



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

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

Application Details	
Ref. No.	CMTEDDFO 2026-235
Date of Application	20 August 2026
Date of Decision	16 September 2026
Processing time (in working days)	19
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	Response to a letter of 24 May 2024 and related information held between 24 May 2023 to 30 June 2024.
Publication Details	
Original application	☒ Published ☐ N/A
Decision notice	☒ Published ☐ N/A
Documents and schedule	☒ Published ☐ N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

From: smartforms@act.gov.au
To: [CMTEDD FOI](#)
Subject: CMTEDDFOI 2026-235 - Freedom of Information (FOI) request, [REDACTED] [SEC=, DLM=Sensitive: Personal]
Date: Thursday, 20 August 2026 3:37:04 PM
Attachments: [YJQ66PFF.pdf](#)

Freedom of Information (FOI) request

Form data summary

Applicant name	[REDACTED]
Responsible directorate	Chief Minister, Treasury and Economic Development Directorate
Reference code	[REDACTED]

For issues or questions relating to SmartForms please contact the Payment Services Integration Team on *5 4607 or email smartforms.admin@act.gov.au.



Freedom of Information (FOI) request - Submission confirmation

Your submission has been successful. Please keep a copy of this receipt for your records.

Date and time

20 Aug 2026 3:34:00 PM

Reference code

Chief Minister, Treasury and Economic Development Directorate (CMTEDD)

GPO Box 158
Canberra City, ACT 2601

Phone: 6207 7754
CMTEDDFOI@act.gov.au

Applicant information

☒ I want to submit this request anonymously

Assistance

Do you need assistance with preparing your request?

☐ Yes

☐ No

Do you need an interpreter?

☐ Yes

☐ No

Contact details

For your anonymous request to be valid, please provide at least one method of contact. This information will help us confirm the details of your request and/or deliver information to you once your request is completed.

Phone number

Email address

Address line 1

Address line 2

Suburb

State

Postcode

Help us direct your request

The following information helps us send your request to the most appropriate team who will coordinate and respond to your request.

What do you know about the information you are requesting?*

- ☒ I know the Directorate or agency
- ☐ I know the topic
- ☐ I am not sure

Directorate or agency*

- ☐ Canberra Health Services
- ☒ Chief Minister, Treasury and Economic Development Directorate
- ☐ City and Environment Directorate
- ☐ Digital Canberra
- ☐ Education Directorate
- ☐ Health and Community Services Directorate
- ☐ Infrastructure Canberra
- ☐ Justice and Community Safety Directorate
- ☐ Multiple Directorate request

Request for

To help us process your request:

- Include enough detail in your application so we can identify what government information you want.
- As an alternative to using fields within the form, you may choose to attach documents or audio recordings.
- You may wish to include a statement on how the release of this information is in the public interest.

Scope of your request

What information are you requesting access to?*

Dear CMTEDD FOI Team,

Freedom of Information Request

I request access under the Freedom of Information Act 2016 (ACT) to documents held by CMTEDD, including the Office of Industrial Relations and WorkSafe ACT, concerning the ACT Government's response to the CPSU correspondence dated 24 May 2023 titled "Managing Psychosocial Risk – WorkSafe ACT".

That correspondence was identified in CMTEDDFOI 2024-220 and sought the intervention of the Office of Industrial Relations in relation to workplace culture and psychosocial safety concerns at WorkSafe ACT. The accompanying CPSU correspondence described the issues as ongoing, serious and unresolved and sought urgent intervention to review WorkSafe ACT's operations and culture.

For this request, the relevant period is 24 May 2023 to 30 June 2024.

I do not seek individual personnel, disciplinary or investigation files. My request concerns the organisational, governance and systemic response to the issues raised by the CPSU.

I request access to existing documents sufficient to show the following.

1. Receipt, referral and escalation of the CPSU correspondence

Documents sufficient to show:

- a. when the 24 May 2023 CPSU correspondence was received;
- b. the positions, business areas or executives to whom it was referred or escalated;
- c. any briefing, summary or advice prepared concerning the issues raised; and
- d. which position or business area was assigned responsibility for determining or coordinating the ACT Government response.

