign** the revised Workers Compensation (Director-General) Delegations 2020 (No 1)) instrument (Attachment A);
    b. **note** that the previous Head of Access Canberra delegations and appointments under the *Workers Compensation Act 1951* will be revoked; and
    c. **note** that the WHS Commissioner will make the inspector appointment instrument once provided with the delegation.

David Pryce..... / /

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. The Office of the Work Health and Safety (WHS) Commissioner, known as WorkSafe ACT, was established on 30 April 2020 and commenced governance as an independent statutory authority with effect from 1 July 2020.

4. Since being established, all work safety regulatory operations were shifted to WorkSafe ACT, and more specifically, the WHS Commissioner. This change from Director-General to WHS Commissioner functions was given effect and limited to work safety laws, including the *Work Health and Safety Act 2011* and other work safety laws. It did not include a legislative reassignment of workers' compensation regulatory functions despite these functions also being performed by WorkSafe ACT.

5. The *Employment and Workplace Safety Legislation Amendment Act 2020* (EWSLA Act), notified on 9 July 2020, was the legislative vehicle later used to shift workers' compensation regulatory functions of the Director-General over to the WHS Commissioner.

Issues

6. The EWSLA Act has staged commencement periods and relevantly, the workers' compensation amendments will not commence until 9 January 2021.

7. Due to the longer than anticipated time between establishing the new WorkSafe ACT governance model and giving legislative effect to the regulator's functions for workers' compensation, the WHS Commissioner and WorkSafe ACT is not able to effectively perform their role as regulator for the *Workers Compensation Act 1951* (WC Act).

8. The current delegation and appointments instrument, the *Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)* (Attachment B), provided WorkSafe ACT with delegated powers to regulate and enforce workers' compensation legislative obligations. This delegation was made under the old WorkSafe governance model and does not allow the WHS Commissioner or Deputy WHS Commissioner to exercise regulatory functions under the new WorkSafe ACT governance model.

9. A new delegation instrument has been prepared for your signature as Head of Access Canberra (Attachment A). This instrument would only be required to support the regulatory functions of WorkSafe ACT in relation to workers' compensation until 9 January 2021, and would:

    a. revoke the current *Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)*;

    b. remove all previous delegates and non-WorkSafe ACT position numbers;

    c. delegate the respective Director-General functions to the:

        i. WHS Commissioner

        ii. Deputy WHS Commissioner

        iii. Senior Director, Compliance and Enforcement

d. delegate the appointment of inspectors to the WHS Commissioner.

10. Once the new delegation instrument has been signed by you, the WHS Commissioner will arrange for the appointment of inspectors in line with the suitability requirements under s188 of the WC Act.

Consultation

11. WorkSafe ACT has been consulted in drafting the attached instruments and the WHS Commissioner supports the re-appointment of current WorkSafe ACT inspectors for the purposes of the WC Act.

12. The ACT Government Solicitor's Office has advised that you, as Head of Access Canberra, have the power to make the attached delegations and appointment of inspectors. The Head of Service has been briefed on the issue and considers this power to more appropriately rest with you.

Work Health and Safety

13. Nil.

Financial

14. Nil.

Risks/ Sensitivities

15. Retaining the current delegations until the EWSLA Act workers' compensation changes commence by 9 January 2021 would unduly restrict the regulator's operational activities, including review mechanisms, associated with the WC Act between now and January 2021.

Media

16. Not applicable.

Michael Young

Action Officer: Ellen Lukins

Phone: x53874

Attachments

Attachment	Title
Attachment A	New: Workers Compensation (Director-General) Delegations 2020 (No.1)
Attachment B	Current: Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)

Australian Capital Territory

Workers Compensation (Director-General) Delegations 2020 (No 1)

made under the

***Workers Compensation Act 1951* and *Public Sector Management Act 1994*, section 20 (Delegation by Director-General)**

---

1 Name of instrument

This instrument is the *Workers Compensation (Director-General) Delegations 2020 (No 1)*.

2 Commencement

This instrument commences on the day after it is made.

3 Delegations—Act, section

I, Head of Access Canberra, delegate those of my powers and functions under the *Workers Compensation Act 1951* identified in column 1 of table 1 of schedule 1 to the persons occupying or performing the duties, from time to time of the position specified in the corresponding row of column 3 of table 1 of schedule 1.

4 Revocation

This instrument revokes the *Workers Compensation (Appointments and Delegations) 2019 (No 1)* signed on 9 July 2019.

David Pryce
Head of Access Canberra
November 2020

Note 1: The Head of Access Canberra is authorised to exercise functions of the Directors General under the Territory laws that have been declared by the responsible Minister: see section 21 of the Public Sector Management Act 1994.

Note 2: The power to appoint inspectors and delegate the functions under the Workers Compensation Act 1951 are declared in NI2017-465, Public Sector Management (Head of Access Canberra Functions) Declaration 2017 (No 1).

Workers Compensation (Director-General) Delegations 2020 (No 1)

Schedule 1

Table 1 – Director-General Delegations under the *Workers Compensation Act 1951*

Column 1	**Column 2**	**Column 3**
Section(s)	**Function**	**Position numbers**
All sections, except for sections 110, 166C, 188, 201, 210 and 221		P46665, WHS Commissioner E1149, Deputy WHS Commissioner P35631, Senior Director
Section 147	Issuing default and cease business notices for not holding compulsory insurance	P05507 P05737 P05546
Section 188	Appointing inspectors	P46665, WHS Commissioner

From: "Lukins, Ellen"
Sent: 30/08/2024 1:55 PM
To: "Young, Michael" <Michael.Young@act.gov.au>
Cc: "CMTEDD, EGM WSG Office" <EGMWSGOffice@act.gov.au>; "Turner, Mikaela" <Mikaela.Turner@act.gov.au>
Subject: FOR EGM APPROVAL: Revised QTB for review
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Office of Industrial Relations and Workforce ~ Double Sitting Week.tr5, REVISED 30082024 - Workplace culture at WorkSafe ACT (WSG) (NEW) - NEW.DOCX

Hi Michael

As discussed, see attached a revised QTB re WorkSafe ACT culture – please note I haven't added to the attached QTB Trim container as yet.

Have added dotties on the construction industry ... see what you think.

Happy to adjust further if needed.

Cheers,
EL

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 Sch 2.2(a)(ii) ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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QUESTION TIME BRIEF

Portfolio/s: Workplace Safety & Industrial Relations

ISSUE: Workplace Culture at WorkSafe ACT

Talking points:

- I am aware of recent media reports relating to WorkSafe ACT's workplace culture.
- The Office of the Work Health and Safety Commissioner was established in 2020 as an independent authority in response to recommendations of a *2018 independent review of the ACT's work safety compliance infrastructure, policies and procedures*.
- Securing the independence of the ACT work safety regulator was a design objective of the reforms and responsive to calls on the government to insulate the work safety regulator from the potential influence of government agencies and officials that it regulates.
- A safeguard to balance independence from influence by other government agencies, was to task the ACT's tripartite WHS Council with monitoring and advising the Minister about the performance of WorkSafe and the WHS Commissioner.
- The Council convenes quarterly and reviews performance reports from the regulator.
- WorkSafe ACT employees are ACT Public Sector employees and have access to a range of whole of government tools and resources to support their health and safety at work, including:
    - access to mechanisms available under the *Public Sector Management Act*; and
    - their enterprise agreement to address workplace relations issues and grievances that they may have.

Cleared as complete and accurate:	22/08/2024	
Cleared for public release by:	Deputy Director-General	Ext: 75001
Contact Officer name:	Michael Young	Ext: 53095
Lead Directorate:	Chief Minister, Treasury and Economic Development	
Trim Ref:	CM24/98242	

QUESTION TIME BRIEF

Background Information:

- Advisory functions held by the WHS Council under schedule 2, section 2.2 of the *Work Health and Safety Act 2011* are:
    - advising the Minister on WHS, workers' compensation and bullying and harassment matters (schedule 2, section 2.2 (1)(a) of the WHS Act):
        - including, but not limited, to the performance of the office of the WHS commissioner and the WHS commissioner (schedule 2, section 2.2 (2)(aa) of the WHS Act);
    - inquiring and reporting to the Minister on matters referred to the Council in relation to WHS, workers' compensation and bullying and harassment matters (schedule 2, section 2.2 (1)(b) of the WHS Act); and
    - advising the Minister and the WHS commissioner on any matters arising from the Council's review and consideration of WorkSafe ACT's annual report published each year (schedule 2, section 2.2 (1)(c) of the WHS Act).
- The WHS Council is an advisory body and not a governance board.
- Membership of the WHS Council comprises appointed employee and employer representatives, as well as ex-officio representatives from government and the WHS Commissioner.
    - representative members on the Council comprise a broad membership from unions and industry peak officials, including CFMEU, UnionsACT, CPSU, Master Builders Association, YMCA Canberra, and Canberra Business Chamber.
- Communique's from meetings of the Council are released and published on the CMTEDD webpage.

WHS Commissioner appointment

- The Work Health and Safety Commissioner is appointed by the Executive (2 or more Ministers) after consultation with the chair and deputy chair of the WHS Council and an open and accountable selection process.
- The selection process leading to the appointment in April 2020 of the current WHS Commissioner, Jacqueline Agius followed the process as required by statute.
- The elected Chair and Deputy Chair of the WHS Council at the time were consulted in relation to the selection process. The selection panel comprised tripartite representation of employer, employee representatives from the WHS Council and an independent panel member.

Compliance and enforcement activities – **independence from directions**

- The WHS Commissioner as the regulator must act independently in carrying out functions under the WHS Act and the Minister is only able to give directions of a

Cleared as complete and accurate:	22/08/2024	
Cleared for public release by:	Deputy Director-General	Ext: 75001
Contact Officer name:	Michael Young	Ext: 53095
Lead Directorate:	Chief Minister, Treasury and Economic Development	
Trim Ref:	CM24/98242	

general nature. Specifically, the Minister is not able to give directions in relation to a particular investigation or particular regulatory action.

- Regulatory action of WorkSafe ACT is carried out in a manner that is consistent with the articulated and transparent approach in WorkSafe ACT's Compliance and Enforcement Policy which is available on the ACT Legislation Register and published on .

Compliance and enforcement activities – **construction industry**

- The construction industry is consistently year on year one of the highest risk industries in the ACT.
- Poor work safety practices in the construction industry are evidenced in workers' compensation data with the industry having one of the highest representation in accepted lost-time injury workers' compensation claims (between 300 and 370 annually) compared to other ACT industries.
- The construction industry is also nationally recognised as a priority industry, if you refer to the current nationally endorsed Australian Work Health and Safety Strategy it continues to be a high priority industry where workers face the higher rates of harm.
- This is why in setting broad and general Ministerial Expectations for WorkSafe ACT annually, the construction industry continues to be identified as a priority area for the regulator in the ACT. ——

From: "Lukins, Ellen"
Sent: 21/04/2026 11:41 PM
To: "Parton, Rebecca" <Rebecca.Parton@act.gov.au>
Cc: "Pogson, Gemma" <Gemma.Pogson@act.gov.au>; "CMTEDD, EGM WSG Office" <EGMWSGOffice@act.gov.au>
Subject: FW: CMTEDD2026/1482 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Worksafe Brief - WRITTEN DIRECTION REGARDING AMENDMENTS INTRODUCED BY CRIMES
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Worksafe ~ WRITTEN DIRECTION REGARDING AMENDMENTS INTRODUCED BY CRIMES.tr5

Hi Rebecca

On a quick review:

- propose supporting, while long and overly complex they are generally fine and align with previous delegations
- it may be worth noting that the splitting of sections (eg s124 in the first attachment) is confusing when both say only X, Y, Z and then only A may do a function as delegate, appreciating that they are looking to provide written directions for when the lowest delegated level is able to exercise a delegated function however it may be done more clearly by adjusting the columns, for example (with items not requiring 'written directions' simply stating nil written direction in the last column):

Section	Function Description	Limitation	Written direction
124	**Extension of time to pay penalty –** The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: • Work Health and Safety Commissioner Deputy Work Health and Safety • Commissioner Executive Group Manager, WorkSafe ACT • Executive Branch Manager, WorkSafe ACT • Senior Officer Grade A • Senior Officer Grade B • Senior Office Grade C	If exercised at the Senior Officer C classification this function is only able to be exercised in circumstances where the request for an extension of time has been received by the administering authority before the end of the allowed time, i.e., within 28 days of service of the infringement notice or reminder notice or any extension of time previously given.

