



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

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

FOI Reference: CMTEDDFOI 2022-294

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	50
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [REDACTED]  
**To:** [CMTEDD FOI](#)  
**Subject:** CMTEDDFOI 2022-294 - FOI Request  
**Date:** Wednesday, 21 September 2022 9:59:05 PM


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Good evening,

I'd like to request access to any documents concerning a prohibition notice issued this year to the Australian National University (ANU) and/or [REDACTED] for construction on the ANU campus. This should include the notice itself, as well as any emails / contact between your organisation and the aforementioned parties, regarding the prohibition notice.

Thanks.





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2022-294



## **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 21 September 2022.

Specifically, you are seeking: *“Any documents concerning a prohibition notice issued this year to the Australian National University (ANU) and/or [redacted] for construction on the ANU campus. This should include the notice itself, as well as any emails / contact between your organisation and the aforementioned parties, regarding the prohibition notice.”*

### **Authority**

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

### **Timeframes**

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 11 November 2022 however, following third party consultations, the due date is now 2 December 2022.

### **Decision on access**

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

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

I have decided to grant access in full to one document and partial access to three documents.

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

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

### **Statement of Reasons**

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

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

### **Exemption claimed**

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

#### Public Interest

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

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

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

#### Factors favouring disclosure in the public interest:

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

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

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in the document may contribute to procedural fairness by allowing you to have a copy of the documents that fall within the scope of your request.

#### Factors favouring nondisclosure in the public interest:

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

*(ii) Prejudice the protection of an individual's right to privacy or other rights under the Human Rights Act 2004.*

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

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (email addresses and names of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*.

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

### **Charges**

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

### **Online publishing – Disclosure Log**

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

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

### **Ombudsman Review**

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

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

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

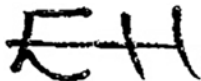
### **ACT Civil and Administrative Tribunal (ACAT) Review**

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

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

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

Yours sincerely



Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate  
2 December 2022



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

### WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

Any documents concerning a prohibition notice issued this year to the Australian National University (ANU) and/or Richard Crookes Construction for construction on the ANU campus. This should include the notice itself, as well as any emails / contact between your organisation and the aforementioned parties, regarding the prohibition notice.

CMTEDDFOI 2022-294

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-5	WorkSafe Prohibition Notice	10/05/2022	Full	N/A	Yes
2	6-7	Email – ANU / RCC Notices	20/05/2022	Partial	Sch 2 s2.2 (a)(ii) Out of Scope	Yes
3	8-9	Email – [REDACTED]	10/05/2022	Partial	Sch 2 s2.2 (a)(ii)	Yes
4	10-11	Email – [REDACTED]	10/05/2022	Partial	Sch 2 s2.2 (a)(ii)	Yes
<b>Total No of Docs</b>						
4						

# PROHIBITION NOTICE

This is a Prohibition Notice issued under section 195 of the Work Health and Safety Act 2011

## Information

### Notice number N-000004009

Issued By: Karen Palmer ID number:

### To whom this notice is issued

Name of registered company: RICHARD CROOKES CONSTRUCTIONS PTY. LIMITED ABN: 33001375266 ACN: 001375266

Registered Address: Unit 1

155 Newcastle Street suburb: Fyshwick state: ACT postcode: 2609

Site address: Clunies Ross Street suburb: Acton state: ACT postcode: 2600

Method of service: Email

Served on:

Date of issue: 10/05/2022

A verbal instruction was issued on:

06/05/2022 11:05 AM

## Description

The provision that the inspector believes is being, or is likely to be, contravened by the activity (s196(1)(c)) is **WHS Regulations** Section number - **225**

You are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

Accessing scaffold at both stair sets of the partly dismantled scaffold at the west side of Building A structure, until the appropriate measures are in place to advise scaffold stripping taking place and no entry permitted for any workers not critical to that task.

until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied (s195(2)).

The inspector reasonably believes that grounds for the issue of this notice exist (s195(1)), i.e. (a) an activity is occurring at a workplace that involves, or will involve, a serious risk to the health or safety of a person emanating from an immediate exposure to a hazard; or (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

Basis for belief (s196(1)(a))

On Friday 6 May 2022 at 08:50 AM Inspectors PALMER, WOOLGAR, TEER, MERRITT and PORTER attended commercial construction site for Richard Crookes Construction at Australian National University Student Accommodation Building 8, to undertake a follow up inspection, in order to close out previous Notices.



At the back of Building A a scaffold was identified as incomplete due to it being stripped for removal however there was no signage indicating the south and adjacent access points were not to be used as stripping was underway and safe elements of the structure had already been removed such as kickboards, midrails and out mesh. A Verbal PROHIBITION was issued at 11:14 AM to restrict access to both stair sets until the appropriate measures were in place to advise scaffold stripping taking place and no entry was permitted for any workers not critical to that task.

