

ANNUAL REPORT 2022–23



State of Queensland 2023

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PN12824

**Office of the Work Health
and Safety Prosecutor**

**ANNUAL REPORT
2022-2023**

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22 September 2023

The Honourable Grace Grace MP
Minister for Education,
Minister for Industrial Relations and
Minister for Racing
1 William Street
BRISBANE QLD 4000

Dear Minister,

As the appointed Work Health and Safety Prosecutor (WHSP), I am pleased to present my report for the period 1 July 2022 until 30 June 2023.

The WHSP is required by Schedule 2, s.49(1), of the *Work Health and Safety Act 2011* to give to the Minister, as soon as practicable after the close of each financial year, but not later than four months after the close, a report on the performance of the functions of the WHSP during that year.

The functions of the WHSP are to:

- conduct and defend proceedings under the Act before a court or tribunal
- advise the regulator on matters relating to the Act
- any other function given to the WHSP under the Act or another Act.

The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it, pursuant to Schedule 2, s.49(3), of the *Work Health and Safety Act 2011*.

The report includes a copy of each guideline made by the WHSP, in force during the year, as required by Schedule 2, s.49(2), of the *Work Health and Safety Act 2011*.



Yours faithfully
Simon Nicholson
Work Health and Safety Prosecutor

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Work Health and Safety Prosecutor 2022–2023 review

Introduction

I was proud to be appointed Queensland’s second Work Health and Safety Prosecutor (WHSP) on 31 October 2022 by the Governor in Council, on the recommendation of the Honourable Grace Grace Minister for Education, Minister for Industrial Relations and Minister for Racing (the Minister).

As an independent statutory prosecution office established under the *Work Health and Safety Act 2011* (the Act), my office conducts and defends proceedings for breaches of Queensland’s work health and resource safety and health laws.

The Office of the Work Health and Safety Prosecutor (OWHSP) is attached to the Department of Education for administrative support services, which is effected through the Office of Industrial Relations (OIR).

The OWHSP consists of both myself as Chief Executive Officer¹ and WHSP, and my Executive and staff.

Summary – functions and operation

My functions are:

- to conduct and defend proceedings under the Act before a court or tribunal
- to advise the regulator on matters relating to the Act
- any other function given to me under the Act or another Act.

I have powers given to me under the Act, together with the power to do all things necessary or convenient for the performance of those functions.

I represent the State and, although I report to the Minister, I am not under the control or direction of the Minister.

In 2022–2023, the OWHSP prosecuted matters investigated and referred by both OIR (primarily Work Health and Safety Queensland - WHSQ) and Resources Safety and Health Queensland (RSHQ).

At the close of 2022–2023, the OWHSP:

- had carriage of 130 prosecutions which were still before various levels of Queensland courts²
- received 127 new briefs of evidence over the financial year (an increase of over 56 per cent from the previous year)
- successfully finalised 46 matters, in relation to which \$2,662,160 in fines were imposed.³
- made 231 prosecution decisions (to prosecute or not prosecute a suspect), an increase of 25.5 per cent from the previous financial year, as follows:
 - There were 76 decisions to prosecute, including seven decisions to prosecute officers and eight to prosecute workers.
 - There were 155 decisions not to prosecute.

1. Within the meaning of the *Public Sector Act 2022*.

2. This figure excludes three unsuccessful prosecution matters under appeal where the only issue which remained to be determined before the Court related to costs.

3. This figure excludes two further successful prosecution matters where a plea of guilty was entered by the defendant, where following sentencing appeals were lodged (one by the defence and one by the prosecution) regarding the adequacy of the fine imposed by the Court. These two matters were still before the Court at the end of the reporting period.

In 2022–2023, the OWHSP incurred direct costs of \$4,100,366⁴ (mainly comprising staff expenses and legal costs).

The OWHSP conducted approximately:

- 519 mentions⁵ (in person, by phone or video conference)
- 30 interlocutory hearings
- 62 sentence hearings
- 2 contested committal hearings
- 40 days of summary trial
- 1 District Court appeal
- 5 appeals in the Court of Appeal
- 4 appeals in the Industrial Court of Queensland.

OWHSP Executive

The OWHSP Executive assists me in my role. The Executive members also act as supervisors of teams of lawyers and corporate and paralegal services in the OWHSP.

At 30 June 2022, the OWHSP Executive comprised the following members:

- Senior Assistant Work Health and Safety Prosecutor, Mr David Gore. Mr Gore acted as Work Health and Safety Prosecutor⁶ within the reporting period until 31 October 2022 and again for approximately two weeks in June 2022 when I took leave. Mr Gore’s skills and knowledge from years of practice in criminal, regulatory and compliance law are reflected in the high-level advice he provides to me. I have benefited from his candour and counsel and I am thankful for his ongoing commitment to his role and his support to the whole of the OWHSP.
- Assistant Work Health and Safety Prosecutor, Ms Kate Milbourne. Ms Milbourne, formerly a Principal Prosecutor in the OWHSP, was appointed as Assistant Work Health and Safety Prosecutor in March 2023, having also acted in the role in 2022. Ms Milbourne had many years of experience working in defence and senior prosecution roles at state and Commonwealth levels prior to coming to the OWHSP in 2021. Ms Milbourne’s extensive practicing history and depth of knowledge of criminal law is reflected in the complex work she undertakes, and she too provides comprehensive support to me, for which I am indebted.
- Director of Corporate and Legal Services, Ms Simone Spring. Ms Simone Spring is a qualified solicitor and skilled public sector leader, who previously worked as the practice manager in the Prosecution Services Unit, OIR up until the establishment of our office in March 2019. Prior to that Ms Spring held various project management roles within government. She provides crucial corporate support to me on a daily basis, and supervises the administrative and paralegal staff. I note my sincere thanks for her ongoing and significant contribution to the OWHSP’s business. In particular, during the reporting period Ms Spring, with the assistance of Acting Principal Practice Administrator Ms Lauren Cairns, navigated the OWHSP through a challenging pilot project with OIR leading to the adoption of a new records and case management system.

4. This figure excludes accommodation and other corporate expenses incurred directly by the Office of Industrial Relations (OIR) to support the OWHSP, noting OIR is funded partly through the Department of Education and partly by Resources Safety and Health Queensland (RSHQ) for this purpose.

5. For reporting purposes this includes mere delivery of Decisions of the Court.

6. If there is a vacancy in the office of the WHS Prosecutor or the WHS Prosecutor is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as the WHS Prosecutor for a period of not more than 6 months.

Ms Jade Henderson, whose substantive position is as a Principal Prosecutor in the OWHSP, acted as an Assistant Work Health and Safety Prosecutor during the reporting period up to February 2023, and then again for a period in May 2023. Ms Henderson previously practiced in personal injuries, regulatory and compliance law. Like the other executive members, Ms Henderson provided high-level support and assistance to me upon my appointment, for which I am very thankful. At the time of writing Ms Henderson is again acting as Assistant Work Health and Safety Prosecutor temporarily to manage the OWHSP's work in resources safety and health prosecutions. I would like to see this role ongoing if circumstances allow.

Ms Jacqueline Ball, a Principal Prosecutor in the OWHSP, acted as Assistant Work Health and Safety Prosecutor for approximately four weeks, two of those in the reporting period. I thank Ms Ball for her contribution to the Executive and to the OWHSP in that time.

OWHSP staff

At 30 June 2023, the OWHSP had a staff of 16, plus the WHSP⁷. The OWHSP's staff are employed under the *Public Sector Act 2022*, but, not being itself an employing entity, the OWHSP's staff are employees of the Department of Education.

Upon appointment, I worked towards welcoming back to the office a number of staff who had been on long-term secondment and extended medical leave. I also aimed to promote staff stability and consistency by recruiting for positions on a permanent basis as opportunities to do so became available.

Lawyers

In 2022–2023, there were 11 lawyers employed by the OWHSP. Each lawyer undertakes review work on briefs of evidence submitted by our client and stakeholder agencies – primarily WHSQ and RSHQ – and undertakes appearance work in the Magistrates Court of Queensland and also, on occasion, the District, Supreme and Industrial Courts.

Further, each lawyer works with external counsel when counsel is briefed by the OWHSP to appear on trials or matters identified to be of significant complexity or where otherwise there is a need to do so.

I am extremely proud of each lawyer's work. Queensland should be confident that the important work of the OWHSP is being handled by competent, skilled and knowledgeable specialists in this field.

Corporate and legal services team

In the reporting period there were five members of staff in the corporate and legal services section in the OWHSP. The corporate and legal services team provides administrative and operational support to the OWHSP. Paralegals assist the lawyers with trial and sentence hearing preparations and co-ordinate a number of other things to ensure that the work of the office is conducted efficiently and with minimal disruption. Quite simply, the OWHSP could not function as it does without the work of this dedicated and productive team.

7. Annexure A – OWHSP Organisational Chart as at 30 June 2023.

WHSP and Director of Public Prosecution Guidelines

The Act provides for the mandatory issue by the WHSP of general guidelines in relation to the prosecution of offences under the Act, which must be published on the website of the WHSP. The Act also provides that the WHSP may issue written guidelines to any of their staff, the Regulator or public service employees employed in the department undertaking work relevant to the WHSP's functions under the Act.

On 17 April 2019, the former WHS Prosecutor, Aaron Guilfoyle, issued a guideline on the advice and charging function of the OWHSP, which was reissued on 21 September 2020. Pursuant to s.48(2) of the Act, the guideline, a copy of which is annexed, applies to OWHSP staff, the Regulator, and relevant staff of OIR. The guideline continued in force in 2022–2023.⁸

On 7 November 2019, Mr Guilfoyle also issued a guideline on prosecution disclosure, which was also reissued on 21 September 2020, a copy of which is annexed.⁹

The offences under the Act include indictable offences, for which lengthy sentences of imprisonment are available. It is vital to the proper conduct of all prosecutions, and particularly those for serious offences, that appropriate disclosure is made by investigators and prosecutors. The disclosure guideline aims to ensure that occurs. Pursuant to s.48(2) of the Act, the guideline applies to OWHSP staff, the Regulator, and relevant staff of OIR. The guideline continued in force in 2022–2023.

The Guidelines of the DPP (Director's Guidelines) continue to apply to any decision of the WHS Prosecutor in respect of the conduct of prosecutions. Consequently, any guidelines issued by the WHS Prosecutor are to be read with, and subject to, the Director's Guidelines.

Effectiveness, efficiency and transparency

Effectiveness

In 2022–2023, the OWHSP achieved a conviction rate of 97.9 per cent against a target of 90 per cent—the best figure since this office was created. This was relating to 46 prosecutions (out of 47) that proceeded to a decision or verdict. The result is a reflection of how capable my staff are.

Out of two defended summary hearings, there was a conviction in one, and in another the prosecution has appealed the verdict of not guilty, meaning a result of 100 per cent against a target of 70 per cent, for finalised defended summary hearings.

In relation to defendants tried on indictment, there was one matter which resulted in conviction, meaning a result of 100 per cent against a target of 70 per cent.

