

DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

Work Health Authority

Annual Report
2016-17

NT WorkSafe



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Function and Purpose of the Work Health Authority

The role of the Work Health Authority was established by the *Work Health Administration Act*, which came into force on 1 January 2012. The Work Health Authority is granted powers and functions under the *Work Health and Safety (National Uniform Legislation) Act* and the *Return to Work Act*. The former Minister for Business was responsible for the *Work Health Administration Act* from July 2016 to 27 August 2016. The Attorney-General and Minister for Justice was responsible for the remainder of the reporting period. The Ministers responsible for the *Work Health Administration Act* are responsible for appointment of the Work Health Authority.

Part 2 (5) of the *Work Health Administration Act* provides:

1. The Authority has the following functions:
 - (a) to be the regulator under the *Work Health and Safety (National Uniform Legislation) Act*;
 - (b) the functions conferred on it under the Return to Work Act; and
 - (c) any other function conferred on it under any Act.
2. The Authority has the powers necessary to perform its functions.

The Work Health Authority is also granted powers and functions under the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act* and Regulations.

Part 2 (22) of the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act* provides:

1. The Work Health Authority is the Competent Authority for this act.
2. The Competent Authority:
 - (a) may exercise all the powers and perform all the functions of an authorised officer; and
 - (b) when exercising those powers or performing those functions, has all the immunities of an authorised officer.

NT WorkSafe Corporate Information

Functions of the Work Health Authority are performed by NT WorkSafe, a division of the Department of the Attorney-General and Justice. NT WorkSafe is the statutory body responsible for the Northern Territory-wide provision of advice, information and regulation of workplace health and safety, dangerous goods, electrical safety, and rehabilitation and workers' compensation.

NT WorkSafe comprises the following business units:

- Permissioning and Advisory Services
 - Small Business Safety Program
- Rehabilitation and Compensation
- Operations
 - Electrical Safety
 - Remote Safety
 - General Safety
- Executive
 - Regulatory Reform
 - Communications
 - Business Administration
 - Training

During 2016 – 2017, the Work Health Authority was provided with 62 full-time equivalent staff (FTE) as per the NT WorkSafe organisational chart below. Staff were located at NT WorkSafe offices in Darwin, Katherine and Alice Springs.



Permissioning and Advisory Services

The Permissioning and Advisory Services (PAS) unit of NT WorkSafe performs various functions in the administration of the *Work Health and Safety (National Uniform Legislation) Act*, the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act*, the *Dangerous Goods Act*, and all associated Regulations. PAS functions include:

- providing specialist advice and support to businesses and individuals;
- issuing licences, permits and registrations;
- approving course delivery by training providers; and
- issuing high risk work licence assessor accreditations.

The PAS unit accepts and triages notifiable incidents and complaints as well as mandatory notifications including notification of demolition, asbestos removal, pipelines, lead work and Schedule 11 hazardous chemicals. The PAS unit provides businesses with practical tools to help them to identify hazards, helps businesses and workers to identify relevant and functional solutions, and offers ongoing support and advice on work health and safety matters.

Throughout 2016-17, the PAS unit received 15, 158 telephone enquiries regarding work health and safety and responded to 8, 273 general enquiries through its generic email address.

Small Business Safety Program

Since early 2016, the PAS unit has incorporated a Small Business Safety Program (SBSP). The program is confidential, free of charge and allows business owners to consult with Small Business Safety Advisors (Advisors). The Advisors are not authorised officers and therefore have no delegated powers under the *Work Health and Safety (National Uniform Legislation) Act*.

The SBSP is available to small businesses across the Territory. Advisors travel to regional and remote areas to assist, educate and empower small businesses to manage their own work health and safety processes.

In 2016 – 2017 a total of 114 businesses accessed the SBSP. These businesses cover a wide range of industry sectors including: building and construction, tourism and hospitality, agriculture, retail, manufacturing, and personal services.

