Australian Capital Territory

Magistrates Court (Workers Compensation 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 (Workers Compensation 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 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*.

b) 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 the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006* 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 *Workers Compensation Act 1951*.

4 Revocation

This instrument revokes the *Magistrates Court (Workers Compensation 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 (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
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 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
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

Column 1 Section	Column 2 Function Description	Column 3 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 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
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

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
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
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

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
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
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

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
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
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

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

Schedule 2

Sections under the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
10(b)	**Contents of infringement notices – identifying authorised person** – 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)	**Contents of reminder notices – identifying authorised person** – 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

From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 25/09/2020 10:53 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: WorkSafe delegations
Attachments: HOS Brief - WorkSafe ACT Delegations Appts Sept 2020.docx

OFFICIAL

Cover brief provided a bit late – makes it clearer – probably just needed a background note for Kathy to point out that the statutory independence/ severing of DG delegations did not extend to WC functions – I can talk Leanne through that

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: Power, Leanne
Sent: Friday, 25 September 2020 10:35 AM
To: Young, Michael
Subject: WorkSafe delegations

OFFICIAL

Hi Michael
This is a copy of the brief
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, Canberra Nara Centre, 1 Constitution Avenue Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	15 September 2020	TRIM No: File No:
To	Director-General	
From	Work Health and Safety Commissioner	
Subject	Delegation and Appointment Instruments - *Workers Compensation Act 1951*	

Critical date and reason

1. **15 September 2020** - existing workers' compensation delegations no longer align with the Office of the Work Health and Safety Commissioner's governance structure.

Recommendations

2. That you sign the:
    a. *Workers Compensation Delegation 2020 (No 1)*) (**Attachment A**) and
    b. *Workers Compensation Appointments 2020 (No 1)*) (**Attachment B**),

    made under the *Workers Compensation Act 1951*.

Kathy Leigh..... / /

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. WorkSafe ACT was established as an independent statutory authority with effect from 1 July 2020.
4. Appointments and delegations made on 9 July 2019 under the *Workers Compensation Act 1951* (the Act) require updating to reflect the current governance structure of the Office of the Work Health and Safety Commissioner.
5. The Act provides appointments and delegations may be made by the Director-General of the directorate with administrative responsibility, i.e CMTEDD.

Issues

6. The *Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)* providing WorkSafe ACT with delegation to regulate and enforce workers' compensation legislative obligations, were last made in July 2019 (refer **Attachment C**).
7. The July 2019 appointments and delegations instrument does not align with the Office of the Work Health and Safety Commissioner's governance arrangements and structure.
8. New instruments have been prepared to reflect the Office of the Work Health and Safety Commissioner's operating model, supporting effective compliance and enforcement activities and an avenue for review for regulatees.
9. The two new instruments separate delegations (refer **Attachment A**) and appointments (refer **Attachment B**) to provide WorkSafe ACT independence in allocating inspectors in accordance with the delegations.
10. The eligibility requirements of the persons occupying the positions of inspector identified in the appointments instrument were previously satisfied in the July 2019 instrument.

Consultation

11. Workplace Safety and Industrial Relations, CMTEDD, has been consulted in the preparation of the updated instruments to ensure consistency with the Act.

Work Health and Safety

12. There are no work health and safety implications associated with this Brief.

Financial

13. There are no financial implications associated with this Brief.

Risks/ Sensitivities

14. The current delegations do not align with the Office of the Work Health and Safety Commissioner's governance structure, restricting operational activities, including review mechanisms, associated with the Act.

Media

15. Not applicable.

Name and signature of sender

Action Officer: Jacqueline Agius, WHS Commissioner

Phone: 6207 2718

Attachments

Attachment	Title
Attachment A	Workers Compensation Act Delegations Instrument 2020 (No.1)
Attachment B	Workers Compensation Act Appointments Instrument 2020 (No.1)
Attachment C	Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)

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
30/7/2021

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	WHS Commissioner
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
113	Notice of stopping payments	P46665	WHS Commissioner
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	P46665 E1149	WHS Commissioner Deputy WHS Commissioner
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**
7(1)	Minister may approve information	E900	Director-General
16	Minister may approve rehabilitation providers	P46665 E1149 P35631 P48222	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director

ACT Government

OFFICIAL MINISTERIAL BRIEF

Chief Minister, Treasury and Economic Development Directorate

To:	Minister for Industrial Relations and Workplace Safety	**Tracking No.: CMTEDD2021/2867**
From:	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject:	Ministerial delegations: *Workers Compensation Act 1951*	
Critical Date:	**29/07/2021**	
Critical Reason:	To update delegations of Ministerial functions under the *Workers Compensation Act 1951*	

- DG .../.../...
- Dr Damian West, DDG, WCAG 20/07/2021

Recommendations

That you:

1. **sign** the updated instrument of delegation at Attachment A; and

Signed / Not Signed / Please Discuss

2. **note** the updated instrument revokes the *Workers Compensation Delegation 2011* (No 1) at Attachment B and the *Workers Compensation Delegation 2011 (No 1)* at Attachment C.

Noted / Please Discuss

Mick Gentleman MLA 30/7/2021

Minister's Office Feedback

Background

1. The *Workers Compensation Act 1951* (the WC Act) assigns various functions to the Minister, the WHS Commissioner and the Director-General, CMTEDD. These functions are currently delegated under two delegation instruments:

    a. the *Workers Compensation Delegation 2011 (No 1)* (the 2011 Delegation) (Attachment B); and

    b. the *Legislation (Workers Compensation) Delegation 2021 (No 1)* (the 2021 Delegation) (Attachment C).

2. While both delegations have been made under the *Legislation Act 2001* (Legislation Act), the 2011 Delegation has never been notified on the ACT Legislation Register as was the practice at that time. Delegations are not required to be notified under the Legislation Act, however, in recent years the practice has been to notify them on the ACT Legislation Register for transparency purposes.

3. The 2011 Delegation delegated a number of Ministerial powers under the WC Act to the person who occupies the position of Director-General, Chief Minister and Cabinet.

4. Attachment E provides a schedule of delegations made under the WC Act.

Issues

5. The 2011 Delegation, having been made in 2011, reflects the directorate naming conventions of that time. While the different name may constitute a defect, the Legislation Act (section 242) would be considered to operate such that the delegation is not affected by a defect.

6. There have however been other delegations made under the WC Act, first made in 2015 (Attachment D), these delegated functions focussing on administrative/regulatory functions are now reflected in the current 2021 Delegation and never revoked the 2011 Delegation.

7. Consequently the 2011 Delegation remains on foot. However, it is considered better practice to update the 2011 Delegation to remove any concern in the future about the possible defects in the 2011 instrument.

8. In the course of updating the 2011 Delegation and noting the existing 2021 Delegation, both instruments have now been combined in the attached delegation instrument prepared for your consideration and signature at Attachment A.

9. The updated delegations include the following revisions:

    a. a number of functions that are operational and regulatory in nature have been transferred to the WHS Commissioner from the Director-General consistent with the functions already assigned to the WHS Commissioner under the WC Act, specifically:

i. section 88(3) of the WC Act to receive injury management programs from insurers;

ii. section 111 of the WC Act to monitor compliance by insurers with the requirements of chapter 5 (injury management obligations);

iii. section 164(2) of the WC Act about the provision of information.

b. in addition, for ease of administration in relation to the issuing of a notice to insurers of the apportioned costs under section 210A of the WC Act, this has been included in the updated delegation instrument and delegated to positions held in the Workplace Safety and Industrial Relations Group, CMTEDD. It is an anomaly in the 2011 Delegation that the apportioning of costs in administering the WHS and workers' compensation legislation was delegated however the associated issuing of the notice was not delegated.

10. Once the instrument has been signed, WSIR will arrange for the instrument to be notified on the ACT Legislation Register. On commencement of the updated instrument, both the 2011 and 2021 Delegation instruments would be revoked.

Financial Implications

11. Nil.

Consultation

Internal

12. Nil.

Cross Directorate

13. Nil.

External

14. Consultation has taken place with WorkSafe ACT on the updated delegation instrument.

Benefits/Sensitivities

15. Nil.

Communications, media and engagement implications

16. Nil.

Signatory Name:	Michael Young	Phone:	50395
Action Officer:	Ellen Lukins	Phone:	53874

Attachment	Title
Attachment A	*Legislation (Workers Compensation) Delegation 2021 (No 2)*
Attachment B	*Workers Compensation Delegation 2011 (No 1)*
Attachment C	*Legislation (Workers Compensation) Delegation 2021 (No 1)*
Attachment D	*Workers Compensation Delegation 2015 (No 1)*
Attachment E	Schedule of workers compensation instruments

From: "Lukins, Ellen"
Sent: 30/07/2021 5:28 PM
To: "CMTEDD, Assembly Coordination" <AssemblyCoordination@act.gov.au>
Subject: Notification request: delegation instrument
Attachments: Minister signed Brief - Workers compensation delegations.PDF, Minister signed - Attachment A - Updated Workers compensation Delegation 2021 (No 2).PDF

OFFICIAL

Good afternoon

Can I please request notification of the attached instrument on ***Monday 2 August***? I note that these instruments aren't technically notifiable instruments but are notified on the Legislation Register for transparency (we will require notification on the Monday so we can progress another related briefing noting we have put commencement as the day after notification)

Documents for requesting notification are in Trim folder CMTEDD2021/2867.

Please let me know if you have any questions and thank you.

Kind regards,
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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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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CONFIDENTIAL

CONFIDENTIAL – NOT FOR FURTHER DISTRIBUTION

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.

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.

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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:

> *'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

[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.