- as mentioned at para 6 in the WorkSafe brief, we are progressing changes to the workers comp and dangerous substances infringement notice scheme regs to switch the administering authority over to the

WHS Commissioner rather than the D-G (CMTEDD) aligning with their functions – PCO is currently drafting these amendments (**Gemma**, can you please let Rebecca P know roughly when we anticipate progressing these, thanks).

Gemma, if you have a closer read and identify any issues that I may have missed please let Rebecca know.

Noting I am offline progressing urgent portable long service leave matters, Rebecca, if you need Gemma to reach out to WorkSafe ACT (contact officer in the brief) to discuss the suggested clarification please let us know.

Thank you,
EL

Ellen Lukins
Executive Branch Manager | Policy Branch
02 6205 3874 Sch 2.2(a)(ii) | ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

****
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From: Parton, Rebecca <Rebecca.Parton@act.gov.au>
Sent: Tuesday, 21 April 2026 4:32 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: FW: CMTEDD2026/1482 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Worksafe Brief - WRITTEN DIRECTION REGARDING AMENDMENTS INTRODUCED BY CRIMES

OFFICIAL

Rebecca Parton
A/g Executive Group Manager
02 6205 9482 | rebecca.parton@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

From: Doyle, Samantha <Samantha.Doyle@act.gov.au>
Sent: Tuesday, 21 April 2026 4:24 PM
To: Parton, Rebecca <Rebecca.Parton@act.gov.au>
Cc: Anderson, Dan <Dan.Anderson@act.gov.au>
Subject: CMTEDD2026/1482 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Worksafe Brief - WRITTEN DIRECTION REGARDING AMENDMENTS INTRODUCED BY CRIMES

OFFICIAL

Hi Rebecca,

Please see attached TRIM container for action.

On this brief, Kathy has requested your advice. Please provide a covering brief.

Thanks,

Sam

Samantha Doyle | Director of Communication, Office of the Head of Service
Phone: Webex or Teams | Mobile Sch 2.2(a)(ii) Email: samantha.doyle@act.gov.au

------< Content Manager Record Information >------

Record Number: CMTEDD2026/1482
Title: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Worksafe Brief - WRITTEN DIRECTION REGARDING AMENDMENTS INTRODUCED BY CRIMES

From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 11/07/2024 11:57 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: CPSU letter about WorkSafe culture - para's for possible use in reply
Importance: High

OFFICIAL: Sensitive

From: Young, Michael
Sent: Friday, May 3, 2024 3:02 PM
To: Turner, Mikaela
Subject: FW: CPSU letter about WorkSafe culture - para's for possible use in reply
Importance: High

From: Young, Michael
Sent: Monday, September 11, 2023 2:32 PM
To: Noud, Russell <Russell.Noud@act.gov.au>; McKinnon, Margaret <Margaret.McKinnon@act.gov.au>
Subject: FW: CPSU letter about WorkSafe culture - para's for possible use in reply
Importance: High

OFFICIAL: Sensitive

Hello

This is the email I was referring to at our meeting just now.

The draft email of reply wasn't used – Damian was going to give Brenton some time to cool and then consider talking to Jacqui about her bringing on a review voluntarily.

The pathway that the draft suggests (WHS Council) is available. However it would constitute an escalation of the concerns, which was why Damian was looking for a middle ground.

The draft email sets out the regulatory situation and limits on the OIRWS powers to review the performance of the WHS Commissioner. In short – the role was designed (at the urging of unions) to prevent the public sector from influencing the operations of the WHS Commissioner.

Russell – you may have a view on whether the PSM Act could be applied in some way that would allow a review?

I don't seem to have the letter Brenton sent to Damian asking for the review. He was treating it confidentially at the time so may have just shown me a hard copy – it was sent in mid to late May 2023 and was from Brenton Higgins or Maddie Northam, perhaps Fay could access?

Michael

Michael Young | Executive Group Manager
02 6205 3095| michael.young@act.gov.au

Work Safety Group | Office of Industrial Relations & Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Young, Michael
Sent: Wednesday, 31 May 2023 7:49 PM
To: West, Damian <Damian.West@act.gov.au>
Cc: Noud, Russell <Russell.Noud@act.gov.au>
Subject: CPSU letter about WorkSafe culture - para's for possible use in reply
Importance: High

OFFICIAL: Sensitive

Hi Damian and Russell

Below for your consideration – words on the independence of WHS Commissioner and associated WHSC role.

Although the paras below focus on technical statutory bars to OIRWS intervening, a review could be conducted by OIRWS (or any other reviewer) at Jacqui's request.

I refer to your letter seeking a review of the WorkSafe ACT workplace culture by the Office of Industrial Relations and Workforce Strategy.

As you know, in 2020 the Office of the Work Health and Safety Commissioner (WorkSafe ACT) was established as an independent entity in response to recommendations of the *2018 Independent review of the ACT's work safety compliance infrastructure, policies and procedures*, specifically, recommendation 21. This was to ensure clarity of roles and independence of the regulator.

The design was responsive to calls on the Government, primarily from unions, to insulate WorkSafe from influence by government agencies and officials that may be regulated by it. Given this, I am unable to intervene directly in the manner you have suggested.

Key features of the legislative design that limit intervention by other ACTPS agencies include:

- Section 2.23 schedule 2 of the *Work Health and Safety Act 2011* (the Act) provides that the WHS Commissioner is not subject to the direction of anyone else and must act independently in the exercise of their functions.
- Responsibility for the employment of staff of the Office rests with the WHS Commissioner under section 2.32, of the Act.

- The staff's independence from external directions is maintained under section 2.34 of schedule 2.

In establishing the independence of the Office an additional layer of oversight was afforded to the Work Health and Safety Council, including the ability to advise the Minister about the performance of the Office and the WHS Commissioner and also consider a resolution of no-confidence in the WHS Commissioner. Any no-confidence resolution must then be responded to by the ACT Executive Government in accordance with section 2.28, schedule 2 of the Act.

In light of this, you may wish to consider raising your concerns with the WHS Council, to bring forward at a future meeting for review and consideration by the Council, who may then advise the Minister on any recommendations it resolves to make. I understand the next meeting of the Council is scheduled for Thursday, 8 June 2023. Matters may also be considered out-of-session.

From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 06/11/2020 9:14 AM
To: "Turner, Mikaela" <Mikaela.Turner@act.gov.au>
Cc: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: FOR APPROVAL: WorkSafe ACT WC delegations
Attachments: Brief to HOAC_WorkSafe ACT WC Delegations.docx, Att A - revised - Workers Comp Delegations - Sept 2020 FINAL.docx, Att B_Current Workers Compensation Appointment and Delegations 2019 (No 1).pdf
Importance: High

OFFICIAL

Hi Mikaela and Ellen

I approve these documents.

Mikaela – for our record keeping purposes, please set up a Trim record to keep them – and add signed version when they come back.

I note Access Canberra doesn't use Trim however. Would one of you please speak with the Access Canberra DLO or David Pryce's office with a view to getting them into his papers for signing pile?

If unsure about how best to do that, Amanda could probably advise.

Thanks

M

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government



From: Lukins, Ellen
Sent: Tuesday, 3 November 2020 10:07 PM
To: Young, Michael
Subject: FOR APPROVAL: WorkSafe ACT WC delegations
Importance: High

OFFICIAL

Hi Michael

I'm assuming you might have already discussed this with Jacqui/Amanda – they've asked us to progress the WorkSafe workers comp delegations to Head of Access Canberra for signature as HOS has indicated this is preferred.

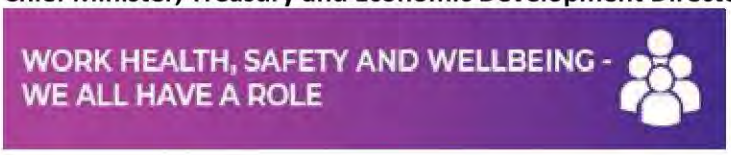
I've agreed with Amanda that we just seek HOAC signature on the delegations and then Jacqui can make the inspector appointment instrument – it will just mean a day where no inspector compliance activity can occur.

Briefing is attached for your approval, not on Trim as Access Canberra is not on TRIM (so can't reassign trim tree to David Pryce) – I'm going to check with their DLO (Kim Bailey) what their usual workaround is.

Let me know if you need anything added to the briefing and will confirm re progressing to HOAC.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government



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ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	6 November 2020	TRIM No: CMTEDD2020/5486 File No:
To	Head of Access Canberra	
From	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject	Delegation and Appointments – *Workers Compensation Act 1951*	

Critical date and reason

1. **URGENT, 11 November 2020** – to support the regulatory operations of the new independent Office of the Work Health and Safety Commissioner's in relation to workers' compensation laws in the Territory.

Recommendations

2. That you:
    a. **sign** the revised Workers Compensation (Director-General) Delegations 2020 (No 1)) instrument (Attachment A);
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    c. **note** that the WHS Commissioner will make the inspector appointment instrument once provided with the delegation.

David Pryce..... / /

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. The Office of the Work Health and Safety (WHS) Commissioner, known as WorkSafe ACT, was established on 30 April 2020 and commenced governance as an independent statutory authority with effect from 1 July 2020.

4. Since being established, all work safety regulatory operations were shifted to WorkSafe ACT, and more specifically, the WHS Commissioner. This change from Director-General to WHS Commissioner functions was given effect and limited to work safety laws, including the *Work Health and Safety Act 2011* and other work safety laws. It did not include a legislative reassignment of workers' compensation regulatory functions despite these functions also being performed by WorkSafe ACT.

5. The *Employment and Workplace Safety Legislation Amendment Act 2020* (EWSLA Act), notified on 9 July 2020, was the legislative vehicle later used to shift workers' compensation regulatory functions of the Director-General over to the WHS Commissioner.

Issues

6. The EWSLA Act has staged commencement periods and relevantly, the workers' compensation amendments will not commence until 9 January 2021.

7. Due to the longer than anticipated time between establishing the new WorkSafe ACT governance model and giving legislative effect to the regulator's functions for workers' compensation, the WHS Commissioner and WorkSafe ACT is not able to effectively perform their role as regulator for the *Workers Compensation Act 1951* (WC Act).

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    b. remove all previous delegates and non-WorkSafe ACT position numbers;

    c. delegate the respective Director-General functions to the:

        i. WHS Commissioner

        ii. Deputy WHS Commissioner

        iii. Senior Director, Compliance and Enforcement

    d. in addition, section 147 functions in relation to the issuing of default and cease business notices for not holding compulsory insurance would also be delegated

to inspectorate position numbers in WorkSafe ACT, consistent with past delegations and the enforcement nature of those powers; and

e. delegate the appointment of inspectors (for the purposes of workers compensation compliance activity) to the WHS Commissioner.

10. Once the new delegation instrument has been signed by you, the WHS Commissioner will arrange for the appointment of inspectors in line with the suitability requirements under s188 of the WC Act.

Consultation

11. WorkSafe ACT has been consulted in drafting the attached instruments and the WHS Commissioner supports the re-appointment of current WorkSafe ACT inspectors for the purposes of the WC Act.

