

ANNUAL REPORT 2023–2024

Office of the Work Health
and Safety Prosecutor





State of Queensland 2024

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

**ANNUAL REPORT
2023–2024**

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23 August 2024

The Honourable Grace Grace MP
Minister for State Development and Infrastructure,
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 2023 until 30 June 2024.

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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Office of the Work Health and Safety Prosecutor

2023–2024 review

Introduction

I am the Work Health and Safety Prosecutor (WHSP), appointed on 31 October 2022 by the Governor in Council, on the recommendation of the Honourable Grace Grace, Minister for State Development and Infrastructure, 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 State Development and Infrastructure (the Department) 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 2023–2024, 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 2023–2024, the OWHSP:

- had carriage of 169 prosecutions which were still before various levels of Queensland courts²
- received 99 new briefs of evidence over the financial year³
- successfully finalised 85 matters, in relation to which \$6,826,260 in fines were imposed⁴
- made 457 prosecution decisions (to prosecute or not prosecute a suspect), an increase of 98 per cent from the previous financial year⁵, as follows:
 - There were 165 decisions to prosecute, including 21 decisions to prosecute officers and 22 to prosecute workers.
 - There were 292 decisions not to prosecute.

In 2023–2024, the OWHSP incurred direct costs of \$5,182,291⁶ (mainly comprising staff expenses and legal costs).

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

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

³ This is a decrease of 22 per cent in the number of briefs referred from 2022–2023 (which was, 127 briefs relating to 187 suspects). Whilst the number of briefs referred decreased in 2023–2024, the number of suspects identified in those briefs (to be considered for prosecution) was 237 (an increase of 26.7 per cent).

⁴ This figure excludes five successful prosecution matters where appeals were lodged (three by the defence and two by the prosecution). These matters were still before the Court at the end of the reporting period.

⁵ In 2022–2023, there were 231 decisions to prosecute or not prosecute made.

⁶ This figure excludes accommodation and other corporate expenses incurred directly by the Office of Industrial Relations (OIR) to support the OWHSP. OIR is currently funded for this purpose partly through the Department of State Development and Infrastructure (DSDI) and partly by Resources Safety and Health Queensland (RSHQ). Following machinery-of-government changes effective from 18 December 2023, the OWHSP moved from the Department of Education (DOE) to DSDI. Financial statements incorporating OWHSP for the period 1 July 2023 to 31 December 2023 can be found in the DOE annual report. Financial Statements incorporating OWHSP for the period 1 January 2024 to 30 June 2024 can be found in the DSDI annual report.

The OWHSP conducted approximately:

- 546 mentions⁷ (in person, by phone or administratively)
- 86 sentence hearings
- 22 other types of hearings (directions hearings, application hearings, committal hearings and costs hearings)
- 85 days of summary hearings (trials)
- 32 review mentions related to trials
- 1 presentation of an indictment
- 7 attendances for District Court appeals.

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 2024, the OWHSP Executive comprised the following members:

- Senior Assistant Work Health and Safety Prosecutor, Mr David Gore
- Assistant Work Health and Safety Prosecutor, Ms Kate Milbourne
- Acting Assistant Work Health and Safety Prosecutor, Ms Jade Henderson
- Director of Corporate Services, Ms Simone Spring.

Ms Gretchen McKinley, a Principal Prosecutor in the OWHSP, acted as an Assistant Work Health and Safety Prosecutor from October 2023 until May 2024, during which time she made a significant contribution to the office and to the team she managed.

Mr Bob Watson, a Principal Prosecutor in the OWHSP, acted as an Assistant Work Health and Safety Prosecutor for two weeks of the reporting period in June 2023. I thank him for his support during that time.

OWHSP staff

At 30 June 2024, the OWHSP had a staff of 19 people, some working full-time and others part-time, plus the WHSP⁸.

