

Work Health and Safety (Prosecution) Guidelines 2023

Notifiable instrument NI2023-372

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 2023*.

2 Commencement

This instrument commences on the day after notification.

3 Revocation

This instrument revokes the *Work Health and Safety (Prosecution) Guidelines 2018 (No 1)* signed on 1 March 2018.

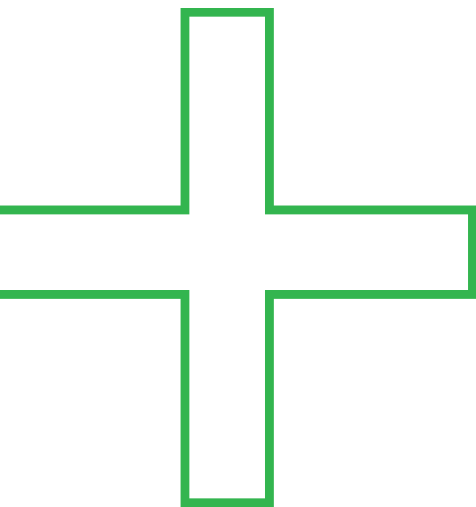
4 Notification

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

Jacqueline Agius
WHS Commissioner

23 June 2023

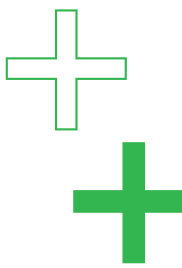
Schedule 1: Work Health and Safety (Prosecutions) Guidelines 2023



GENERAL GUIDELINES FOR PROSECUTIONS

WORK HEALTH AND SAFETY ACT 2011

July 2023



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

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

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

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

A revised [WorkSafe ACT Compliance and Enforcement Policy 2020-2024](#) was approved on 3 July 2023. The Policy outlines the aims of compliance and enforcement as well as the compliance and enforcement tools available to WorkSafe ACT. The Policy also sets out general information about prosecutions, including the criteria used to determine whether to initiate prosecution and the timeframes for initiating such action.

Courts

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

Prosecution initiation

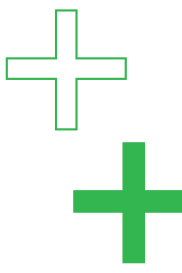
Where the regulator considers that a prosecution should be initiated, the WHS Commissioner may commence proceedings for an offence against the WHS Act. In commencing a proceeding under the WHS Act, s 230 provides two methods for doing so:

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

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

The court process

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



Sentencing options

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

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

Appeals

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

Records of court process and decisions

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

Publication of prosecution outcomes

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

Recording of convictions

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

Requests for a prosecution to be brought

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

Information about the status of court proceedings

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