

# **Work Health Authority**

*Work Health Administration Act*

## **Annual Report 2015-2016**

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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* and the *Return to Work Act*. The Minister for Business was responsible for the *Work Health Administration Act* for the entire reporting period. The Minister was also responsible for appointing the Work Health Authority.

Part 2 (5) of the *Work Health Administration Act 2011* 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

In 2015-16, the functions of the Work Health Authority were performed by NT WorkSafe, a division of the Department of Business. 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 offices are located in Darwin, Katherine and Alice Springs. NT WorkSafe comprises the following business units:

- Permissioning and Advisory Services
- Compensation and Information
- Operations
  - Electrical Safety
  - Resource Safety
  - General Safety
- Executive
  - Training and Audit
  - Regulatory Reform
  - Communications

During 2015-16, NT WorkSafe developed and implemented a Small Business Safety Program, designed to empower small and medium businesses to manage their own work health and safety processes. The program is confidential, free of charge and allows business owners to consult with Small Business Safety Advisors to assist them to take a systematic approach to managing work health and safety in their workplace. Small Business Safety Advisors are not authorised officers and do not have any powers under the Work Health and Safety (National Uniform Legislation) Act.

The Work Health Authority was provided with 59 full-time equivalent staff (as per the NT WorkSafe organisational chart below) to administer a range 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* and associated Regulations.



## Permissioning and Advisory Services

The Permissioning and Advisory Services (PAS) unit of NT WorkSafe perform a number of functions as a component of the advisory and licensing compliance requirements directed by the Work Health Authority in the course of administering the *Work Health and Safety (National Uniform Legislation) Act* and the *Dangerous Goods Act* and associated Regulations.

Work Health and Safety authorisation activities undertaken by PAS include:

- issuing of licences;
- issuing of permits;
- registration of plant design and items;
- approving course delivery by Registered Training Organisations; and
- issuing of high-risk work accreditations.

In addition, the PAS unit delivers front-line services by accepting and triaging all NT WorkSafe incident notifications as well as a number of mandatory notifications including demolition, asbestos removal, pipelines, lead work and Schedule 11 hazardous chemicals.

The PAS team assists business in making their workplaces safer through the provision of practical tools to help identify hazards; assisting to facilitate solutions that are both relevant and functional; as well as offering ongoing support and advice on work health and safety matters.

Throughout 2015-16, the PAS unit received 14, 776 telephone enquiries regarding work health and safety and responded to 7, 785 general enquiry emails through its generic email address.

## Compensation and Information

The Rehabilitation and Compensation unit of NT WorkSafe perform a number of functions in the course of administering the Return to Work legislation 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 all the financial risk of pricing and claims. The *Return to Work Act* does not regulate the premiums charged by insurers. A privately underwritten scheme also operates

in Western Australia, Tasmania and in the Australian Capital Territory. Public schemes (where the financial risk falls to government) operate in other jurisdictions.

There are 4 insurers that have been approved under the *Return to Work Act*. These are:

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

In general, the Northern Territory Government does not insure and carries the financial risk for its own workers. The *Return to Work Act* 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; the 2014-15 report has been published on the NT WorkSafe website. Highlights from the actuary's report on the performance of the scheme were:

- Claims incurred are relatively stable. There are between 2,500 and 2,800 claims per year (this figure does not include Government or self-insurers).
- A reducing claim frequency
- Settlements increased noticeably between 2007 and 2011 from 28% to 37%. They decreased to 32% in 2014 and had a significant further reduction to 25% in 2015.
- Payment of lost wages makes up approximately one third of expected cost per accident.
- Most payment categories are fairly stable except for two large claims in 2015; with a combined cost of around \$15 million.
- The incurred cost per claim has been increasing since a low in 2011. 2015 is 12.1% higher than 2014 due to the two large claims.

The operation of the Northern Territory workers compensation scheme is kept under review by the Workers Rehabilitation and Compensation Advisory Council. This Council is established under the *Return to Work Act* with responsibility to make recommendations to the Minister on possible improvements to the administration of the Act and the scheme.