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, except in the case of one part-time position filled via a Work Performance Arrangement (WPA) whereby they are employed by RSHQ to work in the OWHSP.

Lawyers

At 30 June 2024, there were 13 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.

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.

Being a career prosecutor is a difficult vocation, particularly when sensitive and critical decisions are made that may challenge community expectations. The success of the OWHSP in the work that it does is a reflection of the staff's skills, knowledge, and dedication.

Three 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.

Queensland should be proud of the work of the OWHSP lawyers and paralegals.

⁷ For reporting purposes this includes mere delivery of Decisions of the Court.

⁸ See: Annexure A – Organisational structure as at 30 June 2024. The staffing cap (excluding the WHS Prosecutor) remained at 18.43 full time equivalents (FTEs) and was not exceeded.

Corporate team

In the reporting period there were three members of staff in the corporate services section in the OWHSP.⁹ The corporate services team provides administrative, executive and operational business support to the OWHSP.

Given the amount of work undertaken by the OWHSP during the reporting period, the successes achieved would not have been possible without this team. I am thankful for each member's efforts, particularly the stewardship brought by Ms Spring and Ms Lauren Sherd.

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 2023–2024.¹⁰

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.¹¹

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 2023–2024.

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 2023–2024, the OWHSP commenced and resolved many more cases than the previous reporting period, whilst maintaining a consistent conviction rate.

In 2023–2024, the OWHSP achieved a conviction rate of 92.4 per cent against a target of 90 per cent. This was relating to 85 prosecutions (out of 92) that proceeded to a decision or verdict.

There were a higher number of defended hearings in the reporting period compared to 2022–2023. Nonetheless, as demonstrated by the conviction rate, the office continued to prosecute successfully in the vast majority of the cases it commenced.

Our office also successfully prosecuted Queensland's third (and Australia's fourth) industrial manslaughter case during the reporting period. That case and other notable prosecutions are discussed elsewhere in my report. The pages of my report can only touch on several critical cases; further case reports can be seen in the court reports available on the OWHSP's website.¹² However, each case considered and prosecuted by this office is important.

⁹ Once vacancy was unable to be filled despite various recruitment processes.

¹⁰ Annexure B – Advice function and the decision to charge (Guideline 1/2019)

¹¹ Annexure C – Disclosure (Guideline 2/2019), including Annexure to Disclosure (Guideline 2/2019)

¹² www.owhsp.qld.gov.au

Decisions to prosecute / not prosecute

More prosecution decisions were made in 2023–2024 than in any previous year since the OWHSP’s inception. As in previous years, 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).

Through the thorough and critical examination of available evidence against the *Director’s Guidelines*, each suspect / potential duty holder is evaluated to identify any breach of the relevant legislation. The fact of many decisions being made not to prosecute is not a general indication of a poor standard of briefs of evidence being referred to our office or poor decision-making. It is also important to again note the number and success rate of the cases progressed through the reporting period.

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 2023–2024, out of 457 decisions to prosecute or not prosecute, the average decision time per suspect was 246 days, which is a reduction of an average 16 days compared to the previous year. The KPI was achieved in 11.4 per cent of cases.

Commencing 1 August 2023, I implemented a new policy regarding compliance with the KPI — which remains for 2023–2024¹³ — that required intensive engagement between OWHSP lawyers and the Assistant Work Health and Safety Prosecutors to progress matters to me for decision far more promptly. For referrals received after 1 August 2023 to 30 June 2024 the average decision time was 123 days.

To further refine efficiency and flexibility, on 1 July 2024, I commenced a new three-tiered allocation system (coupled with the 120-day KPI) for briefs of evidence referred to the OWHSP by OIR, based on an evaluation of how serious or complex a case is. A file will be allocated a “red”, “amber”, or “green” designation, with associated mandated timeframes for the completion. This will provide some flexibility to my staff in the management of their practices in progressing advice to me for prosecution decisions. I pause to repeat that every case is given diligent attention, no matter what designation is allocated.