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: "Short, Rachael" <Rachael.Short@act.gov.au>
Sent: 09/11/2020 11:13 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Cc: "Turner, Mikaela" <Mikaela.Turner@act.gov.au>; "Short, Rachael" <Rachael.Short@act.gov.au>
Subject: RE: AC20_841 FOR APPROVAL: WorkSafe ACT WC delegations
Attachments: Att A - revised - Workers Comp Delegations - Sept 2020 FINAL.pdf, Att B_Current Workers Compensation Appointment and Delegations 2019 (No 1).pdf, Brief to HOAC_WorkSafe ACT WC Delegations (A27168188).pdf

OFFICIAL

Hi Ellen

Signed brief and attachments attached.

Thanks Rachael

Rachael Short |Executive Officer
Deputy Director-General, David Pryce
Executive Group Manager, Regulatory Compliance, David Snowden
Phone: 02 5124 6022 Ex: 46022 | Email: rachael.short@act.gov.au
Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government
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This email and any of its attachments may be confidential. If you are not the intended recipient please notify the sender and delete immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: Lukins, Ellen
Sent: Friday, 6 November 2020 1:26 PM
To: Short, Rachael
Cc: Turner, Mikaela
Subject: AC20_841 FOR APPROVAL: WorkSafe ACT WC delegations
Importance: High

OFFICIAL

Hi Rachael

Thank you for arranging to get this briefing to David Pryce and fingers crossed he is back on Monday.

The briefing has been cleared through Michael Young, EGM, Workplace Safety and Industrial Relations.

Let me know if there are any follow up questions I can assist with.

Kind regards,
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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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
9 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

ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	6 November 2020	TRIM No: CMTEDD2020/5486 File No: 20/86846
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:

- **sign** the revised Workers Compensation (Director-General) Delegations 2020 (No 1)) instrument (Attachment A);

SIGNED/~~NOT SIGNED/PLEASE DISCUSS~~

- **note** that the previous Head of Access Canberra delegations and appointments under the *Workers Compensation Act 1951* will be revoked; and

NOTED/~~PLEASE DISCUSS~~

- **note** that the WHS Commissioner will make the inspector appointment instrument once provided with the delegation.

NOTED/~~PLEASE DISCUSS~~

David Pryce 9/11/2020

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. 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: "MacLaughlan, Leanne" <Leanne.MacLaughlan@worksafe.act.gov.au>
Sent: 14/07/2021 3:48 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Consultation: workers compensation delegations
Attachments: Attachment A - Updated Workers compensation Delegation 2021 (No 2) WS 2.docx

OFFICIAL

Hi Ellen
I've reviewed this instrument again taking your comments below into consideration.

I understand the concern regarding delegation below the WHS Commissioner (and deputy WHS Commissioner). However, as we've already discussed, it seems that some of the Minister's functions being delegated to the WHS Commissioner should actually be regulator functions. Obviously, such a legislative change is not something that is achievable in the short term, but something that should be raised sooner rather than later.

I've made a couple of comments in the attached, agreeing to remove the Director level and retaining Snr Director for only two of the functions (s111 and s114).

Happy to discuss if there are still concerns – or perhaps Jacqui can discuss with the Minister's office as part of the approval process?

Thank you

Regards

Leanne MacLaughlan| Senior Director - Strategy, Compensation and Licensing
P: 6207 1505| M: Sch 2.2(a)(ii) E: Leanne.maclaughlan@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



From: Lukins, Ellen
Sent: Monday, 12 July 2021 6:19 PM
To: MacLaughlan, Leanne
Subject: RE: Consultation: workers compensation delegations

OFFICIAL

Hi Leanne

Having had a closer look at this and revisited the Brief to reflect – I'm still uncomfortable with delegating to the 'director level', particularly for a function in the nature of the approval of rehabilitation providers for the Act.

Is there a signed brief from Jacqui that she is happy to delegate functions of this type within WorkSafe below the deputy WHS Commissioner (or senior director if appropriate) that you are able to provide? I'm assuming if there is a brief it would have set out the issues/risks/governance in place to support delegating such a function to the level of

a director (particularly given this could potentially mean they are the ones considering and making the recommendation as well as signing off on the approval …).

If your able to provide an agreed/signed brief from Jacqui it would assist in prosecuting the case as I'm conscious that those above me in the clearance line would be keen to have certainty that the appropriate governance is in place before recommending the Minister delegate these functions given that the Minister would ultimately retain responsibility for the approval of a dodgy provider/fraudulent application process if things went wrong.

A similar example might be the function of licensing insurers which now rests with the regulator, has Jacqui delegated that function past the deputy WHS Commissioner? And if so do they include 'directors' or just down to the 'senior director' level?

Let me know if you need to discuss further and apologies for labouring on this point.

Thank you
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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From: Lukins, Ellen
Sent: Monday, 12 July 2021 4:34 PM
To: MacLaughlan, Leanne <Leanne.MacLaughlan@worksafe.act.gov.au>
Subject: RE: Consultation: workers compensation delegations

OFFICIAL

Fantastic, thanks Leanne!

And agreed we can have the review of functions on our future work plan ☺

Cheers,
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: MacLaughlan, Leanne <Leanne.MacLaughlan@worksafe.act.gov.au>
Sent: Monday, 12 July 2021 4:32 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: Consultation: workers compensation delegations

OFFICIAL

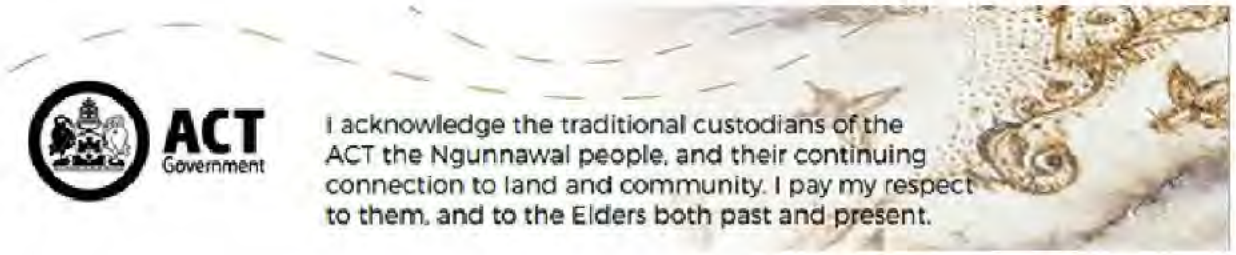
Hi Ellen
Thank you for the clarification earlier this afternoon. This is clearly an examples why there should only be one instrument of delegation!

I've amended following our conversation and taking your point about Minister function, I've removed the "Director" level – with the exception of the approval of rehab providers. It would be good to review some of these functions to reflect the WHS Commissioner's independence and the overall functions of the Office of the WHS Commissioner. I'm sure you've got this on your future work plan!

Thanks again.

Regards

Leanne MacLaughlan| Senior Director - Strategy, Compensation and Licensing
P: 6207 1505| M Sch 2.2(a)(ii) E: Leanne.maclaughlan@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



From: MacLaughlan, Leanne
Sent: Thursday, 8 July 2021 9:07 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: Consultation: workers compensation delegations

OFFICIAL

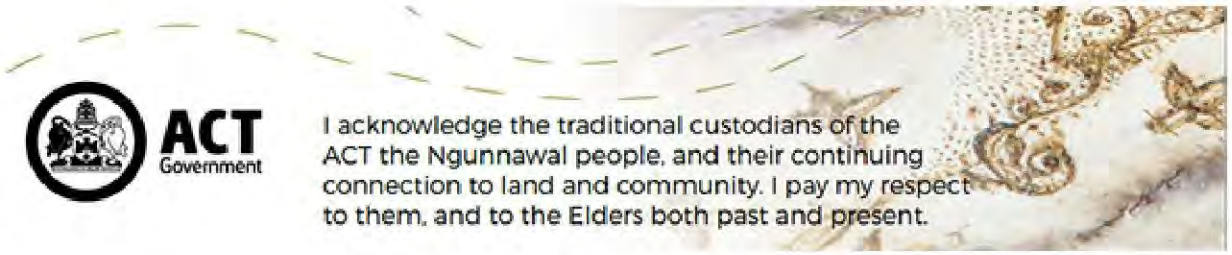
Hi Ellen
I have reviewed the proposed delegation schedule and have added in "Directors" into the WorkSafe delegations (refer attached).

There are also a couple of comments that we would appreciate feedback on.

Thank you

Regards

Leanne MacLaughlan| Senior Director - Strategy, Compensation and Licensing
P: 6207 1505| M Sch 2.2(a)(ii) E: Leanne.maclaughlan@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, 6 July 2021 6:30 PM
To: MacLaughlan, Leanne <Leanne.MacLaughlan@worksafe.act.gov.au>
Subject: Consultation: workers compensation delegations

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: "MacLaughlan, Leanne" <Leanne.MacLaughlan@worksafe.act.gov.au>
Sent: 12/07/2021 4:31 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Consultation: workers compensation delegations
Attachments: Attachment A - Updated Workers compensation Delegation 2021 (No 2) WS 2.docx

OFFICIAL

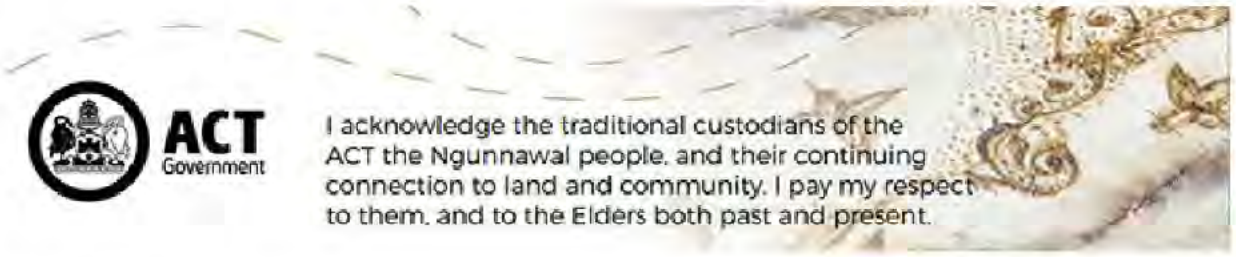
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I've amended following our conversation and taking your point about Minister function, I've removed the "Director" level – with the exception of the approval of rehab providers. It would be good to review some of these functions to reflect the WHS Commissioner's independence and the overall functions of the Office of the WHS Commissioner. I'm sure you've got this on your future work plan!