Rehabilitation and Compensation

The Rehabilitation and Compensation unit of NT WorkSafe performs various functions in the course of administering the *Return to Work Act* including:

- providing advice and information to employers, workers, insurers and the public about workers' compensation matters;
- coordinating mediations (between claimants, employers and insurers) in accordance with legislation;
- arranging permanent impairment reassessments in accordance with legislation;
- approving insurers and self-insurers in the Northern Territory;
- approving rehabilitation providers; and
- collecting statistical information from insurers and self-insurers for work health safety activity and for national reporting to Safe Work Australia.

The Northern Territory Scheme is referred to as a privately underwritten scheme because private insurers carry the financial risk of pricing and claims. Privately underwritten schemes operate in Western Australia, Tasmania and the Australian Capital Territory while public schemes (where the financial risk falls to the government) operate in other jurisdictions.

The Northern Territory Government is a self-insurer under the *Return to Work Act* and carries the financial risk for its own workers. The *Return to Work Act* does not regulate the insurance premiums charged by insurers.

Four insurers have been approved under the *Return to Work Act*. These are:

- Allianz Australia Insurance Limited
- QBE Australia
- CGU (Insurance Australia Limited)
- GIO (AAI Limited)

The *Return to Work Act* also establishes a Nominal Insurer for instances where an employer fails to insure or in cases where the insurer defaults. The Nominal Insurer meets claims liabilities by obtaining contributions from the approved insurance companies based on their market share.

The *Return to Work Act* also establishes a Scheme Monitoring Committee, whose role is to monitor the viability and performance of the Northern Territory workers' compensation scheme. The scheme is the subject of an annual actuarial report which is published on the NT

WorkSafe website. Key trends from the 2015-16 report on the performance of the scheme were:

- Number of claims incurred remained relatively stable at between 2,600 and 2,800 claims per year (not including self-insurers).
- A reducing claim frequency (number of claims divided by estimated number of full time employees) was noted. This is attributed to a significant increase in wages without a corresponding increase in claim numbers.
- The average claim size for 2016 was \$42,500, which is lower than the 2015 average of \$44,400 but higher than most prior years.
- Incurred costs for 2016 is \$109.7 million, this is lower than 2015 however is in line with prior years.
- Settlements, non-economic lump sums and weekly benefits combined account for two thirds of the total incurred cost and payments each financial year.
- Distribution of payments for the last seven accident years has remained fairly stable.

The *Return to Work Act* establishes the Workers Rehabilitation and Compensation Advisory Council to keep the operation of the workers compensation scheme under review. The Council has prepared an Annual Report outlining its activities during 2016-17 as required under the *Return to Work Act*.

Operations

The Operations unit comprises the Inspectorate and is the public face of NT WorkSafe. The Operations unit provides safety education and advice to workers and employers throughout the Northern Territory to help them to understand and meet their work health and safety obligations. The Operations unit investigates notifiable incidents, and monitors and enforces compliance with the *Work Health and Safety (National Uniform Legislation) Act* and Regulations in line with the National Compliance and Enforcement Policy.

There are three work teams in the Operations unit:

- Electrical Safety Team – assists the Electricity Safety Regulator to monitor and regulate electrical safety and technical standards from the point of network connection at the premises to the outlet, as well as providing advice and assistance to licenced electrical workers, individual home owners, occupiers and persons conducting a business or undertaking.
- Remote Safety Team – monitors and regulates work health and safety and provides advice and education to workers and businesses located in remote and regional areas of the Northern Territory.
- General Safety Team – monitors and regulates work health and safety and provides advice and education to workers and businesses located in urban areas of the Northern Territory.

The Operations unit develops and implements targeted campaigns to identified high risk sectors to increase awareness of workplace health and safety, and support Northern Territory industry to achieve and exceed national safety standards and targets.

Section 160 of the *Work Health and Safety (National Uniform Legislation) Act* outlines the functions and powers of inspectors as follows:

- (a) to provide information and advice about compliance with this Act;
- (b) to assist in the resolution of:
 - (i) work health and safety issues at workplaces; and
 - (ii) issues related to access to a workplace by an assistant to a health and safety representative; and
 - (iii) issues related to the exercise or purported exercise of a right of entry under Part 7;
- (c) to review disputed provisional improvement notices;
- (d) to require compliance with this Act through the issuing of notices;
- (e) to investigate contraventions of this Act and assist in the prosecution of offences;

- (f) if permitted under section 40(3) of the *Coroners Act*, to attend coronial inquests in relation to work-related deaths and examine witnesses;
- (g) to monitor compliance with this Act.