As a result of the consistent advocacy by myself and my predecessor Mr Guilfoyle, the OWHSP will soon employ two new permanent prosecutors as well as fill an important new administrative role following allocation of resources for these purposes by the Government. This will assist in ensuring matters are continued to be progressed in a timely way. This also aligns with my continuing goal of making sure the OWHSP continues to be a psychosocially safe workplace.

Recent changes to the WHS Act mean I may now authorise another suitably qualified member of my staff to commence WHS Act prosecutions. As these prosecutions constitute the majority of the work undertaken by the OWHSP, it is of benefit to have two persons authorised to commence proceedings (rather than one).

Transparency

The OWHSP consistently applies the *Director’s Guidelines* in 100 per cent of the cases it evaluates and prosecutes.

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.

¹³ Annexure D – OWHSP Business Plan 2024–25

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. I am happy to report 100 per cent compliance with that requirement.

Briefing of external counsel and equitable briefing

The OWHSP briefed external counsel to provide advice and appear on behalf of the office on complex and critical matters. Given the number of defended hearings undertaken during the reporting period, our expenditure on external counsel rose to its highest level ever.

I am proud to note that, 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 2023–2024 the OWHSP briefed female counsel in 56 per cent of the matters. Our office paid female barristers 55.2 per cent of the total fees paid to counsel.

Gender equality, inclusion and diversity, and the elimination of sexual harassment

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

In September 2023, the Office undertook Aboriginal and Torres Strait Islander Awareness training led by an appropriately knowledgeable subject matter expert from the community working in the Department of Education's Inclusion and Diversity team. The session was designed to increase awareness of the diversity of Aboriginal and Torres Strait Islander peoples, cultural protocols, and the impact of historical events. We thank the presenter, and also thank and acknowledge Aboriginal peoples and Torres Strait Islander peoples for generously sharing their knowledge and experiences with us and helping the OWHSP to foster a culturally capable workforce and culturally safe workplace.

In December 2023, the Office undertook training in the prevention of sexual harassment. I have since issued a policy on the matter which applies to all staff, and appointed a Sexual Harassment Contact Officer.

Ms Spring, our Equality, Diversity and Inclusion Officer, and I travelled to Canberra in March 2024 to attend the "LGBTQIA+ Leadership & Allyship Summit" where we heard from diverse and informed speakers on identifying and overcoming challenges facing LGBTQIA+ leaders in the public sector.

Staff development and enrichment

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

The OWHSP provided annual vicarious trauma training to all staff during 2023–2024, 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.

Our office continues to hold quarterly training days. In the sessions through the reporting period, staff have participated in training relating to the prevention of sexual harassment, ethical behaviour, positive engagement with families and next of kin of injured or deceased workers, and other relevant topics to their practices.

In November 2023, Ms Spring and I undertook the program "Defining Success & Measuring Regulatory Performance", conducted by Professor Malcolm Sparrow.

Stakeholder engagement

Whilst our office is an independent statutory authority, I have again continued to strengthen effective working relationships with OIR (principally WHSQ) and RSHQ, which have included regular liaison meetings, invitations to participate in our staff forums, and our prosecutors again assisting investigators in Moot Court sessions.

In November 2023, Mr Gore and I delivered a presentation about the work of our office to the Inspector Forum, organised by WHSQ.

Our office also established the Brief of Evidence Oversight Committee. The Committee, comprising senior members of the office, engaged with investigators from OIR to provide feedback on brief quality, and in May 2024 I chaired a workshop designed to develop investigator's knowledge of the prosecution process and the importance of properly structured briefs of evidence.