Many decisions were made not to commence a prosecution. This could include being for reasons of a lack of evidence (where there was either no prima facie case or no reasonable prospect of securing a conviction). Thorough consideration is given to every potential suspect or duty holder in the course of both investigations and assessment of briefs of evidence by the OWHSP.

Efficiency

The OWHSP sets a key performance indicator (KPI) for briefs of evidence to be assessed within 120 days of referral in 100 per cent of cases.

In 2022–2023, out of 231 decisions to prosecute or not prosecute, the average decision time per suspect was 262 days. Seven briefs of evidence out of 70 were reviewed within 120 days, meaning that our KPI was achieved in 10 per cent of cases.

8. Annexure B – Advice function and the decision to charge (Guideline 1/2019)

9. Annexure C – Disclosure (Guideline 2/2019)

Commencing 1 August 2023, I implemented a new policy regarding compliance with the KPI – which remains for 2023–2024¹⁰ – that requires intensive engagement between OWHSP lawyers and the Assistant Work Health and Safety Prosecutors to progress matters to me for decision far more promptly, with the aim of substantially improving compliance with the KPI overall in 2023–2024.

In addition, 2023–2024 marks the return of experienced prosecutors who were on long term leave or seconded elsewhere, which should also assist productivity going forward.

I note that examination of compliance with the KPI in isolation from other results does not realistically show how busy and effective the OWHSP is (with the staffing and resourcing levels it has). Of course, commencing proceedings within relevant statutory time limits remains the primary obligation, but equally the 120-day KPI allows the OWHSP to have a useful yardstick to measure its performance.

As mentioned, during the reporting period the number of briefs of evidence received increased over 56 per cent, and the number of prosecution decisions made increased over 25 per cent, compared to the previous period. However, there was not a commensurate rise in the number of lawyers or resources in the OWHSP. Despite that, convictions were secured in nearly 98 per cent of matters taken to court.

I will continue to advocate, as my predecessor Mr Guilfoyle did, for further funding and a lift in our full-time equivalent employee cap to take into account the disequilibrium between workload and resourcing, which, if addressed, would no doubt improve the timeliness of reviews and the efficiency overall of the office. Moreover, appropriate and adequate resourcing will ensure that the OWHSP continues to be a psychosocially safe workplace where staff may make supported choices to finish work on time to meet their family commitments or take available recreational leave.

Transparency

Essential to the effectiveness of the OWHSP as a prosecution service is consistency in our prosecution decision making, including in the application of the Director’s Guidelines. Again in 2022–2023, the Director’s Guidelines were considered, applied and recorded in 100 per cent of briefs assessed.

This insistence on consistency has ensured:

- consideration of prosecution action against all duty holders and potential suspects identified during both the investigation and brief assessment
- relevant legal considerations were factored into decision-making
- appropriate supervisor oversight of those recommendations
- consultation with the referring agency prior to the commencement of prosecutions or decisions not to prosecute
- consideration of the interests of victims and their families.

I have also implemented a requirement to record application of the *Human Rights Act 2019* in relation to any prosecution decision made involving a natural—as opposed to corporate—individual. By the end of 2023–2024, I expect to report 100 per cent compliance with that requirement by my office.

10. Annexure D – OWHSP Business Plan 2023–24

Briefing of external counsel and equitable briefing

The OWHSP continued to brief external counsel to provide advice and appear on behalf of the WHSP where appropriate. Our expenditure on external counsel was again our most significant expense in 2022–2023, save for staffing costs.

In line with our commitment to equal or better the equitable briefing policy of the Law Council of Australia, which prescribes the briefing of female counsel in at least 30 per cent of matters and paying them at least 30 per cent of the total fees, during 2022–2023 the OWHSP briefed female counsel in 45.3 per cent of the matters. By the end of 2023–2024, I would like to see that figure increase to 50 per cent.

Our office paid female barristers 30.1 per cent of the total fees paid to counsel.

The private bar continues to make a significant contribution to complementing the capacity and capability of my office, particularly given the increase of work the office is receiving.

Gender equality, inclusion and diversity

The OWHSP embraces OIR's commitment to cultivating a fair, responsive and inclusive workplace culture where all staff feel empowered, enabled and encouraged.

Ms Spring was appointed the OWHSP's Equality, Diversity and Inclusion Officer in March 2023. The role assists in the development and application of an equality, diversity and inclusion policy for our office that the Executive and I are working on. Additionally, Ms Spring and I continue to identify opportunities to encourage inclusion and diversity in the OWHSP each time a recruitment drive is undertaken, in order to take advantage of the ability to target particular groups for recruitment in line with the *Public Sector Act 2022*.

During the reporting period, Mr Gore and I investigated offering work experience to first nations students and students from culturally and linguistically diverse backgrounds, which I hope to do in 2023–2024.

In terms of gender equality, as at 30 June 2023, 50 per cent of the Executive (or two out of the four members) of the OWHSP were female. Further, 56 per cent (or nine out of 16 positions) of staff were female and 54 per cent (or six out of 11) of the lawyers in the office were female.

Health and safety representatives

Ms Henderson and Mr Bronson Ballard (a senior lawyer in the OWHSP) were appointed as the OWHSP Health and Safety representatives pursuant to division 3 of part 5 of the Act. Both have received training and I look forward to engaging with them in these important roles.

Mental health first aid¹¹

In 2022–2023, the OWHSP supported Ms Cairns to achieve accreditation as a Mental Health First Aid (MHFA) Officer. Ms Cairns is available to all staff to approach confidentially regarding access to relevant services and support in this space, whether this be for themselves, or their family members. The MHFA Officer, with the support of the OWHSP Executive, is committed to assisting staff in connecting with the appropriate professional help for their individual circumstances.

11. <https://mhfa.com.au/>

Staff development and enrichment

I remain committed to developing our staff professionally and protecting their physical, psychological, and psychosocial wellbeing whilst at work.

In the course of their work, my staff are routinely exposed to material concerning serious injuries and death. The OWHSP provided annual vicarious trauma training to all staff during 2022–2023, and will provide this again in the coming financial year. This is in addition to the services provided through OIR, which includes access to an employee assistance provider.

Additionally, I have commenced quarterly compulsory training days, where staff attend and learn from guest speakers relevant to our field. So far, we have had sessions on psychosocial hazards and risks, human rights, addresses from senior staff from RSHQ about investigation procedures, and a talk by the Commissioner for Resources Safety and Health, Ms Kate Du Preez about her role. Each training day also embodies a legal seminar on a topical subject relevant to our practice; in the sessions already conducted, we have discussed industrial manslaughter prosecutions, particularisation of complaints, and legal professional privilege.

In May 2023 several staff from my office undertook the People Matters leadership program. The program aimed to teach participants practical skills and confidence in managing people, performance and change in the workplace. The training went over four full days of facilitated workshops and a workplace practice activity.

Stakeholder engagement

Whilst my office is an independent statutory authority, I have nonetheless continued to strengthen effective working relationships with OIR (principally WHSQ) and RSHQ. I am of the view that consistent and proactive engagement with our stakeholders will cultivate healthy association as well as seeing the OWHSP's functions being discharged in an ongoing efficient, effective and transparent way. Our liaison with these key stakeholders has taken various forms ranging from regular liaison meetings to invitations to participate in our staff forums, to our prosecutors assisting investigators in Moot Court sessions.

With assistance from the Crime and Corruption Commission on 10 November 2022, I issued my policy on *Complaints about the Public Official of the Office of the Work Health and Safety Prosecutor: section 48A of the Crime and Corruption Act 2001*, which was then published on the OWHSP website.¹²

On 23 February 2023, I attended the Coroners Court Queensland (CCQ) to provide CCQ Coroners, court staff and invited guests with a presentation on the roles and responsibilities of the WHS Prosecutor. This was well received and the CCQ provided my office with a Certificate of Appreciation from the State Coroner, Terry Ryan.

12. <https://www.owhsp.qld.gov.au/resources>

Engagement with external groups

On 17 May 2023, I presented at the conference “Enhancing Investigations & Enforcement Outcomes” in Canberra. It brought together Federal, State, and Local Government regulators and investigation and legal enforcement officers. My topic was “Work health and safety prosecutions – from incident to the courtroom”. I enjoyed the opportunity to network with regulatory colleagues from interstate, particularly given interest in how my office remains unique (by reason of being a specialist, independent work health and safety prosecutions office) in the regulatory and enforcement environment in Australia.

Affected workers, next of kin and family, and community engagement

Incidents at work that result in preventable injuries or death can have devastating consequences for workers, next of kin, and family and friends, as well as to the Queensland community generally. To me, recognition of those effects are an important part of the prosecution work the OWHSP does. Furthermore, the legal process can be daunting for those who have been injured at work, or for those who have lost a loved one to a work-related incident.

Prosecutors and I have met with several families and affected workers since my appointment. I have also met with the Affected Persons Committee, and Mr Gore and I, along with other members of our office, attended the Workers’ Memorial Breakfast, which I found to be extremely moving.

In 2022–2023, the Coronial and Investigation Liaison Unit (CILU) of OIR continued to provide support for victims and their families, in respect of both work health and safety and resources safety and health jurisdictions.

We maintained our communication protocol with CILU, which provides for:

- a joint commitment to working cooperatively and professionally to ensure the obligations to the next of kin and certain injured people and their representatives are met
- a flexible approach and encouragement to communicate with each other about issues that may impact upon service delivery by the respective units.

Into 2023–2024 I am looking at strengthening the OWHSP’s compliance with the Charter of Victim’s Rights as part of our liaison with affected workers, next of kin, and families.

Relocation of offices

Ms Spring and I are currently working together on a relocation project to move our offices from our current address to premises at 400 George Street.

This significant task began in December 2022. It involves close work with various business arms of OIR and the Queensland Government Accommodation Office.

The aim was to move by September 2023. It has since been pushed back to later in 2023 because of delays outside of my office’s control.

Requests to commence a prosecution and referrals to Director of Public Prosecutions

As in other years, the Act provides a regime in which a request can be made to the WHSP to commence a prosecution where a suspected work health and safety offence has been committed. Equivalent provisions also exist in the *Safety in Recreational Water Activities Act 2011*, the *Electrical Safety Act 2002* and the various resources safety acts.

The regime also provides for the referral of matters for consideration by the Director of Public Prosecutions (DPP) where the WHS Prosecutor declines to prosecute.

In 2022–2023, five requests were responded to by the OWHSP.¹³ No matters were the subject of a request for referral to the DPP.

Indictable prosecutions and engagement with the DPP

The OWHSP prosecutes indictable offences for reckless conduct and industrial manslaughter.

Under the *Director of Public Prosecutions Act 1984*, the DPP must authorise indictable prosecutions conducted by the OWHSP prior to the presentation of an indictment. Those prosecutions are otherwise conducted and funded by the OWHSP.