Young Worker Program

In 2016 the Operations unit identified that young workers (aged between 16 and 24 years of age) are a high risk work group, entering the workforce with limited skills and experience. Workers' compensation statistics show that approximately 300 young workers in the Northern Territory are injured in the workplace each year.

In response, the Operations unit developed and implemented the Young Worker Program. The program is designed to educate young workers and their employers about various work health and safety topics including:

- rights and responsibilities of employers and workers
- duty of care
- incident notification
- workplace consultation
- hazard identification
- risk management

Through the program, the Operations unit engages with young workers and their employers by delivering information sessions, workshops, toolbox talks, team meetings and management presentations. In 2016-17 the program delivered 26 sessions to young workers and their employers.

A dedicated page has been published on the NT WorkSafe website to support the program. That page provides additional information and resources relevant to young workers.

Remote Community Work Health and Safety Initiative

In 2016 the Operations unit designed, developed and implemented the Remote Community Work Health and Safety Initiative in partnership with North East Arnhem Land Aboriginal community stakeholders. Twenty-one businesses and three Aboriginal Corporations were involved in development of the program which aimed to improve the safety culture in workplaces and encourage participants to apply the same safety focus at home.

The program provides advice, education and training to workers and employers and has been delivered to 86 students at six schools; 164 workers at 21 businesses and Miwatji Employment and Participation groups across 11 communities.

The program aimed to ensure that remote Aboriginal workers were given accessible, culturally appropriate work health and safety training to improve the safety culture throughout the East Arnhem community.

NT WorkSafe developed three culturally appropriate short films for the region as well as other guidance and educational materials. Films were produced locally, starred local workers and residents and were aired in-country and published online through the Safe Work Australia virtual seminar series website. The films are:

- *NT WorkSafe WHS Consultation in North-East Arnhem Land* – developed to promote the Remote Community Work Health and Safety Initiative;
- *Djäka Madagarritj'ku (Keep Safe From Danger)* – developed to highlight the importance of identifying hazards and risks encountered in daily life as well as the workplace; and
- *Wänyayi Ruyiyi (Come Home Safely)* – developed as a local version of the successful Victorian “homecomings” work health and safety film. The film explores the potential impacts of poor safety practices on family (this film was produced in 2016-17 for broadcast and online publication in 2017-18).

Following interest in the program from stakeholders on Groote Eylandt, the Tiwi Islands, the Victoria Daly, Roper Gulf and Central Desert regions the Operations unit will plan for further expansion of the program in 2017-18.

Executive

The Executive unit of NT WorkSafe comprises four areas which function under the direction of the Work Health Authority to support the effective administration of legislation including the *Work Health and Safety (National Uniform Legislation) Act*, the *Return to Work Act* and the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act*.

The Regulatory Reform area is responsible for participating in local and national reviews of relevant legislation, representing the Northern Territory on various national committees and groups, coordinating legislative amendments, and undertaking public consultation as required. The unit consults and develops policy specific to NT WorkSafe's regulatory functions.

The Communications area is responsible for developing and publishing various information products, coordinating NT WorkSafe involvement in local and national safety events, and developing and implementing communication strategies.

The Business Administration area is responsible for providing support services within NT WorkSafe including ministerial liaison, committee and council arrangements, delegations, finance assistance, corporate governance, travel arrangements, building maintenance and vehicle management.

The Training area is responsible for developing a comprehensive training management system for NT WorkSafe in consultation with all business units. The training area supports the other business units by helping them to identify and prioritise training needs for inclusion in the annual NT WorkSafe training plan.

Legislative Update

Work Health and Safety (National Uniform Legislation) Regulations

The *Work Health and Safety (National Uniform Legislation) Regulations* were amended to rectify some issues with technical definitions and incorrect language as well as to reduce and clarify the impact of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) on the manufacturers, importers, retailers and users of agricultural and veterinary chemicals.