Ms Henderson and I, along with other members of the RSHQ prosecution team, have presented to inspectors and senior leaders of RSHQ on a diverse range of topics. This has seen the fostering of an encouraging and positive rapport between our two organisations that combines a productive working relationship with a respect for the independence of my functions. Prosecutions in the resources sector are often challenging and factually complex. As I have discussed elsewhere in this report, our office resolved several of these matters successfully during the reporting period. Difficult decisions were made to amend or terminate some cases, but this was not without fulsome and considered reflection on the available evidence by experienced counsel, Ms Henderson's team, and myself – at all times applying the *Director's Guidelines*.

Engagement with external groups

In October 2023, I presented at the Heavy Vehicle Major Investigations and Prosecutions Forum which was hosted by the National Heavy Vehicle Regulator. I presented on the topic "An exploration into the work of the Office of WHS (QLD), trends and issues faced in WHS prosecutions and prosecuting executives."

In March 2024, Ms McKinley and I presented to Environmental Services and Regulation in the Department of Environment Science and Innovation on the topic "Executives and Senior Officers – Obligations under the *Work Health and Safety Act 2011*."

In May 2024, I again was invited to present at the conference "Enhancing Investigations & Enforcement Outcomes" in Canberra. I attended with Ms Henderson. We enjoyed the opportunity to network with regulators – particularly in the WHS environment – from around Australia.

In June 2024, Principal Prosecutor Stipe Drinovac and I delivered a presentation on the work of our office to the Site Safety and Health Representative Conference in Mackay.

Review of industrial manslaughter laws

In early 2024 I undertook an independent review of the industrial manslaughter laws in the WHS Act in Queensland, assisted by Acting Senior Prosecutor Jordan O'Hanlon-Rose. I consulted widely with industry and community groups about the effectiveness of the industrial manslaughter laws since they were introduced in 2017. This important work led to a number of recommendations which are being progressed at the time of this report.

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

I continue to prioritise the effective engagement and liaison of injured workers, affected families and next of kin. As I observed in my last annual report, incidents at work that result in preventable injuries or — worse — death can have devastating consequences for workers, next of kin, and family and friends, as well as to the Queensland community generally.

I have established regular meetings with Coronial Family Liaison Services, who provide ongoing and valuable support to our office. In May 2024, I met with the Consultative Committee for Work-Related Fatalities and Serious Incidents. Over the reporting period I conducted approximately 20 meetings with injured workers, affected families and next of kin. I also attended the annual Workers Memorial Breakfast.

Relocation of offices

Our office relocated to new premises at Level 13, 400 George Street in November 2023. I am thankful for the work of representatives from OIR and QBuild, along with Ms Spring and Ms Sherd in assisting with the co-ordination and delivery of this significant project.

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 2023–2024, three requests were responded to by the OWHSP. One matter was the subject of a request for referral to the DPP.¹⁴

Indictable prosecutions and engagement with the DPP

The OWHSP prosecutes indictable offences for reckless conduct and industrial manslaughter. I possess a commission to indict.

Under the *Director of Public Prosecutions Act 1984*, the DPP must still authorise indictable prosecutions conducted by the OWHSP prior to the presentation of an indictment¹⁵. Those prosecutions are otherwise conducted and funded by the OWHSP.

¹⁴ The DPP agreed that a prosecution should not be brought.

¹⁵ E274218 – The DPP was asked to and provided consent to one indictment being presented during the reporting period; E301273 – In the reporting period the OWHSP sought and received DPP approval to discontinue charges upon indictment in relation to two defendants (*nolle prosequi* entered).

Performance data 2023–2024

New briefs of evidence (briefs) referred in the reporting period: 99¹

Ongoing brief assessments at EOFY

Brief assessments ongoing at EOFY, excluding those in suspension **61 briefs (relating to 105 suspects²)**

Brief assessments suspended at EOFY whilst investigators responded to requisitions **3 briefs (relating to 6 suspects)**

Total briefs in brief assessment phase including those where requisitions were raised **64 briefs (relating to 111 suspects)**

Pre-brief legal advice requests³

Requests for pre-brief advice **3**

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

Complaints before the Court at the EOFY: 169⁴

Total prosecutions finalised in the FY: 115⁵

1 94 briefs were referred to the OWHSP by the Office of Industrial Relations (OIR) and five briefs by Resources Safety and Health Queensland (RSHQ). The number of suspects from those briefs was 237.