I met with Mr Carl Heaton KC early in 2023. At the time of publishing this report, Mr Heaton is now a judge of the District Court of Queensland. I thank the Office of the Director of Public Prosecutions for its continued support of the conduct, by the OWHSP, of indictable prosecutions in 2022–2023 and I look forward to working with the new Director in 2023-24. I note that Mr Heaton agreed to organise a commission to prosecute for me, which I see as assisting in the disposition of indictable offences in the *Work Health and Safety Act 2011* (and other related legislation) by allowing me to present indictments.

13. One request to commence a prosecution was not considered to be a validly made request under the relevant legislation.

Performance data 2022–2023

127 New briefs of evidence (briefs) referred in the reporting period:¹

Ongoing brief assessments at EOFY

Brief assessments ongoing at EOFY, excluding those in suspension **115 briefs (relating to 142 suspects²)**

Brief assessments suspended at EOFY whilst investigators responded to requisitions **1 brief (relating to 1 suspect)**

Total briefs in brief assessment phase including those where requisitions were raised **116 briefs (relating to 143 suspects)**

Pre-brief legal advice requests³

Requests for pre-brief advice **5**

Pre-brief advice files open at the EOFY pending provision of legal advice by the OWHSP or the referral of a brief of evidence **1**

130 Complaints before the Court at the EOFY.⁴

73 Total prosecutions finalised in the FY.⁵

1. 121 briefs were referred to the OWHSP by the Office of Industrial Relations (OIR) and 6 briefs by Resources Safety and Health Queensland (RSHQ). The number of suspects from those BOES was 187.
2. The final number of suspects is not known until the brief assessment has concluded and the matter is decided by the WHS Prosecutor. This figure excludes matters where the brief assessment was in suspension, awaiting a response to requisitions.
3. A brief may or may not ultimately be referred.
4. This figure excludes three unsuccessful prosecution matters under appeal where the only issue which remained to be determined before the Court related to costs.
5. Of the prosecutions finalised six related to referrals from RSHQ and the other 67 related to referrals from OIR.

Prosecutions successfully finalised⁶

Prosecutions successfully finalised	46 ⁷
Fines imposed in relation to successful prosecutions	\$2,662,160 ⁸
Number of successful matters where a guilty plea was entered	44
Number of successful matters which proceeded ex parte	0

Unsuccessful or discontinued prosecutions

Unsuccessful prosecutions	2 ⁹
Prosecutions withdrawn ¹⁰	16 ¹¹
Prosecutions withdrawn – EU ¹²	9

6. The final court order date must occur in the relevant financial year. In keeping with previous annual reports this excludes matters that are the subject of an appeal, unless the appeal relates only to the matter of costs.
7. There were 46 successful prosecutions in FY 2022–23. This figure excludes two further successful prosecutions matters where a plea of guilty was entered, however, they went on appeal regarding the adequacy of the fine imposed by the Court (one per the defence and one per the prosecution). These two matters were still before the Court at the end of the reporting period.
8. See footnote 5 above. The figure of \$2,662,160 excludes a matter where the prosecution entered an appeal alleging the fine of \$30,000 was inadequate (E299159) and also a matter where the defence entered an appeal alleging the fine of \$250,000 was excessive (E270071). The total fines ordered in the reporting period including the appealed matters was \$2,942,160.
9. In relation to these two unsuccessful prosecutions the issue of costs is still being resolved. These were matters which were struck out. (The figure excludes another summary prosecution where although the defendant was found not guilty, the prosecution appealed the verdict E282561 and the appeal is not likely to be listed until 2024).
10. The prosecution offered no evidence and the matters were discontinued. This figure does not include decisions to substitute charges or withdraw a charge when there are multiple charges.
11. Twelve of these discontinued matters related to referrals from OIR and four related to matters referred by RSHQ. One prosecution relating to a category 1 indictable offence was discontinued as a result of a decision of the Mental Health Court that the defendant was permanently unfit for trial.
12. Discontinued as a result of an Enforceable Undertaking being entered by the defendant with the WHS Regulator.

Performance data 2022–2023

Prosecutorial decisions made	
Total prosecution decisions (to prosecute or not prosecute)	231¹³
Number of briefs of evidence related to those decisions	70
Decisions to prosecute	
• Number of bodies corporate prosecuted	47
• Number of individuals prosecuted	29
• Officers, within those individuals, prosecuted	7
• Workers, within those individuals, prosecuted	8
Decisions not to prosecute	
• No prima facie case	102
• No reasonable prospects of conviction	36
• Not in the public interest	17

13. 87 decisions in relation to bodies corporate and 144 decisions in relation to individuals.

14. Three prosecutions were later withdrawn in the same reporting period.

Effectiveness measures 2022–2023

KPI: Compliance in applying DPP Guidelines in decisions to commence, not commence, continue or discontinue (100%)

KPI met
100% in relation to 258 decisions¹⁵

KPI: Prosecutions resulting in a conviction (90%)

KPI exceeded
97.9%¹⁶

KPI: Defendants in defended summary hearings resulting in conviction (70%)

KPI exceeded
100%¹⁷

KPI: Defendants tried on indictment and convicted (70%)

KPI exceeded
100%¹⁸

KPI: Briefs of evidence assessed within 120 days of referral (100%)¹⁹

KPI not met
10%²⁰

Average decision time in days per brief of evidence

262

KPI: Pre brief advice provided within 30 days (100%)

KPI not met
80%²¹

15. There were 231 decisions to prosecute or not prosecute; There were 14 decisions to fully discontinue a prosecution (excluding a decision of the Mental Health Court referred to in Footnote 9); There were 13 decisions to enter an appeal. An appeal may be in relation to the decision of the Court at first instance or in relation to interlocutory matters.

16. Of 47 prosecutions which proceeded to a decision or verdict, and which are not under appeal, 46 resulted in a conviction. The figure of 47 excludes two matter (RS2020–019 and RS2020–015) where the prosecutions were struck out at first instance, the prosecution appealed but later withdrew the appeals and therefore the matters did not proceed to a decision or verdict. Also see footnote 5.

17. There were two defended summary hearings finalised in the reporting period, one of which resulted in a conviction. In relation to the not guilty finding in the other, the prosecution has appealed the verdict. Accordingly, one out of one finalised defended summary matters was successful.

18. One out of one defendants tried on indictment resulted in a conviction.

19. Reported on a per brief of evidence basis up until FY 2022–23. Now calculated on a per suspect basis.

20. 231 decisions to prosecute or not prosecute a suspect were made in FY 2022–23, in relation to 70 briefs of evidence, and the average decision time per suspect or per brief of evidence was 262 days. The KPI was met in relation to 21 files (or suspects) out of 231 or in relation to seven briefs of evidence out of 70. The assessment time ranged between 27 and 577 days.

21. Four out of five requests met the KPI of 30 days.

Notable prosecutions 2022–23

A worker – Category 1 offence – Concrete billet injury¹

This matter relates to serious injuries suffered by a worker as a result of another worker throwing a 6.5kg concrete billet from a scissor lift six metres high on 30 June 2020.

A worker was charged with a category 1 offence that in contravention of s.31 of the *Work Health and Safety Act 2011* (the Act), without reasonable excuse they engaged in conduct that exposed an individual, to whom a health and safety duty was owed pursuant to s.28(b) of the Act, to a risk of death or serious injury and was reckless as to the risk.

On 29 September 2022, after a three-day trial the defendant was found guilty and sentenced to four months imprisonment. The Court ordered that the sentence be wholly suspended for an operational period of four months. A conviction was recorded.

A corporate PCBU² and an officer – Category 1 and Category 2 offences – Tyre de-beading injury³

This matter relates to an incident at a tyre recycling facility, where metal fabrication work was also undertaken with unguarded plant. On 2 April 2020, a worker undertook work using the unguarded plant and suffered traumatic amputation and crush injuries. The incident occurred after Work Health and Safety inspectors had warned supervisors of the PCBU that the operation of the machines without appropriate guarding was dangerous.

On 27 October 2022, a director of the company plead guilty to a category 2 offence pursuant to s.32 of the *Work Health and Safety Act 2011* (the Act) for failing their s.27(1) duty under the Act, to exercise due diligence to ensure the company complied with its health and safety duty, and that failure exposed workers to a risk of death or serious injury. A fine of \$60,000 was ordered. No conviction was recorded.

On 6 June 2023, the company entered a plea and was sentenced in the District Court at Brisbane for breaching s.31 of the Act, having failed to comply with its health and safety duty pursuant to s.19 of the Act, having without reasonable excuse engaged in conduct that exposed an individual to whom that duty was owed, to a risk of death or serious injury, and was reckless to that risk. The company was convicted upon the indictment and fined \$650,000. A conviction was recorded.⁴

An individual PCBU - Industrial manslaughter – Fatality at electrical repair business⁵

This matter relates to the death of a worker involving a forklift at business premises in Gympie in 2019. The defendant's conduct caused the death and the defendant was negligent about causing the death.

This was the first prosecution in Queensland of an individual PCBU for industrial manslaughter against s.34C of the *Work Health and Safety Act 2011*.

On 25 March 2022, following a trial in the District Court at Gympie, the defendant was convicted and sentenced to five years' imprisonment, suspended after serving 18 months for an operational period of five years.

On 22 April 2022, the defendant appealed against his conviction and sentence. The appeal was abandoned on 4 November 2022.

A corporate PBCU and an officer – Category 2 offences – Abattoir worker contracts zoonotic illness⁶

This matter relates to an abattoir operator's alleged failure to control the risk of workers contracting Q Fever. On 3 November 2020, the company that conducted the business and its sole director each were charged with a category 2 offence against s.32 of the *Work Health and Safety Act 2011* (the Act) for failing to comply with their duties under s.19(1) and s.27 respectively.

On 7 December 2022, at Toowoomba Magistrate Court, the defendants were fined \$20,000 and \$5,000 respectively. Convictions were not recorded.

1. E288431

2. Person conducting a business or undertaking.

3. E285377

4. On 21 July 2023, in relation to two summary offences for breaching sections 38 and 39 of the Act, and upon entering a plea of guilty, the company was sentenced in the Brisbane Magistrates Court, convicted and not further punished. The convictions were recorded. The summary offences related to a failure to ensure the regulator was notified of a notifiable incident and a failure to ensure so far as reasonably practicable that the site where the notifiable incident occurred was not disturbed until an inspector arrived.

5. E273866

6. E266171

A corporate PCBU and an officer – Category 1 offences – Sand wash plant⁷

This matter relates to a serious injury incident at a sand wash plant on the Sunshine Coast in 2019. On 13 August 2020, the company that conducted the business and its director each were charged contrary to s.31 of the *Work Health and Safety Act 2011* (the Act) with failing to comply with their duties pursuant to s.19 and s.27 of the Act respectively, having engaged without reasonable excuse in conduct which exposed individuals to a risk of death or serious injury and were reckless to that risk.

On 8 October 2021, the defendants pleaded guilty and were sentenced in the District Court at Maroochydore. The company was fined \$500,000 and the director was sentenced to six months' imprisonment, wholly suspended for an operational period of 12 months. Convictions were recorded.

On 3 November 2021, both defendants appealed against their sentences. The appeals were heard in the Court of Appeal on 4 May 2022, with the Court dismissing the appeals on 7 March 2023.

