

DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

Work Health Authority

Annual Report
2018-19

NT WorkSafe



**NORTHERN
TERRITORY
GOVERNMENT**

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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 2011*, 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 2011* and the *Return to Work Act 1986*. The Attorney-General and Minister for Justice is responsible for the *Work Health Administration Act 2011* and the 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 2011*;
 - (b) the functions conferred on it under the *Return to Work Act 1986*; 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 2010* and Regulations.

Part 2 (22) of the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010* 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.

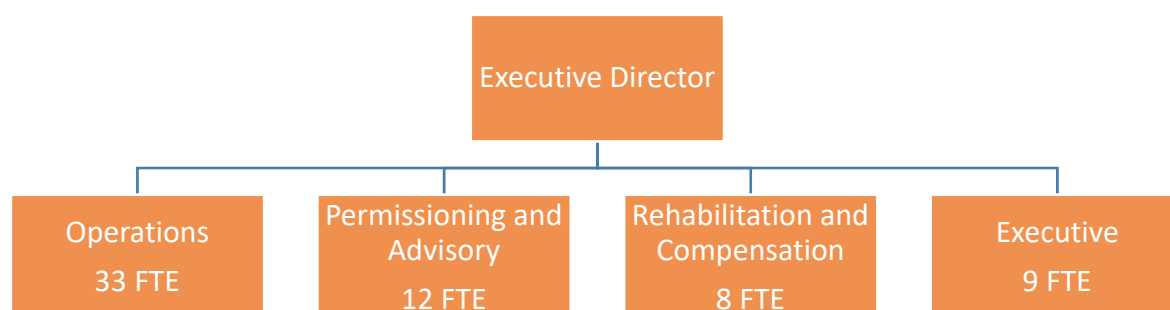
NT WorkSafe Corporate Information

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 2018 – 2019, 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 2011*, the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010*, the *Dangerous Goods Act 1998*, and 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 and workers with practical tools to assist them identify hazards in the workplace and offers ongoing support and advice on work health and safety matters.

Small Business Safety Program

NT WorkSafe continues to support small business owners manage their own health and safety through the Small Business Safety Program. 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 2011*.

The program is delivered throughout the Northern Territory, with services provided via telephone, email or face to face where possible. In 2018–2019 a total of 188 businesses accessed the Small Business Safety Program. 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 1986* including:

- providing advice and information to employers, workers, insurers and the public about workers' compensation matters;
- coordinating mediations between claimants, employers and insurers;
- arranging permanent impairment reassessments;
- approving insurers and self-insurers in the Northern Territory;
- approving rehabilitation providers; and
- collecting data from insurers and self-insurers used for national reporting to Safe Work Australia and to help prioritise work health and safety activities.

The Northern Territory Scheme is a privately underwritten scheme in which approved insurers and self-insurers carry the financial risk and are responsible for managing the workers' compensation claims process.

There are currently four insurance companies approved under the *Return to Work Act 1986*:

- Allianz Australia Insurance Ltd
- CGU Workers' Compensation
- GIO General Ltd
- QBE Insurance (Australia) Ltd

The following five employers are approved under the *Return to Work Act 1986* as self-insurers in the Northern Territory:

- Catholic Church Insurance Ltd
- Coles Group Limited
- Wesfarmers Ltd
- Westpac Group
- Woolworths

The Northern Territory Government is a self-insurer under the *Return to Work Act 1986* and carries the financial risk for its own workers. Gallagher Bassett are responsible for managing the workers' compensation claims on behalf of the Northern Territory Government.

The *Return to Work Act 1986* establishes

- the Nominal Insurer for instances where an employer fails to insure or in cases where the insurer defaults.
- a Scheme Monitoring Committee, whose role is to monitor the viability and performance of the Northern Territory workers' compensation scheme.
- the Workers Rehabilitation and Compensation Advisory Council to keep the operation of the workers compensation scheme under review.

Northern Territory Workers Compensation Injury Management e-Learning program

The Rehabilitation and Compensation unit worked with the Personal Injury Education Foundation (PIEF) to develop the NT WorkSafe Northern Territory Workers' Compensation Injury Management e-Learning program in collaboration with insurer representatives. The program provides the minimum level of knowledge required for all scheme participants in the Northern Territory and supports a consistent approach to claims management including the terminology used.

The unit also developed an e-learning training program on workers compensation specific to the Northern Territory that is mandatory for all insurers and self-insurers who manage claims for Territory workers and is now available to workers compensation stakeholders.