The amendments were the culmination of considerable national debate around the application of the GHS to agricultural and veterinary chemicals. The amendments to the WHS Regulations relating to the GHS ease negative impacts to businesses and end users without reducing safety outcomes by:

- excluding Schedule 8 veterinary medicines from GHS labelling requirements;
- excluding Schedule 4 veterinary medicines from GHS labelling requirements providing they are supplied in a form and packaging consistent with direct administration to animals;
- clarifying that it is not necessary to include duplicate label elements required by other labelling laws, and that it is permissible to omit elements provided this does not decrease the level of protection or information in relation to the hazards of the chemical; and
- allowing businesses and end users to continue to use, store and handle hazardous chemicals labelled under the pre-GHS system if the chemicals were supplied to the workplace prior to 1 July 2017.

National legislative reviews

- A number of the model Codes of Practice called up by the model Work Health and Safety legislation were reviewed during this period. The national review of the full suite of model Codes is expected to be completed in late-2018.
- National model legislation for the regulation of explosives was developed during 2016-17. It is expected that Ministers will be presented with final recommendations on this legislation in early 2018.

Local legislative reviews

- The incoming Government established a working group to discuss the policy and legal impacts surrounding reform of the *Return to Work Act* and provide the Government with a written report with advice and options for consideration.

Public Awareness and Advice

A key role of NT WorkSafe is to increase public awareness of and provide advice about work health and safety matters. NT WorkSafe maintains a website which is used to publish various information and resources including Information Bulletins, Guides, Safety Alerts, information about legislation administered by NT WorkSafe, and general and industry specific safety information. Relevant news items and information about upcoming events and promotional activities are also published on the website.

Information Bulletins are published to provide specific information on complying with legislation administered by NT WorkSafe. In 2016-17 the following Information Bulletins were published:

- Tower Cranes – Duties of principal contractor
- Certification requirements for installing PV panels on buildings
- Prohibited use of male parallel thread fittings on gas installations

Safety Alerts are issued to alert relevant industries and the wider community to safety risks that have been identified through the investigation of incidents, or urgent and significant work health safety matters. Safety Alerts are also used to provide timely information and advice on a range of work health and safety issues including legislated obligations and emerging issues. The following Safety Alerts were issued in 2016-17:

- Maintenance and risk management of large trees and palms
- Commercial transport of recalled Samsung Galaxy Note 7 mobile phones

NT WorkSafe proactively engages with businesses and workers through sponsorship and participation as an exhibitor at industry conferences and events. NT WorkSafe Inspectors and Advisory staff man exhibition booths and ensure that relevant information is on hand for attendees. During 2016-17, NT WorkSafe participated in the following events:

- NT Resources Week – 16 to 17 August 2016.
- Safety Institute of Australia (OHS in Challenging Environments) –6 to 7 September 2016
- NT Cattlemen's Association Annual Conference – 30 to 31 March 2017
- AFL Northern Territory Ltd – Big Rivers Football League sponsorship from January 2016 to January 2019.

Training

The Work Health Authority is responsible for approving health and safety representative courses in the Northern Territory. Section 72 of the *Work Health and Safety (National Uniform Legislation) Act* requires a person conducting a business or undertaking to allow a health and safety representative to attend an approved work health and safety course if the representative requests to do so. During 2016-17, four additional providers of health and safety representative training were approved.

Section 131 of the *Work Health and Safety (National Uniform Legislation) Act* allows a union to apply to the Work Health Authority for the issue of a Work Health and Safety (WHS) entry permit to a person who is an official of the union. A WHS entry permit holder may enter a workplace to consult on work health and safety matters and provide advice on those matters to one or more relevant workers who wish to participate in the discussions.

Before issuing a WHS entry permit, the Work Health Authority must be satisfied that the official meets the eligibility criteria, which includes the satisfactory completion of prescribed training run by NT WorkSafe.