An individual company director – s.734 offence – Gas explosion⁸

This matter relates to a gas explosion which occurred on 6 October 2020, resulting in a worker suffering burns injuries.

The director was charged with a failure to comply with a safety requirement pursuant to s.734(1) of the *Petroleum and Gas (Production and Safety) Act 2004* and that failure caused bodily harm. The defendant entered a plea of guilty and was fined \$5,000 on 1 March 2023, in the Toowoomba Magistrates Court. No conviction was recorded.

A corporate PCBU and an officer – Category 2 offences – Noodle and dumpling factory worker injured using unguarded noodle-making machine⁹

This matter relates to an incident on 30 December 2019, where a worker was required to use unguarded plant, and suffered serious injuries when his arm became trapped in a noodle-making machine.

The company and its sole director were each charged with an offence under s.32 of the *Work Health and Safety Act 2011* (the Act) in relation to the use of the unguarded machine, having failed to comply with their primary health and safety duties pursuant to sections 19(1) and 27(1) of the Act respectively. They were each also charged with another s.32 offence in relation to the use of another unguarded item of plant at the workplace.

On 26 April 2023, the company and its sole director were fined a total of \$125,000¹⁰ in the Beenleigh Magistrates Court for those offences. No convictions were recorded.

A corporate PCBU – Category 3 offences – Silica exposure¹¹

This is the first prosecution in Queensland relating to the dry cutting of manufactured stone benchtops.

A stone benchtop manufacturer and installation company was charged on 27 March 2020, with two offences under s.33 of the *Work Health and Safety Act 2011* (the Act), having failed to comply with its primary health and safety duties pursuant to section 19(1) and (2) of the Act.

This matter proceeded to sentence on 22 June 2023, and following a plea of guilty the company was fined \$32,000. No conviction was recorded.

7. E269519

8. RS2021-003

9. E281420

10. The company was fined \$110,000 and the director was fined \$15,000.

11. E263313

Notable prosecutions – not finalised

A corporate PCBU – Fatality at Coal Mine as a result of echelon wall fall¹²

This matter relates to an incident at a coal mine northeast of Emerald. On 26 June 2019, an echelon wall collapsed and fell, fatally crushing a worker.

On 16 June 2020, Mark Stone of the Department of Natural Resources and Mines (now the Department of Resources), swore a complaint charging the company with one offence in contravention of s.34 of the *Coal Mining Safety and Health Act 1999*, namely failing to discharge an obligation placed on it by section 41(1)(e) of that Act.

At the end of the reporting period, 30 June 2023, this matter was still before the Court.¹³

A local council, a corporate PCBU and an officer – Double fatality at public lagoon¹⁴

These matters concern the drowning-related deaths of a man and his five-year-old son, at a public lagoon in Queensland, on 28 October 2018.

On 22 September 2020, the company and an officer of the company, responsible for lifeguard and water maintenance services at the lagoon were each charged with a category 2 offence contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), for allegedly failing in their duty under s.19(1) or s.27 of the Act respectively, to ensure, so far as reasonably practicable, that the health and safety of other persons was not put at risk from work carried out as part of the conduct of its business or undertaking and failed to comply with that duty which exposed an individual to a risk of death or serious injury. On 27 October 2020, the local council was also charged with a category 2 offence.

These matters are listed for a review of the Magistrate's refusal to stay or strike out the complaint in the Brisbane Supreme Court on 26 September 2023.

A corporate PCBU – Category 2 offence – Electrocution¹⁵

This matter relates to the death of a worker after being fatally electrocuted when a Franna crane contacted an overhead powerline during the construction of a cane railway near Cairns on 28 July 2019.

On 28 July 2021, the operator of the cane rail network was charged with industrial manslaughter and a category 2 offence contrary to s.40C of the *Electrical Safety Act 2002* (the Act) for allegedly failing in their duty under s.30 of the Act, to ensure that its business or undertaking is conducted in a way that is electrically safe, which failure exposed an individual to a risk of death or serious injury. The charge of industrial manslaughter was later not committed to the District Court.

The category 2 prosecution is listed for a summary hearing over four to five days commencing on 20 November 2023.

A corporate PCBU and an officer – Category 2 offence – Diesel mechanic fatality¹⁶

This matter relates to the death of a worker while carrying out maintenance work on a tilt-cab truck at a business premises at Coolum on 23 March 2017.

On 27 October 2020, the company that conducted the business and its director were each charged with a category 2 offence contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), for allegedly failing in their duty under s.19(1) or s.27 of the Act respectively.

The sentence hearing for these matters occurred in the Maroochydore Magistrates Court on 5 September 2023 where the defendants plead guilty. The decision has been reserved to date to be fixed.

12. RS2020-011

13. On 8 August 2023, in the Mackay Industrial Magistrates Court, the mine operator plead guilty to failing to discharge a safety and health obligation by failing to ensure that the site senior executive at the mine developed and implemented a safety health management system for all persons at the mine. The mine operator entered a plea of guilty to an amended complaint and was fined \$70,000 by Industrial Magistrate Hartigan. The mine operator was also ordered to pay \$110,000 in investigative and prosecution costs. No conviction was recorded.

14. E263527

15. E274819

16. E240647

An individual PCBU – Category 2 offence – Bobcat fatality¹⁷

This matter relates to a fatality which occurred on 13 June 2022, when a member of the public was reversed over by a Bobcat driven by the individual, who is a partner in the PCBU concreting business.

On 18 January 2023, the PCBU was charged with one category 2 offence contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), for allegedly failing in their duty under s.19(2) of the Act to ensure, so far as reasonably practicable, that the health and safety of other persons was not put at risk from work carried out as part of the conduct of its business or undertaking and failed to comply with that duty which exposed an individual to a risk of death or serious injury.

At the end of the reporting period, 30 June 2023, this matter was still before the Court, having been set down for sentence in Gympie Magistrates Court on 8 September 2023.¹⁸

A corporate PCBU – Category 2 offence – Child fatality at an aquatic centre¹⁹

This matter relates to the drowning-related death of a five-year-old boy at an aquatic centre in Brisbane in 2019.

On 24 February 2022, the company that managed the centre was charged with a category 2 offence that contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(2) of the Act, to ensure so far as reasonably practicable, that the health and safety of other persons was not put at risk, and that failure exposed an individual to a risk of death or serious injury.

The matter is listed for mention in Brisbane Magistrates Court on 20 October 2023.

A corporate PCBU and an officer – Category 1 and 2 offences – Zipline fatality²⁰

This matter relates to a zipline tree canopy tour at Cape Tribulation where on 22 October 2019, the cable infrastructure failed. A man was fatally injured and a woman seriously injured.

On 30 August 2021, the company that operated the zipline was charged with a category 1 offence that, contrary to s.31 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty pursuant to s.19(2) of the Act, to ensure so far as reasonable practicable the health and safety of others persons was not put at risk, and without reasonable excuse engaged in conduct that exposed other persons to a risk of death or serious injury, and were reckless to that risk.

A director of that company was also charged with a category 2 offence that contrary to s.32 of the Act, they allegedly failed in their duty under s.27 of the Act to ensure, so far as reasonably practicable, that the health and safety of other persons was not put at risk from work carried out as part of the conduct of its business or undertaking and failed to comply with that duty which exposed an individual to a risk of death or serious injury.

The company has been committed for trial in the Cairns District Court with a date to be fixed at a review mention on 20 November 2023.

The prosecution of the director is listed for a three day hearing in the Cairns Magistrate Court commencing 18 December 2023.

17. E318764

18. Following a plea of guilty on 8 September 2023, the defendant was ordered to pay a fine of \$80,000. No conviction was recorded.

19. E279695

20. E278717

A corporate PCBU – Category 2 offence – Fatality at recycling plant²¹

This matter relates to a fatality at a recycling plant at Rocklea in 2019.

On 3 December 2020, the company that conducted the business was charged with a category 2 offence that contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(1) of the Act to ensure, so far as reasonably practicable, that the health and safety of workers whose activities in carrying out work are influenced or directed by it, was not put at risk from work carried out as part of the conduct of its business or undertaking, which failure exposed an individual to a risk of death or serious injury.

The matter is listed for mention in the Holland Park Magistrates Court on 17 November 2023.

A corporate PCBU – Category 2 offence – Near miss at amusement park²²

This matter relates to the uncontrolled fall of two large metal arms that narrowly missed two workers during reassembly of an amusement park ride.

On 15 September 2022, the company that was responsible for the amusement ride was charged with one category 2 offence that, contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(1) of the Act to ensure, so far as reasonably practicable, that the health and safety of workers whose activities in carrying out work are influenced or directed by it, was not put at risk from work carried out as part of the conduct of its business or undertaking, which failure exposed an individual to a risk of death or serious injury.

This matter is listed for mention in the Southport Magistrates Court on 9 October 2023.

A local council – Category 2 offence – Child injured due to fall from diving platform²³

This matter relates to injuries suffered by a child who fell from a height of approximately three metres, sustaining serious spinal and cranial injuries.

On 21 December 2022, the local council which operated the pool was charged with one category 2 offence that, contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(2) of the Act, to ensure so far as reasonably practicable, that the health and safety of other persons was not put at risk from work carried out as part of the conduct of the business or undertaking, and that failure exposed an individual to a risk of death or serious injury.

This matter is listed for mention in the Southport Magistrates Court on 9 October 2023.

A mining company – Appeal against conviction²⁴

A mining company was convicted on 11 May 2023 in the Industrial Magistrates Court for one contravention of s.34 of the *Coal Mining Safety and Health Act 1999* after pleading not guilty. The Magistrate was satisfied that the failure caused injuries amounting to bodily harm to workers, but was not satisfied that the failure caused the death of a worker.

The defendant appealed to the Industrial Court of Queensland seeking to have the conviction set aside.

The matter is listed for an appeal hearing on 29 September 2023.

21. E269562

22. E294447

23. E296200

24. RS2020-010

A corporate PCBU – Category 2 offence – Energised cable struck at amusement park²⁵

On 14 May 2021, a worker struck an energised cable while performing timber formwork in preparation of concreting works at an amusement park.

On 11 May 2023, the company was charged with a category 2 offence contrary to s.40C of the *Electrical Safety Act 2002* (the Act) for allegedly failing in their duty under s.30(1) of the Act, to ensure that its business or undertaking is conducted in a way that is electrically safe, which failure exposed an individual to a risk of death or serious injury.

This matter is listed for mention in the Southport Magistrates Court on 9 October 2023.

A corporate PCBU – Category 3 offence – Uncontrolled raising of mechanical arm at amusement park²⁶

This matter relates to the uncontrolled raising of a mechanical arm during the disassembly of an amusement park ride on 23 February 2021.

On 24 November 2022, the company was charged with a category 3 offence that contrary to s.33 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(2) of the Act, to ensure so far as reasonably practicable, the health and safety of workers while at work in the business or undertaking.

This matter is listed for mention in the Southport Magistrates Court on 9 October 2023.