Injury and Compensation Data for 2018-19

Item	No.
Total claims received by insurers	2,703
Total claims accepted	2,383
Number of accredited rehabilitation providers	12
Workers' compensation mediations completed	414

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 2011* 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 2011* 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 1993*, to attend coronial inquests in relation to work-related deaths and examine witnesses;
- (g) to monitor compliance with this Act.

Young Worker Program

In 2018-19, NT WorkSafe continued to conduct information sessions with young workers at educational institutes. The sessions covered work health and safety topics such as rights and responsibilities of employers and workers, duty of care, incident notification and consultation. Information sessions conducted included:

- Charles Darwin University; (4 sessions);
- Casuarina Senior College (8 sessions);
- Department of Education (1 session);
- Katherine High School (1 session);
- Good Shepherd Lutheran College (1 session); and
- Palmerston College (2) Yirra College (1 session).

NT WorkSafe also participated in the Careers Expo held from 13 to 25 August 2018 in Darwin, Katherine, Gove, Tennant Creek and Alice Springs. This was an opportunity for NT WorkSafe to reach young people entering the workforce with approximately 862 attendees across all events.

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.

Executive

The Executive unit of NT WorkSafe comprises four sections 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 2011*, the *Return to Work Act 1986* and the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010*.

Regulatory Reform 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 the regulatory functions of NT WorkSafe.

Communications 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.

Business Administration 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.

Training 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

National legislative reviews

The model work health and safety (WHS) legislation (which the Northern Territory has adopted in full) allows the Minister to approve model Codes of Practice, not all of which have been adopted in the Northern Territory. The model Codes were reviewed nationally during this period with NT WorkSafe having an active role. The updated model Codes became available for adoption in mid-2019.

NT WorkSafe is a participant in a national Review of the model WHS laws that commenced in early 2018. The Final Report from the review is available at the Safe Work Australia site. The Review's central finding is that the model WHS laws are largely operating as intended, but the final report includes 34 recommendations to improve clarity and consistency, including undertaking further review and analysis in certain areas.

The recommendations are being assessed through a public consultation and a Decision Regulatory Impact Statement is being prepared for Ministers' to consider in late 2019.

Local legislative reviews

The Government is considering the recommendations of a working group that reviewed the impacts surrounding reform of the *Return to Work Act 1986*.

The Government established a tri-partite working group to develop recommendations regarding electrical safety and licencing.

An Inter-Departmental group has been established to investigate methods (including possible legislative reform) to improve the awareness and management of asbestos across the Northern Territory.

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, Videos, 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.

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 2018-19:

- Ride failure highlights the need for rigorous inspection and testing of amusement rides
- Serious crush injury highlights failure of safety in building and plant design
- Hazards of using load skates
- Asbestos in insulation component of battery-operated bee smokers
- Safe use of tractors fitted with a trailing turf mower
- Electrical safety risks in ceiling spaces
- Asbestos in Bunsen burner gauze mats
- Managing the risk of sea snake bites in the fishing and aquaculture industry
- Crane owners, operators urged to conduct safety checks
- Transportation risk of horizontally mounted fire extinguishers on plant and equipment
- Safe Access/Egress to Marine Vessels in Port

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 Officers man exhibition booths and ensure that relevant information is on hand for attendees. During 2018-19, NT WorkSafe participated in the following events:

- Skills, Employment and Careers Expo (August 2018)
- October Business Month – Safe Work Month (October 2018)

Training External

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 2011* 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 2018-19, one additional provider of health and safety representative training was approved.

Section 131 of the *Work Health and Safety (National Uniform Legislation) Act 2011* 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 2018-19 period, one WHS entry permit holder training session was held, resulting in the issue of five 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 2011* (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 2018-19, the Work Health Authority accepted four enforceable undertakings in relation to incidents where:

- 14 spectators received serious burn injuries during a burnout competition (two undertakings by two separate companies);
- a worker fell from the first floor of a residential home under construction; and
- the management of asbestos removal works breached legislation.

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.