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 two 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 14 related to referrals from RSHQ and the other 101 related to referrals from OIR.

Prosecutions successfully finalised⁶

Prosecutions successfully finalised	85⁷
Fines imposed in relation to successful prosecutions	\$6,826,260⁸
Number of successful matters where a guilty plea was entered	81
Number of successful matters which proceeded ex parte	2

Unsuccessful or discontinued prosecutions

Unsuccessful prosecutions	7⁹
Prosecutions withdrawn¹⁰	19¹¹
Prosecutions withdrawn – EU¹²	4

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 85 successful prosecutions in FY 2023–24. This figure excludes five further successful prosecution matters which went on appeal (three per the defence and two per the prosecution).

8 See footnote 5 above. The figure of \$6,826,260 excludes any matters under appeal. The total fines ordered in the reporting period including the appealed matters was \$7,016,260.

9 These seven unsuccessful prosecutions were finalised in the reporting period. Four other prosecution matters were unsuccessful, however, they are each subject to an appeal.

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 12 of these discontinued matters related to referrals from OIR and seven related to matters referred by RSHQ.

12 Discontinued as a result of an Enforceable Undertaking being entered by the defendant with the WHS Regulator.

Performance data 2023–2024

Prosecutorial decisions made	
Total prosecution decisions (to prosecute or not prosecute)	457¹³
Number of briefs of evidence related to those decisions	154
Decisions to prosecute 165¹⁴	
• Number of bodies corporate prosecuted	99
• Number of individuals prosecuted	66
• Officers, within those individuals, prosecuted	21¹⁵
• Workers, within those individuals, prosecuted	22
Decisions not to prosecute 292	
• No prima facie case	183
• No reasonable prospects of conviction	76
• Not in the public interest	33

¹³ 185 decisions in relation to bodies corporate and 272 decisions in relation to individuals.

¹⁴ Two prosecutions were later withdrawn in the same reporting period (E312855 and E324510).

¹⁵ For reporting purposes this figure includes 'Officers' and 'Site Senior Executives'.

Effectiveness and efficiency measures 2023–2024

KPI: Compliance in applying DPP Guidelines in decisions to commence, not commence, continue or discontinue (100%)
KPI met 100% in relation to 482 decisions¹⁶
KPI: Prosecutions resulting in a conviction (90%)
KPI exceeded 92.4%¹⁷
KPI: Defendants in defended summary hearings resulting in conviction (70%)
KPI not met 28.6%¹⁸
KPI: Defendants tried on indictment and convicted (70%)
Nil cases¹⁹
KPI: Briefs of evidence assessed within 120 days of referral (100%)
KPI not met 11.4%²⁰
Average decision time in days per brief of evidence
246
KPI: Pre brief advice provided within 30 days (100%)
KPI met 100%²¹

¹⁶ There were 457 decisions to prosecute or not prosecute; There were 23 decisions to fully discontinue a prosecution; There were two decisions to enter an appeal. An appeal may be in relation to the decision of the Court at first instance or in relation interlocutory matters.

¹⁷ Of 92 prosecutions which proceeded to a decision or verdict, and which are not under appeal, 85 resulted in a conviction.

¹⁸ There were seven defended summary hearings finalised in the reporting period, two of which resulted in a conviction.

¹⁹ Although no matters were tried on indictment during the reporting period, there was one matter where the defendant plead guilty to an indictable offence (E305983).

²⁰ 52 out of 457 decisions to prosecute or not prosecute met the KPI.

²¹ Three out of three requests met the KPI of 30 days.