A corporate PCBU and an officer – Industrial manslaughter – Abattoir fatality²⁷

This matter relates to the death of a worker at an abattoir when he fell whilst manually loading goat carcasses into a dehairer machine in South-Western Queensland on 29 July 2019.

On 13 August 2021, the company that operated the business and a senior officer of that company were charged with industrial manslaughter, contrary to ss 34C(1) and 34D(1) respectively of the *Work Health and Safety Act 2011* (the Act), for allegedly negligently causing the death of a worker.

The company and officer was each also charged with a category 2 offence that contrary to s.32 of the Act, they allegedly failed to comply with their respective duties under s.19(1) and s.27 of the Act and that failure exposed an individual to a risk of death or serious injury.

The matters are listed for committal hearing in the Charleville Magistrates Court commencing on 27 November 2023.

An individual PCBU – Category 1 offence – Demolition injury²⁸

This matter relates to a serious injury incident at a residential demolition site on 11 July 2019, when the roof and wall framing of the structure being demolished collapsed.

On 7 May 2021, the defendant was charged with a category 1 offence that contrary to s.31 of the *Work Health and Safety Act 2011* (the Act) they allegedly failed in their duty pursuant to s.19(1) of the Act, to ensure so far as reasonably practicable the health and safety of workers was not put at risk, and without reasonable excuse engaged in conduct that exposed an individual to a risk of death or serious injury, and were reckless to that risk.

The defendant was also charged contrary to s.38 of the Act with failing to notify the Regulator immediately after becoming aware of a notifiable incident arising out of the conduct of the business or undertaking. Further, the defendant was charged pursuant to s.39 of the Act, as a person with management or control of a workplace where a notifiable incident had occurred, for allegedly failing to ensure, so far as reasonably practicable, that the site where the incident had occurred was not disturbed until an inspector arrived at the site.

An indictment is to be prepared and presented to the Brisbane District Court on a date to be fixed.

The summary matters are listed for mention in the Brisbane Magistrates Court on 17 November 2023.

25. E301515

26. E299697 (aka E299627)

27. E275083

28. E274218

A corporate PCBU – Category 2 offence – Shredder machine fatality²⁹

It is alleged that, as part of his work duties, a worker at a waste transfer operation was required to resolve blockages in the shredder machine, by going underneath the conveyor and manually removing the material. On 22 January 2021, while conducting this duty, the machine lowered onto the worker, fatally crushing him.

On 18 January 2023, the PCBU was charged with one category 2 offence that contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(1) of the Act to ensure, so far as reasonably practicable, that the health and safety of workers engaged was not put at risk from work carried out as part of the conduct of its business or undertaking, which failure exposed an individual to a risk of death or serious injury.

This matter is listed for mention in the Brisbane Magistrates Court on 20 October 2023.

A corporate PCBU and an individual – Category 2 offence – Double fatality on Fraser Island³⁰

These matters concern the drowning-related fatalities of two Japanese students at Lake McKenzie whilst on a guided tour of K'gari on 29 March 2019.

On 3 July 2020, a tour company and an individual each were charged with a category 2 offence that contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(2) and s.28(b) of the Act respectively and that failure exposed an individual to a risk of death or serious injury.

On 8 February 2023, having entered a plea of guilty, the company was convicted and fined \$250,000. The defendant company has filed an appeal against the sentence which was heard in the Brisbane District Court on 6 September 2023. The decision has been reserved and will be delivered on a date to be fixed.

In relation to the category 2 charge against the individual, the matter is listed for mention in the Hervey Bay Magistrates Court on 19 October 2023.

A corporate PCBU – Category 2 offence – Worker fatally crushed by unrestrained pipe³¹

This matter relates to a fatality at a business premises in Townsville on 14 December 2018.

On 19 March 2020, the company that conducted the business was charged with a category 2 offence that contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), they allegedly failed in their duty under s.19(1) of the Act to ensure so far as reasonably practicable the health and safety of workers, which failure exposed an individual to a risk of death or serious injury.

The matter is listed in the Townsville Magistrate Court for a four day hearing commencing 26 February 2024.

A PCBU – Category 2 offence – Fatality³²

This matter relates to an incident on 26 June 2021, where a worker deployed a tyre deflation, resulting in the worker's fatality.

On 30 March 2023, the PCBU was charged with one category 2 offence contrary to s.32 of the *Work Health and Safety Act 2011* (the Act), that they allegedly failed in their duty under s.19(1) of the Act to ensure so far as reasonably practicable the health and safety of workers, which failure exposed an individual to a risk of death or serious injury.

This matter is listed for mention in Caboolture Magistrates Court on 25 October 2023.

29. E296847

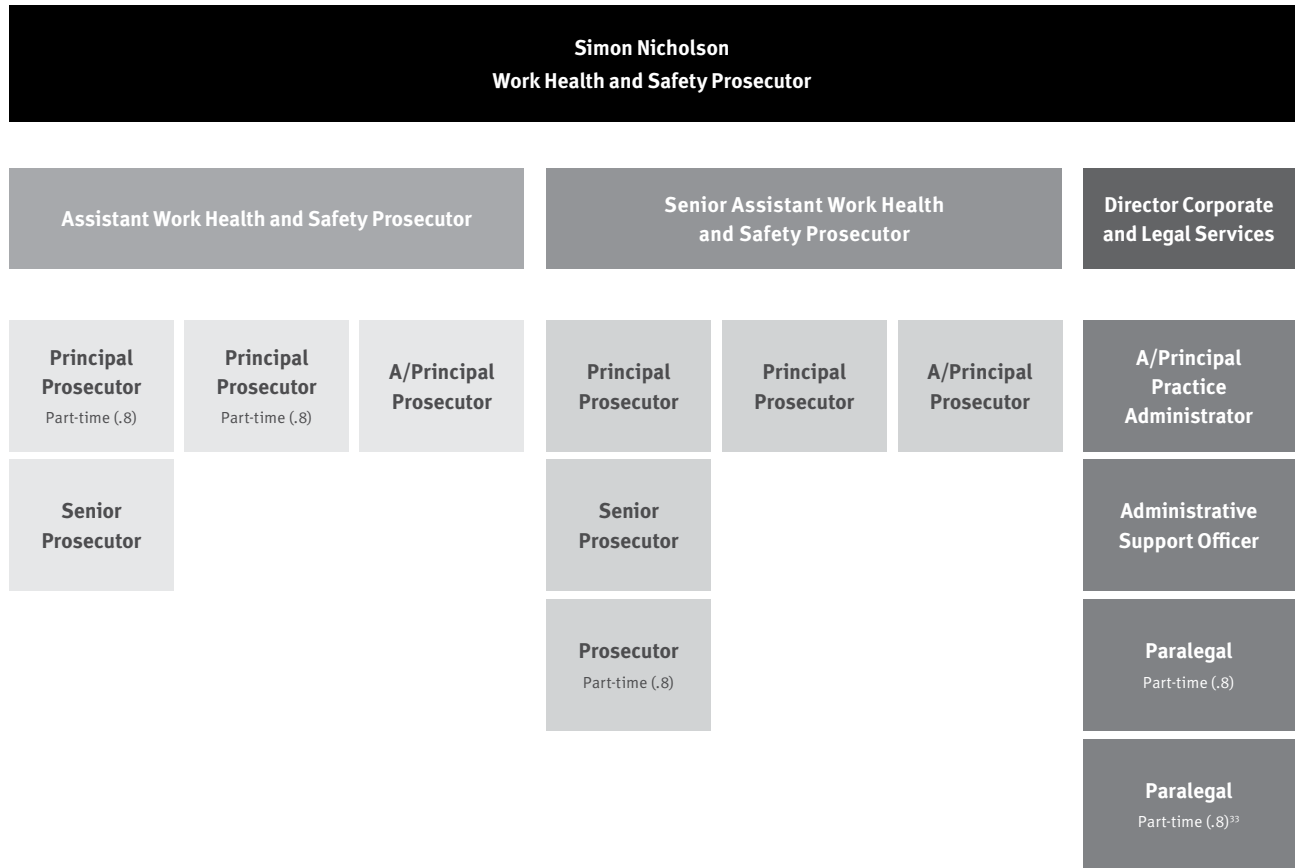
30. E270071

31. E265825

32. E303482

Annexure A

OWHSP Organisational Chart as at 30 June 2023



33. Employed by RSHQ, Non FTE

Annexure B

Advice function and the decision to charge (Guideline 1 of 2019)

Pursuant to s.48 of Schedule 2 to the *Work Health and Safety Act 2011* (the Act), this guideline is issued to:

- a. the staff of the WHS Prosecutor
- b. the regulator
- c. any public service employees employed in the department undertaking work relevant to the WHS Prosecutor's functions under the Act.

Provision of pre-brief advice

1. The Office of the Work Health and Safety Prosecutor regards the provision of pre-brief advice to the Office of Industrial Relations as a valuable practice that is in the interests of both the OWHSP and OIR. When providing pre-brief advice, it is important that the separation of the investigative and prosecutorial functions is maintained and recognised.
2. The OWHSP is available to provide pre-brief advice to OIR in:
 - a. matters which are significant, complex or major
 - b. sensitive matters
 - c. matters of particular importance for OIR's enforcement strategy
 - d. matters that are likely to have an impact on a broader class of cases; or
 - e. as agreed by the OWHSP and OIR, as resources permit for both offices.
3. It is OIR's responsibility to make operational decisions, including as to whether an investigation would be warranted, an investigation's scope, the ongoing management of an investigation, the prioritisation of investigations and the deployment of resources during investigations. The OWHSP will take into account OIR's prioritisation of their matters in providing pre-brief advice.
4. The OWHSP may be requested to provide legal advice on such things as:
 - a. the identification of the elements of offences
 - b. evidentiary issues
 - c. substantive impediments to proving the offence and how these might be addressed
 - d. identifying particular witnesses who could be spoken to and lines of inquiry that may assist
 - e. the seriousness of the offending.
5. In requesting advice, OIR should identify the legal issues and potential offences on which advice is sought. Whilst a full brief of evidence is not required for the purpose of pre-brief advice, sufficient factual background against which to frame the advice should be provided. This information should be provided in writing.
6. In drafting pre-brief advice, the OWHSP lawyer should consider consulting with the Work Health and Safety Prosecutor (WHSP) or the WHSP's delegate before coming to a concluded view and the final advice should be settled by the WHSP or the WHSP's delegate before it is provided to OIR. It will not be possible in every case for the OWHSP to give legal advice on whether, on the evidence, there are reasonable prospects of a conviction when consulted in the investigative stage. The material that has been assembled for the consideration of the OWHSP at the investigation stage, particularly in urgent matters, may be inadequate to make that assessment even with a number of provisos. In some instances, it will still be of assistance to OIR to identify areas of deficiency, in order that they may be addressed.
7. Requests for advice should be settled by nominated senior officer in OIR and the decision to accept a request for advice will be made by the WHSP or the WHSP's delegate.
8. The OWHSP is also available to discuss in general terms a matter with OIR and provide an indication of the issues that may arise for consideration or deal with any straight forward issues. Any thoughts expressed in such discussion or consultation are done so on the basis that they represent a best view on the information provided and are not determinative of a more informed OWHSP view.