As a duty holder the PCBU must ensure that under Work Health and Safety Act 2011, section 21:- Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces

(1) In this section:

person with management or control of fixtures, fittings or plant at a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings or plant, in whole or in part, at a workplace

(a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

(b) a prescribed person.

(2) The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

From observations and information I formed the belief that you have contravened the Work Health and Safety Regulation Work Health and Safety Regulations 2011 section 225 Scaffolds

(5) The person with management or control of a scaffold at a workplace must ensure that unauthorised access to the scaffold is prevented while the scaffold is incomplete or unattended.

Maximum penalty:

(a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

Note: Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Briefly, the activity that the inspector believes involves or will involve the risk, and the matters that gave or will give rise to the risk (s196(1)(b))

At the back of Building A a scaffold was identified as incomplete due to it being stripped for removal however there was no signage indicating the south and adjacent access points were not to be used as stripping was underway and safe elements of the structure had already been removed such as kickboards, midrails and out mesh.

A Verbal PROHIBITION was issued at 11:14 AM to restrict access to both stair sets until the appropriate measures were in place to advise scaffold stripping taking place and no entry was permitted for any workers not critical to that task.

This Notice may include directions concerning the measures to be taken to remedy the risk or contravention. You must comply with the direction

The person with management or control of a scaffold at a workplace must ensure that unauthorised access to the scaffold is prevented while the scaffold is incomplete or unattended.

The inspector recommends that you:

In complying with the direction, you may give consideration to further guidance available from:

- WorkSafe ACT code of practice 'Managing the risks of plant in the workplace'
- WorkSafe ACT code of practice 'Managing the risk of falls at the workplace'
- Australian New Zealand Standards AS/NZS 1576.1:2010 Scaffolding Part 1: General Requirements and AS/NZS 4576:1995 Guidelines for scaffolding.

See over for important information on your rights and responsibilities.

## **Prohibition Notice issued under section 191 of the Work Health and Safety Act 2011 - further information**

If you have any questions you may contact the inspector who issued this notice.

### **Display of Notices**

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

### **Compliance with direction or notice**

The person to whom a Prohibition notice is issued must comply with the notice (s197). The maximum penalty for failing to comply with this requirement is \$100,000 for an individual or \$500,000 for a corporation.

### **Regulator may carry out action**

If a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice, and after giving written notice of its intentions and the persons liability for the costs, the regulator (WorkSafe ACT) may take any remedial action it believes reasonable to make the workplace or situation safe (s 211). The regulator may then recover the reasonable costs of taking this remedial action (s213).

### **Contents of Notice**

This Notice may state one or more of the following: (a) a workplace, or part of a workplace, at which the activity is not to be carried out; (b) anything that is not to be used in connection with the activity; (c) any procedure that is not to be followed in connection with the activity (s196(3)).

### **Directions and recommendations**

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Prohibition notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

### **Changes to notice by inspector**

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

### **Privacy statement**

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the *Work Health and Safety Act 2011* and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies.

WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014*. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at [www.act.gov.au/privacy](http://www.act.gov.au/privacy).

### **Review of this *Work Health and Safety Act* notice**

If you have any questions or need more information you may contact the inspector who issued this notice, or email [worksafe@act.gov.au](mailto:worksafe@act.gov.au).

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days. You may also make an application for the reviewer to stay the operation of the Prohibition notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email: [worksafe@act.gov.au](mailto:worksafe@act.gov.au)

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at [www.acat.act.gov.au](http://www.acat.act.gov.au).

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court. Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

### **WorkSafe ACT contact details**

PO Box 158, Canberra ACT 2601

Email: [Worksafe @act.gov.au](mailto:Worksafe@act.gov.au)

Phone: (02) 6207 3000

Fax:(02) 6205 0336.

### **Translating and Interpreting Service**

Phone: 131 450

**From:** Sch 2.2(a)(ii) <[redacted]@richardcrookes.com.au>  
**Sent:** 20/05/2022 6:06 AM  
**To:** "Palmer, Karen" <Karen.Palmer@worksafe.act.gov.au>  
**Cc:** Sch 2.2(a)(ii) <[redacted]@richardcrookes.com.au>; Sch 2.2(a)(ii) <[redacted]@richardcrookes.com.au>; Sch 2.2(a)(ii) <[redacted]@richardcrookes.com.au>  
**Subject:** ANU SA8 RCC Notices Close Out - Email 1 of 2  
**Attachments:** Out of scope

**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. [Learn why this is important](#)

Hi Karen,

Please find

attached a series of documentation and photos that highlight the close out and action taken in accordance with the Out of scope prohibition notices that were issued to the ANU SA8 team.