## Operations

The Operations unit comprises the Inspectorate and is the public face of NT WorkSafe. The Operations team aim to provide safety education and advice in workplaces throughout the Northern Territory to assist businesses in understanding and meeting their obligations around work health and safety.

The Operations unit encompasses three broad areas of expertise:

- 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.
- Resource Safety Team – predominantly focus on the provision of advice and education to the mining and resource sectors. The resource safety team has implemented a coordinated approach to mine safety with the Department of Mines and Energy to minimise duplication where possible.
- General Safety Team – provide advice and assistance to businesses across a wide range of industry sectors including education, health and community services, transport, construction, retail services and manufacturing.

The Operations team develop and implement 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

## Executive

The Executive unit of NT WorkSafe comprises three areas which function under the direction of the Work Health Authority to support the effective administration of a range 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 reviews of relevant legislation undertaken at a local and national level, representation of the Northern Territory on various national committees and groups, the coordination of legislative amendments relevant to NT WorkSafe, and organisation of public consultation as required. The unit also consults and develops internal policy that is specific to NT WorkSafe's regulatory functions.

The Communications area has responsibility for development and publication of various NT WorkSafe information products, coordination of NT WorkSafe involvement in local and national safety events and implementation of communication strategies.

The Executive Administration area is responsible for providing support services within NT WorkSafe and to the Directorate in services such as Ministerial liaison and advice, committee and council arrangements, delegations, finance assistance, corporate governance, travel arrangements, building maintenance and vehicle management.

## Training

The Work Health Authority has responsibility for approving health and safety representative courses in the Northern Territory. Section 72 of the *Work Health and Safety (National Uniform Legislation) Act* places an obligation on the 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 2015-16, three 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 2015-16 period, two WHS entry permit holder training sessions were held, resulting in the issue of seven 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 at the [NT WorkSafe website](http://www.worksafe.nt.gov.au).<sup>1</sup>

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<sup>1</sup> <http://www.worksafe.nt.gov.au>

## Legislative Update

In 2015-16, amendments were proposed to the Northern Territory's work health and safety legislation following feedback received as part of the Northern Territory and national review of the legislation carried out in 2014.

During September and October 2015, a public consultation period was open for discussion of the possible amendments. As well as seeking written feedback, there were public information and feedback sessions held in Darwin and Alice Springs.

The Northern Territory Government considered the feedback received and decided to progress amendments to three areas of the Work Health and Safety (National Uniform Legislation) Regulations. The amendments commenced on 4 April 2016 and:

- increased the construction project trigger point value to \$500,000
- made the regulator the sole issuer of construction induction cards in the Northern Territory
- allow licence and permit holders to notify matters to the regulator via phone, email, mail or in person.

### Changes to the workers' compensation legislation

Significant amendments were made to the NT 'Workers' Rehabilitation and Compensation Act' following completion of the review of the scheme in 2014.

The scheme provides no fault coverage for eligible workers who are injured at work and supports injured workers financially whilst they are assisted to return to work.

The review made 58 recommendations in its final report to government with all the recommendations being accepted with minor variations. The purpose of the amendments is to reduce the cost for businesses and maintain the long-term viability of the scheme, while providing reasonable financial support for injured workers.

The amendments were set out in two parts.

The first amendment bill, Workers' Rehabilitation and Compensation Legislation Amendment Bill 2015, was tabled in February 2015, passed in March 2015 and came into effect 1 July 2015.

The second amendment bill, the Return to Work Legislation Amendment Bill 2015, was tabled in June 2015, passed in August 2015 and came into effect on 1 October 2015.