Annexure B

Advice function and the decision to charge (Guideline 1 of 2019)

9. Requests for urgent legal advice may be made and the OWHSP will assist where possible, however, advice can only be provided when there is adequate time to consider the material. In some circumstances, it may not be possible to give legal advice in the time available. Any advice provided orally should be confirmed in writing at the earliest possibility by the OWHSP lawyer.
10. The decision to grant an indemnity is one for the Attorney General. If it becomes apparent in the investigation that a successful prosecution will depend on an indemnity being given to a participant in the crime, OIR as the investigative agency should seek the early advice of the OWHSP. Where investigators consider that an indemnity or a commitment to obtain the testimony or evidence of a person by way of an induced statement may be required, OWHSP should be consulted. This consultation should take place prior to an induced statement being taken.

The decision to charge

11. The decision to commence a prosecution under the WHS Act is one ultimately for the WHSP (save for where a delegation has been given to an inspector to take proceedings for a category 3 offence under the WHS Act). That decision is made by applying the Guidelines of the Director of Public Prosecutions.
12. The decision to proceed on indictment, ultimately reflected in the filing of an indictment, is a decision for the Director of Public Prosecutions or a prosecutor who holds a commission from the Director to sign indictments.
13. Whilst the decision to charge does not rest with OIR, the decision will have regard to the views of OIR in its recommendation to the OWHSP.
14. Ordinarily, a brief of evidence must be referred to the OWHSP before a prosecution is instituted by the WHSP (or for definitive advice on whether to commence a prosecution under the Guidelines of the Director of Public Prosecutions where OIR proposes to institute proceedings subsequent to that advice).
15. Upon the receipt the brief of evidence the OWHSP will: examine the brief to determine whether a prosecution should be instituted and, if so, on what charge or charges:
 - a. if a prosecution is to be instituted, prepare a complaint
 - b. provide the draft complaint to OIR for the purpose of consultation prior to the complaint being made
 - c. contingent upon the outcome of that consultation, commence a prosecution by making and filing a complaint.
16. Where OIR has the ability to commence a prosecution under certain legislation, it will often refer a brief of evidence to the OWHSP for assessment. In those circumstances, upon the receipt the brief of evidence the OWHSP will:
 - a. examine the brief to determine whether a prosecution should be instituted and, if so, on what charge or charges
 - b. advise OIR of the outcome
 - c. if a prosecution is to be instituted, prepare a complaint
 - d. send the complaint to the agency for execution and service.
17. Where OIR has the ability to commence a prosecution for certain offences, including by reason of authorisation by the WHSP, there may nevertheless be instances where it requests that the WHSP institute proceedings contingent upon the assessment of a brief of evidence. In those circumstances, OIR should indicate in the referral for assessment to OWHSP if such a request is being made.
18. Where OWHSP determines that there is insufficient evidence to commence a prosecution, or that there is sufficient evidence but that the public interest does not require a prosecution, reasons for that decision will be provided to OIR.

Annexure C

Disclosure (Guideline 2 of 2019)

Pursuant to s.48 of Schedule 2 to the *Work Health and Safety Act 2011* (the Act), this guideline is issued to:

- a. the staff of the WHS Prosecutor
- b. the regulator
- c. any public service employees employed in the department undertaking work relevant to the WHS Prosecutor's functions under the Act.

Disclosure principles

1. The guiding principle in determining what material should be disclosed by the prosecution is that there is a need to ensure that the accused receives a fair trial.
2. In order to ensure that the accused receives a fair trial, there must be adequate notice of the evidence to be adduced as part of the prosecution case.
3. The prosecution's duty of disclosure is ethical in nature and it is an obligation that is owed to the court. It is a significant aspect of the administration of criminal justice and the court's capacity to ensure the accused's right to a fair trial. Accused are entitled to know the case against them, so that they can properly defend the charges they face. An accused is entitled to know the evidence that will be adduced in support of the charges and whether there is any other material which may be relevant to the defence of the charges, including material relating to the credibility or reliability of a prosecution witness. A failure to disclose may result in a miscarriage of justice.
4. In addition to fulfilling statutory obligations relating to disclosure, the prosecution must disclose to the accused any material which:
 - a. can be seen on a sensible appraisal by the prosecution to run counter to the prosecution case (i.e. points away from the accused having committed the offence); or
 - b. might reasonably be expected to assist the accused in advancing a defence; or
 - c. might reasonably be expected to undermine the credibility or reliability of a material prosecution witness.
5. The prosecution duty of disclosure under this guideline does not extend to disclosing material which is:
 - a. relevant only to the credibility of defence (as distinct from prosecution) witnesses
 - b. relevant only to the credibility of the defendant
 - c. relevant only because it might deter the defendant from giving false evidence or raising an issue of fact which might be shown to be false
 - d. relevant in that it might alert and prevent the defendant from creating a trap for themselves based on suspect evidence (i.e. a suspect alibi), if at the time the prosecution became aware of the material it was not disclosable pursuant to Paragraph 4.
6. A precondition for prosecution disclosure is that the material is in the possession of, or the information is known by, the prosecution. For the purposes of this guideline, and at common law, there is no distinction between the prosecuting agency and the investigative agency. The courts generally regard the investigative agency and the prosecuting agency as "the prosecution". Consequently, the OWHSP largely depends on OIR as the investigative agency to inform it of the existence of material which should be disclosed to the defence, whether the investigative agency holds it or is aware it is held by a third party including another, State, Territory or Commonwealth agency, private entity or individual.
7. If a matter involves investigation by more than one agency, the OWHSP depends on OIR, as the investigative agency which refers the brief to the OWHSP, to inform the OWHSP of all disclosable material which any of the agencies involved hold or are aware of.
8. Disclosure should be timely and occur as soon as is reasonably practicable. The disclosure obligation is ongoing throughout the prosecution process and continues after trial and the conclusion of any appeals.

Annexure C

Disclosure (Guideline 2 of 2019)

9. Disclosure of the prosecution case will ordinarily be by provision of a copy of the brief of evidence. A copy of the brief should always be provided where requested. There may be matters, however, where a defendant wishes to plead guilty quickly without a copy of a brief of evidence being requested and provided. The duty of disclosure is not incompatible with a defendant wanting to plead guilty before a full brief is served and a plea of guilty may well be accepted by the prosecution in such circumstances.
10. The prosecution may hold or be aware of information or material, other than the material in the brief of evidence, which has:
 - a. been gathered or come to the attention of investigators in the course of the investigation; or
 - b. is otherwise held within any part of OIR, other agencies, or a third party;that satisfies the requirements for disclosure set out in the Disclosure Principles in this guideline.
11. Examples of material that may fall within this category of material appear below.

Disclosure affecting credibility or reliability of a prosecution witness

12. The prosecution should disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:
 - a. a relevant previous conviction or finding of guilt
 - b. a statement made by a witness which is inconsistent with any other statement made by the witness
 - c. a relevant adverse finding in other criminal proceedings or in non-criminal proceedings (such as disciplinary proceedings, civil proceedings or a Royal Commission)
 - d. evidence before a court, tribunal or Royal Commission which reflects adversely on a witness;
 - e. any physical or mental condition which may affect reliability
 - f. any concession or benefit which has been offered or granted to a witness in order to secure that person's testimony for the prosecution
 - g. where credibility is in issue, that the witness has been charged with a relevant offence.
13. Some examples of material of the kind referred to in paragraph 12. are further discussed below.

Previous convictions

14. Minor prior convictions for formal or non-contentious witnesses may not meet the requirements for disclosure, whereas previous convictions for perjury and offences involving dishonesty should always be disclosed to defence.
15. The prosecution must, on request, disclose a copy of a criminal history of a proposed witness which is in the possession of the prosecution. Where blanket requests for 'all witnesses' are made, the prosecution should attempt to negotiate with defence practitioners to ensure that unnecessary checks do not have to be undertaken for formal or non-contentious witnesses.
16. The duty to disclose relevant prior convictions is not confined to cases of specific requests for the criminal histories of witnesses. For that reason, it is appropriate for the prosecution to ensure, prior to the commencement of any trial or summary hearing, that criminal history checks have been undertaken for significant civilian witnesses whose credit may be in issue. In addition to paragraph 14, in some cases convictions relating to Driving Under the Influence or illicit substances might be relevant particularly if the proposed witness is to give evidence relating to operation of plant/machinery.

Annexure C

Disclosure (Guideline 2 of 2019)

Adverse findings

17. Where a prosecution witness has been the subject of an adverse finding (including a finding of dishonesty) in other criminal proceedings, disciplinary proceedings, civil proceedings or a Royal Commission, such adverse findings should be disclosed by the prosecution to the defence. That is, unless the finding does not meet the requirements for disclosure set out in the Disclosure Principles in this guideline. Regard should be had to the nature of the evidence expected to be given and the issues likely to arise in the case at hand. For example, it may not be necessary to disclose adverse findings which arise from inefficiency, incompetence or disobedience of orders, but it might be necessary to disclose any history relevant to those matters in paragraph 16.

Concessions to witnesses

18. The prosecution must disclose:
 - a. any concession offered or provided to a witness with respect to his or her involvement in suspected offences in order to secure his or her evidence for the prosecution, whether as to choice of charge, the grant of an undertaking or otherwise
 - b. any monetary or other benefit or inducement that has been claimed by, or offered or provided to, a witness. This does not include any payments made in the ordinary and usual course of a witness coming to court to give evidence (e.g. the payment of travel and accommodation expenses or the fees of expert witnesses) and disclosure will be subject to any legislative requirements such as witness protection legislation
 - c. where the witness participated in the suspected offending that is the subject of the charges against the defendant, whether the witness has been dealt with in respect of his or her own involvement and, if so, whether the witness received a discount on sentence as a result of undertaking to cooperate with the prosecution in relation to the current matter.

Disclosure affecting the competence or credibility of an expert witness or of expert or scientific evidence

19. The prosecution should disclose to the defence information of which it is aware that is relevant or potentially relevant to the competence or credibility of an expert witness the prosecution intends to rely on.
20. The prosecution should also disclose to the defence information of which it is aware that is in the form of an expert opinion and/or in the nature of scientific evidence, which differs from such evidence already received by the prosecution or in some way casts doubt on the opinions or evidence on which the prosecution intends to rely where that opinion or evidence is relevant and not merely speculative.

Disclosure of a statement by a witness who is not credible

21. If the prosecution has a statement from a person whose evidence meets the requirements for disclosure as set out in the Disclosure Principles in this guideline, but who will not be called because they are not credible, the defence should be provided with copy of the statement of that witness. The witnesses contact details may also be provided in certain circumstances – see s.590AP *Criminal Code* (Qld).³⁴

³⁴. See Annexure to Disclosure Guideline 2/2019_Disclosure legislation

Annexure C

Disclosure (Guideline 2 of 2019)

Material withheld from disclosure

22. Where material has been withheld from disclosure as:
- it is considered that the material is immune from disclosure on public interest grounds; or
 - disclosure of the material is precluded by statute; or
 - it is considered that legal professional privilege should be claimed in respect of the material;

the defence should ordinarily be informed of this. In most cases it should be possible to provide some general information as to the nature of the material concerned. The extent of any further information will be determined by reference to the particular matter, but as a general rule information about the nature of the claim should be provided unless it will compromise that claim (e.g. the fact of there being an informer claim is not usually disclosed). Notification of the existence of such material may in some circumstances generate the issuing of a summons or subpoena to produce the material.