12. The ACT Government Solicitor's Office has advised that you, as Head of Access Canberra, have the power to make the attached delegations. The Head of Service has been briefed on the issue and considers this time limited delegation function to more appropriately rest with you.

Work Health and Safety

13. Nil.

Financial

14. Nil.

Risks/ Sensitivities

15. Retaining the current delegations until the EWSLA Act workers' compensation changes commence by 9 January 2021 would unduly restrict the regulator's operational activities, including review mechanisms, associated with the WC Act between now and January 2021.

Media

16. Not applicable.

Michael Young

Action Officer: Ellen Lukins

Phone: x53874

Attachments

Attachment	Title
Attachment A	New: Workers Compensation (Director-General) Delegations 2020 (No.1)
Attachment B	Current: Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)

From: "Lukins, Ellen"
Sent: 01/08/2024 3:07 PM
To: "Michael Hiscox (CFMEU Sch 2.2(a)(ii)
Cc: "ACTWorkHealthandSafetyCouncil.Secretariat" <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: Fw: Letter to the Chair of the Work Health and Safety Council
Attachments: [SIGNED] WorkSafe ACT - Letter to WHS Council Chair.pdf

Hi Michael
As discussed at today's meeting - the Secretariat has received this corro (yet to be updated on the draft agenda noting correspondence only received this morning).
We ask that you please treat with sensitivity noting we are still seeking more context at the directorate level and can provide some guidance re functions of the Council in response.
Thank you,
Ellen

Ellen Lukins
Executive Branch Manager | Policy Branch
& WHS Council/LHL Advisory Committee Secretariat
02 6205 3874 | Sch 2.2(a)(ii) | ellen.lukins@act.gov.au
Work Safety Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.
****

Important: This message may contain confidential or privileged information. If you are not the recipient of this message, you are hereby notified that you must not disseminate, copy or take any action based upon it. If you think this was sent to you by mistake, please delete all copies and advise the sender immediately.

From: Winn, Sinead
Sent: Thursday, August 1, 2024 8:50 AM
To: ACTWorkHealthandSafetyCouncil.Secretariat
Subject: Letter to the Chair of the Work Health and Safety Council
Dear Secretariat
Please find attached correspondence from Minister Gentleman for the consideration of the Chair.
Warm regards

Sinead Winn (she/her)
Adviser – Industrial Relations and Workplace Safety
Office of Minister Mick Gentleman MLA | Member for Brindabella
Minister for Police and Crime Prevention | Minister for Fire and Emergency Services
Minister for Multicultural Affairs | Minister for Industrial Relations and Workplace Safety
Minister for Business | Manager for Government Business
E: sinead.winn@act.gov.au | M: Sch 2.2(a)(ii)
ACT Legislative Assembly, 196 London Circuit, Canberra ACT 2601

ACT Government

Mick Gentleman MLA
Manager of Government Business
Minister for Business
Minister for Fire and Emergency Services
Minister for Industrial Relations and Workplace Safety
Minister for Multicultural Affairs
Minister for Police and Crime Prevention

Member for Brindabella

Mr Michael Hiscox
Chair
Work Health and Safety Council
Via email: ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au

Dear Mr Hiscox,

I am writing to you as Chair of the Work Health and Safety Council to provide support for an independent review into workplace culture at the Office of the Work Health and Safety Commissioner (WorkSafe ACT).

As you would be aware, WorkSafe ACT functions as an independent entity to ensure that they would remain unaffected by influence from government agencies and officials that may be regulated by it. In establishing the independence of the Office an additional layer of oversight was afforded to the Work Health and Safety Council, which is further outlined in the Work Health and Safety Act.

I am concerned by the matters raised by current and former WorkSafe employees over the past few weeks, and by the risks similarly identified and raised by the Community and Public Sector Union, including at ACT Labor Conference this past weekend. I would hope that your fellow Council members feel similarly, as we all have a vested interest in ensuring safe and healthy workplace for all Canberrans.

Noting the specificity of independence in the design of WorkSafe ACT, and the additional layer of oversight granted to the Council, I believe that it is in the best interests of the public that the Council, which as you know is comprised of both employer and employee representatives, has the opportunity to discuss recommendations for actions to take regarding these matters.

For this reason, I am writing to suggest that discussion of an independent review be added to the agenda at the next meeting of the Work Health and Safety Council. Should the outcome of this discussion be to pursue an independent review, please know that I would be fully supportive of this endeavour.

ACT Government

Mick Gentleman MLA
Manager of Government Business
Minister for Business
Minister for Fire and Emergency Services
Minister for Industrial Relations and Workplace Safety
Minister for Multicultural Affairs
Minister for Police and Crime Prevention

Member for Brindabella

Yours sincerely,

Mick Gentleman MLA
31/7/2024

Office of Minister Mick Gentleman MLA
6205 0218 | gentleman@act.gov.au

From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 15/08/2025 5:18 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: OIRWS review of Worksafe brief
Attachments: Signature - Brief - WorkSafe - Updated delegations and appointments of Administering Authority functions.pdf

Its a long one

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Work Safety Group | Office of Industrial Relations & Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Power, Leanne
Sent: Friday, 15 August 2025 5:06 PM
To: Wright, Robert ; Young, Michael
Cc: Anderson, Dan ; Marando, Liza
Subject: OIRWS review of Worksafe brief

Hi Robert and Michael

Kathy has asked if you can please review and comment or endorse the attached brief from the WorkSafe Commissioner.

Dan can you please note on the TRIM workflow.

Many thanks
Leanne

Leanne Power | Executive Branch Manager, Office of the Head of Service
Phone: 02 620 75990 | Mobile: Sch 2.2(a)(ii) | Email: leanne.power@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

WORKSAFE ACT SAFE + HEALTHY WORKPLACES

WHS COMMISSIONER MINUTE TO DIRECTOR-GENERAL

Chief Minister, Treasury and Economic Development Directorate

To: Kathy Leigh, Director-General, Chief Minister, Treasury and Economic Development Directorate

14/08/2025

From: Jacqueline Agius, Work Health and Safety Commissioner

Updated delegations and appointments of Administering Authority functions under the Magistrates Court Act 1951

RECOMMENDATION

That you:

- **note** the information in this minute

Noted / Please discuss

- **agree** to delegating your functions under the *Magistrates Court Act 1930* for offences against the Dangerous Substances Legislation and *Workers Compensation Act 1951* to authorised persons within the Office of the Work Health and Safety Commissioner

Agreed/Not Agreed / Please discuss

- **sign** the delegation instruments at Attachment C and D.

Signed / Please discuss

Kathy Leigh - Director-General, Chief Minister, Treasury and Economic Development Directorate

/ /2025

COMMENTS

BACKGROUND

1. On 11 April 2025, you agreed to update delegations of your functions under Part 3.8 of the *Magistrates Court Act 1930* (the MC Act), in your capacity as Administering Authority for infringement notice offences under the Dangerous Substances Legislation (the DS Legislation) and *Workers Compensation Act 1951* (the WC Act) to certain authorised persons within the Office of the Work Health and Safety Commissioner (WorkSafe ACT). A copy of the minute is at Attachment A.
2. I recently made amendments to similar delegation instruments for which I am the relevant Administering Authority for infringement notice offences against the Work Health and Safety legislation and Dangerous Goods Road Transport legislation. These changes have extended some delegations to lower classifications and limited others to higher classifications. For consistency, I wish to make similar amendments to the delegation instruments for those infringement notice offences that you are the relevant Administering Authority.
3. Finally, I have identified a hazard impacting inspector safety arising from their surnames and initials appearing on regulatory notices. To control the risk posed to inspectors, I am seeking further delegation of your functions to facilitate the use of unique identifiers (i.e. inspector numbers) on regulatory notices instead of surnames and initials.
4. Section 135 of the MC Act provides the ability for the Administering Authority to delegate their functions under Part 3.8 of the MC Act to an authorised person or a person prescribed by regulation.
5. It should be noted that no person has been prescribed by regulation for the purposes of section 135 of the MC Act, so the only ability to delegate the Administering Authority's functions is to an authorised person. An authorised person for the purposes of Part 3.8 of the MC Act is defined under section 134A(3)(a) as:

   authorised person

   a) for an infringement notice for an infringement notice offence—
      i. the administering authority; or
      ii. a person who is appointed under this section by the administering authority to serve an infringement notice for the offence; or
      iii. anyone else who, under the regulations, may serve an infringement notice for the offence; or

   b) for a reminder notice for an infringement notice offence—
      i. the administering authority; or
      ii. a person who is appointed under this section by the administering authority to serve a reminder notice for the offence; or
      iii. anyone else who, under the regulations, may serve a reminder notice for the offence.

ISSUES

Proposed changes to delegations – Section 124 functions for SOGC classifications to be limited to in-time applications only

6. Through consultation with the Deputy WHS Commissioner in relation to proposed changes to these delegations, it was identified that the current delegations under section 124 to Senior Officer Grade C may not be appropriate, noting that it allowed the approval of both in-time and out of time applications, which are defined in the *Magistrates Court (Extension of Time) Guidelines 2024 (No 1)*.

7. Out of time applications pose a higher risk to WorkSafe ACT and require more discretionary consideration of the application. As such, it was proposed that the current delegations to Senior Officer Grade C levels should be limited to exclude out of time applications.

8. Considering that the *Magistrates Court (Extension of Time) Guidelines 2024 (No 1)* specify that the Administering Authority **must** approve an in time application, excepting circumstances where the extension period exceeds six months, it is proposed that limitations be placed on delegations for the Senior Officer Grade C classification to only be able to be exercised in relation to in-time applications. It is recommended that you agree to this proposal.

Proposed changes to delegations – Limited section 127 functions to be delegated to SOGB classifications

9. It has also been identified that further efficiencies relating to the delegation of functions under section 127 (Withdrawal of infringement notice) of the MC Act could be achieved through limited delegations to Senior Officer Grade B staff.

10. Infringement notices and reminder notices regularly need to be withdrawn under section 127 of the MC Act and reissued due to technical deficiencies which deem the notices invalid. Examples of such deficiencies include where the notice:

    a) has been returned to sender due to an incorrect address for service of notice;

    b) where the infringement notice does not comply with sections 121 (*Contents of infringement notices*) and 122 (Additional information in infringement notices) of the MC Act, or

    c) where the reminder notice does not comply with sections 130 (*Contents of reminder notices*) or 131 (*Additional information in reminder notices*).

11. While I note that your functions under section 127 of the MC Act have been delegated down to the Senior Officer Grade A level, I see benefits for extending the delegation of limited functions under section 127 of the MC Act to a Senior Officer Grade B level to ensure efficient withdrawal and reissue of technically deficient infringement and reminder notices.

12. I have considered the risks associated with delegations to the Senior Officer Grade B classification and propose that if you agree to delegate your functions under section 127 of the MC Act to staff at this classification, that delegations to staff at this level would be limited to circumstances where the infringement notice or reminder notice is to be withdrawn for technical deficiencies only and be reissued immediately.

13. This would introduce further efficiencies allowing notices to be withdrawn and reissued in a timely manner and would reduce the administrative burden on Senior Executive Service staff and Senior Officer Grade A staff in these circumstances.

14. The limitations also ensure that decisions to withdraw infringement or reminder notices where there is insufficient evidence to support the elements of the offence or in instances where it may be more appropriate for a proceeding for the offence to be taken in court remains with more senior staff within WorkSafe ACT.

15. Having considered the above, I also recommend that you extend delegation of your functions under section 127 of the MC Act to Senior Officer Grade B staff, however such delegation would be limited to withdrawals where the infringement notice or reminder notice was invalid due to technical deficiencies and the notice would be reissued immediately.