2. Decision whether to investigate or review WorkSafe ACT

Documents sufficient to show whether consideration was given to the CPSU request that the Office of Industrial Relations investigate or review psychosocial safety across WorkSafe ACT, including its safety systems and arrangements for mitigating psychosocial risk.

This includes documents sufficient to show:

- a. whether an investigation, review, assessment or other intervention was approved, declined or otherwise dealt with;
- b. the date of the decision;
- c. the position or delegate responsible for the decision;
- d. the recorded reasons for the decision; and

e. any terms of reference, scope, methodology or instructions established for any review or assessment that proceeded.

3. Review of WorkSafe ACT psychosocial safety systems

Where any review, assessment or consideration occurred, documents sufficient to show whether the following were examined:

- a. identification and management of psychosocial hazards;
- b. psychosocial risk assessment processes;
- c. existing controls intended to prevent or mitigate psychological injury;
- d. mechanisms for reporting and escalating psychosocial hazards;
- e. workplace culture or change-management risks;
- f. support available to employees exposed to occupational violence; and
- g. compliance with applicable ACT Public Service policies, procedures, values or behavioural standards.

I seek documents sufficient to show any findings, conclusions, recommendations or identified deficiencies arising from that consideration.

4. Existing measures said to be ineffective

The CPSU correspondence stated that measures implemented to mitigate the risk of psychological injury had not resolved the concerns raised.

I request documents sufficient to identify, where recorded:

- a. the psychosocial-risk controls or measures that were already in place at WorkSafe ACT at the time;
- b. any assessment of their adequacy or effectiveness;
- c. any identified deficiency in those measures; and
- d. any decision to modify, replace, supplement or discontinue them.

5. Preliminary Assessment process

Documents sufficient to show whether the ACT Government, Office of Industrial Relations, CMTEDD or WorkSafe ACT considered or reviewed the CPSU concern regarding the use of Preliminary Assessments at WorkSafe ACT, including the concern that the process could be used without sufficient basis or in a manner creating psychosocial risk.

I request documents sufficient to show:

- a. whether that concern was assessed or reviewed;
- b. any findings or conclusions reached;

c. whether any systemic or governance issue was identified;

d. whether any change was considered or made to Preliminary Assessment policies, procedures, approval requirements, guidance, oversight or training; and

e. any resulting recommendation or action.

I do not seek records relating to the merits of any identifiable employee's individual Preliminary Assessment.

6. Communication with WorkSafe ACT employees

The CPSU requested that WorkSafe ACT employees be informed about any investigation or review and how they could contribute to it.

I request documents sufficient to show:

a. whether that request was accepted, declined or otherwise considered;

b. any communication issued to WorkSafe ACT employees concerning the review, investigation or psychosocial-safety issues;

c. any invitation for employees to provide information, participate in consultation or otherwise contribute; and

d. any recorded reason if no such communication or consultation occurred.

7. Engagement with the CPSU

Documents sufficient to show:

a. the ACT Government's substantive response to the CPSU following the 24 May 2023 correspondence;

b. any meeting, consultation or engagement with CPSU representatives concerning the issues raised;

c. any agreed actions, commitments or next steps;

d. any action register, meeting outcome or follow-up arising from that engagement; and

e. whether the CPSU was subsequently advised that the matters raised had been resolved, addressed or closed.

I do not seek routine administrative correspondence concerning meeting availability unless it records a substantive decision or outcome.

8. Recommendations, actions and implementation

Documents sufficient to show any recommendation, remedial action, control measure, improvement initiative or action plan arising from the CPSU correspondence or any subsequent review or assessment, including:

a. the action or recommendation;

b. the responsible position, business area or risk owner;

c. any target completion date;

d. the status of the action;

e. the date of completion, where applicable; and

f. any review of whether the action was effective.