Thanks again.

Regards

Leanne MacLaughlan| Senior Director - Strategy, Compensation and Licensing
P: 6207 1505| M Sch 2.2(a)(ii) E: Leanne.maclaughlan@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



From: MacLaughlan, Leanne
Sent: Thursday, 8 July 2021 9:07 PM
To: Lukins, Ellen
Subject: RE: Consultation: workers compensation delegations

OFFICIAL

Hi Ellen
I have reviewed the proposed delegation schedule and have added in "Directors" into the WorkSafe delegations (refer attached).

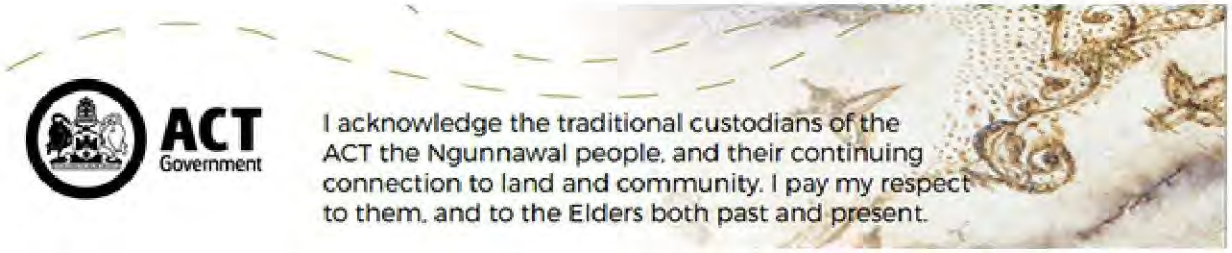
There are also a couple of comments that we would appreciate feedback on.

Thank you

Regards

Leanne MacLaughlan| Senior Director - Strategy, Compensation and Licensing
P: 6207 1505| M Sch 2.2(a)(ii)| E: Leanne.maclaughlan@worksafe.act.gov.au
WORKSAFEACT

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



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, 6 July 2021 6:30 PM
To: MacLaughlan, Leanne <Leanne.MacLaughlan@worksafe.act.gov.au>
Subject: Consultation: workers compensation delegations

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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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)**

---

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	Director-General

Commented [ML1]: As discussed, this is transferred from 2011 instrument that is being revoked.

Suggest s113 also be included in this instrument to provide clarity of this function (ie notice provided to the WHS Commissioner to action) .

Commented [ML2]: What is the mechanism for the Commissioner et al to request information (given the delegated functions)

Suggest this also be delegated to the WHS Commissioner and Deputy WHS Commissioner.

Column 1	Column 2	Column 3	Column 4
Sections	**Functions**	**Position number**	**Position description**
		P18350	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 P50813 P05752	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director Director Director

From: "MacLaughlan, Leanne" <Leanne.MacLaughlan@worksafe.act.gov.au>
Sent: 08/07/2021 9:06 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Consultation: workers compensation delegations
Attachments: Attachment A - Updated Workers compensation Delegation 2021 (No 2) WS.docx

OFFICIAL

Hi Ellen
I have reviewed the proposed delegation schedule and have added in "Directors" into the WorkSafe delegations (refer attached).

There are also a couple of comments that we would appreciate feedback on.

Thank you

Regards

Leanne MacLaughlan| Senior Director - Strategy, Compensation and Licensing
P: 6207 1505| M Sch 2.2(a)(ii) : Leanne.maclaughlan@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



From: Lukins, Ellen
Sent: Tuesday, 6 July 2021 6:30 PM
To: MacLaughlan, Leanne
Subject: Consultation: workers compensation delegations

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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Australian Capital Territory

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Notifiable instrument NI 2021–

made under the

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

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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 P50813 P05752	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director Director Director
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111	Obligation of Minister	E900 P46665 E1149 P35631 P48222 P50813 PP05752	Director-General WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director Director Director
114	Unreasonableness in stopping payments	P46665 E1149 P35631 P48222 P50813 P05752	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director Director Director
164(2)	Provision of information to Minister	E900	Director-General
201(1) & (2)	Medical referees	E900	Director-General

Commented [ML1]: The insurer provides the notice to the Minister under s113(2) - How would this work?

Commented [ML2]: What is the mechanism for the Commissioner et al to request information (given the delegated functions)

Suggest this also be delegated to the WHS Commissioner and Deputy WHS Commissioner.

Column 1	Column 2	Column 3	Column 4
Sections	**Functions**	**Position number**	**Position description**
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 P50813 P05752	WHS Commissioner Deputy WHS Commissioner Senior Director Senior Director Director Director

From: "Lukins, Ellen"
Sent: 13/10/2025 3:01 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Cc: "CMTEDD, EGM WSG Office" <EGMWSGOffice@act.gov.au>
Subject: RE: Content Manager CMTEDD - Brief Container : CMTEDD2025/4290 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Conflict of Interest Declaration by WorkSafe ACT Commissioner

Thanks Emma, appreciated.

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: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Monday, 13 October 2025 2:35 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: CMTEDD, EGM WSG Office <EGMWSGOffice@act.gov.au>
Subject: FW: Content Manager CMTEDD - Brief Container : CMTEDD2025/4290 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Conflict of Interest Declaration by WorkSafe ACT Commissioner

OFFICIAL: Sensitive - Personal Privacy

Hi Ellen

I'm a little nervous about the 'I trust' statement. The Minister may wish to see evidence of the approach established to manage this within the Commissioner's office. This could be provided at a future date.

Emma

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, 13 October 2025 2:30 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Cc: CMTEDD, EGM WSG Office <EGMWSGOffice@act.gov.au>
Subject: Content Manager CMTEDD - Brief Container : CMTEDD2025/4290 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Conflict of Interest Declaration by WorkSafe ACT Commissioner

OFFICIAL: Sensitive - Personal Privacy

Hi Emma

AS discussed, before clearing through Michael could I please get your external to WSG review of the attached consideration of a 'conflict of interest' declaration provided by the WHS Commissioner to the Minister.

Thank you,

EL

------< Content Manager Record Information >------

Record Number: CMTEDD2025/4290
Title: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Conflict of Interest Declaration by WorkSafe ACT Commissioner

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
Sent: Friday, July 19, 2024 9:36 AM
To: CMTEDDMedia
Cc: CMTEDD, DDGOIRWS ; Irvine, Lisa ; Turner, Mikaela ; Hempenstall, Alana ; Lukins, Ellen ; Winn, Sinead
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:

copy

copy

copy

copy

copy

From: "Polglase, David" <David.Polglase@act.gov.au>
Sent: 29/07/2024 4:37 PM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Young, Michael" <Michael.Young@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Irvine, Lisa" <Lisa.Irvine@act.gov.au>
Subject: RE: MEDIA RESPONSE FOR APPROVAL FW: WorkSafe ACT

OFFICIAL

Thanks Lisa

Michael has confirmed this is ok since I sent this response – but will tidy up.

Cheers
David

David Polglase | Senior Director, Content
Phone: 02 6205 9957 | Mobile: Sch 2.2(a)(ii) | Email: david.polglase@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

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ACT Government
Produced by Chief Minister, Treasury and Economic Development Directorate

---

From: Carmody, Lisa
Sent: Monday, July 29, 2024 4:33 PM
To: Polglase, David
Cc: Young, Michael ; Lukins, Ellen ; Irvine, Lisa
Subject: RE: MEDIA RESPONSE FOR APPROVAL FW: WorkSafe ACT

OFFICIAL

This looks fine to progress thanks – I note the penultimate sentence is the only one I would query, mainly because I am not sure this should be opened up as a possibility, but I can see this is under consideration.
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile Sch 2.2(a)(ii) | Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

---

From: Polglase, David <David.Polglase@act.gov.au>
Sent: Monday, July 29, 2024 3:31 PM
To: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Cc: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Irvine, Lisa <Lisa.Irvine@act.gov.au>

Subject: MEDIA RESPONSE FOR APPROVAL FW: WorkSafe ACT
Importance: High

OFFICIAL

Hi Lisa

Please see below statement for your approval. This has been through Michael and Ellen.

We will then get cleared through the Minister's Office.

Please note this enquiry came following other questions that were responded to previously. They are included earlier in the media chain for awareness.

Cheers
David

Enquiry Sch 2 2(a)(ii) Riotact)

All well and good but will the Council be discussing any of the matters former and current employees, and the CPSU, have raised?
Will the WHS Commissioner face any questions?
Will she excuse herself from Council discussion?
If so, can any of this be made public?
When is the next meeting?
Is the minister expecting advice from the council on the performance of the Commissioner?
Will he release that advice?

Response

The Commissioner receives and responds to questions on a quarterly basis from members of the WHS Council, including but not limited to the employee representative member who is a CPSU official.

The Council's governance arrangements provide for the Commissioner (and any other WHS Council member) to be excluded from discussions where there is an actual or potential conflict of interest.

The next meeting is scheduled for 22 August 2024.

The directorate publishes a communique issued by the Council following each meeting.