Proposed changes to delegations – Limitations to be applied to section 136 functions

16. Additionally, I propose to limit the current delegations under section 136 (Evidentiary certificates) of the MC Act to Senior Officer Grade C classifications and above after discussions with the Deputy WHS Commissioner. The current delegations are down to a WorkCover Officer 5 classification.

17. An evidentiary certificate is signed by or on behalf of the Administering Authority in proceedings for an infringement notice offence. Such a certificate states any matter relevant to anything done under Part 3.8 of the MC Act is evidence of the matter.

18. Considering the legal and reputational risks associated with legal proceedings to both WorkSafe ACT and the ACT Public Service, it is proposed that the delegation under section 136 be limited to Senior Officer Grade C classifications and above to allow suitable oversight to be applied to the issuance of an evidentiary certificate.

19. I note that since you signed the previous delegation instruments on 11 April 2025, delegations under section 136 have not been exercised by any delegate within WorkSafe ACT. It is proposed that you agree to the proposal to limit delegations under section 136 to Senior Officer Grade C classifications and above.

<u>Delegation of functions to issue a unique identifier to authorised persons</u>

20. Inspectors regularly issue regulatory notices and infringement notices to businesses and individuals. These notices contain the inspectors' name and surname or or surname and initials. Considering that the regulatory penalties imposed have quite a significant impact on the recipient, there is potential for inspectors to then be targeted as individuals and exposed to psychosocial hazards of violence and aggression.

21. As regulatory notices issued by inspectors contain their full name and surname, recipients of regulatory notices may be able to use the electoral roll or other methods to target inspectors at their home residences. Recent media articles about outlaw motorcycle gangs infiltrating the ACT construction industry have raised further concerns for inspectors' safety in this regard.

22. To mitigate the risks posed to our inspectors, I have provided information on how to become a silent elector and investigated options to de-identify inspectors through the issuance of a unique identifier that can be used on regulatory notices.

23. To issue a unique identifier, it would be necessary for you to delegate your functions as Administering Authority under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004* and the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006* to staff within WorkSafe ACT.

24. These regulations state that the authorised person issuing the infringement notice or reminder notice must be identified by either listing their full name or surname and initials or by any unique identifier given to the authorised person by the Administering Authority.

25. I have considered the appropriateness of inspectors just listing their surname and initials on regulatory notices, however I note that some of our inspectors have unique surnames so there is little utility in just listing their surname and initials as it would still be possible for them to be identified by the notice recipient. The issuance of a unique identifier would provide the highest administrative control possible to mitigate the risk of violence and aggression being directed to our inspectors.

26. I propose that the power to issue a unique identifier to inspectors be limited to Senior Officer Grade B classifications and above. This allows this function to be included in onboarding processes whereby a unique identifier is issued to the inspector upon their commencement and this number would be used by that inspector the duration of their employment in WorkSafe ACT.

27. Once issued to a person, the unique identifier would not be reallocated to another person to ensure notices issued by individual inspectors using this unique identifier were able to be tracked appropriately in our system and in court proceedings.

28. It is recommended that you agree to delegate your powers under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004* and the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006* to Senior Officer Grade B classifications and above.

29. I have included a table outlining all specific changes proposed to the delegations at Attachment B for your information. It is recommended that you sign the delegation instruments at Attachments C and D.

Requirement to notify these instruments on the ACT Legislation Register

30. It is noted that while these instruments have been prepared using a Notifiable Instrument template, these are not technically Notifiable Instruments as defined in the *Legislation Act 2001*, as the MC Act does not declare them to be notifiable.

31. While these instruments may be notified for information purposes only, as these instruments only impact WorkSafe ACT staff, I do not propose to notify these instruments on the ACT Legislation Register. The instruments will be filed within WorkSafe ACT's EDRM system Objective and will be recorded in iDelegate.

CONSULTATION

32. WorkSafe ACT's Legal Policy team was consulted on the Instruments at Attachments C and D.

33. WorkSafe ACT's Senior Leadership team have also been consulted on the proposal to extend delegations to issue a unique identifier to inspectors to increase controls associated with violence and aggression towards WorkSafe ACT inspectors.

WORK HEALTH AND SAFETY

34. The changes to delegations, particularly in relation to the issuance of a unique identifier to inspectors will significantly mitigate psychosocial risks arising from exposure to the hazard of violence and aggression.

FINANCIAL

35. There are no financial impacts relevant to these instruments.

RISKS/SENSITIVITES

36. As outlined in this minute, the changes proposed will have positive benefits through the creation of operational efficiencies for WorkSafe ACT.

MEDIA

37. It is not anticipated that these updates will attract any media attention or scrutiny as these instruments are internally facing.

ACTION OFFICER: Cath Matthews PHONE: 6205 3464

Attachments

Attachment/s	Title
Attachment A	Minute to DG CMTEDD - Delegation of Administering Authority functions under Part 3.8 of the Magistrates Court Act - Signed
Attachment B	Breakdown of changes to delegations for WS ACT staff under the MC Act
Attachment C	Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 2)
Attachment D	Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2025 (No 2)

WORKSAFE ACT SAFE + HEALTHY WORKPLACES

WHS COMMISSIONER BRIEF TO DIRECTOR-GENERAL

Chief Minister, Treasury and Economic Development Directorate

To: Kathy Leigh, Director-General, Chief Minister, Treasury and Economic Development Directorate

25/03/2025

From: Jacqueline Agius, Work Health and Safety Commissioner

Updated delegations and appointments of Administering Authority functions under the Magistrates Court Act 1951

RECOMMENDATION

That you:

- **note** the information in this minute;

Noted / Please discuss

- **sign** the appointment instruments at Attachment B and C appointing me as an authorised person to serve infringement notices and reminder notices for offences against the Dangerous Substances Legislation and *Workers Compensation Act 1951*; and

Signed / Not Signed / Please discuss

- **sign** the delegation instruments at Attachment E and F delegating your functions under the *Magistrates Court Act 1930* for offences against the Dangerous Substances Legislation and *Workers Compensation Act 1951* to authorised persons within the Office of the Work Health and Safety Commissioner.

Signed / Not Signed / Please discuss

Kathy Leigh, Director-General, Chief Minister, Treasury and Economic Development Directorate

11 /04/2025

COMMENTS

Thank you. I have asked for OLRWS advice in responding. cm

BACKGROUND

1. On 27 February 2024, the *Magistrates Court (Infringement Notices) Amendment Act 2020* (the Amendment Act) commenced. The Amendment Act amended Part 3.8 of the *Magistrates Court Act 1930* (the MC Act) to provide new infringement notice management options which allow the recipient of an infringement notice to manage their infringement notice.
2. On 17 April 2024, you agreed to delegate your functions under Part 3.8 of the MC Act, in your capacity as Administering Authority for infringement notice offences under the Dangerous Substances Legislation (the DS Legislation) and *Workers Compensation Act 1951* (the WC Act) to certain authorised persons within the Office of the Work Health and Safety Commissioner (WorkSafe ACT). A copy of the minute is at Attachment A.
3. On 20 April 2024, the *Crimes Legislation Amendment Act 2024* (the CLAA) commenced and made amendments to the MC Act in relation to infringement notices. This included the inclusion of new provisions that allow the Administering Authority to cancel infringement notice management plans (INMP) if the terms of the INMP are not complied with.
4. As these provisions were not part of the MC Act when you previously delegated your functions, they are not included in the delegation instruments you signed on 17 April 2024, and therefore an update to the delegations is required.
5. In addition, as WorkSafe ACT has become more experienced with the operation of the new provisions inserted into the MC Act through the Amendment Act and the CLAA, we have identified areas where operational efficiencies could be achieved through further updates to the delegation instruments. Such amendments would also have a beneficial impact on infringement notice recipients in the management of their infringement notice penalties.
6. Finally, it has recently been identified that the current delegation of your functions under Part 3.8 of the MC Act to my position as Work Health and Safety Commissioner (WHS Commissioner) are technically invalid.
7. Section 135 of the MC Act provides the ability for the Administering Authority to delegate their functions under Part 3.8 of the MC Act to an authorised person or a person prescribed by regulation.
8. It should be noted that no person has been prescribed by regulation for the purposes of section 135 of the MC Act, so the only ability to delegate the Administering Authority's functions is to an authorised person. An authorised person for the purposes of Part 3.8 of the MC Act is defined under section 134A(3)(a) as:

authorised person

a) for an infringement notice for an infringement notice offence—
   i. the administering authority; or
   ii. a person who is appointed under this section by the administering authority to serve an infringement notice for the offence; or
   iii. anyone else who, under the regulations, may serve an infringement notice for the offence; or
b) for a reminder notice for an infringement notice offence—
   i. the administering authority; or
   ii. a person who is appointed under this section by the administering authority to serve a reminder notice for the offence; or

iii. anyone else who, under the regulations, may serve a reminder notice for the offence.

9. While I have various roles and functions in my capacity as WHS Commissioner in both the DS Legislation and WC Act, I am not technically an inspector for either piece of legislation. The previous minute sent to you regarding delegations (Attachment A) incorrectly referred to my position as an authorised person.
10. Inspectors appointed under the DS legislation and WC Act are authorised people to issue infringement notices and reminder notices under Part 3.8 of the MC Act. While I have the power to appoint inspectors for both pieces of legislation, it would be a conflict of interest for me to appoint myself as an inspector.
11. As you can only delegate your functions as Administering Authority under Part 3.8 of the MC Act to an authorised person, it is recommended that you consider appointing me as an authorised person to serve infringement notices and reminder notices under section 134A of the MC Act to enable delegation to my position.

ISSUES

Appointment of WHS Commissioner as an authorised person under section 134A of the MC Act

12. As previously noted in this minute, I have various compliance functions under both the DS Legislation and WC Act, however in my capacity as WHS Commissioner, I am not an inspector for these pieces of legislation.
13. Section 207 of the *Dangerous Substances Act 2004* (the DS Act) States that a police officer or a public servant appointed by the WHS Commissioner are inspectors for the DS Act. Similarly, in my capacity as Regulator for the WC Act, section 188 allows me to appoint inspectors for the Act.
14. There are no sections in either Act that expressly state that I have the powers of an inspector, as is the case in other pieces of legislation such as the *Work Health and Safety Act 2011* (the WHS Act). The inclusion of such statements in the WHS Act meant that it would be reasonable to believe similar clauses existed within the DS Act and WC Act, however it has only recently been identified that this is not the case. As previously noted, given that I have the power to appoint inspectors for both Acts, it would also be a conflict of interest for me to appoint myself as an inspector.
15. This means that for the purposes of Part 3.8 of the MC Act, I am not an authorised person and therefore you are unable to delegate your functions as Administering Authority for an infringement notice offence under Part 3.8 of the MC Act to me.
16. While the delegation instruments you signed on 17 April 2024 included my position as WHS Commissioner, I have not exercised any delegations for functions included in those instruments since they were signed. All decisions made under Part 3.8 of the MC Act have been made by other delegates and have therefore been validly made by these delegates.
17. To address this issue, I propose that you appoint me as an authorised person to serve infringement notices and reminder notices under the MC Act for infringement notices offences against the DS Legislation and WC Act.
18. Section 134A (1) of the MC Act allows the Administering Authority for an infringement notice offence to appoint a person to be an authorised person to serve infringement notices or reminder notices. It is recommended that you appoint me using this pathway to allow you to delegate your functions under Part 3.8 of the MC Act to me.



19. I have arranged for two instruments of appointment to be drafted for your consideration and signature if you agree with my recommendation. Copies of these instruments are at Attachments C and D. It is recommended that you sign these instruments.

Updated delegation instruments for Part 3.8 of the MC Act

20. As previously noted, with the commencement of the CLAA on 20 April 2024, various new provisions were inserted into the MC Act relating to the management of INMPs.

21. One of these provisions, section 131ACA (Cancellation of infringement notice management plan) allows the Administering Authority to issue a proposed cancellation notice, and subsequently a cancellation notice, should a person who has entered into an INMP fail to comply with the INMP.