9. Executive and governance oversight

Documents sufficient to show whether the CPSU concerns or resulting response were considered, reported or escalated to:

a. the Work Health and Safety Commissioner;

b. WorkSafe ACT Senior Leadership Team or Senior Leadership Group;

c. CMTEDD senior executives;

d. the Office of Industrial Relations;

e. People and Capability / Human Resources;

f. a WHS committee or equivalent governance body; or

g. the responsible Minister or Minister's office.

For any such consideration, I seek only the relevant portions of briefing notes, agenda items, minutes, action registers, decision records or correspondence sufficient to show the issue considered, decision taken and any resulting action.

10. Decision that no further action was required

If any aspect of the CPSU request was considered but no investigation, review, psychosocial risk assessment, employee consultation, remedial action or other intervention was undertaken, I request documents sufficient to show:

a. the decision not to proceed;

b. the date of that decision;

c. the position or delegate responsible; and

d. the recorded reasons for that decision.

11. Closure or assessment of effectiveness

Documents sufficient to show whether, before 30 June 2024:

a. the issues raised by the CPSU were considered resolved or closed;

b. any resulting actions were considered completed;

c. any assessment was undertaken of whether psychosocial risk within WorkSafe ACT had reduced; and

d. any assurance, evaluation or review was undertaken to determine whether the measures adopted had been effective.

Scope and privacy

For clarity, this request concerns the ACT Government's organisational and governance response to the CPSU's 24 May 2023 correspondence.

I do not seek:

names or identifying information of individual complainants, witnesses or affected employees;
medical or health information;
the detailed substance of individual allegations where disclosure would identify an individual;
complete personnel, disciplinary or Professional Standards files; or
the merits or outcome of individual Preliminary Assessments.

Where responsive documents contain exempt or irrelevant personal information, I request partial access with that information redacted rather than refusal of access to the document in full.

Where names of individual employees cannot be released, position titles or de-identified descriptions are sufficient.

I seek existing documents and records only and do not require the creation of new information or a new narrative response.

If no formal review, investigation, action plan or equivalent record exists, I nevertheless seek any existing document sufficient to show how the CPSU correspondence was considered and the decision or recorded reason for the course ultimately taken.

If any part of the request is considered too broad, complex or likely to require substantial processing, please contact me before making a decision so that I may consider narrowing the scope rather than having the request refused.

Attach additional documents to support your application

Submit application

Timeframes

The Directorate responsible for your application must:

- inform you in writing within 10 working days that it has received your application
- communicate to you about any difficulties/ delays in processing your request
- provide you with a decision on access to the information within 30 working days or less

Requests may take longer than 30 days in situations where an extension has been granted.

If the Directorate must consult a third party, the deadline for providing a decision is extended by 15 working days. The Directorate will notify you if consultation is required.

Anonymous request

You're submitting an anonymous FOI request. The information you supply will be provided to:

- **Chief Minister, Treasury and Economic Development Directorate**
- **cmteddFOI@act.gov.au**

The FOI team may contact you to clarify details of your request. This will assist the team in reaching a decision on providing access to the information.

After submitting your request, you may wish to save a PDF copy of your form or email a PDF copy to your nominated email address.



FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 24 August 2026.

Specifically, you have sought access to the following information:

'... documents held by CMTEDD, including the Office of Industrial Relations and WorkSafe ACT, concerning the ACT Government's response to the CPSU correspondence dated 24 May 2023 titled "Managing Psychosocial Risk – WorkSafe ACT" refer CMTEDDFOI2024-220.

The period remains 24 May 2023 to 30 June 2024.

I am seeking any record that includes information concerning:

- *how the 24 May 2023 CPSU correspondence was received, referred and escalated;*
- *whether an investigation, review, psychosocial risk assessment or other intervention was considered, and any decision made about that;*
- *any findings, advice, risk assessments or recommendations arising from those concerns, including any consideration of the Preliminary Assessment process;*
- *any actions or remedial measures that followed;*
- *substantive engagement with the CPSU or WorkSafe ACT employees;*
- *executive or governance consideration of the issues; and*
- *any later decision that the matter was resolved, closed or required no further action, including any record of outstanding actions or review of effectiveness.*

I am not seeking individual personnel, disciplinary or investigation files through this request."