The Minister will request the Council to expand future communiques, to regularly include additional information about the Council's consideration of the performance of WorkSafe at meetings. (Minister Office to consider this sentence)

The Minister anticipates regular advice from the Council on a range of matters, outlined in its establishing legislation, including performance of WorkSafe. The functions of the Council are described in the following extract from the WHS Act:

Division 2.1.1 Establishment, functions and powers

2.2 Functions

(1) The council has the following functions:

(a) to advise the Minister on matters relating to—

(i) work health and safety; or

(ii) workers compensation; or

(iii) bullying in the workplace and other workplace psychosocial issues; or

(b) to inquire into and report to the Minister on matters referred to the council by the Minister in relation to—

(i) work health and safety; or

(ii) workers compensation; or

(iii) bullying in the workplace and other workplace psychosocial issues; or

(c) at the first council meeting that happens after the publication of the annual report required under section 2.41 (Annual report)—

(i) review and consider the annual report; and

(ii) advise the Minister and the WHS commissioner on any matters arising from the review and consideration; or

(d) any other function prescribed by regulation.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, defs ***entity*** and ***function***).

(2) Without limiting subsection (1) (a), the matters on which the council may advise the Minister include the following matters:

(a) the operation of this Act and the associated laws;

(aa) the performance of the office of the work health and safety commissioner and the WHS commissioner;

(b) the approval of codes of practice, and the variation of codes of practice, under section 274 (Approved codes of practice);

(c) the provision of education and training in relation to work health and safety;

(d) the promotion of work health and safety;

(e) the operation of the *Workers Compensation Act 1951*;

(f) the approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;

(g) the provision of education and training in relation to workers' compensation;

(h) the operation of the *Dangerous Substances Act 2004*;

(i) the operation of the *Workplace Privacy Act 2011*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation (see Legislation Act, s 104).

David Polglase | Senior Director, Content
Phone: 02 6205 9957 | Mobile Sch 2.2(a)(ii) Email: david.polglase@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

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Produced by Chief Minister, Treasury and Economic Development Directorate

From: Dynon, Kaarin <Kaarin.Dynon@act.gov.au>
Sent: Monday, July 29, 2024 1:45 PM
To: Polglase, David <David.Polglase@act.gov.au>
Subject: FW: WorkSafe ACT

From: Sch 2.2(a)(ii)
Sent: Monday, July 29, 2024 1:28 PM
To: Inman, Mick <Mick.Inman@act.gov.au>
Subject: Re: 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,
Thanks for this.
All well and good but will the Council be discussing any of the matters former and current employees, and the CPSU, have raised?
Will the WHS Commissioner face any questions?
Will she excuse herself from Council discussion?
If so, can any of this be made public?
When is the next meeting?
Is the minister expecting advice from the council on the performance of the Commissioner?
Will he release that advice?

Sch 2.2(a)(ii)

Virus-free.www.avast.com

On Mon, Jul 29, 2024 at 1:01 PM Inman, Mick <Mick.Inman@act.gov.au> wrote:

Hi Sch 2.2(a)(ii) Response below. Thanks. Mick

From an ACT Governments spokesperson:

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:

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

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.

ENDS

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.

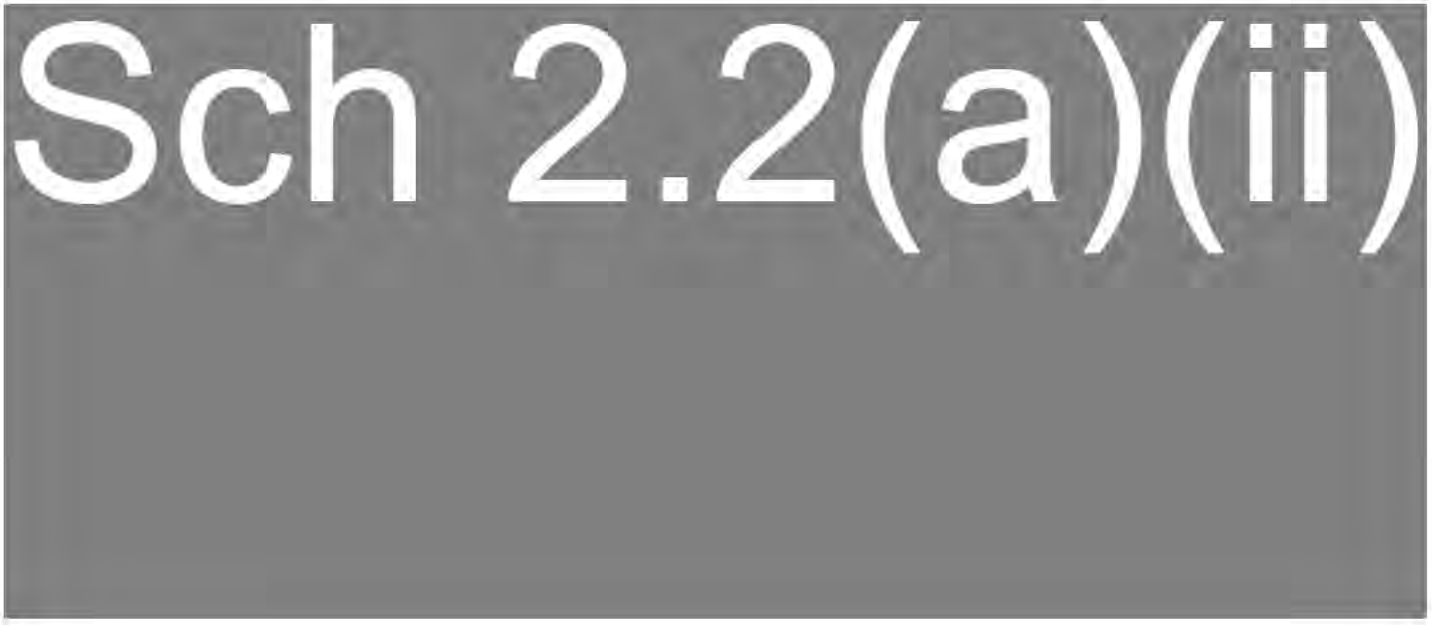
There are claims that:

- 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)



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From: "Lukins, Ellen"
Sent: 25/09/2020 10:58 AM
To: "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: quick check

OFFICIAL

Hi

Yes they did consult me on drafting them, and yes as your later email points out the WC delegations were not legislatively addressed as part of the work safety regulator functions being directly legislated to WorkSafe.

These delegations are required until the changes in the *Employment and Workplace Safety Legislation Amendment Act 2020* (EWSLA Act) to the *Workers Compensation Act 1951* come into effect (automatically by 9 July 2021, if not before). The changes in the EWSLA Act will transfer over the regulatory workers' compensation functions directly to the new independent regulator (WorkSafe ACT), similar to what was achieved when establishing the WHS Commissioner and Office under work safety legislation.

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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From: Young, Michael
Sent: Friday, 25 September 2020 10:34 AM
To: Lukins, Ellen
Subject: quick check

OFFICIAL

Hi

I assume WorkSafe consulted you on drafting of these? HoS Office is asking to check and confirm they are needed given independence and all that. I note they are WC instruments and I can explain the difference once you confirm no issues from your end.

Thanks

M

From: "Lukins, Ellen"
Sent: 09/11/2020 8:48 PM
To: "Grey, Amanda" <Amanda.Grey@act.gov.au>
Cc: "MacLaughlan, Leanne" <Leanne.MacLaughlan@act.gov.au>; "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: WC Delegations
Attachments: Att B - revised - Workers Comp Appointment - Sept 2020 FINAL.docx, Brief to HOAC_WorkSafe ACT WC Delegations (A27168188).pdf, Att A - revised - Workers Comp Delegations - Sept 2020 FINAL.pdf, Att B_Current Workers Compensation Appointment and Delegations 2019 (No 1).pdf

OFFICIAL

Hi Amanda and Leanne

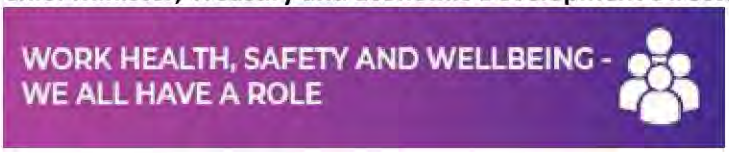
As promised ☺

- Attached are the signed brief and instrument from the Head of Access Canberra for your records
- Attached is the tweaked inspector appointment instrument for Jacqui to sign tomorrow – I've removed the revocation clause as the HOAC delegation does this (ie no need to do this twice), and added new notes 1 & 4 (please note that re note 4 I've added for clarity and there is nothing in the WC Act to limit the extent of the delegation that can be made by the D-G) – am leaving the briefing to Jacqui and evidence re meeting s188(2) to you guys

Let me know if there are any issues.

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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From: Grey, Amanda <Amanda.Grey@act.gov.au>
Sent: Monday, 9 November 2020 12:09 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Cc: MacLaughlan, Leanne <Leanne.MacLaughlan@act.gov.au>
Subject: RE: WC Delegations

OFFICIAL

Thanks Ellen, this is great news.

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, 9 November 2020 11:18 AM

To: Young, Michael <Michael.Young@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>
Subject: RE: WC Delegations

OFFICIAL

Hi

Amanda – I have these now! – will send over for your records and attach the inspector appointment instrument for Jacqui to sign tomorrow once her delegation commences (I've amended to add in the relevant notes for Jacqui to sign under delegated authority) ☺

Cheers,
Elln

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: Young, Michael <Michael.Young@act.gov.au>
Sent: Monday, 9 November 2020 11:14 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>
Subject: WC Delegations

OFFICIAL

Hi

FYI – David Pryce is about to sign the WC delegation instruments. His office will get the signed versions back to us.