22. The effect of cancellation of an INMP effectively extends the statute of limitations to begin a proceeding for the original offence by 12 months and allows me to prosecute the individual for the original offence.

23. There are a number of persons who are not compliant with the terms of their INMP so delegation of this section is now required. Noting that the cancellation of an INMP has severe ramifications for the person, it is recommended that delegations for this function remain with myself (should you agree to sign Attachments B and C), the Deputy WHS Commissioner (Executive Group Manager, WorkSafe ACT) and Executive Branch Manager, WorkSafe ACT.

Proposed changes to delegations

24. To aid in clarity and consistency, I have updated references in the delegation instrument for the Deputy WHS Commissioner to include their public service title of Executive Group Manager, WorkSafe ACT.

25. WorkSafe ACT has also identified a number of proposed changes to the existing delegations, under Part 3.8 of the MC Act, which would reduce the administrative burden on Executive staff within WorkSafe ACT. Such changes would also have additional benefits for infringement notice recipients by introducing operational efficiencies in processing applications for infringement notice management options under the MC Act.

26. I have considered the nature of certain functions that have been delegated and propose that certain lower risk functions be delegated to officers within WorkSafe ACT below the Senior Executive Service Band classifications. Delegation of these certain functions to lower-level positions will increase operational efficiencies and reduce the administrative burden on Senior Executive staff within WorkSafe ACT.

27. The functions that are proposed to be delegated to lower-level classifications are limited to low risk functions where the Administering Authority may:

    a) ask an applicant for additional information to consider their application;

    b) agree to an extension of time to do a certain thing;

    c) consult with the Responsible Director-General for the *Crimes (Sentence Administration) Act 2006* (whose functions have been delegated to staff within Access Canberra) for waiver applications and agreement to undertake a community or social development program to discharge their infringement penalty; and

    d) provide an evidentiary certificate stating any matter relevant to anything done or not done under Part 3.8 of the MC Act in relation to the offence as evidence of the matter.

28. I am satisfied that the authorised persons at these lower-level classifications have sufficient knowledge and experience to exercise functions of the Administering Authority on your behalf in keeping with WorkSafe ACT's Compliance and Enforcement framework, relevant Standard Operating Procedures along with any relevant Guidelines made under the MC Act. I also note that these proposed changes are mirrored to existing delegations I have made in my capacity as

Administering Authority for infringement notice offences under the Work Health and Safety legislation and Dangerous Goods Road Transport legislation.

29. The final proposal for changes to delegated functions relates to provisions included in section 127 (Withdrawal of infringement notice) of the MC Act. This section provides the ability for the Administering Authority, by written notice served on the person, withdraw the infringement notice on its own initiative.

30. This section may be utilised where it is identified that a notice was invalidly issued, where there is insufficient evidence to support the elements of the offence or in instances where it may be more appropriate for a proceeding for the offence to be taken in court.

31. Issues with the levels delegated to make a decision under section 127 came to light recently where an application for an internal review of a Prohibition notice issued under the WHS Act was received. The result of the internal review was that the Prohibition notice was set aside due to insufficient evidence to support the elements of the offence. An infringement notice had also been issued for failure to display the Prohibition notice as required by the WHS Act, which was effectively deemed invalid as a result of the Prohibition notice being set aside.

32. While the internal reviewer had the relevant delegation to set aside the Prohibition Notice, in order to withdraw the resulting invalid infringement notices, a separate minute had to be prepared for a senior executive level staff member. This disparity in delegated functions under the WHS Act and MC Act pinpointed the need for a reconsideration of delegations under section 127 of the MC Act to avoid additional, unnecessary administrative burden.

33. While I acknowledge that this issue arose for a matter where I am the relevant Administering Authority, operationally it is more practical for delegations for Administering Authority functions under Part 3.8 of the MC Act to be consistent for all infringement notice offences administered by WorkSafe ACT.

34. I propose to extend the delegation of my functions as Administering Authority under section 127 for offences against the Work Health and Safety legislation and Dangerous Goods Road Transport legislation to authorised persons at the Senior Officer Grade A classification. This would achieve operational efficiencies whilst still maintaining a level of risk mitigation by limiting this specific delegation to senior and experienced staff within WorkSafe ACT. It is recommended that you also agree to delegate your functions under section 127 of the MC Act to staff at the Senior Officer Grade A classification.

35. I have included a table outlining all specific changes proposed to the delegations at Attachment D for your information. It is recommended that you sign the delegation instruments at Attachments E and F.

Requirement to notify these instruments on the ACT Legislation Register

36. It is noted that while these instruments have been prepared using a Notifiable Instrument template, these are not technically Notifiable Instruments as defined in the *Legislation Act 2001*, as the MC Act does not declare them to be notifiable.

37. While these instruments may be notified for information purposes only, as these instruments only impact WorkSafe ACT staff, I do not propose to notify these instruments on the ACT Legislation Register. The instruments will be filed within WorkSafe ACT's EDRM system Objective and will be recorded in iDelegate.

CONSULTATION

38. Tim Hutchens, Director, Legal Policy in WorkSafe ACT was consulted on the Instruments at Attachments B, C, E and F, and confirmed the drafting on 3 February 2025.

WORK HEALTH AND SAFETY

39. Under the current delegations under the MC Act, all decisions relating to infringement notices are made by Senior Executive level staff. This has the potential to expose these staff to a risk of psychosocial injury due to the volume of applications needing to be approved whilst juggling the relatively high job demands of their roles.
40. The proposal that certain low risk Administering Authority functions be delegated to lower position classifications would potentially mitigate the risk of psychosocial injury to Senior Executive level staff by spreading the workload more evenly across the organisation and freeing up Senior Executive level staff to respond to serious workplace incidents or concerns and allowing business as usual activities to continue uninhibited.

FINANCIAL

41. There are no financial impacts relevant to these instruments.

RISKS/SENSITIVITES

42. As outlined in this minute, the changes proposed will have positive benefits through the creation of operational efficiencies for WorkSafe ACT and additional benefits for infringement notice recipients through more efficient processing of applications.
43. Psychosocial risks to Senior Executive staff within WorkSafe ACT are also mitigated through the distribution of decision making powers to lower level staff, reducing the administrative burden on Senior Executive staff and allowing them to focus on serious incidents and concerns.
44. By agreeing to appoint me as an authorised person to serve infringement notices and reminder notices under the MC Act, a legal risk will be mitigated in the current delegation instruments noting that the delegations to my position as WHS Commissioner are technically invalid as I am not currently an authorised person for infringement notice offences against the DS legislation or WC Act.

MEDIA

45. It is not anticipated that these updates will attract any media attention or scrutiny as these instruments are internally facing.

ACTION OFFICER: Cath Matthews PHONE: 6205 3464

Attachments

Attachment/s	**Title**
Attachment A	Minute to DG CMTEDD - Delegation of Administering Authority functions under Part 3.8 of the Magistrates - Signed
Attachment B	Magistrates Court (Dangerous Substances Infringement Notices Authorised People) Appointment 2025 (No 1)
Attachment C	Magistrates Court (Workers Compensation Infringement Notices Authorised People) Appointment 2025 (No 1)
Attachment D	Breakdown of changes to delegations for WS ACT staff under the MC Act
Attachment E	Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 1)

Attachment F	Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2025 (No 1)

WORKSAFE ACT SAFE + HEALTHY WORKPLACES

WHS Commissioner Minute to Director-General

Chief Minister, Treasury and Economic Development Directorate

Date	2 April 2024
To	Kathy Leigh, Director-General, Chief Minister, Treasury and Economic Development Directorate
From	Amanda Grey, A/g Work Health and Safety Commissioner
Subject	Delegation of Administering Authority functions under Part 3.8 of the *Magistrates Court Act 1930*

Recommendations

That you:

1. **note** the information in this minute, and

NOTED/PLEASE DISCUSS

2. **sign** the instruments of delegation at Attachments A and B delegating your functions as the Administering Authority for offences against the *Workers Compensation Act 1951* and Dangerous Substances Legislation to staff within the Office of the Work Health and Safety Commissioner.

SIGNED/NOT SIGNED/PLEASE DISCUSS

I have taken into account the Corporate advice of OIRWS that this is appropriate based on the nature of warrants & the level of the staff concerned.

Kathy Leigh 17/4/24

Feedback (as required)

Background

1. On 27 February 2024, the *Magistrates Court (Infringement Notices) Amendment Act 2020* (the Amendment Act) commenced. The Amendment Act amends Part 3.8 of the *Magistrates Court Act 1930* (the MC Act) to provide new infringement notice management options which allow the recipient of an infringement notice to manage their infringement notice.
2. These amendments replicate the infringement management options available under the Road Transport Legislation and include the ability to:
    a. apply for an extension of time to take action in relation to their infringement notice;
    b. apply for an infringement notice management plan to:
        i. pay the infringement penalty by instalment (a payment plan); or
        ii. undertake a community or social development program to discharge their infringement penalty (a WDP);
    c. apply for a withdrawal of the Infringement Notice;
    d. apply for a waiver of the Infringement Penalty; or
    e. dispute liability.
3. The functions within Part 3.8 of the MC Act relating to these infringement management options sit with an entity referred to as the Administering Authority and each of the Magistrates Court Infringement Notice Regulations define the relevant Administering Authority for offences against certain Acts.
4. There are two Magistrates Court Infringement Notice Regulations that define the relevant Administering Authority as the Director-General of the Chief Minister, Treasury and Economic Development Directorate. These are the:
    a. *Magistrates Court (Dangerous Substances Infringement Notice) Regulation 2004* which defines the Administering Authority as the Director-General for the *Dangerous Substances Act 2004* (the DS Act); and
    b. *Magistrates Court (Workers Compensation Infringement Notice) Regulation 2006* which defines the Administering Authority as the Director-General for the *Workers Compensation Act 1951* (the WC Act).
5. The *Administrative Arrangements 2023 (No 1)* identifies the Chief Minister, Treasury and Economic Development Directorate as the administrative unit with responsibility for both the DS Act and the WC Act. This means that you are the relevant Administering Authority for offences against each Act.
6. Section 135 of the MC Act provides the ability for the Administering Authority to delegate their functions under Part 3.8 of the MC Act to an authorised person or a person prescribed by regulation.
7. It should be noted that no person has been prescribed by regulation for the purposes of section 135 of the MC Act, so the only ability to delegate the Administering Authority's functions is to an authorised person. An authorised person for the purposes of Part 3.8 of the MC Act is defined as:

a. for an infringement notice for an infringement notice offence—

   i. the administering authority; or

   ii. a person who is appointed under section 134A of the MC Act by the administering authority to serve an infringement notice for the offence; or

   iii. anyone else who, under the regulations, may serve an infringement notice for the offence; or

b. for a reminder notice for an infringement notice offence—

   i. the administering authority; or

   ii. a person who is appointed under section 134A of the MC Act by the administering authority to serve a reminder notice for the offence; or

   iii. anyone else who, under the regulations, may serve a reminder notice for the offence.

8. For the two specific Magistrates Court Regulations previously identified, an authorised person also includes an Inspector appointed under the DS Act and an Inspector appointed under the WC Act respectively.

Issues

9. You are the Administering Authority for infringement notice offences against the DS Act and the WC Act. It appears impractical for you to undertake your functions as Administering Authority personally, so I am seeking your agreement to delegate these functions to the Work Health and Safety Commissioner and certain staff within the Office of the Work Health and Safety Commissioner.

10. I am proposing to limit the delegation to the following authorised persons:

    a. Work Health and Safety Commissioner;

    b. Deputy Work Health and Safety Commissioner; and

    c. Executive Branch Manager, WorkSafe ACT.