Notable prosecutions 2023–24

Mine operator fined for not ensuring safety and health management system was implemented¹

On 26 June 2019, an incident occurred involving the failing of an echelon wall causing the death of an excavator operator.

On 8 August 2023, in the Mackay Industrial Magistrates Court, the mine operator entered a plea of 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, pursuant to sections 34 and 41(1)(e)(i) of the *Coal Mining Safety and Health Act 1999*.

The mine operator was fined \$70,000 by the Industrial Magistrate. The mine operator was also ordered to pay \$110,000 in investigative and prosecution costs. No conviction was recorded.

Scrap metal recycling company fined in relation to death of a worker²

On 23 March 2017, a worker, performing maintenance work on a Scania tilt-cab truck at a scrap metal recycling centre, died when the cab of the truck fell onto them.

On 5 September 2023, the defendant company entered a plea of guilty in the Maroochydore Magistrates Court for failing to comply with their health and safety duty which exposed workers to a risk of death or serious injury, pursuant to sections 19(1) and 32 of the *Work Health and Safety Act 2011*.

The Magistrate heard sentencing submissions on 5 September 2023 and reserved their decision.

On 15 September 2023, the defendant was fined \$175,000 and no conviction was recorded.

Electricity entity fined following electrocution of worker on a pineapple farm³

On 14 July 2021, workers were using a tractor and harvester or were otherwise in the vicinity of that machinery as it was operating, collecting pineapples. The top of the harvester was approximately 4.36 metres high. The tractor and harvester passed underneath the overhead power line, and the top of the harvester either contacted, or came in very close proximity to, the overhead power line. One worker was electrocuted and died shortly thereafter, while another five workers received electric shocks and were hospitalised. Some of the workers suffer continuing physical and psychological health issues because of the incident.

On 20 October 2023, an electricity entity, having entered a plea of guilty, was sentenced in the Rockhampton Magistrates Court for breaching section 40C of the *Electrical Safety Act 2002*, having failed to comply with its duty under section 29(1)(a) of the Act to ensure that its works were electrically safe, with the failure exposing an individual to a risk of serious injury or death.

The Magistrate imposed a fine of \$300,000, and no conviction was recorded.

Individual fined for threatening an inspector⁴

On 27 May 2021, an Inspector from Workplace Health and Safety (WHSQ) attended a bridge in Maroochydore following a report of a broken-down truck and trailer. The Inspector approached the defendant, identified himself as an inspector from WHSQ and asked that the defendant move off the road. A heated exchange ensued.

On 24 October 2021, the defendant was sentenced in the Brisbane Magistrates Court for threatening an inspector, pursuant to section 190 of the *Work Health and Safety Act 2011*. The defendant was fined \$1,250 and no conviction was recorded.

[Two other individuals entered pleas and were convicted for threatening an Inspector in two other unrelated incidents on 1 March 2024 and 23 April 2024].

¹ RS2020-011

² E240647

³ E304203

⁴ E302071; [E333379 – Pine Rivers Magistrates Court – Defendant placed on 12 months' probation not to commit an offence – no conviction recorded] and [E318438 – Maroochydore Magistrates Court – Defendant fined \$2,250 – no conviction recorded].

Manufacturing company fined after worker struck by large plastic water tank mould⁵

On 17 May 2021, a worker was operating a forklift to remove a 10,000L mould from a platform when it knocked an adjacent mould, causing it to fall striking another worker, who sustained serious fracture injuries to his spine, requiring hospitalisation and surgery.

On 13 November 2023, the company was sentenced in the Townsville Magistrates Court for breaching section 32 of the *Work Health and Safety Act 2011* (the Act), having failed to comply with its primary health and safety duty under section 19 of the Act.

The company was fined \$100,000 and a conviction was recorded.

Toowoomba school and supplier of plant fined after death of worker⁶

On 7 January 2022, a school grounds-keeper was working from an elevated work platform (scissor lift) and fell, striking his head on the ground, wherein he suffered a traumatic brain injury and passed away on 17 March 2022.