23. If the existence of material that otherwise meets the requirements for disclosure as set out in the Disclosure Principles in this guideline cannot be disclosed at all because of one of the matters identified in paragraph 22, or where a claim for immunity has been upheld by a court, then consideration will need to be given as to whether it is fair for the prosecution to proceed or continue in the absence of such disclosure. In some circumstances a prosecution may not be able to proceed and may need to be discontinued.

Disclosure and sentencing

24. While disclosure most frequently arises in the context of hearings and trials there are some important obligations on the prosecution in the context of the sentencing process. In particular, any information or material that may affect an assessment of the moral culpability of a defendant on sentence should be disclosed. Such material will often be in the possession of OIR and should be disclosed to the OWHSP in that event.

Other matters

Timing of disclosure

25. Disclosure should be timely, and occur as soon as practicable, always remembering the obligation is ongoing throughout the prosecution process, including during the sentencing process and continues after trial and the conclusion of any appeals (see s.590AL *Criminal Code* (Qld))³⁴. However, in certain circumstances, it may be appropriate to delay disclosure. Some examples of this may include the following:
- where disclosure might prejudice ongoing investigations (see paragraphs 22 and 23), and OIR requests the non-disclosure of material that would otherwise be disclosable under this guideline, disclosure may be able to be delayed until after the investigations are completed
 - where the prosecution is of the opinion that to disclose evidence is likely to lead to a witness being intimidated, or a risk to the safety of a witness, or to some other interference with the course of justice.
26. Where disclosure of material has been delayed in accordance with the preceding paragraph, the defence should ordinarily be so informed, unless to do so might compromise the reason for the delay (e.g. the existence of an ongoing investigation).

35. See Annexure to Disclosure Guideline 2/2019_Disclosure legislation

Annexure C

Disclosure (Guideline 2 of 2019)

How material should be disclosed

27. There are various ways material may be disclosed, and this guideline does not purport to prescribe a necessary means of disclosure. Material may be disclosed in hard copy or electronic form. Disclosure may occur via a schedule listing the material, or by making the material available for inspection or copying. Where a schedule listing material is provided, it should include a description making clear the nature of that material and the defence should be informed that arrangements may be made to inspect the material. This is because the essence of disclosure is that the defence be made aware of the existence of the material – in many instances they may not actually wish to have a copy of the material.
28. There may be cases where, having regard to:
- a. the absence of information available to the prosecution as to the lines of defence to be pursued; and/or
 - b. the nature, extent or complexity of the material gathered in the course of the investigation;

there may be special difficulty in accurately assessing whether particular material meets the requirements for disclosure set out in the Disclosure Principles in this guideline. In these cases, after consultation with OIR, the prosecution may permit the defence to inspect such material.

Disclosure of material held by third parties

29. Where the prosecution is aware of disclosable material that is in the possession of a third party, the defence should be informed of:
- a. the name of the third party
 - b. the nature of the material
 - c. the address of the third party (unless there is good reason for not doing so and if so, it may be necessary for the prosecution to facilitate communication between the defence and the third party).

Annexure to Disclosure (Guideline 2 of 2019) - Disclosure Legislation

Indictable offences

Criminal Code (Qld) Chapter 62, Chapter Division 3 - Disclosure by the prosecution

1. The provisions apply to a “relevant proceeding”, which is defined in s.590AD to mean:
 - a. A committal proceeding, or a trial on indictment; or
 - b. A prescribed summary trial (defined in s.590AD as meaning a summary trial of certain indictable offences pursuant to nominated provisions under the *Criminal Code* (Qld), or summary proceedings in relation to an indictable offence against the *Drugs Misuse Act 1986* (Qld) where the prosecution has elected summary jurisdiction, or a charge for an offence prescribed under a regulation).
2. s.590AO provides that the prosecution does not have to disclose “sensitive evidence” (which is defined in s.590AF). A court may make an order in relation to disclosure of such material.
3. Nothing requires the prosecution to disclose information which it is otherwise unlawful to disclose (s.590AC(1)).

Mandatory disclosure

4. A copy of each of the following:
 - a. Bench charge sheet, complaint or indictment containing the charges against a person.
 - b. The accused’s criminal history in the prosecution’s possession.
 - c. Any statement of the accused in the prosecution’s possession.
 - d. For each proposed prosecution witness who is or may be an “affected child” (defined in s.590AD by reference to the *Evidence Act 1977*, s.21AC), a written notice naming the child and describing why they may be an affected child.
 - e. For all other proposed prosecution witnesses, any statement in the prosecution’s possession, or if there is no statement, written notice of the witness’s name.
 - f. If s.93B of the *Evidence Act 1977* (Qld) is to be relied upon (pre-recording of a child’s evidence), a notice stating that intention and the matters set out in s.590C(2) of the *Criminal Code* (Qld).
 - g. Any report of any test or forensic procedure relevant to the proceeding and in the prosecution’s possession.
 - h. A written notice describing any test or forensic procedure, including one that is not yet completed, on which the prosecution intends to rely.
 - i. A written notice describing any “original evidence” (defined in s.590AD as a thing that may be tendered in the proceeding) on which the prosecution intends to rely. (An exhibit list should usually suffice.)
5. Anything else on which the prosecution intends to rely. (This may include maps or charts etc to be used as an aid for the Court or jury. It may also include a submission on a legal issue, for example, the reversal of the onus of proof, or a submission for an alternative verdict.)
6. Written notice of, or a copy of, anything else in the prosecution’s possession prescribed by regulation.
7. Pursuant to s.590AI(2), this material must be disclosed as soon as practicable, but at least:
 - a. For a committal hearing or prescribed summary trial, 14 days before the date set by the court for the commencement of the hearing of evidence
 - b. For a trial on indictment, no more than 28 days after presentation of the indictment, or if the trial starts less than 28 days after presentation, before the evidence starts to be heard.
8. A number of paragraphs in s.590AH(2) refer to items in the “possession of the prosecution.” The expression “possession of the prosecution” is given an extended definition by s.590AE, and it includes things the “arresting officer” (defined in s.590AD as including a person who brought a charge if the accused was not arrested) or prosecutor were aware of, and which could be located without unreasonable effort. This definition would extend the expression “possession of the prosecution” to include things held by third parties and known to the police or prosecutor.

Annexure to Disclosure (Guideline 2 of 2019) - Disclosure Legislation

9. The obligation to disclose an exculpatory thing continues post trial until the accused is discharged or acquitted or dies (that is, the obligation continues indefinitely even after the person has been convicted and has been unsuccessful on appeal) (s.590AL(3)). Exculpatory material is defined in s.590AD as “reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person.”

Disclosure on request

10. The matters listed below, which are disclosable on request, must all be disclosed as soon as practicable:
 - a. Particulars of a charge against the accused if a proposed prosecution witness is or may be an affected child. Must be disclosed as soon as practicable (s.590AJ(2)(a), s.590AK(2)).
 - b. A criminal history of a proposed witness for the prosecution that is in the possession of the prosecution (s.590AJ(2)(b), s.590AK(2)). “Possession of the prosecution” is given an extended definition in s.590AD. The common law requires the prosecution to disclose any criminal history of a witness, where their credit or reliability is in issue, whether requested by defence or not.
 - c. A copy or notice of any thing in the possession of the prosecution that may reasonably be considered to be adverse to the reliability or credibility of a proposed witness for the prosecution (s.590AJ(2)(c), s.590AK(2)).
 - d. Notice of anything in the possession of the prosecution that may tend to raise an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding (s.590AJ(2)(d), s.590AK(2)).
 - e. Any statement of any person relevant to the proceeding and in the possession of the prosecution but on which the prosecution does not intend to rely at the proceeding (s.590AJ(2)(e), s.590AK(2)).
 - f. A copy or notice of any other thing in the possession of the prosecution that is relevant to the proceeding but on which the prosecution does not intend to rely at the proceeding (s.590AJ(2)(f), s.590AK(2)). This may include documents such as accounting records, correspondence and emails seized pursuant to a warrant, but upon which the possession does not rely.

Summary offences

Magistrates Court PD No.13 of 2010

11. The Practice Direction defines “Prosecution” to mean either the DPP or Police Prosecution Corps, but should be read to include OWHSP.
12. Prior to the initial appearance, and within a reasonable time of any request, a statement of facts is to be delivered to the Defence by the prosecution which had carriage of the matter at the time the request was made. If there has been no earlier request for a Statement of Facts, it is to be handed personally to a defendant, who is not legally represented, at an appropriate time before his/her first appearance.
13. Written notices which may be given pursuant to Chapter 62 Chapter Division 3 may, in addition to hard copy documents, be given by means of electronic communication.
14. In the event that the defence requests the Prosecution to provide to it certain specified statements and/or exhibits then the Prosecution will make copies of the same available for collection by the defence (and advise the Defence of same) within 14 days of the request or such longer time as directed by the Court.
15. The full brief of evidence must be made available by the Prosecution for collection within 35 days of the matter being set for trial and at least 14 days prior to the date set for the hearing of the trial. “Full brief”, means a brief which contains copies of signed statements of witnesses and exhibits upon which the prosecution proposes to rely on in the proceeding and all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the defendant.

Annexure to Disclosure (Guideline 2 of 2019) - Disclosure Legislation

16. Briefs of evidence and any specified statements and/or exhibits shall have the statements endorsed with original signatures.
17. “Specified statements and/or exhibits” means statements of the prosecution witnesses who will provide the “substantial evidence” in the matter and copies of exhibits of substantial evidence as requested by the defence or prosecution for the purposes of finalising a case conference.
18. “Substantial evidence” means the evidence which tends to prove an offence but does not include corroborative evidence or continuity evidence or evidence of ownership (except where it is expected that such evidence will be a major point of the litigation).

Professional rules

2011 Barristers’ Rules (made pursuant to the Legal Profession Act 2007 (Qld)) - R.86 and 87 Australian Solicitors Conduct Rules 2012 - R.29.5 and 29.6

19. 86/29.5 - A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused other than material subject to statutory immunity, unless the prosecutor believes on reasonable grounds that such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person.
20. 87/29.6 - A prosecutor who has decided not to disclose material to the opponent under Rule 86/29.5 must consider whether:
 - a. the charge against the accused to which such material is relevant should be withdrawn
 - b. the accused should be faced only with a lesser charge to which such material would not be so relevant. That consideration must occur as soon as practicable after the prosecutor has decided not to disclose material.