11. I am satisfied that these authorised persons have sufficient knowledge and experience to exercise functions of the Administering Authority on your behalf in keeping with WorkSafe ACT's Compliance and Enforcement framework along with any Guidelines that are made under the MC Act in relation to the exercise of these functions.

12. I have arranged for draft instruments of delegation to be prepared which delegates your functions as Administering Authority to these positions. Copies of these instruments are at Attachments A and B.

13. These instruments have been prepared based on a template instrument which was prepared by staff managing the implementation of the Amendment Act within Access Canberra. The draft template was reviewed and cleared by GSO staff.

14. It is recommended that you sign the instruments of delegation at Attachments A and B.

Consultation

15. GSO was consulted on the template delegation instrument prepared by Access Canberra staff.

Work Health and Safety

16. Nil.

Financial

17. Nil.

Risks/ Sensitivities

18. A decision not to delegate your Administering Authority functions under Part 3.8 of the MC Act would require each application for an infringement management option to be progressed to you for decision. It is noted that for some processes, multiple decisions may need to be made at various stages of the process. This would require a minute to be progressed to you at each stage, delaying the process for applicants.
19. Delegating your Administering Authority functions will streamline processes for applicants and ensure that decisions can be made in a timely manner, improving the customer experience.

Media

20. Nil.

Action Officer: Bill Smith

Phone: 02 6205 9532

Australian Capital Territory

Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2024 (No 1)

made under the

Magistrates Court Act 1930, section 135 (Delegation of administering authority's functions)

---

1 Name of instrument

This instrument is the *Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2024 (No 1)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Delegation of Administering Authority functions

I, the Director-General, in my capacity as Administering Authority for infringement notice offences against the *Dangerous substances legislation*, delegate my functions under the provisions of Part 3.8 of the *Magistrates Court Act 1930* specified in column 1 of schedule 1, subject to any limitations specified in the corresponding row of column 3 of schedule 1 to an authorised person for the purposes of serving infringement notices or reminder notices for an infringement notice offence against the *Dangerous substances legislation*.

4 Definitions

In this instrument:

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*. At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Dangerous substances legislation*; or

b) anyone else who, under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*, may serve an infringement notice or a reminder notice for an offence against the *Dangerous substances legislation*.

Dangerous substances legislation means –

a) the *Dangerous Substances Act 2004*

b) the *Dangerous Substances (Explosives) Regulation 2004*; and

c) the *Dangerous Substances (General) Regulation 2004*.

Deputy Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.31 of the *Work Health and Safety Act 2011*.

Director-General for the Dangerous Substances Act 2004 means the Director-General of the administrative unit responsible for the *Dangerous Substances Act 2004* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Dangerous Substances Act 2004* is the Chief Minister, Treasury and Economic Development Directorate.

Executive Branch Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 1 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
17 April 2024

Column 1 Section	Column 2 Function Description	Column 3 Limitation
131AB(6)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must tell an applicant for an infringement notice management plan about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AC	**Approved community work or social development program — responsible director-general's agreement** – The Administering Authority must ask the Responsible Director-General if they agree to an applicant participating in an approved community work or social development program.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(1)	**Application for waiver of penalty – decision** – The Administering Authority must allow or refuse an application for a waiver of penalty.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(2)	**Application for waiver of penalty – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(4)	**Application for waiver of penalty – decision** – The Administering Authority may consult with the Responsible Director-General.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(5)	**Application for waiver of penalty – decision** – The Administering Authority must tell an applicant for a waiver of an infringement notice penalty about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT

Schedule 1

Sections under Part 3.8 of the *Magistrates Court Act 1930*

Column 1 Section	Column 2 Function Description	Column 3 Limitation
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
126	**Application for withdrawal of infringement notice** – The Administering Authority must allow or refuse an application to withdraw an infringement notice or reminder notice.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AB(1)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must allow or refuse an application for an infringement notice management plan or addition to plan.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AB(2)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AB(5)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may decide the amount of instalments that must be paid for an infringement notice management plan that allows payments by instalment.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
134(2)	**Procedure if liability is disputed** – If a person disputes liability for an infringement notice offence, the Administering Authority may lay an information in the Magistrates Court against a person for the offence within 60 days after being given the notice.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
134(3)	**Procedure if liability is disputed** – The Administering Authority must discontinue a proceeding brought against the person for the offence if before the hearing the person pays the total of a) the infringement notice penalty; and b) the costs (if any) prescribed by regulation for beginning the proceeding; and c) disbursements (if any) incurred by the Administering Authority up to the day payment is made.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
134(2)	**Procedure if liability is disputed** – If the Administering Authority does not lay an information in the Magistrates Court against the person within 60 days, the Administering Authority must tell the person in writing that no further action will be taken against the person for the offence and must not take any further action against the person for the offence.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT

Australian Capital Territory

Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2024 (No 1)

made under the

Magistrates Court Act 1930, section 135 (Delegation of administering authority's functions)

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1 Name of instrument

This instrument is the *Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2024 (No 1)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Delegation of Administering Authority functions

I, the Director-General of the Chief Minister, Treasury and Economic Development Directorate, in my capacity as Administering Authority for infringement notice offences against the *Workers Compensation Act 1951*, delegate my functions under the provisions of Part 3.8 of the *Magistrates Court Act 1930* specified in column 1 of schedule 1, subject to any limitations specified in the corresponding row of column 3 of schedule 1 to an authorised person for the purposes of serving infringement notices or reminder notices for an infringement notice offence against the *Workers Compensation Act 1951*.

4 Definitions

In this instrument,

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*. At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Workers Compensation Act 1951*; or

b) anyone else who, under the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*, may serve an infringement notice or a reminder notice for an offence against the *Workers Compensation Act 1951*.

Deputy Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.31 of the *Work Health and Safety Act 2011*.

Director-General for the Workers Compensation Act 1951 means the Director-General of the administrative unit responsible for the *Workers Compensation Act 1951* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Workers Compensation Act 1951* is the Chief Minister, Treasury and Economic Development Directorate.

Executive Branch Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 1 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
17 April 2024

Schedule 1

Sections under Part 3.8 of the *Magistrates Court Act 1930*

Column 1 Section	Column 2 Function Description	Column 3 Limitation
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
126	**Application for withdrawal of infringement notice** – The Administering Authority must allow or refuse an application to withdraw an infringement notice or reminder notice.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AB(1)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must allow or refuse an application for an infringement notice management plan or addition to plan.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AB(2)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AB(5)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may decide the amount of instalments that must be paid for an infringement notice management plan that allows payments by instalment.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AB(6)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must tell an applicant for an infringement notice management plan about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AC	**Approved community work or social development program — responsible director-general's agreement** – The Administering Authority must ask the Responsible Director-General if they agree to an applicant participating in an approved community work or social development program.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(1)	**Application for waiver of penalty – decision** – The Administering Authority must allow or refuse an application for a waiver of penalty.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(2)	**Application for waiver of penalty – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(4)	**Application for waiver of penalty – decision** – The Administering Authority may consult with the Responsible Director-General.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
131AF(5)	**Application for waiver of penalty – decision** – The Administering Authority must tell an applicant for a waiver of an infringement notice penalty about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT

Column 1 Section	Column 2 Function Description	Column 3 Limitation
134(2)	**Procedure if liability is disputed** – If a person disputes liability for an infringement notice offence, the Administering Authority may lay an information in the Magistrates Court against a person for the offence within 60 days after being given the notice.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
134(3)	**Procedure if liability is disputed** – The Administering Authority must discontinue a proceeding brought against the person for the offence if before the hearing the person pays the total of a) the infringement notice penalty; and b) the costs (if any) prescribed by regulation for beginning the proceeding; and c) disbursements (if any) incurred by the Administering Authority up to the day payment is made.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
134(2)	**Procedure if liability is disputed** – If the Administering Authority does not lay an information in the Magistrates Court against the person within 60 days, the Administering Authority must tell the person in writing that no further action will be taken against the person for the offence and must not take any further action against the person for the offence.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	Only able to be exercised by the following authorised persons occupying the position of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Branch Manager, WorkSafe ACT

Power, Leanne

From: Wright, Robert
Sent: Wednesday, 17 April 2024 1:19 PM
To: Leigh, Kathy
Cc: Power, Leanne; Round, Jessica; Young, Michael
Subject: Advice on Worksafe brief
Attachments: Delegation of Administering Authority functions under Part 3.8 of the Magistrates.pdf

OFFICIAL

Good afternoon Kathy

Thank you for your request for advice about the attached briefing.

The Work Safety Group has considered the matter and supports the proposal on the basis that is practically consistent with other statutory compliance powers used by WorkSafe and that the proposed recipients of the delegations are executive staff with responsibility for governance of the WorkSafe compliance infrastructure.

On our advice, WorkSafe has made a technical adjustment to the draft delegation schedule. An updated version incorporating the change is attached for your consideration and signature if agreed.

Thanks and regards

Robert Wright
a/g DDG OIRWS

Australian Capital Territory

Magistrates Court (Dangerous Substances Infringement Notices Authorised People) Appointment 2025 (No 1)

made under the

Magistrates Court Act 1930, Section 134A (1) (Authorised people for infringement notice offences)

---

1 Name of instrument

This instrument is the *Magistrates Court (Dangerous Substances Infringement Notices Authorised People) Appointment 2025 (No 1).*

2 Commencement

This instrument commences on the day after it is signed.

3 Appointment

I, the Director-General, in my capacity as Administering Authority for infringement notice offences against the *Dangerous substances legislation*, appoint the Work Health and Safety Commissioner as an authorised person to serve infringement notices or reminder notices for the *Dangerous substances legislation.*

5 Definitions

In this instrument:

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*. At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Dangerous substances legislation*; or

b) anyone else who, under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*, may serve an infringement notice or a reminder notice for an offence against the *Dangerous substances legislation*.

Dangerous substances legislation means –

a) the *Dangerous Substances Act 2004*

b) the *Dangerous Substances (Explosives) Regulation 2004*; and

c) the *Dangerous Substances (General) Regulation 2004*.

Director-General for the Dangerous Substances Act 2004 means the Director-General of the administrative unit responsible for the *Dangerous Substances Act 2004* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Dangerous Substances Act 2004* is the Chief Minister, Treasury and Economic Development Directorate.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
1 April 2025

Australian Capital Territory

Magistrates Court (Workers Compensation Infringement Notices Authorised People) Appointment 2025 (No 1)

made under the

Magistrates Court Act 1930, Section 134A (1) (Authorised people for infringement notice offences)

---

1 Name of instrument

This instrument is the *Magistrates Court (Workers Compensation Infringement Notices Authorised People) Appointment 2025 (No 1).*

2 Commencement

This instrument commences on the day after it is signed.

3 Appointment

I, the Director-General, in my capacity as Administering Authority for infringement notice offences against the *Workers Compensation Act 1951*, appoint the Work Health and Safety Commissioner as an authorised person to serve infringement notices or reminder notices for the *Workers Compensation Act 1951*.

5 Definitions

In this instrument:

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*. At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Workers Compensation Act 1951*; or

b) anyone else who, under the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*, may serve an infringement notice or a reminder notice for an offence against the *Workers Compensation Act 1951*.

Director-General for the Workers Compensation Act 1951 means the Director-General of the administrative unit responsible for the *Workers Compensation Act 1951* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Workers Compensation Act 1951* is the Chief Minister, Treasury and Economic Development Directorate.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
11 April 2025

Breakdown of changes to delegations for WS ACT staff under the MC Act

General updates

Changes have been made to include Senior Executive Service Band classification/title of Executive Group Manager, WorkSafe ACT in the delegations for clarity on the classification of the Deputy WHS Commissioner.