To note, on 20 August 2026 you requested a longer scope. This was negotiated and the above agreed on 24 August 2026.

Authority

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

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application within 30 days.

Therefore, a decision is due by **1 October 2026**.

Decision on access

Searches within CMTEDD and WorkSafe ACT records have identified documents in scope of your request.

In accordance with section 35(2), an access application may be decided in more than one way.

1) I have decided to grant full access to five documents.

The records identified as relevant to your application are listed in the schedule enclosed at **Attachment A**. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

2) Refuse to deal with parts of your application - *already available to the applicant*

A decision-maker can refuse to deal with an application under s 35(1)(d) where, as outlined in s 43(1)(d), they are satisfied the government information sought is already available to the applicant.

In September 2024, CMTEDD published [CMTEDDFOI2024-220](#) - an access application seeking information on a letter from the CPSU to the then Deputy Director General Damian West regarding psychosocial hazards at WorkSafe ACT and associated documents.

Many of the documents identified within scope for CMTEDDFOI2024-220 were also in scope for your access application CMTEDDFOI2026-235, in particular the Senior Leadership Team minutes for the period May 2023-June 2024.

Review of the published pack for CMTEDDFOI2024-220 has found no change in the application of the public interest test. Therefore, for some of this request, I find information is publicly available.

Release of documents

The information being released to you is provided at **Attachment B**.

Statement of Reasons

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below. In reaching my access decisions, I have taken the following into account:

- the Act
- the information that falls within the scope of your request

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per **Schedule 1** of the Act.
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring nondisclosure in **Schedule 2** of

the Act.

Exemptions claimed

Schedule 1: Information taken to be contrary to the public interest

No schedule 1 provisions were identified.

Public Interest Test

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

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

Schedule 2: Factors to be considered when deciding the public interest

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

Factors favouring disclosure (Section 2.1)

- *Section 2.1(a)(i) - promote open discussion of public affairs and enhance the government’s accountability.*
- *Section 2.1(a)(ii) - contribute to positive and informed debate on important issues or matters of public interest.*
- *Section 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision.*

I have considered the information within scope of your application and have found that release would reasonably contribute to discussion and informed debate regarding the response to the CPSU letter of 24 May 2023.

I believe the release of this information will reveal the reason for a government decision regarding the response to the CPSU letter and provide some contextual information.

I am satisfied that these factors favouring disclosure carry significant weight. However, these factors are to be balanced against the factors favouring nondisclosure.

Factors favouring nondisclosure (Section 2.2)

No factors identified.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a [disclosure log](#).

Your original access application and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

Ombudsman Review

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

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

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

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

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

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

Yours sincerely



Emma Hotham

Information Officer
Chief Minister, Treasury and Economic Development Directorate

16 September 2026



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
I request access under the Freedom of Information Act 2016 (ACT) to documents held by CMTEDD, including the Office of Industrial Relations and WorkSafe ACT, concerning the ACT Government's response to the CPSU correspondence dated 24 May 2023 titled "Managing Psychosocial Risk – WorkSafe ACT" refer CMTEDDFOI2024-220. The period remains 24 May 2023 to 30 June 2024. I am seeking any record that includes information concerning: • how the 24 May 2023 CPSU correspondence was received, referred and escalated; • whether an investigation, review, psychosocial risk assessment or other intervention was considered, and any decision made about that; • any findings, advice, risk assessments or recommendations arising from those concerns, including any consideration of the Preliminary Assessment process; • any actions or remedial measures that followed; • substantive engagement with the CPSU or WorkSafe ACT employees; • executive or governance consideration of the issues; and • any later decision that the matter was resolved, closed or required no further action, including any record of outstanding actions or review of effectiveness.	CMTEDDFOI2026-235