About us

The Office of the Work Health and Safety Prosecutor (OWHSP) is an independent prosecution office, established by the Queensland Parliament under the *Work Health and Safety Act 2011*. OWHSP conducts and defends proceedings under Queensland’s workplace and resources health and safety laws.

Decisions of the OWHSP in relation to whether to commence or discontinue charges in proceedings are made in accordance with the guidelines of the Director of Public Prosecutions (Qld).

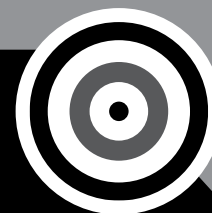
Purpose



Our purpose is to:

- provide an independent prosecution service
- meet the expectations of our client agencies and other stakeholders
- understand the priorities of our client agencies
- contribute to the safety of Queensland workers and members of the public.

Aim



We aim to:

- act with courtesy, professionalism and sensitivity toward the interests of client agencies, stakeholders, affected workers and families and the Queensland community
- ensure consistency in decision-making
- work as model litigants
- ensure the timely advice of decisions and outcomes to our stakeholders.

Strategic priorities

Our strategic priorities are:

- to provide an efficient, effective and transparent prosecution service
- to establish and maintain effective engagement with our client agencies and stakeholders
- to develop and recognise our people in a healthy, diverse, collaborative, and just workplace.



Performance measures

We perform **effectively**

- by applying the Guidelines of the Director of Public Prosecutions in decisions to commence, not commence, continue, or discontinue a prosecution in 100% of cases
- by applying the *Human Rights Act 2019* in so far as addressing any incompatibility with a human right in our decision-making processes in 100% of cases



- by aiming to resolve 90% of cases we prosecute in conviction¹
- by aiming to achieve a conviction rate of 70% in matters prosecuted in defended summary hearings
- by aiming to achieve a conviction rate of 70% in matters tried on indictment.

We perform **efficiently**:



- by aiming to assess briefs of evidence within 120 days of referral.

1. The conviction rate is the percentage of defendants convicted in prosecutions which proceeded to a decision or verdict. The calculation does not include defendants where the OWHSP determined not to commence a prosecution or discontinued a prosecution prior to decision or verdict. 'Conviction' includes any finding of guilt, and is not limited to prosecutions in which a conviction is recorded. It also includes prosecutions with multiple charges, where at least one charge is proven.

Annexure E

Performance, efficiency and effectiveness data: comparative data

New referrals received				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
New briefs of evidence (briefs) referred	85	96	81	127¹
Ongoing brief assessments at EOFY				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Brief assessments ongoing at EOFY, excluding those in suspension	31 briefs (relating to 61 suspects)	22 briefs (relating to 38 suspects)	49 briefs (relating to 110 suspects)	115 briefs (relating to 142 suspects²)
Brief assessments suspended at EOFY whilst investigators responded to requisitions	11 briefs (relating to 20 suspects)	7 briefs (relating to 25 suspects)	15 briefs (relating to 45 suspects)	1 brief (relating to 1 suspect)
Total briefs in brief assessment phase including those where requisitions were raised	42 briefs (relating to 81 suspects)	29 briefs (relating to 63 suspects)	64 briefs (relating to 155 suspects)	116 briefs (relating to 143 suspects)
Pre-brief legal advice requests³				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Requests for pre-brief advice	18	9	13	5
Pre-brief advice files open at the EOFY pending provision of legal advice by the OWHSP or the referral of a brief of evidence	11	Nil	Nil	1

1. 121 briefs were referred to the OWHSP by the Office of Industrial Relations (OIR) and 6 briefs by Resources Safety and Health Queensland (RSHQ). The number of suspects from those BOES was 187.

2. The final number of suspects is not known until the brief assessment has concluded and the matter is decided by the WHS Prosecutor. This figure excludes matters where the brief assessment was in suspension, awaiting a response to requisitions.

3. A brief may or may not ultimately be referred.

Appendix E

Performance, efficiency and effectiveness data: comparative data

Prosecutions successfully finalised during FY⁴				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Prosecutions successfully finalised	42	83	72	46⁵
Fines imposed in relation to successful prosecutions	\$5,501,200	\$8,430,600	\$3,589,600	\$2,662,160⁶
Number of successful matters where a guilty plea was entered	Not previously reported	77	64	44
Number of successful matters which proceeded ex parte	Not previously reported	2	1	0
Unsuccessful or discontinued prosecutions during FY				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Unsuccessful prosecutions	2	5	7	2⁷
Prosecutions withdrawn⁸	1	18	18	16⁹
Prosecutions withdrawn – EU¹⁰	2	1	8	9
Total prosecutions finalised in the FY				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Total prosecutions finalised	47	107	105	73¹¹

4. The final court order date must occur in the relevant financial year. In keeping with previous annual reports this excludes matters that are the subject of an appeal, unless the appeal relates only to the matter of costs.
5. There were 46 successful prosecutions in FY 2022–23. This figure excludes two further successful prosecutions matters where a plea of guilty was entered, however, they went on appeal regarding the adequacy of the fine imposed by the Court (one per the defence and one per the prosecution). These two matters were still before the Court at the end of the reporting period.
6. See footnote 5 above. The figure of \$2,662,160 excludes a matter where the prosecution entered an appeal alleging the fine of \$30,000 was inadequate (E299159) and also a matter where the defence entered an appeal alleging the fine of \$250,000 was excessive (E270071). The total fines ordered in the reporting period including the appealed matters was \$2,942,160.
7. In relation to these two unsuccessful prosecutions the issue of costs is still being resolved. These were matters which were struck out. (The figure excludes another summary prosecution where although the defendant was found not guilty, the prosecution appealed the verdict E282561 and the appeal is not likely to be listed until 2024).
8. The prosecution offered no evidence and the matters were discontinued. This figure does not include decisions to substitute charges or withdraw a charge when there are multiple charges.
9. Twelve of these discontinued matters related to referrals from OIR and four related to matters referred by RSHQ. One prosecution relating to a category 1 indictable offence was discontinued as a result of a decision of the Mental Health Court that the defendant was permanently unfit for trial.
10. Discontinued as a result of an Enforceable Undertaking being entered by the defendant with the WHS Regulator.
11. Of the prosecutions finalised six related to referrals from RSHQ and the other 67 related to referrals from OIR.

Appendix E

Performance, efficiency and effectiveness data: comparative data

Complaints before the Court at the EOFY				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Complaints before the Court at EOFY	108	164	135	130¹²
Prosecutions successfully finalised during FY				
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Total prosecution decisions (to prosecute or not prosecute)	202	387	184	231¹³
Number of briefs of evidence related to those decisions	85	104	51	70
Decisions to prosecute	105	149	58	76¹⁴
Number of bodies corporate prosecuted	64	77	35	47
Number of individuals prosecuted	41	72	23	29
Officers, within those individuals, prosecuted	15	16	12	7
Workers, within those individuals, prosecuted	Not previously reported	Not previously reported	Not previously reported	8
Decisions not to prosecute	107	238	126	155
No prima facie case	82	197	94	102
No reasonable prospects of conviction	12	20	21	36
Not in the public interest	13 ¹⁵	21	11	17

12. This figure excludes three unsuccessful prosecution matters under appeal where the only issue which remained to be determined before the Court related to costs.

13. 87 decisions in relation to bodies corporate and 144 decisions in relation to individuals.

14. Three prosecutions were later withdrawn in the same reporting period.

15. This includes a matter which was reported in the FY 2019–20 OWHSP Annual Report as discontinued on public interest grounds E253136.

Appendix E

Effectiveness measures

KPI: Compliance in applying DPP Guidelines in decisions to commence, not commence, continue or discontinue (100%)

Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
100% in relation to 202 decisions	100% in relation to 408 decisions	100% in relation to 215 decisions	100% in relation to 258 decisions¹⁶

KPI: Prosecutions resulting in a conviction (90%)

Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
KPI exceeded 95.4% ¹⁷	KPI exceeded 95.4% ¹⁸	KPI exceeded 91.4% ¹⁹	KPI exceeded 97.9%²⁰

KPI: Defendants in defended summary hearings resulting in conviction (70%)

Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
KPI not met 50% ²¹	KPI not met 44.4% ²²	KPI not met 16.7% ²³	KPI exceeded 100%²⁴

16. There were 231 decisions to prosecute or not prosecute; There were 14 decisions to fully discontinue a prosecution (excluding a decision of the Mental Health Court referred to in Footnote 9); There were 13 decisions to enter an appeal. An appeal may be in relation to the decision of the Court at first instance or in relation to interlocutory matters.

17. 83 out of 88 prosecutions which proceeded to a decision or verdict resulted in a conviction.

18. 42 out of 44 prosecutions which proceeded to a decision or verdict resulted in a conviction.

19. 74 out of 81 prosecutions which proceeded to a decision or verdict resulted in a conviction.

20. Of 47 prosecutions which proceeded to a decision or verdict, and which are not under appeal, 46 resulted in a conviction. The figure of 47 excludes two matters (RS2020-019 and RS2020-015) where the prosecutions were struck out at first instance, the prosecution appealed but later withdrew the appeals and therefore the matters did not proceed to a decision or verdict. Also see footnote 5.

21. One out of two defended summary hearings resulted in a conviction.

22. Four out of nine defended summary hearings resulted in a conviction.

23. One out of six defended summary hearings resulted in a conviction.

24. There were two defended summary hearings finalised in the reporting period, one of which resulted in a conviction. In relation to the not guilty finding in the other, the prosecution has appealed the verdict. Accordingly, one out of one finalised defended summary matters was successful.

Appendix E

Effectiveness measures (continued)

KPI: Defendants tried on indictment and convicted (70%)			
Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
KPI not met 0% ²⁵	Nil cases	KPI not met 66.6% ²⁶	KPI exceeded 100%²⁷

Efficiency measures

KPI: Briefs of evidence assessed within 120 days of referral (100%)²⁸			
Result FY 2019/20 ²⁹	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
KPI not met 33.6%	KPI not met 23.1%	KPI not met 25%	KPI not met 10%³⁰

Average decision time in days per brief of evidence			
Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
161	202	178.2	262

KPI: Pre brief advice provided within 30 days (100%)			
Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23
Data not reported	KPI not met 55% ³¹	KPI not met 45.5% ³²	KPI not met 80%³³

25. One defendant was retried after an appeal and was found not guilty.

26. Two out of three defendants tried on indictment resulted in a conviction.

27. One out of one defendants tried on indictment resulted in a conviction.

28. Reported on a per brief of evidence basis up until FY 2022–23. Now calculated on a per suspect basis.

29. The KPI in this reporting period was briefs of evidence assessed within 90 days of referral (85%).

30. 231 decisions to prosecute or not prosecute a suspect were made in FY 2022–23, in relation to 70 briefs of evidence, and the average decision time per suspect or per brief of evidence was 262 days. The KPI was met in relation to 21 files (or suspects) out of 231 or in relation to seven briefs of evidence out of 70. The assessment time ranged between 27 and 577 days.

31. Five out of nine requests met the KPI of 30 days.

32. Five out of eleven requests met the KPI of 30 days.

33. Four out of five requests met the KPI of 30 days.