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



Australian Capital Territory

Workers Compensation (Inspectors) Appointment 2020 (No 1)

made under the

***Workers Compensation Act 1951*, section 188 (inspectors)**

---

1 Name of instrument

This instrument is the *Workers Compensation (Appointments and Delegations) 2020 (No 1)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Authorisations—Act, section 188

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

4 Eligibility—Act, section 188 (2)

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

Jacqueline Agius
WHS Commissioner
November 2020

Note 1: The WHS Commissioner is authorised to appoint inspectors as delegated by the Head of Access Canberra under the Workers Compensation (Director-General) Delegations 2020 (No 1) signed 9 November 2020.

Note 2: 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 3: 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).

Note 4: The Head of Access Canberra may delegate declared functions to the extent permitted by other territory laws: see section 21 of the Public Sector Management Act 1994.

Workers Compensation (Inspectors) Appointment 2020 (No 1)

Schedule 1

Table 1 – appointment of inspectors under section 188 of the *Workers Compensation Act 1951*

Column 1
Position number
P05507 – Arthur Reilly
P05737 – Lloyd Benivento
P05546 – Jonathan Aoki

ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	6 November 2020	TRIM No: CMTEDD2020/5486 File No: 20/86846
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:

- **sign** the revised Workers Compensation (Director-General) Delegations 2020 (No 1)) instrument (Attachment A);

SIGNED/~~NOT SIGNED/PLEASE DISCUSS~~

- **note** that the previous Head of Access Canberra delegations and appointments under the *Workers Compensation Act 1951* will be revoked; and

NOTED/~~PLEASE DISCUSS~~

- **note** that the WHS Commissioner will make the inspector appointment instrument once provided with the delegation.

NOTED/~~PLEASE DISCUSS~~

David Pryce 9/11/2020

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. 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)

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
9 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

From: "Lukins, Ellen"
Sent: 17/09/2020 12:25 PM
To: "MacLaughlan, Leanne" <Leanne.MacLaughlan@act.gov.au>
Subject: RE: Workers Comp Delegations and Appointments

OFFICIAL: Sensitive

Hi Leanne

Good to chat about this – delegations need their own forensic tracing board!!

I can confirm, having found my earlier PCO drafting instruments – the sections to be excluded from the delegation are section 166C and section 210, and also the following that have been delegated by the Minister to the D-G not be sub-delegated: sections 110, 201 and 221.

Cheers,
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: MacLaughlan, Leanne
Sent: Wednesday, 16 September 2020 1:23 PM
To: Lukins, Ellen
Subject: Workers Comp Delegations and Appointments

OFFICIAL: Sensitive

Hi Ellen
Following on from our conversation earlier in the week, WorkSafe has finalised the two instruments for Kathy Leigh's signature (attached).

I just receive a call from Andrew Macrea from Corporate who was asked to provide feedback on them prior to Kathy approving.

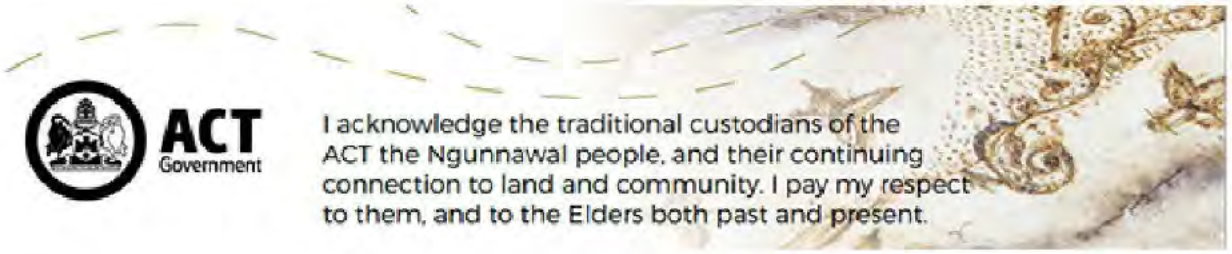
He noted that the Delegations says "all sections" which is consistent with the existing instrument. However, there are sections which should not be included as they do not relate to WorkSafe functions. Would you please advise which sections should be "excluded" from this delegation.

Thank you

Regards

Leanne MacLaughlan| Senior Director

P: 6207 1505| Mobile: Sch 2.2(a)(ii)| E: Leanne.maclaughlan@act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



WORKSAFEACT

From: "Polglase, David" <David.Polglase@act.gov.au>
Sent: 29/07/2024 3:06 PM
To: "Young, Michael" <Michael.Young@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: WorkSafe ACT

OFFICIAL

We should follow the normal process on this. DDG sign off and then I will go back via the media team in Min's office who will share with relevant advisors.

David Polglase | Senior Director, Content
Phone: 02 6205 9957 | Mobile: Sch 2.2(a)(ii) Email: david.polglase@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

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From: Young, Michael
Sent: Monday, July 29, 2024 3:04 PM
To: Polglase, David ; Lukins, Ellen
Subject: RE: WorkSafe ACT

OFFICIAL

Thanks

Ellen and I can reach out to the MO and see if they are comfortable with that flagged sentence. Ellen – I think the MO was open to Jacqui's quarterly report being published, so I would suggest just removing the words *outcomes of* from your red text.

David would you mind recirculating whatever final form of words you are comfortable with – for approval by DDG (Lisa Carmody is back from leave) and cc the Min office?

Michael

From: Polglase, David <David.Polglase@act.gov.au>
Sent: Monday, July 29, 2024 2:56 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: WorkSafe ACT

OFFICIAL

Thanks Ellen and Michael

Do I need further approvals on this?

Cheers
David

David Polglase | Senior Director, Content
Phone: 02 6205 9957 | Mobile: Sch 2.2(a)(ii) Email: david.polglase@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

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From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, July 29, 2024 2:43 PM
To: Young, Michael <Michael.Young@act.gov.au>
Cc: Polglase, David <David.Polglase@act.gov.au>
Subject: RE: WorkSafe ACT

OFFICIAL

Hi all

I'm comfortable with the below, have just suggested some tweaks to the fourth dot point.

Query whether it is worth expressly noting in the response that there is representation from a member of the CPSU on the WHS Council.

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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From: Young, Michael <Michael.Young@act.gov.au>
Sent: Monday, July 29, 2024 2:26 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Polglase, David <David.Polglase@act.gov.au>

Subject: FW: WorkSafe ACT
Importance: High

OFFICIAL

Hi

I would be inclined to respond that:

- The Commissioner receives and responds to questions on a quarterly basis from members of the WHS Council, including but not limited to the employee representative member who is a CPSU official
- The Council's governance arrangements provide for the Commissioner (and any other WHS Council member) to be excluded from discussions where there is an actual or potential conflict of interest.
- The next meeting is scheduled for 22 August 2024.
- The directorate publishes a communique issued by the Council following each meeting. (MO to confirm the next sentence but I anticipate they are agreeable) The Minister for IRWS will request the Council to expand future communiques, to regularly include additional information about the outcomes of Council's consideration of the performance of WorkSafe at meetings.
- The Minister anticipates regular advice from the Council on a range of matters, outlined in its establishing legislation, including performance of WorkSafe. The functions of the council are described in the following extract from the WHS Act:

Division 2.1.1 Establishment, functions and powers

2.2 Functions

(1) The council has the following functions:

(a) to advise the Minister on matters relating to—

(i) work health and safety; or

(ii) workers compensation; or

(iii) bullying in the workplace and other workplace psychosocial issues; or

(b) to inquire into and report to the Minister on matters referred to the council by the Minister in relation to—

(i) work health and safety; or

(ii) workers compensation; or

(iii) bullying in the workplace and other workplace psychosocial issues; or

(c) at the first council meeting that happens after the publication of the annual report required under section 2.41 (Annual report)—

(i) review and consider the annual report; and

(ii) advise the Minister and the WHS commissioner on any matters arising from the review and consideration; or

(d) any other function prescribed by regulation.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, defs ***entity*** and ***function***).

(2) Without limiting subsection (1) (a), the matters on which the council may advise the Minister include the following matters:

(a) the operation of this Act and the associated laws;

(aa) the performance of the office of the work health and safety commissioner and the WHS commissioner;

(b) the approval of codes of practice, and the variation of codes of practice, under section 274 (Approved codes of practice);

(c) the provision of education and training in relation to work health and safety;

(d) the promotion of work health and safety;

(e) the operation of the *Workers Compensation Act 1951*;

(f) the approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;

(g) the provision of education and training in relation to workers' compensation;

(h) the operation of the *Dangerous Substances Act 2004*;

(i) the operation of the *Workplace Privacy Act 2011*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation (see Legislation Act, s 104).

Ellen – what do you think?

Michael

From: Polglase, David <David.Polglase@act.gov.au>
Sent: Monday, July 29, 2024 1:54 PM
To: Young, Michael <Michael.Young@act.gov.au>
Subject: FW: WorkSafe ACT
Importance: High

OFFICIAL

Hi Michael

Please find below some additional media questions in relation to the WHS Council.

Do you have any advice available on a response to the below.

Happy to discuss.

Cheers
Dave

David Polglase | Senior Director, Content
Phone: 02 6205 9957 | Mobile: Sch 2.2(a)(ii) Email: david.polglase@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

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ACT Government
Produced by Chief Minister, Treasury and Economic Development Directorate

From: Dynon, Kaarin <Kaarin.Dynon@act.gov.au>
Sent: Monday, July 29, 2024 1:45 PM
To: Polglase, David <David.Polglase@act.gov.au>
Subject: FW: WorkSafe ACT

From: Sch 2.2(a)(ii)
Sent: Monday, July 29, 2024 1:28 PM
To: Inman, Mick <Mick.Inman@act.gov.au>
Subject: Re: 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,
Thanks for this.
All well and good but will the Council be discussing any of the matters former and current employees, and the CPSU, have raised?
Will the WHS Commissioner face any questions?
Will she excuse herself from Council discussion?
If so, can any of this be made public?
When is the next meeting?
Is the minister expecting advice from the council on the performance of the Commissioner?
Will he release that advice?