Additional definitions have been included in the instrument defining the following roles/classification:

- Senior Officer Grade A
- Senior Officer Grade B
- Senior Officer Grade C
- WorkCover Officer 6
- Administrative Services Officer 6
- WorkCover Officer 5

Table 1 – Specific amendments proposed for MC Act functions

Section	Function Description	Comments
124	**Extension of time to pay penalty –** The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Not previously delegated below Senior Executive Service Band Level. I propose that this function be delegated down to Assistant Director (Senior Officer Grade C) level so that these staff are able approve extension of time applications. It should be noted that under the *Magistrates Court (Extension of Time) guidelines 2024 (No 1)*, if a complete application for an extension of time is made within the allowed timeframe and the requested timeframe does not exceed the maximum 6-month period of time, the Administering Authority ***must*** automatically approve the application.
131AB(2)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may ask an applicant for more information.	Not previously delegated below Senior Executive Service Band Level. I propose that this function be delegated down to WorkCover Officer 5 level so that these staff are able to request additional information in support of an application prior to a delegate making a decision on the application.
131AC	**Approved community work or social development program –– responsible director-general's agreement** – The Administering Authority must ask the Responsible Director-General if they agree to an applicant participating in an approved community work or social development program.	Not previously delegated below Senior Executive Service Band Level. I propose that this function be delegated down to WorkCover Officer 5 level so that these staff are able to seek agreement from a delegate of the Responsible Director-General on whether they agree to an applicant participating in a community work or social development program prior to a delegate making a decision on the application.

Section	Function Description	Comments
131ACA	**Cancellation of infringement notice management plan** – The Administering Authority may serve on a person a written notice of their proposal to cancel an infringement notice management plan, and after allowing suitable time for the person to provide written reasons why the infringement notice management plan should not be cancelled, serve a cancellation notice on the person to cancel an infringement notice plan.	Not previously delegated. This function was inserted into the MC Act through the the *Crimes Legislation Amendment Act 2024* which commenced on 20 April 2024, after the current delegation instrument was signed. I propose that this function only sit with staff at the Senior Executive Service Band Level.
131AF(2)	**Application for waiver of penalty – decision** – The Administering Authority may ask an applicant for more information.	Not previously delegated below Senior Executive Service Band Level. I propose that this function be delegated down to WorkCover Officer 5 level so that these staff are able to request additional information in support of an application prior to a delegate making a decision on the application.
131AF(4)	**Application for waiver of penalty – decision** – The Administering Authority may consult with the Responsible Director-General.	Not previously delegated below Senior Executive Service Band Level. I propose that this function be delegated down to WorkCover Officer 5 level so that these staff may consult with a delegate of the Responsible Director-General on whether the applicant would be a suitable person to participate in a community work or social development program prior to a delegate making a decision on the application.
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	Not previously delegated below Senior Executive Service Band Level. I propose that this function be delegated down to WorkCover Officer 5 level so that these staff may provide a signed certificate outlining actions they have or have not taken in relation to an offence as evidence of the matter.

Australian Capital Territory

Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 1)

made under the

Magistrates Court Act 1930, section 135 (Delegation of administering authority's functions)

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1 Name of instrument

This instrument is the *Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 1).*

2 Commencement

This instrument commences on the day after it is signed.

3 Delegation of Administering Authority functions

I, the Director-General, in my capacity as Administering Authority for infringement notice offences against the *Dangerous substances legislation*, delegate my functions under the provisions of Part 3.8 of the *Magistrates Court Act 1930* specified in column 1 of schedule 1, subject to any limitations specified in the corresponding row of column 3 of schedule 1 to an authorised person for the purposes of serving infringement notices or reminder notices for an infringement notice offence against the *Dangerous substances legislation.*

4 Revocation

This instrument revokes the *Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2024 (No 1).*

5 Definitions

In this instrument:

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*. At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

Administrative Services Officer 6 means a person at the Administrative Services Officer 6 classification employed within the Legal Policy team or Occupational Hygiene and Dangerous Substances team within the Office of the Work Health and Safety Commissioner.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Dangerous substances legislation*; or

b) anyone else who, under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*, may serve an infringement notice or a reminder notice for an offence against the *Dangerous substances legislation*.

Dangerous substances legislation means –

a) the *Dangerous Substances Act 2004*

b) the *Dangerous Substances (Explosives) Regulation 2004*; and

c) the *Dangerous Substances (General) Regulation 2004*.

Deputy Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.31 of the *Work Health and Safety Act 2011*.

Director-General for the Dangerous Substances Act 2004 means the Director-General of the administrative unit responsible for the *Dangerous Substances Act 2004* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Dangerous Substances Act 2004* is the Chief Minister, Treasury and Economic Development Directorate.

Executive Branch Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 1 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Executive Group Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 2 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade A means a person at the Senior Officer Grade A classification employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade B means a person at the Senior Officer Grade B classification employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade C means a person at the Senior Officer Grade C classification employed within the Office of the Work Health and Safety Commissioner.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

WorkCover Officer 5 means a person at the Regulatory Inspector 5 (WorkCover Officer 5) classification employed within the Office of the Work Health and Safety Commissioner.

WorkCover Officer 6 means a person at the Regulatory Inspector 6 (WorkCover Officer 6) classification employed within the Office of the Work Health and Safety Commissioner.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
17 April 2025

Schedule 1

Sections under Part 3.8 of the *Magistrates Court Act 1930*

Column 1 Section	Column 2 Function Description	Column 3 Limitation
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C
126	**Application for withdrawal of infringement notice** – The Administering Authority must allow or refuse an application to withdraw an infringement notice or reminder notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A
131AB(1)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must allow or refuse an application for an infringement notice management plan or addition to plan.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AB(2)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AB(5)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may decide the amount of instalments that must be paid for an infringement notice management plan that allows payments by instalment.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
131AB(6)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must tell an applicant for an infringement notice management plan about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AC	**Approved community work or social development program — responsible director-general's agreement** – The Administering Authority must ask the Responsible Director-General if they agree to an applicant participating in an approved community work or social development program.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131ACA	**Cancellation of infringement notice management plan** – The Administering Authority may serve on a person a written notice of their proposal to cancel an infringement notice management plan , and after allowing suitable time for the person to provide written reasons why the infringement notice management plan should not be cancelled, serve a cancellation notice on the person to cancel an infringement notice plan.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
131AF(1)	**Application for waiver of penalty – decision** – The Administering Authority must allow or refuse an application for a waiver of penalty.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AF(2)	**Application for waiver of penalty – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AF(4)	**Application for waiver of penalty – decision** – The Administering Authority may consult with the Responsible Director-General.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AF(5)	**Application for waiver of penalty – decision** – The Administering Authority must tell an applicant for a waiver of an infringement notice penalty about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
134(2)	**Procedure if liability is disputed** – If a person disputes liability for an infringement notice offence, the Administering Authority may lay an information in the Magistrates Court against a person for the offence within 60 days after being given the notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
134(3)	**Procedure if liability is disputed** – The Administering Authority must discontinue a proceeding brought against the person for the offence if before the hearing the person pays the total of a) the infringement notice penalty; and b) the costs (if any) prescribed by regulation for beginning the proceeding; and c) disbursements (if any) incurred by the Administering Authority up to the day payment is made.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
134(2)	**Procedure if liability is disputed** – If the Administering Authority does not lay an information in the Magistrates Court against the person within 60 days, the Administering Authority must tell the person in writing that no further action will be taken against the person for the offence and must not take any further action against the person for the offence.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5

Australian Capital Territory

Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2025 (No 1)

made under the

Magistrates Court Act 1930, section 135 (Delegation of administering authority's functions)

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1 Name of instrument

This instrument is the *Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2025 (No 1).*

2 Commencement

This instrument commences on the day after it is signed.

3 Delegation of Administering Authority functions

I, the Director-General of the Chief Minister, Treasury and Economic Development Directorate, in my capacity as Administering Authority for infringement notice offences against the *Workers Compensation Act 1951*, delegate my functions under the provisions of Part 3.8 of the *Magistrates Court Act 1930* specified in column 1 of schedule 1, subject to any limitations specified in the corresponding row of column 3 of schedule 1 to an authorised person for the purposes of serving infringement notices or reminder notices for an infringement notice offence against the *Workers Compensation Act 1951.*

4 Revocation

This instrument revokes the *Magistrates Court (Workers Compensation Infringement Notices) Administering Authority Delegation 2024 (No 1).*

5 Definitions

In this instrument,

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006.* At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

Administrative Services Officer 6 means a person at the Administrative Services Officer 6 classification employed within the Legal Policy team within the Office of the Work Health and Safety Commissioner.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Workers Compensation Act 1951*; or

b) anyone else who, under the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*, may serve an infringement notice or a reminder notice for an offence against the *Workers Compensation Act 1951*.

Deputy Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.31 of the *Work Health and Safety Act 2011*.

Director-General for the Workers Compensation Act 1951 means the Director-General of the administrative unit responsible for the *Workers Compensation Act 1951* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Workers Compensation Act 1951* is the Chief Minister, Treasury and Economic Development Directorate.

Executive Branch Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 1 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Executive Group Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 2 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade A means a person at the Senior Officer Grade A classification employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade B means a person at the Senior Officer Grade B classification employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade C means a person at the Senior Officer Grade C classification employed within the Office of the Work Health and Safety Commissioner.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

WorkCover Officer 5 means a person at the Regulatory Inspector 5 (WorkCover Officer 5) classification employed within the Office of the Work Health and Safety Commissioner.

WorkCover Officer 6 means a person at the Regulatory Inspector 6 (WorkCover Officer 6) classification employed within the Office of the Work Health and Safety Commissioner.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
1 April 2025

Schedule 1

Sections under Part 3.8 of the *Magistrates Court Act 1930*

Column 1 Section	Column 2 Function Description	Column 3 Limitation
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C
126	**Application for withdrawal of infringement notice** – The Administering Authority must allow or refuse an application to withdraw an infringement notice or reminder notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A
131AB(1)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must allow or refuse an application for an infringement notice management plan or addition to plan.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AB(2)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AB(5)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may decide the amount of instalments that must be paid for an infringement notice management plan that allows payments by instalment.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
131AB(6)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must tell an applicant for an infringement notice management plan about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AC	**Approved community work or social development program — responsible director-general's agreement** – The Administering Authority must ask the Responsible Director-General if they agree to an applicant participating in an approved community work or social development program.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131ACA	**Cancellation of infringement notice management plan** – The Administering Authority may serve on a person a written notice of their proposal to cancel an infringement notice management plan , and after allowing suitable time for the person to provide written reasons why the infringement notice management plan should not be cancelled, serve a cancellation notice on the person to cancel an infringement notice plan.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
131AF(1)	**Application for waiver of penalty – decision** – The Administering Authority must allow or refuse an application for a waiver of penalty.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AF(2)	**Application for waiver of penalty – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AF(4)	**Application for waiver of penalty – decision** – The Administering Authority may consult with the Responsible Director-General.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AF(5)	**Application for waiver of penalty – decision** – The Administering Authority must tell an applicant for a waiver of an infringement notice penalty about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
134(2)	**Procedure if liability is disputed** – If a person disputes liability for an infringement notice offence, the Administering Authority may lay an information in the Magistrates Court against a person for the offence within 60 days after being given the notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
134(3)	**Procedure if liability is disputed** – The Administering Authority must discontinue a proceeding brought against the person for the offence if before the hearing the person pays the total of a) the infringement notice penalty; and b) the costs (if any) prescribed by regulation for beginning the proceeding; and c) disbursements (if any) incurred by the Administering Authority up to the day payment is made.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
134(2)	**Procedure if liability is disputed** – If the Administering Authority does not lay an information in the Magistrates Court against the person within 60 days, the Administering Authority must tell the person in writing that no further action will be taken against the person for the offence and must not take any further action against the person for the offence.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5

Breakdown of changes to delegations for WS ACT staff under the MC Act and Regulations

Table 1 – Specific amendments proposed for MC Act functions

Section	Function Description	Comments
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	This function was previously delegated down to the Senior Officer Grade C level. Following consultation with the Deputy WHS Commissioner, concerns were raised regarding this function being delegated down to the Senior Officer Grade C level. It therefore proposed that the ability to approve both in time and out of time applications, as defined in the *Magistrates Court (Extension of Time) Guidelines 2024 (No 1)* be restricted to Senior Officer Grade B levels and above.
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	This function was previously delegated down to the Senior Officer Grade C level without limitation. Following consultation with the Deputy WHS Commissioner, concerns were raised regarding this function being delegated down to the Senior Officer Grade C level. Subsequently it is proposed that delegations for Senior Officer Grade C level staff be limited to the ability to approve in time applications, as defined in the *Magistrates Court (Extension of Time) Guidelines 2024 (No 1)*, noting that if an in-time application is made, the Administering Authority **must** approve the application as long as the requested extension of time does not exceed 6 months.
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Not previously delegated below Senior Director level (Senior Officer Grade A). I propose that this function be delegated down to Director (Senior Officer Grade B) level with limitations on when these delegations can be exercised to only be exercised in circumstances where the infringement notice is technically invalid and will be reissued immediately. Such a delegation would increase efficiency in reissuing invalid notices and reduce the administrative burden on Senior Executive Service Band staff and Senior Director.