In the 2016-17 period, two WHS entry permit holder training sessions were held, resulting in the issue of fifteen permits to union officials. NT WorkSafe maintains a publically accessible, up-to date register of current WHS entry permit holders, in accordance with the Regulations on the [NT WorkSafe website](http://www.worksafe.nt.gov.au).¹

¹ <http://www.worksafe.nt.gov.au>

Prosecutions and Enforceable Undertakings

The *Work Health and Safety (National Uniform Legislation) Act* (the Act) and the National Compliance and Enforcement Policy allow the Work Health Authority some flexibility in interventions that can be used to achieve compliance.

Interventions may include educational campaigns, the issue of improvement or prohibition notices, infringement notices (fines), suspension of licenses or permits, acceptance of an enforceable undertaking or a prosecution.

A person can propose an enforceable undertaking as an alternative to prosecution for a contravention of alleged contravention of the Act, except in relation to a category one offence. An enforceable undertaking is seen as mutually beneficial in that:

- the person or company protects their reputation by not gaining a recorded conviction;
- tangible improvements are made to work health and safety as a result of the undertaking;
- the person or company agrees to cease and never again allow the behaviour that led to the contravention to occur; and
- a positive benefit to the community is made.

In 2016-17, the Work Health Authority accepted two enforceable undertakings in relation to an incident in which a worker sustained serious injuries after falling from a height of approximately five metres at a construction site in Darwin.

When deciding whether to commence a prosecution the Work Health Authority must consider if there is sufficient evidence to form a *prima facie* case, the likelihood of conviction and whether the prosecution would meet a public interest test. In addition, the Work Health Authority considers whether an alternative intervention would achieve a similar outcome as could be achieved through a successful prosecution.

Two prosecutions were finalised in 2016-17. These were in relation to:

- A worker climbing a tower crane at a height of approximately 18 to 21 metres without appropriate fall protection – the defendant was convicted on 12 May 2017 and fined \$11,800 for a breach of section 32 of the Act.
- A worker was seriously injured while shredding trees and palm fronds in preparation for an approaching cyclone – the defendant was convicted and fined \$15,000 for a breach of section 32 of the Act.

Directions given by the Minister in 2016-17

Part 2 (6) of the Work Health Administration Act provides:

- (1) In exercising powers or performing functions, the Authority is subject to the written directions of the Minister.
- (2) A copy of a direction given under subsection (1) in a financial year must be included in the Authority's report for the year prepared under section 7.

In 2016-17, the Work Health Authority was not subject to any written directions by the Minister.

Exercise of powers under *WHS (NUL) Act* for 2016-17

Regulatory Requirement	Description	No.
38	Incidents notified	698
65	Disqualification of health and safety representatives	0
131	Application for WHS entry permit	14
134	Issue of WHS entry permit	14
138	Application to revoke WHS entry permit	0
141	Application for assistance of inspector to resolve dispute	0
142	Regulator deals with a dispute about a right of entry under this Act	0
155	Exercise of powers of regulator to obtain information	7
156	Inspectors appointed	1
159	Suspension or ending of appointment of inspectors	0
161	Conditions on inspectors' compliance powers	4*
162	Regulator's directions to inspectors	0
191	Improvement notices issued	169
195	Prohibition notices issued	148
213	Recovery of costs of remedial or other action	0
215	Application for injunctions for non-compliance with notices	0
216	Enforceable undertakings accepted	2
220	Order following contravention of WHS undertaking	0
221	Withdrawal or variation of WHS undertaking	0
231	Written request to Regulator that prosecution be brought	1
260	Proceeding for contravention of civil penalty provision	0

* The Work Health Authority appointed Inspectors under section 156 of the *Work Health and Safety (National Uniform Legislation) Act* to exercise powers under the direct supervision of an Inspector appointed under this Act without conditions. This condition was placed on newly recruited Inspectors until divisional Inspector training and probation is completed.