Thanks,

Sch 2.2(a)(ii)

Virus-free.www.avast.com

On Mon, Jul 29, 2024 at 1:01 PM Inman, Mick <Mick.Inman@act.gov.au> wrote:

Hi [redacted] Response below. Thanks. Mick

From an ACT Governments spokesperson:

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:

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

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.

ENDS

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)



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From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 30/08/2024 3:06 PM
To: "Turner, Mikaela" <Mikaela.Turner@act.gov.au>
Cc: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: REVISED 30082024 - Workplace culture at WorkSafe ACT (WSG) (NEW) - NEW
Attachments: REVISED 30082024 - Workplace culture at WorkSafe ACT (WSG) (NEW) - NEW.DOCX

OFFICIAL

Hi Mikaela

Here is the approved updated WorkSafe culture QTB. Changes are tracked.

Could I trouble you to Trim it up and move through to the MO (cc the DDG office) please?

Thanks

M

ACT Government

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	

QUESTION TIME BRIEF

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	

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.

Delegation of functions to issue a unique identifier to authorised persons

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 Directorate advice of OIRWS that this is appropriate based on the nature of warrants & the level of the staff involved.

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)

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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)

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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)

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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

Australian Capital Territory

Magistrates Court (Workers Compensation 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 (Workers Compensation 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 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*.

b) 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 the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006* 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 *Workers Compensation Act 1951*.

4 Revocation

This instrument revokes the *Magistrates Court (Workers Compensation 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 (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
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 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
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

Column 1 Section	Column 2 Function Description	Column 3 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 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
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

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
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
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

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
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
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

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
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
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

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

Schedule 2

Sections under the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*

Column 1	Column 2	Column 3
Section	**Function Description**	**Limitation**
10(b)	**Contents of infringement notices – identifying authorised person** – 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)	**Contents of reminder notices – identifying authorised person** – 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

From: "Parton, Rebecca" <Rebecca.Parton@act.gov.au>
Sent: 21/10/2024 10:53 AM
To: "James, Annie" <Annie.James@act.gov.au>; "Lucas, Julie" <Julie.Lucas@act.gov.au>
Subject: FW: Invitation to participate in a whole of government psychosocial safety climate project

OFFICIAL

FYI

Rebecca Parton
Executive Branch Manager | Strategy and Services Branch
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: Hirst, Monique <Monique.Hirst@act.gov.au> **On Behalf Of** Young, Michael
Sent: Monday, 21 October 2024 10:18 AM
To: Agius, Jacqueline <Jacqueline.Agius@worksafe.act.gov.au>
Cc: Parton, Rebecca <Rebecca.Parton@act.gov.au>
Subject: Invitation to participate in a whole of government psychosocial safety climate project

OFFICIAL

Hello Jacqueline

The ACTPS will be undertaking a psychosocial safety measurement program from late November 2024, led by the Work Safety Group. This email to is to let you know about the program and invite (WorkSafe ACT/CIT) to participate.

We know that the number of workers' compensation claims arising from psychological injury continue to grow and this is a challenge not only for the ACT Government, but for employers generally. There is also an increasing regulatory focus on managing psychosocial hazards and risks. To support you in addressing these challenges, and in meeting your obligations under the *Work Health and Safety Act 2011* to provide a safe workplace and eliminate risks, we are inviting you to participate in this program. I have provided more information below and what it would involve if you choose to participate.

Psychosocial safety climate measurement

A key component of eliminating and minimising risks is to identify and understand the factors in the workplace that can contribute to perceptions of psychosocial safety, wellbeing and support. Many psychosocial factors are not immediately evident within a workplace and are typically measured using psychometric tools and analysis.

Organisational psychosocial safety climate measurement is a method of identifying and measuring the organisational factors that are contributing to psychosocial safety in organisations. It provides a high level 'climate' view that can support other mechanisms – such as employee surveys and WHS incident data – to inform where focus is needed.

This program

My group has been researching methods to best to assess psychosocial safety factors within the many workplaces that comprise the diverse ACTPS workforce. We have identified a program delivered by the

Centre for Workplace Excellence at the University of South Australia as being ideally suited to the needs of the ACTPS.

The program involves two key components: an employee survey that takes approximately 10 to 15 minutes to complete, and an agency report of results and recommendations presented to your executive and HR professionals in a workshop. The survey report will guide the creation of action plans with the aim of building a mentally healthy climate, developed in the workshops.

You will be able to use the results to understand the psychosocial risk profile of your workplaces and to ensure resources are directed to address those specific risks. Participation will also demonstrate your consultation with the workforce by giving workers an opportunity to provide their perspective on safety climate.

Your participation

Although the Strategic Board has approved delivery of the PSC-12 across ACTPS directorates, I am cognisant that our agency organisations are not part of Strategic Board and have considered how to engage with you as part of this project.

It is important for you to note that as this is an ACTPS activity, your employees will receive communication about the PSC-12 climate survey and be able to complete it. If you choose not to participate, these results will be reported and analysed within an aggregated 'agency' group.

Your participation in the project will permit us to conduct an agency-specific analysis on your results and involve you in a workshop.

Participating workplaces will be supported to promote workforce awareness and participation in the survey through a communication pack and whole of government messaging.

Next steps

Could you please let me know if you would like to participate **by Monday 28 October 2024.** If you would like additional information or have any questions about the project, please contact Rebecca Parton, Executive Branch Manager Strategy and Services, Work Safety Group.

I look forward to hearing back from you.

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

From: "MacLaughlan, Leanne" <Leanne.MacLaughlan@act.gov.au>
Sent: 16/09/2020 1:22 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: Workers Comp Delegations and Appointments
Attachments: Att A - Workers Comp Delegations - Sept 2020.docx

OFFICIAL: Sensitive

Hi Ellen
Following on from our conversation earlier in the week, WorkSafe has finalised the two instruments for Kathy Leigh's signature (attached).

I just receive a call from Andrew Macrea from Corporate who was asked to provide feedback on them prior to Kathy approving.

He noted that the Delegations says "all sections" which is consistent with the existing instrument. However, there are sections which should not be included as they do not relate to WorkSafe functions. Would you please advise which sections should be "excluded" from this delegation.

Thank you

Regards

Leanne MacLaughlan| Senior Director
P: 6207 1505| Mobile Sch 2.2(a)(ii) E: Leanne.maclaughlan@act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



WORKSAFEACT

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 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.

Kathy Leigh
Director-General

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		P46665 E1149 P35631
Section 147	Issuing default and cease business notices for not holding compulsory insurance	P05507 P05737 P05546

From: "MacLaughlan, Leanne" <Leanne.MacLaughlan@act.gov.au>
Sent: 28/10/2020 8:23 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: WorkSafe Delegations and Appointments
Attachments: Att D 2 - WC Statement of Eligibility - Sch 2.2(a)(ii) pdf, HOS Brief - WorkSafe ACT Delegations Appts Sept 2020 v.2 (28092020).docx, Att A - Workers Comp Delegations - Sept 2020 FINAL.docx, Att B - Workers Comp Appointment - Sept 2020 FINAL.docx, Att D 1 - Workers Compensation Statement of Eligibility.PDF

OFFICIAL: Sensitive

Hi Ellen
As mentioned yesterday afternoon, your assistance in progressing WorkSafe's workers compensation delegation and appointments is requested. WorkSafe is currently not able to exercise its functions effectively as the workers compensation delegations do not include relevant WorkSafe positions.

While the Head of Service has the power to delegate these functions, to be consistent with how the current instrument was made, it is proposed that the DG of Access Canberra be requested to remake the updated delegations/appointments. The HOS brief and instruments are attached for information. If you need anything else, please let me know.

The advice provided by GSO on this matter is pasted below:

Advice

1. Under section 188 of the *Workers Compensation Act 1951* (the **Act**), the "director-general" may appoint one or more inspectors for the Act. The "director-general" also has various other powers under the Act. The "director-general" is the Director-General responsible for the Act (by virtue of the *Administrative Arrangements 2020 (No 2)* (**AAs**)). The responsible director-general is the Director-General CMTEDD. As a result, Kathy Leigh in her capacity as Director-General CMTEDD may exercise and delegate her statutory functions under the Act. This provides her with the necessary powers to execute the delegation and appointment instruments you provided to us in this request.
2. In addition to the Director-General CMTEDD's powers, traditionally prior to the establishment of the Office of the WHS Commissioner, the Head of Access Canberra has held powers under the *Work Health and Safety Act 2011*, and the *Workers Compensation Act 1951*, among others, by virtue of their declared functions:
   (1) Section 21 of the *Public Sector Management Act 1994* (**PSM Act**) provides, inter alia, the responsible Minister may declare that a function given to a director-general under a territory law dealing with a relevant matter may be exercised by the head of Access Canberra; the head of Access Canberra may exercise a declared matter; and the head of Access Canberra may delegate a declared function to a public servant or another person.
   (2) Pursuant to *Public Sector Management (Head of Access Canberra Functions) Declaration 2017 (No 1)* NI2017-465 (**NI 2017-465**), the head of Access Canberra may exercise the functions of the Director-General, CMTEDD in relation to prescribed matters including under the *Workers Compensation Act 1951*.
3. Using his powers by virtue of this declaration, the Head of Access Canberra at the time, Mr Snowden made the *Workers Compensation (Appointments and Delegations) 2019 (No 1)* under section 188 of the Act and section 21(4) of the PSM Act which enabled him to delegate his declared functions.
4. This delegation instrument continues to have effect, noting that the functions under the Act remain declared functions provided to the Head of Access Canberra (now Mr Pryce).
5. As a result, where the Head of Service considers the delegation and appointment of functions under the Act more appropriately rests with the Head of Access Canberra, a brief to Mr Pryce can be prepared to this effect, which notes that these functions continue to be declared functions by virtue of NI2017-465. Please note, the revised

instrument can be made in the same form and manner of the existing delegation and appointment instrument *Workers Compensation (Appointments and Delegations) 2019 (No 1).*

6. We note, you instruct that future amendments to the Act from June 2021 will have the effect that the Work Health and Safety Commissioner will receive powers under the Act to appoint inspectors and delegate functions that are otherwise vested in the "director-general" of the responsible Act. Our office is happy to provide advice leading up to this change, if this would assist your office in putting in place new delegations and appointments at that time.