### • Out of scope

- Prohibition Notice 4009 – Accessing scaffold that was being stripped – This was closed during the inspection on the 6/5/22, the scaffolders instated the exclusion zone and completed the scaffold strip on the 6/5/22.

If you have any questions or concerns, please do not hesitate to call.

Regards,

Sch 2.2(a)(ii) [redacted], Project Manager

**RICHARD CROOKES**  
**CONSTRUCTIONS**

Sch 2.2(a)(ii) [redacted]

Unit 1, 155 Newcastle Street, Fyshwick ACT 2609  
[www.richardcrookes.com.au](http://www.richardcrookes.com.au)



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**From:** Sch 2.2(a)(ii) @richardcrookes.com.au  
**Sent:** 20/05/2022 6:07 AM  
**To:** "Palmer, Karen" <Karen.Palmer@worksafe.act.gov.au>  
**Cc:** Sch 2.2(a)(ii) @richardcrookes.com.au; Sch 2.2(a)(ii) richardcrookes.com.au  
**Subject:** ANU SA8 RCC Notices Close Out - Email 2 of 2  
**Attachments:** Out of scope

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- Out of scope

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If you have any questions or concerns, please do not hesitate to call.

Regards,

Sch 2.2(a)(ii) Project Manager

**RICHARD CROOKES**  
**CONSTRUCTIONS**

Sch 2.2(a)(ii)

Unit 1, 155 Newcastle Street, Fyshwick ACT 2609  
[www.richardcrookes.com.au](http://www.richardcrookes.com.au)



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**From:** "Palmer, Karen"  
**Sent:** 10/05/2022 12:03 AM  
**To:** Sch 2.2(a)(ii)@richardcrookes.com.au  
**Cc:** Sch 2.2(a)(ii)@richardcrookes.com.au; Sch 2.2(a)(ii)@richardcrookes.com.au  
**Subject:** RE: Preston decks

OFFICIAL

Hi Sch 2.2(a)(ii)

Thanks for your email and your phone call. From the evidence provided in relation to the Prohibition issued on the [redacted] (I think I referred to them as Multideck), I can confirm the Prohibition is lifted to all bays and the bays may now be used.

Please continue to ensure plant has all records including pre-starts with the plant, and available for reference in relation to instructions and manufacturer's recommendations.

As always if you have any queries please contact me.

Thanks

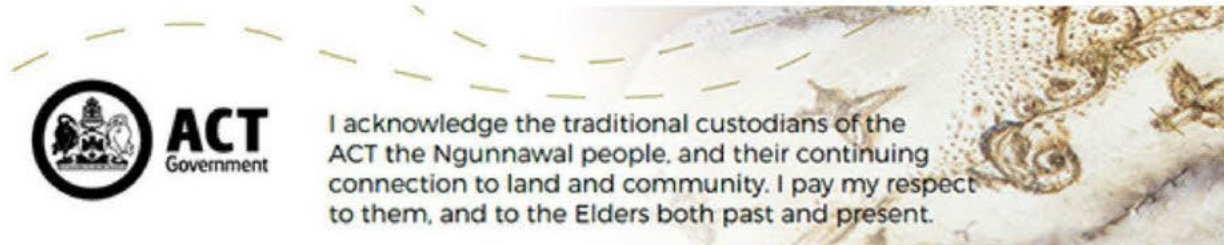
**Karen Palmer** - Inspector

P: 13 22 81 | E: [karen.palmer@worksafe.act.gov.au](mailto:karen.palmer@worksafe.act.gov.au)

**Office of the Work Health and Safety Commissioner**

GPO Box 158 Canberra ACT 2601

**WORKSAFEACT**



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**From:** Sch 2.2(a)(ii)@richardcrookes.com.au  
**Sent:** Tuesday, 10 May 2022 9:54 AM  
**To:** Palmer, Karen <Karen.Palmer@worksafe.act.gov.au>  
**Cc:** Sch 2.2(a)(ii)@richardcrookes.com.au; Sch 2.2(a)(ii)@richardcrookes.com.au  
**Subject:** Preston decks

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Hi Karen

See attached

Photos of the [redacted]

All [redacted] now have the instructions for use and the pre starts in folders on each bay

Can we proceed to use the decks?

Thank you

Regards,

Sch 2.2(a)(ii) WHS&E Advisor

## **RICHARD CROOKES** **CONSTRUCTIONS**

Sch 2.2(a)(ii)

Unit 1, 155 Newcastle Street, Fyshwick ACT 2609

[www.richardcrookes.com.au](http://www.richardcrookes.com.au)



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