

Australian Capital Territory

Work Health and Safety (Prosecution) Guidelines 2018 (No 1)

Notifiable instrument NI2018 - 113

made under the

Work Health and Safety Act 2011, section 230 (Prosecutions)

1 Name of instrument

This instrument is the *Work Health and Safety (Prosecution) Guidelines 2018 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Notification

I make the Prosecution Guidelines as set out in Schedule 1.

Greg Jones
Delegate of the Regulator
1 March 2018



ACT
Government

**Access
Canberra.**

General Guidelines for Prosecutions

Work Health and Safety Act 2011

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

The work health and safety regulator sitting within Access Canberra (the regulator) administers work health and safety laws in the Australian Capital Territory (ACT). These laws include the:

- *Work Health and Safety Act 2011*; and
- *Work Health and Safety Regulation 2011*.

The laws can be accessed at www.legislation.act.gov.au.

The National Compliance and Enforcement Policy (the Policy) outlines the aims of compliance and enforcement as well as the compliance and enforcement tools available to work health and safety regulators. The Policy also sets out general information about prosecutions, including the criteria used by regulators to determine whether or not to initiate prosecution and the timeframes for initiating such action. The Policy can be accessed at www.safeworkaustralia.gov.au or by contacting Access Canberra on 13 22 81.

Courts

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

Prosecution initiation

Where the regulator considers that a prosecution should be initiated, the regulator will recommend this to the Office of the DPP. The DPP conducts prosecutions of regulatory matters referred to it by ACT Government agencies (such as Access Canberra) in respect to legislation those agencies administer. Information about the DPP, including its Prosecution Policy, may be found at www.dpp.act.gov.au.

The court process

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

Sentencing options

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

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

The regulator may recommend to the DPP that the prosecutor seeks some or all of these orders to be made by the court.

Appeals

Appeals from decisions of the Magistrates Court and Supreme Court are governed by the *Magistrates Court Act 1930*, the *Supreme Court Act 1933* and related legislation.

Records of court process and decisions

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

Publication of prosecution outcomes

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

Recording of convictions

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

Requests for a prosecution to be brought

The work health and safety laws outline certain circumstances in which a person may request the regulator refer a matter to the DPP. Information about the circumstances in which such requests can be made and the process for initiating such request can be obtained by contacting Access Canberra on 13 22 81.

Information about the status of court proceedings

The regulator will make arrangements for keeping injured parties up to date with the status of court proceedings.