Regards

Leanne MacLaughlan | Senior Director, Strategy and Regulatory Support
P: 6207 1505 | Mobile: Sch 2.2(a)(ii) E: Leanne.maclaughlan@act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



ACT Government
Chief Minister, Treasury and Economic Development

MINUTE

To:	**David Snowden – A/g Deputy Director General – Access Canberra**
From:	**Greg Jones – Executive Branch Manager - Workplace Protection**
Date:	**5 July 2019**
Subject:	**Proposal to delegate Sch 2.2(a)(ii) as Inspector under *Workers Compensation Act 1951***

Critical date and reason:

1. **Asap** – Sch 2.2(a)(ii) has returned to duties as Workers Compensation Inspector and requires appointment under the *Workers Compensation Act 1951* (the Act).

Background:

2. In 2017 Access Canberra Legal Branch gave an opinion that staff appointed under the former ORS as Inspectors need to be reappointed as Inspectors to comply with S.188 of the Act.

3. The relevant issue is the proof of experience and/or training to undertake the duties of Inspector under the Act.

4 Sch 2.2(a)(ii) was appointed on contract in 2014 to undertake duties as an Inspector in the Workers Compensation Team performing field duty, making work place visits to businesses in the ACT to check their compliance with the Workers Compensation Act 1951. Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

5. Sch 2.2(a)(ii) has been employed and appointed as an Inspector under the Act since September 2006 in various roles including Investigations Manager, Manager - Regulatory Services which included Workers Compensation, Manager - Reactive Team and acted in higher duties as Senior Manager Operations Support and also Senior Manager - Regulatory Compliance. Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

6. Sch 2.2(a)(ii) commenced permanent employment with ACT WorkCover as a WCO5 undertaking duties in the workers compensation area. He was promoted to a WCO6 position and has completed those duties as a worker's compensation inspector to the current time.

7. Extract from *Workers Compensation Act 1951*of Section 188:

188 - Inspectors

(1) The director-general may appoint 1 or more inspectors for this Act or a provision of this Act.

Note 1 ***Director-general*** means the director-general of the administrative unit responsible for this section (see Legislation Act, s 163 (2) (a)).

Note 2 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 3 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(2) A person must not be appointed under subsection (1) unless—

(a) the person is an Australian citizen or a permanent resident of Australia; and

(b) the director-general has certified in writing that, after appropriate inquiry, the director-general is satisfied that the person is a suitable person to be appointed, having regard in particular to—

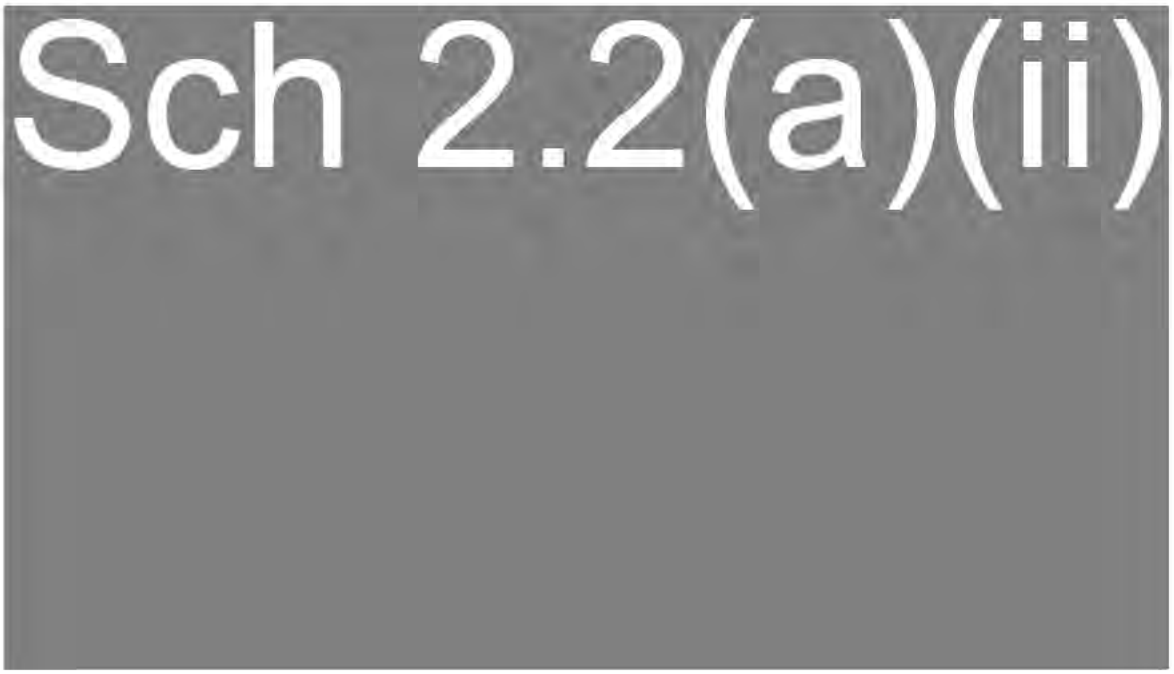
(i) whether the person has any criminal convictions; and

(ii) the person's employment record; and

(c) the person has satisfactorily completed adequate training to exercise the powers of an inspector proposed to be given to the person.

Issues:

8. Listed below find the relevant qualifications, experience and training to comply with the legislation:



Sch 2.2(a)(ii)

Consultation

9. No consultation has been undertaken

Financial

10. There is no financial impost from appointing inspectors under the Act

Risks/ Sensitivities

11. There will be no risk or sensitivities from appointing inspectors under the Act but failure to appoint would stop Sch 2.2(a)(ii) undertaking his duties in the workers compensation area

Media

12. Media will not have any interest in this matter after appointment.

Recommendations

That you:

- agree with the contents of this Minute and sign any related documentation to appoint Sch 2.2(a)(ii) as an Inspector under the Act.

Sch 2.2(a)(ii)

/7/2019

Greg Jones
Executive Branch Manager - Workplace Protection

Action Officer: Arthur Reilly
Branch: Workers Compensation
Extension: 53463

David Snowden

Approved/Not approved

Date .9./.7./..2019.

ACT Government
Chief Minister, Treasury and Economic Development

CMTEDD INTERNAL MINUTE

Date	29 September 2020	TRIM No: File No:	
To	Director-General		
From	Work Health and Safety Commissioner		
Subject	Delegation and Appointment Instruments - *Workers Compensation Act 1951*		

Critical date and reason

1. **1 October 2020** - existing workers' compensation delegations no longer align with the Office of the Work Health and Safety Commissioner's governance structure and as a result restrict regulatory operations.

Recommendations

2. That you sign the:
    a. *Workers Compensation Delegation 2020 (No 1)*) (**Attachment A**) and
    b. *Workers Compensation Appointments 2020 (No 1)*) (**Attachment B**),

    made under the *Workers Compensation Act 1951*.

Kathy Leigh..... / /

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Background

3. The Office of the Work Health and Safety Commissioner, known as WorkSafe ACT, was established as an independent statutory authority with effect from 1 July 2020.
4. Legislative changes introduced in the *Work Health and Safety Amendment Bill 2019* to establish the independence of the WHS Commissioner and its office were mainly confined to work health and safety laws and did not extend to delegations made under workers' compensation laws.

5. The Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1), made under the *Workers Compensation Act 1951* (the WC Act) provide WorkSafe ACT with delegation to regulate and enforce workers' compensation legislative obligations (refer **Attachment C**).
6. It is necessary to update this instrument to reflect the current governance structure of WorkSafe ACT and enable regulatory operations to continue.
7. The WC Act provides appointments and delegations may be made by the Director-General of the directorate with administrative responsibility, i.e CMTEDD.
8. However, the *Employment and Workplace Safety Legislation Amendment Act 2020* (EWSLA Act), incorporates amendments to the WC Act which provide similar independence for WorkSafe ACT as the regulator.

Issues

9. As noted above, the legislative changes to establish the Office of the Work Health and Safety Commissioner did not extend beyond the *Work Health and Safety Act 2011*.
10. The EWSLA Act amendments will not come into effect until 9 July 2021, unless commenced earlier.
11. Once commenced, the changes in the EWSLA Act will transfer over regulatory workers' compensation functions directly to the new independent regulator (WorkSafe ACT), similar to what was achieved when establishing the WHS Commissioner and Office under work health and safety legislation.
12. In the meantime, the existing appointments and delegations instrument does not align with WorkSafe ACT's governance arrangements and structure. This limits WorkSafe ACT's ability to perform its regulatory functions.
13. WorkSafe ACT has prepared new instruments in conjunction with Workplace Safety and industrial Relations and for signing by the Director-General of CMTEDD. These instruments reflect WorkSafe's operating model and support effective compliance and enforcement activities and an avenue for review for regulatees.
14. The two new instruments separate delegations (refer **Attachment A**) and appointments (refer **Attachment B**) to provide WorkSafe ACT independence in appointing inspectors in accordance with the delegations.