Exercise of powers under WHS (NUL) Regulations for 2016-17

Regulatory Requirement	Description	No.
21	Approved training for health and safety representatives	4
93 and 319	Licence documents issued – High Risk Work and White Card	7,341
5	Reassessment of competency of licence holder	0
133	Regulator may suspend or cancel accreditation of assessor	0
142	Notice of demolition work	6
243 and 246	Registration of plant designs and items of plant	387
325	Entered into agreement with RTO to issue white cards	2
348	Hazardous Chemicals – manifest notifications	22
393	Lead process determined	0
403(1)	Lead risk work notified	1
442	Asbestos health monitoring report received	0
466	Notification of asbestos removal received	265
492	Application for asbestos removal or assessor licence	3
520	Suspension or cancellation of asbestos licence removal	0
535	MHF - Exemption of determined facility	1
536	MHF Notifications - Existing Facilities/Modifications (includes re-notifications if Schedule 15 chemicals increases)	8
537	MHF Notifications – proposed facilities	1
539	Regulator may conduct inquiry regarding MHF	0
541	Determination in relation to facility on inquiry	0
542	Determination in relation to over-threshold facility	0
543	Determination of suitability of facility operator	0
544	Conditions on determination	0
546	Regulator revocation of a determination	3
548	Notification by new operator (of determined facility)	0
549	Application for MHF licence	0
580	Grant of MHF licence	1
583	Refusal of MHF licence	0
586	MHF licence document issued	1
595	Renewal of MHF licence	0
600	Transfer of major hazard facility licence	1
601	Cancellation of MHF licence – on operator's application	1
602-605	Suspension or cancellation of MHF licence by Regulator	0
606	Suspension of major hazard facility licence	0
678	Application for internal review	1
684	Exemptions granted	19
686	High risk work licence exemption	5
688	MHF licence exemption	1
690	Applications for exemption received	20
696	Refusal of exemption	1
697	Amendment or cancellation of exemption	0

Note: MHF refers to a Major Hazard Facility as defined under Regulation 5 of the Work Health and Safety (National Uniform Legislation) Regulations

Summary of Inspectorate Activity for 2016-17

Description of Activity	No.
Information / Education sessions	240
Workplace visits	6,399
Preliminary investigations	23*
Comprehensive investigations	21*
Prosecutions	7*

Note: This table refers to 2 types of investigation. A preliminary investigation establishes jurisdiction and evaluates the evidence at hand, and is triggered when there is reasonable belief a breach of legislation has occurred requiring possible comprehensive investigation. A comprehensive investigation is authorised by the Director of Operations when the circumstances of an incident or complaint, such as severity of an injury or gravity of a contravention, warrants consideration of higher order enforcement tools (Court or Regulator sanctions).

*These activities are further broken down by type of notifiable incident and the status of activity in the following tables.

Notifiable Incidents

Death of a person

Description of Activity	Completed No.	Ongoing No.
Preliminary investigations	5	3
Comprehensive investigations	4	3
Prosecution	0	2

Serious injury or illness of a person

Description of Activity	Completed No.	Ongoing No.
Preliminary investigations	5	0
Comprehensive investigations	4	7
Prosecution	1	3

Dangerous incidents

Description of Activity	Completed No.	Ongoing No.
Preliminary investigations	6	4
Comprehensive investigations	3	0
Prosecution	1	0

Workplace visits carried out by industry group 2016-17

Industry Group	No.
Accommodation, cafes and restaurants	370
Agriculture and fishing	85
Communications services	3
Construction	3,260
Cultural and recreational services	213
Education	205
Electricity, gas and water supply	61
Finance and insurance	3
Government administration and Defence	268
Health and community services	134
Manufacturing	225
Mining	92
Personal and other services	229
Property and business services	241
Retail trade	778
Transport and storage	125
Wholesale trade	107
Totals	6,399

Note: Workplace visits carried out under *Work Health and Safety (National Uniform Legislation) Act*, *Return to Work Act*, *Dangerous Goods Act*, *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act*, *Radioactive Ores and Concentrates (Packaging and Transport) Act* and the *Electricity Reform Act*.

Injury and Compensation Data for 2016-17

Item	No.
Total claims received by insurers	2856
Total claims accepted	2565
Number of approved insurers	4
Number of approved self-insurers	4
Number of accredited rehabilitation providers	14
Workers' compensation mediations completed	361