### Summary of key changes in the first amendment bill, Workers' Rehabilitation and Compensation Legislation Amendment Bill 2015

- Legislation name change
- Presumptive legislation for firefighters and volunteers
- Definition of worker
- Increased period of compensation for older workers
- Five year cap on benefits for less serious injuries
- Increase in death and funeral benefits

- Stroke and heart attack claims
- Capping the calculation for normal weekly earnings
- Clarification on when compensation payments are reduced to 75% of normal weekly earnings

### Summary of key changes in the second amendment bill, the Return to Work Legislation Amendment Bill 2015

- Payment of reasonable expenses for family counselling
- Reasonable payment for medical and rehabilitation costs during deferment
- Mental stress claims
- Formal notice be provided to the worker of any pending step down or cancellation
- Payment for legal advice at mediation
- Negotiated settlements
- Settlement of disputed claims
- Exclusion of journey claims
- Enforcement of compulsory insurance provisions by ability to stop work
- Involvement of support persons at mediation
- Improving return to work outcomes

Further information regarding these key changes can be found at the [NT WorkSafe website](http://www.worksafe.nt.gov.au).<sup>2</sup>

### Schedule 2 Prescribed diseases and kinds of employment

The list of “Prescribed diseases and kinds of employment” is better known as ‘deemed diseases’ and was unchanged in the Northern Territory since the original Work Health Act was introduced in 1987.

A worker who has a disease on the list and has been exposed to the relevant occupational exposure is presumed to have developed the disease as a result of that exposure unless there is strong evidence to the contrary.

One of the amendments to the *Return to Work Act* passed in 2015 was that the list of deemed diseases was moved from the Act into Regulation. This change occurred so that the Northern Territory would have the flexibility to adopt a revised schedule of deemed diseases being developed nationally through Safe Work Australia.

On 13 November 2015, the Workers Rehabilitation and Compensation Advisory Council (Council) considered the updated list in the Safe Work Australia report, *‘Deemed Diseases in Australia, August 2015’* and recommended replacing Schedule 2 of the Return to Work Regulations in its entirety with the revised list of deemed diseases contained in the Safe Work Australia report. The NT Government accepted the recommendation and the amendment commenced on 28 June 2016.

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<sup>2</sup> <http://www.worksafe.nt.gov.au>

## Public Awareness and Advice

One of the roles of NT WorkSafe is to increase public awareness of and provide advice about work health and safety matters.

In 2015-16 NT WorkSafe redesigned its website to provide improved information delivery. The website contains information about legislation administered by NT WorkSafe; Information Bulletins; Guides; Safety Alerts; general and industry specific safety information; and publication of relevant news items and information about events and promotional activities.

Safety Alerts are issued to alert relevant industries and the wider community to safety risks arising from incidents being investigated, or urgent and significant work health safety matters. Safety Alerts also 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 2015-16:

- Fire risk in older model Polycom conference phones
- Safe storage of aerosol spray cans
- Safe unloading of sheet material
- Wood chipper leg amputation
- Asbestos in mineral kits
- Unauthorised access to work areas
- Use of saw blades on angle grinders
- Support of mobile plant on outriggers
- Flood damage - Alice Springs

To improve proactive engagement with industry, NT WorkSafe has increased its contribution at industry conferences and events through sponsorship and participation as an exhibitor. Information relevant to attendees is on hand at the NT WorkSafe booth, which is manned by NT WorkSafe Inspectors and Advisory staff. In 2015-16, NT WorkSafe participated in the following industry events:

- NT Resources Week – 25 to 27 August 2015
- SIA WHS Conference – 7 to 8 October 2015
- NT Cattlemen's Association Annual Conference – 17 March 2016
- Katherine Regional Mining and Exploration Forum – 24 and 25 May 2016
- AFL Northern Territory Ltd – Big Rivers Football League sponsorship from 8 January 2016 to 8 January 2019.

## Directions of the Minister under the *Work Health and Safety Administration Act* in 2015-16

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 2015-16, the Work Health Authority was not subject to any written directions by the Minister.