- Three prosecutions were finalised in 2018-19. These were in relation to a deckhand who was found floating face down in the water after he lost his balance when climbing from the barge onto the wharf, with no gangway in place to bridge the gap. One of the defendants, who was the skipper of the barge, was convicted and fined \$20,000 for breaching section 32 of the *Work Health and Safety (National Uniform Legislation) Act 2011*. The other defendant was convicted and fined \$190,000 and the mandatory victim's levy of \$1,000 for breaching section 32 of the *Work Health and Safety (National Uniform Legislation) Act 2011*; and
- a person received fatal injuries after being run over by a truck in a retail shop loading bay.

Directions given by the Minister in 2018-19

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 2018-19, the Work Health Authority was not subject to any written directions by the Minister.

Exercise of powers under WHS (NUL) Act for 2018-19

Regulatory Requirement	Description	No.
38	Incidents notified	600*
65	Disqualification of health and safety representatives	0
131	Application for WHS entry permit	17
134	Issue of WHS entry permit	16
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	41
162	Regulator's directions to inspectors	0
191	Improvement notices issued	116
195	Prohibition notices issued	66
213	Recovery of costs of remedial or other action	0
215	Application for injunctions for non-compliance with notices	0
216	Enforceable undertakings accepted	4
220	Order following contravention of WHS undertaking	0
221	Withdrawal or variation of WHS undertaking	2
231	Written request to Regulator that prosecution be brought	0
260	Proceeding for contravention of civil penalty provision	0

*This figure includes incidents still under investigation and the figure maybe revised down if the investigation finds an incident does not meet the definition of notifiable as per section 35 of the *Work Health and Safety (National Uniform Legislation) Act*.

Exercise of powers under WHS (NUL) Regulations for 2018-19

Regulatory Requirement	Description	No.
21	Approved training for health and safety representatives	1
93 and 319	Licence documents issued – High Risk Work and White Card	10,017
95	Reassessment of competency of licence holder	1
133	Regulator may suspend or cancel accreditation of assessor	0
142	Notice of demolition work	18
243 and 246	Registration of plant designs and items of plant	571
325	Entered into agreement with RTO to issue white cards	5
348	Hazardous Chemicals – manifest notifications	20
393	Lead process determined	0
403(1)	Lead risk work notified	3
442	Asbestos health monitoring report received	0
466	Notification of asbestos removal received	416
492	Application for asbestos removal or assessor licence	21
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)	0
537	MHF Notifications – proposed facilities	0
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	0
548	Notification by new operator (of determined facility)	0
549	Application for MHF licence	0
551	Safety case outline provided	0
553	Alter Safety Case outline	1
560	Safety Case must be provided	4
580	Grant of MHF licence	0
583	Refusal of MHF licence	0
586	MHF licence document issued	0
595	Renewal of MHF licence	1
600	Transfer of major hazard facility licence	0
601	Cancellation of MHF licence – on operator's application	0
602-605	Suspension or cancellation of MHF licence by Regulator	0
606	Suspension of major hazard facility licence	0
678	Application for internal review	7
684	Exemptions granted	15
686	High risk work licence exemption	2
688	MHF licence exemption	1

Regulatory Requirement	Description	No.
690	Applications for exemption received	15
696	Refusal of exemption	0
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 and Advisor Activity for 2018-19

Description of Activity	No.
Information / Education sessions	272
Workplace visits	3,684*

*In 2018-19 there was a decrease in Workplace visits due to leave, temporary transfers, a separation and a promotion. The decrease was also due to an increase in investigations and prosecutions.

Workplace visits carried out by industry group 2018-19

Description of Industry	Workplace Visit No.
No industry recorded	434
Accommodation, cafes and restaurants	179
Agriculture & fishing	88
Construction	1738
Cultural and recreational services	132
Education	119
Electricity, gas and water supply	81
Finance and Insurance	1
Government administration and defence	95
Health and community services	54
Manufacturing	154
Mining	93
Personal and other services	84
Property and business services	165
Retail trade	315
Transport and storage	80
Wholesale trade	66

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*. (This report as at 23 September 2019 built in Microsoft Reporting)

Notifiable Incidents Investigated

Death of a person

Description of Activity	Completed No.	Ongoing No.
Comprehensive investigations	14	9
Prosecution	2	8

Serious injury or illness of a person

Description of Activity	Completed No.	Ongoing No.
Preliminary investigations	16	4
Comprehensive investigations	1	5
Prosecution	1	2

Dangerous incidents

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

Note: These tables refer 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). A comprehensive investigation is undertaken for all fatalities notified, including those out of jurisdiction or relating to other medical episodes. These activities are further broken down by type of notifiable incident and the status of activity in the tables.