Instrument	**Description**
Delegations (Attachment A)	<u>Remove</u> all previous delegates <u>Include:</u> - WHS Commissioner - Deputy WHS Commissioner - Senior Director, Compliance and Enforcement

Instrument	Description
	Section 147 Remove non WorkSafe ACT position numbers
Appointments (Attachment B)	Retain all relevant WorkSafe ACT position numbers

15. In making appointments under s188 of the WC Act, the Director-General must be satisfied that the person is a suitable person to be appointed having regard to:
    a. Whether the person has any criminal convictions; and
    b. the person's employment record; and
    c. the person has satisfactorily completed adequate training to exercise the powers of an inspector.
16. The eligibility requirements of the persons identified **Attachment B** were satisfied in the July 2019 instrument. A copy of these reviews is provided at **Attachment D** for reference.
17. As the WHS Commissioner and workplace regulator, I recommend the individuals identified in **Attachment B** be appointed as inspectors under the WC Act.

Consultation

18. Workplace Safety and Industrial Relations, CMTEDD, has been consulted in the preparation of the updated instruments to ensure consistency with the WC Act.

Work Health and Safety

19. There are no work health and safety implications associated with this Brief.

Financial

20. There are no financial implications associated with this Brief.

Risks/ Sensitivities

21. The current delegations do not align with WorkSafe ACT's governance structure, restricting operational activities, including review mechanisms, associated with the Act.

Media

22. Not applicable.

Jacqueline Agius, WHS Commissioner

6207 2718

Attachments

Attachment	Title
Attachment A	Workers Compensation Act Delegations Instrument 2020 (No.1)
Attachment B	Workers Compensation Act Appointments Instrument 2020 (No.1)
Attachment C	Workers Compensation Delegation (Appointments and Delegations) 2019 (No 1)
Attachment D Part 1 and Part 2	Eligibility for appointments

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 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.

Kathy Leigh
Director-General

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, 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

Australian Capital Territory

Workers Compensation (Inspectors) Appointment 2020 (No 1)

made under the

***Workers Compensation Act 1951*, section 188 (inspectors)**

---

1 Name of instrument

This instrument is the *Workers Compensation (Appointments and Delegations) 2020 (No 1)*.

2 Commencement

This instrument commences on the day after it is made.

3 Authorisations—Act, section 188

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

4 Eligibility—Act, section 188 (2)

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

5 Revocation

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

Kathy Leigh
Director-General

Workers Compensation (Inspectors) Appointment 2020 (No 1)

Schedule 1

Table 1 – appointment of inspectors

Column 1
Position number
P05507 – Arthur Reilly
P05737 – Lloyd Benivento
P05546 – Jonathan Aoki

MINUTE

ACT Government
Chief Minister, Treasury and Economic Development

17/11333

Date 8 May 2017

To Dave Peffer – Deputy Director-General

From Greg Jones - Director

Subject Appointment of Inspectors for the *Workers Compensation Act 1951*

Critical date and reason

1. **Asap** – Each Workers Compensation Inspector requires re appointment under the *Workers Compensation Act 1951* (the Act) .

Background

2. It is the opinion of Access Canberra Legal Branch that staff appointed under the former ORS as Inspectors need to be reappointed as Inspectors to comply with S.188 of the Act.
3. The issue is the proof of experience and/or training to undertake the duties of Inspector under the Act.
4. Sch 2.2(a)(ii) has been employed and appointed as an Inspector under the Act since September 2006 in various roles including Investigations Manager, Manager - Regulatory Services which included Workers Compensation, Manager - Reactive Team and acted in higher duties as Senior Manager Operations Support and also Senior Manager - Regulatory Compliance. Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

5. Sch 2.2(a)(ii) commenced permanent employment with ACT WorkCover as a WCO5 undertaking duties in the workers compensation area. He was promoted to a WCO6 position and has completed those duties as a worker's compensation inspector to the current time.
6. Sch 2.2(a)(ii) commenced with WorkSafe ACT on Sch 2.2(a)(ii) undertaking administrative roles. Following recruitment he was contracted from 28 July 2014

Sch 2.2(a)(ii)

7. Sch 2.2(a)(ii) was recruited on Sch 2.2(a)(ii) to an ASO 3 position (P13862) in the workers compensation area where he has undertaken a wide range of administrative and inspectorial duties. During that time he has regularly been

Sch 2.2(a)(ii)

8. Extract from *Workers Compensation Act 1951* of Section 188

188 - Inspectors

(1) The director-general may appoint 1 or more inspectors for this Act or a provision of this Act.

Note 1 ***Director-general*** means the director-general of the administrative unit responsible for this section (see Legislation Act, s 163 (2) (a)).

Note 2 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 3 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(2) A person must not be appointed under subsection (1) unless—

(a) the person is an Australian citizen or a permanent resident of Australia; and

(b) the director-general has certified in writing that, after appropriate inquiry, the director-general is satisfied that the person is a suitable person to be appointed, having regard in particular to—

(i) whether the person has any criminal convictions; and

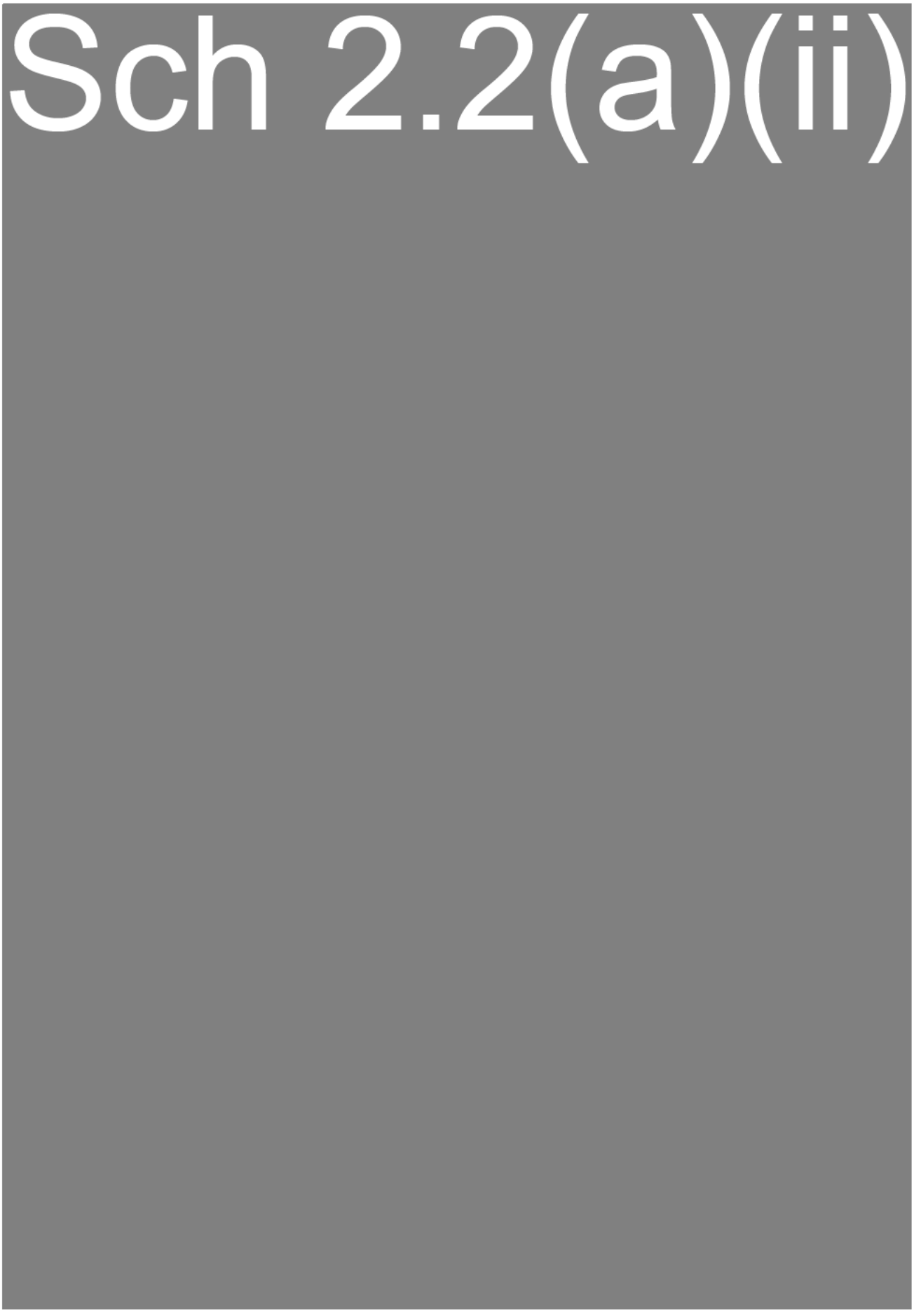
(ii) the person's employment record; and

(c) the person has satisfactorily completed adequate training to exercise the powers of an inspector proposed to be given to the person.

9. Issues

Listed below find the relevant qualifications, experience and training to comply with the legislation:

Sch 2.2(a)(ii)


Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

Consultation

10. No consultation has been undertaken

Financial

11. There is no financial impost from appointing inspectors under the Act

Risks/ Sensitivities

12. There will be no risk or sensitivities from appointing inspectors under the Act but failure to appoint will stop work in the workers compensation area

Media

13. Media will not have any interest in this matter after appointment.

Recommendations

That you:

- first recommendation;

That you agree with the contents of this Minute and sign the documentation to appoint the four staff members as inspectors under the Act.

Greg Jones

Director - CEWP

Action Officer: Arthur Reilly

Phone: 53463

Dave Peffer 31/05/2017

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

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.

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.

Sch 2.2(a)(ii)

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

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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

QUESTION TIME BRIEF

5

Portfolio/s: Workplace Safety & Industrial Relations

ISSUE: 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 now 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.

Cleared as complete and accurate:	28/11/2024	
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:	CM24/98242	

QUESTION TIME BRIEF

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:
    - 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.

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