## Powers Exercised under the *WHS (NUL) Act* for 2015-16

Regulatory Requirement	Description	No.
38	Incidents notified	641
65	Disqualification of health and safety representatives	0
131	Application for WHS entry permit	7
134	Issue of WHS entry permit	7
138	Application to revoke WHS entry permit	0
141	Application for assistance of inspector to resolve dispute	1
142	Regulator deals with a dispute about a right of entry under this Act	1
155	Exercise of powers of regulator to obtain information	6
156	Inspectors appointed	5
157	Identity cards issued	14
159	Suspension or ending of appointment of inspectors	4
161	Conditions on inspectors' compliance powers	14*
162	Regulator's directions to inspectors	0
191	Improvement notices issued	103
195	Prohibition notices issued	117
213	Recovery of costs of remedial or other action	0
215	Application for injunctions for non-compliance with notices	0
216	WHS undertakings accepted	3
220	Order following contravention of WHS undertaking	0
221	Withdrawal or variation of WHS undertaking	0
230	Prosecutions commenced	3
231	Written request to Regulator that prosecution be brought	0
260	Proceeding for contravention of civil penalty provision	0

\* The Work Health Authority under section 156 of the *Work Health and Safety (National Uniform Legislation) Act*, appointed Inspectors 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 experience is completed. Conditions were also placed on the Permissioning and Advisory area staff to exercise the powers with regard to site preservation duties, and Parts 9 and Part 10 of the Act, to assist with securing compliance and enforcement measures.

## Powers Exercised under the WHS (NUL) Regulations for 2015-16

Regulatory Requirement	Description	No.
21	Approved training for health and safety representatives	2
93	Licence documents issued – High Risk Work	7038
5	Reassessment of competency of licence holder	0
133	Regulator may suspend or cancel accreditation of assessor	0
142	Notice of demolition work	23
243-288	Registration of plant designs and items of plant	973
325	Entered into agreement with RTO to issue white cards	29
347	Hazardous Chemicals – manifest notifications	60
393	Lead process determined	0
403(1)	Lead risk work notified	0
442	Asbestos health monitoring report received	0
466	Notification of asbestos removal received	381
492	Application for asbestos removal licence or asbestos assessor licence	15
520	Suspension or cancellation of asbestos licence removal	0
536-537	MHF Notifications	3
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	2
543	Determination of unsuitability of facility operator	0
546	Regulator revocation of a determination	0
549	Application for MHF licence	3
580	Grant of MHF licence	1
583	Refusal of MHF licence	0
586	MHF licence document issued	4
595	Renewal of MHF licence	5
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	2
684	Exemptions granted	11
686	High risk work licence exemption	5
688	MHF licence exemption	0
690	Applications for exemption received	9
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 Activity for 2015-16

Description of Activity	No.
Information / Education sessions	271*
Workplace visits	6,016
Non-fatal investigations	10
Workplace death investigations	4
Total investigations conducted	14
Total investigations completed	12
Ongoing investigations	2
Prosecutions commenced	3
Investigations not prosecuted	9
Matters with legal counsel	4

\*NT WorkSafe has broadened the definition of Information / Education Sessions to include presentations by Inspectors at "Toolbox" meetings.

Note: Investigations in this table refers to comprehensive investigations. 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 warrant consideration of higher order enforcement tools (Court or Regulator sanctions). These investigations usually result in the preparation of a brief of evidence for consideration by the Regulator.

## Workplace visits carried out by industry group 2015-16

Industry Group	No.	%
Accommodation, cafes and restaurants	194	3
Agriculture and fishing	82	1
Communications services	20	0
Construction	3034	50
Cultural and recreational services	156	3
Education	96	2
Electricity, gas and water supply	54	0
Finance and insurance	10	0
Government administration and Defence	193	3
Health and community services	103	2
Manufacturing	252	4
Mining	171	3
Personal and other services	115	2
Property and business services	180	3
Retail trade	926	15
Transport and storage	273	5
Wholesale trade	157	3
Totals	6016	100

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 2015-16

Item	No.
Total claims received by insurers	2858
Total claims accepted	2444
Number of approved insurers	4
Number of approved self-insurers	4
Number of accredited rehabilitation providers	15
Workers' compensation mediations completed	400*