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Email: CPSU letter - para's for inclusion	31/05/2023	Full	-	Yes
2	3-4	Email: FW: CPSU letter about WorkSafe culture - para"s for possible use in reply	03/05/2024	Full	-	Yes
3	5-6	FW: CPSU letter about WorkSafe culture - para"s for possible use in reply	11/09/2023	Full	-	Yes
4	7-8	FW: CPSU letter about WorkSafe culture - para"s for possible use in reply	22/06/2023	Full	-	Yes
5	9	TEAMS message	30/05/2023	Full	-	Yes
Total No of Docs						
5						

From: [Lukins, Ellen](#)
To: [Young, Michael](#)
Subject: CPSU letter - para"s for inclusion
Date: Wednesday, 31 May 2023 11:25:00 AM
Importance: High

OFFICIAL: Sensitive

Hi Michael

As requested yesterday, please see below the para's drafted for inclusion in responding to the CPSU's request to Damian. I've provided a link to get membership details from the secretariat as I'm assuming they are likely to know already who is on the Council, however have also provided my details (noting sensitivity) so we can advise re how to add to the agenda/process to discuss with the Chair re adding to the agenda.

I understand your letter to concern the workplace culture of WorkSafe ACT in seeking my intervention to review the issues raised in my capacity as the Deputy-Director General, Office of Industrial Relations and Workplace Safety, CMTEDD.

As you may recall, in 2020 the Office of the Work Health and Safety Commissioner (the Office, commonly known as WorkSafe ACT) was established as an independent entity in response to recommendations arising out 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, independence of the regulator and increased transparency, accountability and scrutiny of the regulator.

Relevantly, establishing the Office as an independent regulator in the ACT addressed calls on the Government from unions to ensure the independence of the regulator in order to effectively regulate all workplaces in the Territory within the purview of the ACT regulator, ie. both ACT public sector workplaces such as CMTEDD and private sector workplaces across the Territory.

In doing so, responsibility for the employment of staff of the Office rests with the WHS Commissioner under section 2.32, schedule 2 of the *Work Health and Safety Act 2011* (the Act) and their staff's independence from external directions is maintained under section 2.34 of schedule 2 of the Act.

Given these statutory provisions under the Act, I am unable to respond to your letter by directly intervening in the matters raised.

However, in establishing the independence of the Office I note that an additional layer of oversight was afforded to the ACT's Ministerial advisory body of 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 a member of 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. If you would like a list of current members please contact the Secretariat at

ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au or Ellen Lukins, EGM, Policy Branch, Work Safety Group on 02 6205 3874 or at ellen.lukins@act.gov.au.

Let me know if you want any adjustments made to the draft paras.

Cheers,

EL

Ellen Lukins

Executive Branch Manager | Policy Branch

02 6205 3874 | 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: [Young, Michael](#)
To: [Turner, Mikaela](#)
Subject: FW: CPSU letter about WorkSafe culture - para's for possible use in reply
Date: Friday, 3 May 2024 3:01:00 PM
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](#)
To: [Noud, Russell](#); [McKinnon, Margaret](#)
Subject: FW: CPSU letter about WorkSafe culture - para's for possible use in reply
Date: Monday, 11 September 2023 2:32:00 PM
Importance: High

OFFICIAL: Sensitive

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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.

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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](#)
To: [Lukins, Ellen](#)
Subject: FW: CPSU letter about WorkSafe culture - para's for possible use in reply
Date: Thursday, 22 June 2023 10:53:13 AM
Importance: High

OFFICIAL: Sensitive

For our next catch up discussion

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.

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Young, Michael 30/05/2023 4:51 pm

MY

CPSU has written to Damian asking him to intervene at WorkSafe to review what they claim is a workplace culture problem. I would like you to draft a few paras that could be used in a reply that basically points out that:

- WorkSafe statutory independent - and at urging of unions the Gov legislated to reduce ability for WorkSafe regulated agencies like cmteed to disrupt or be perceived to disrupt WorkSafe operations
- point out that the WHS Council was given a stronger oversight role
- suggest that an appropriate first port of call for their concerns might be the Advisory Council

Overall tone is to decline the request to directly intervene - not because we dont want to, but because of statutory design. SO that if OIRWS does intervene it is because the Minister has asked us to either on referral from Jacqui or the WHSC