Section	Function Description	Comments
134(5)	**Procedure if liability is disputed** – If the Administering Authority does not lay an information in the Magistrates Court against the person within 60 days, the Administering Authority must tell the person in writing that no further action will be taken against the person for the offence and must not take any further action against the person for the offence.	Minor update to amend subsection number due to typographical error. Previously this section was incorrectly listed as 134(2) which had already been delegated in an early section of the schedule.
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	This function was previously delegated down to the WorkCover Officer 5 level without limitation. Following consultation with the Deputy WHS Commissioner, concerns were raised regarding this function being delegated down to the WorkCover Officer 5 level. Propose that delegation under this section be limited to Senior Officer Grade C level and above to allow greater scrutiny of the exercise of this function.

Table 2 – Specific amendments proposed for *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004* functions

Section	Function Description	Comments
10(b)(ii)	**Contents of infringement notices – identifying person serving notice –** The Administering Authority may give a unique number for this regulation to an authorised person.	Not previously delegated. Propose delegation down to the Senior Officer Grade B level to allow efficient allocation of a unique identifier to inspectors to mitigate risks of violence and aggression from infringement notice recipients.
11(b)(ii)	**Contents of reminder notices – identifying person serving notice –** The Administering Authority may give a unique number for this regulation to an authorised person.	Not previously delegated. Propose delegation down to the Senior Officer Grade B level to allow efficient allocation of a unique identifier to inspectors to mitigate risks of violence and aggression from reminder notice recipients.

Table 3 – Specific amendments proposed for *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006* functions

Section	Function Description	Comments
10(b)	**Contents of infringement notices – identifying authorised person –** The Administering Authority may give a unique number for this regulation to an authorised person.	Not previously delegated. Propose delegation down to the Senior Officer Grade B level to allow efficient allocation of a unique identifier to inspectors to mitigate risks of violence and aggression from infringement notice recipients.

Section	Function Description	Comments
11(b)	**Contents of reminder notices – identifying authorised person –** The Administering Authority may give a unique number for this regulation to an authorised person.	Not previously delegated. Propose delegation down to the Senior Officer Grade B level to allow efficient allocation of a unique identifier to inspectors to mitigate risks of violence and aggression from reminder notice recipients.

Australian Capital Territory

Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 2)

made under the

Magistrates Court Act 1930, section 135 (Delegation of administering authority's functions)

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1 Name of instrument

This instrument is the *Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 2)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Delegation of Administering Authority functions

a) I, the Director-General, in my capacity as Administering Authority for infringement notice offences against the *Dangerous substances legislation*, delegate my functions under the provisions of Part 3.8 of the *Magistrates Court Act 1930* specified in column 1 of schedule 1, subject to any limitations specified in the corresponding row of column 3 of schedule 1 to an authorised person for the purposes of serving infringement notices or reminder notices for an infringement notice offence against the *Dangerous substances legislation.*

b) I, the Director-General, in my capacity as Administering Authority for infringement notice offences against the *Dangerous substances legislation*, delegate my functions under the provisions of the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004* specified in column 1 of schedule 2, subject to any limitations specified in the corresponding row of column 3 of schedule 2 to an authorised person for the purposes of serving infringement notices or reminder notices for an infringement notice offence against the *Dangerous substances legislation.*

4 Revocation

This instrument revokes the *Magistrates Court (Dangerous Substances Infringement Notices) Administering Authority Delegation 2025 (No 1)*.

5 Definitions

In this instrument:

Administering Authority means the entity defined as the Administering Authority in section 6 of the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*. At the time of making this instrument, the Administering Authority is the Director-General of the Chief Minister, Treasury and Economic Development Directorate.

Administrative Services Officer 6 means a person at the Administrative Services Officer 6 classification employed within the Legal Policy team or Occupational Hygiene and Dangerous Substances team within the Office of the Work Health and Safety Commissioner.

authorised person means for an infringement notice or reminder notice for an infringement notice offence—

a) a person who is appointed under section 134A(1) of the *Magistrates Court Act 1930* by the administering authority to serve an infringement notice or reminder notice for an offence against the *Dangerous substances legislation*; or

b) anyone else who, under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*, may serve an infringement notice or a reminder notice for an offence against the *Dangerous substances legislation*.

Dangerous substances legislation means –

a) the *Dangerous Substances Act 2004*

b) the *Dangerous Substances (Explosives) Regulation 2004*; and

c) the *Dangerous Substances (General) Regulation 2004*.

Deputy Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.31 of the *Work Health and Safety Act 2011*.

Director-General for the Dangerous Substances Act 2004 means the Director-General of the administrative unit responsible for the *Dangerous Substances Act 2004* in the Administrative Arrangements in force at any given time. At the time of making this instrument, the Administrative Unit responsible for the *Dangerous Substances Act 2004* is the Chief Minister, Treasury and Economic Development Directorate.

Executive Branch Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 1 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Executive Group Manager, WorkSafe ACT means a person at the classification of Senior Executive Service Band 2 in table 50 of the *Public Sector Management Standards 2016* employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade A means a person at the Senior Officer Grade A classification employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade B means a person at the Senior Officer Grade B classification employed within the Office of the Work Health and Safety Commissioner.

Senior Officer Grade C means a person at the Senior Officer Grade C classification employed within the Office of the Work Health and Safety Commissioner.

Work Health and Safety Commissioner means the person appointed under schedule 2, section 2.21 of the *Work Health and Safety Act 2011*.

WorkCover Officer 5 means a person at the Regulatory Inspector 5 (WorkCover Officer 5) classification employed within the Office of the Work Health and Safety Commissioner.

WorkCover Officer 6 means a person at the Regulatory Inspector 6 (WorkCover Officer 6) classification employed within the Office of the Work Health and Safety Commissioner.

Kathy Leigh
Director-General
Chief Minister, Treasury and Economic Development Directorate
August 2025

Schedule 1

Sections under Part 3.8 of the *Magistrates Court Act 1930*

Column 1 Section	Column 2 Function Description	Column 3 Limitation
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B
124	**Extension of time to pay penalty** – The Administering Authority may allow or refuse to allow an extension of time to manage an infringement notice.	Only able to be exercised by authorised persons occupying the following positions of, or positions at, the classification of: - Senior Officer Grade C Only able to be exercised in circumstances where the request for an extension of time has been received by the administering authority before the end of the allowed time, i.e., within 28 days of service of the infringement notice or reminder notice or any extension of time previously given.
126	**Application for withdrawal of infringement notice** – The Administering Authority must allow or refuse an application to withdraw an infringement notice or reminder notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A
127	**Withdrawal of infringement notice** – The Administering Authority may withdraw an infringement notice whether or not the person has made an application to withdraw the infringement; the infringement penalty or part of it has been paid; or the person has disputed liability for the offence.	Only able to be exercised by authorised persons occupying the following positions of, or positions at the classification of: - Senior Officer Grade B Only able to be exercised in circumstances where the infringement notice has been returned to sender due to an incorrect address for service of notice, or is invalid due to a technical deficiency, specifically: a) where the infringement notice does not comply with sections 121 (*Contents of infringement notices*) and/or 122 (Additional information in infringement notices) of the *Magistrates Court Act 1930*, or b) where the reminder notice does not comply with sections 130 (*Contents of reminder notices*) and/or 131 (*Additional information in reminder notices*) of the *Magistrates Court Act 1930.*
131AB(1)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must allow or refuse an application for an infringement notice management plan or addition to plan.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AB(2)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AB(5)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority may decide the amount of instalments that must be paid for an infringement notice management plan that allows payments by instalment.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
131AB(6)	**Application for infringement notice management plan or addition to plan – decision** – The Administering Authority must tell an applicant for an infringement notice management plan about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
131AC	**Approved community work or social development program — responsible director-general's agreement** – The Administering Authority must ask the Responsible Director-General if they agree to an applicant participating in an approved community work or social development program.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131ACA	**Cancellation of infringement notice management plan** – The Administering Authority may serve on a person a written notice of their proposal to cancel an infringement notice management plan , and after allowing suitable time for the person to provide written reasons why the infringement notice management plan should not be cancelled, serve a cancellation notice on the person to cancel an infringement notice plan.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
131AF(1)	**Application for waiver of penalty – decision** – The Administering Authority must allow or refuse an application for a waiver of penalty.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1 Section	Column 2 Function Description	Column 3 Limitation
131AF(2)	**Application for waiver of penalty – decision** – The Administering Authority may ask an applicant for more information.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AF(4)	**Application for waiver of penalty – decision** – The Administering Authority may consult with the Responsible Director-General.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C - Administrative Services Officer 6 - WorkCover Officer 6 - WorkCover Officer 5
131AF(5)	**Application for waiver of penalty – decision** – The Administering Authority must tell an applicant for a waiver of an infringement notice penalty about their decision to approve or refuse an application.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
134(2)	**Procedure if liability is disputed** – If a person disputes liability for an infringement notice offence, the Administering Authority may lay an information in the Magistrates Court against a person for the offence within 60 days after being given the notice.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
134(3)	**Procedure if liability is disputed** – The Administering Authority must discontinue a proceeding brought against the person for the offence if before the hearing the person pays the total of a) the infringement notice penalty; and b) the costs (if any) prescribed by regulation for beginning the proceeding; and c) disbursements (if any) incurred by the Administering Authority up to the day payment is made.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
134(5)	**Procedure if liability is disputed** – If the Administering Authority does not lay an information in the Magistrates Court against the person within 60 days, the Administering Authority must tell the person in writing that no further action will be taken against the person for the offence and must not take any further action against the person for the offence.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT
136	**Evidentiary certificates** - The Administering Authority may provide a signed certificate stating any matter relevant to anything done or not done under Part 3.8 of the *Magistrates Court Act 1930* in relation to the offence as evidence of the matter.	Only able to be exercised by the following authorised persons occupying the position of or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B - Senior Officer Grade C

Schedule 2

Sections under the *Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004*

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
10(b)(ii)	**Contents of infringement notices – identifying person serving notice** – The Administering Authority may give a unique number for this regulation to an authorised person.	Only able to be exercised by authorised persons occupying the following positions of, or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B
11(b)(ii)	**Contents of reminder notices – identifying person serving notice** – The Administering Authority may give a unique number for this regulation to an authorised person.	Only able to be exercised by authorised persons occupying the following positions of, or positions at the classification of: - Work Health and Safety Commissioner - Deputy Work Health and Safety Commissioner - Executive Group Manager, WorkSafe ACT - Executive Branch Manager, WorkSafe ACT - Senior Officer Grade A - Senior Officer Grade B