On 20 October 2023, the school (a “limited” company) was sentenced in the Toowoomba Magistrates Court for breaching section 32 of the *Work Health and Safety Act 2011* (the Act). The defendant entered a plea of guilty to failing to comply with its primary health and safety duty, thereby exposing workers to the risk of death or serious injury.

On 5 December 2023, considering all matters and the circumstances of the offending, the Magistrate fined the defendant \$200,000 and exercised discretion not to record a conviction.

On 4 June 2024, the supplier of the plant involved, having entered a plea of guilty, was also convicted and fined \$40,000 for failing to ensure the plant was without risk to the health and safety of persons who use it for the purpose for which it was designed, and that failure exposed an individual to a risk of death or serious injury, pursuant to sections 25 and 32 of the Act. No conviction was recorded.

Unlicensed demolisher fined for failing to manage risk arising from asbestos containing material during house demolitions⁷

On two occasions in 2021, the defendant company demolished residential houses at suburban addresses in Brisbane which contained asbestos containing material (ACM). The defendant failed to safely remove asbestos sheeting before demolishing the houses with an excavator, causing the breakage of asbestos sheeting and the release of asbestos containing dust and debris (ACD). The defendant failed to remove disturbed asbestos from the properties following demolition work, leaving ACD strewn around the yards.

On 15 December 2023, the company was convicted in absentia of two ‘Category 3’ offences contrary to section 33 of the *Work Health and Safety Act 2011* (the Act), in addition to two offences that it carried out work at a workplace for which an authorisation is required by the *Work Health and Safety Regulation 2011*, contrary to section 43(1) of the WHS Act.

In sentencing the defendant, the Magistrate observed that the defendant’s failure to comply with previous statutory notices, in addition to its failure to appear in court, demonstrated a complete disregard for health and safety law.

The defendant was ordered to pay a global fine of \$100,000 and a conviction was recorded.

⁵ E301573

⁶ E312164

⁷ E309159; and E311686

Electrical contractor fined for potentially exposing school children to live terminals⁸

On 17 August 2021, an electrical contractor had been instructed to cease further work in a temporary classroom building by the principal contractor's site supervisor. Contrary to instructions, the defendant entered the classroom and commenced live testing on the sub switchboard located inside, potentially exposing any teachers or students entering the classroom to the live terminals.

On 23 January 2024, the electrical contractor was convicted and fined \$10,000 in the Maroochydhore Magistrates Court of a 'Category 2' offence against section 40C of the *Electrical Safety Act 2022* (ES Act). The defendant had a duty under section 30 of the ES Act to ensure that his business or undertaking is conducted in a way that is electrically safe, that he failed to comply with that duty and the failure exposed an individual to the risk of death or serious injury or illness.

A conviction was not recorded.

Local government authority fined following young child falling from diving platform⁹

On 3 January 2021, at an aquatic centre owned and operated by a local government authority, a 4-year-old girl fell head-first from the 3 metre diving platform onto the concrete below, suffering serious injuries including fractures to her skull and vertebrae.

On 14 February 2024, the defendant local government authority, was sentenced in the Southport Magistrates Court for breaching section 32 of the *Work Health and Safety Act 2011*, having failed to comply with its primary health and safety duty. The failure exposed an individual to a risk of death or serious injury.

The defendant was fined \$125,000. No conviction was recorded.

Waste resource company fined after worker fatally crushed¹⁰

On 22 January 2021, a worker on the night shift was crushed by the magnetic conveyor of a shredder which activated after they climbed under it to clear a blockage. There was no supervisor on the night shift. The other rostered worker in the shed that night had already left the workplace by this time, having become frustrated with the repeated blockages of the shredder.

On 19 February 2024, the waste resource recycling and transfer company was sentenced in the Brisbane Magistrates Court for breaching section 32 of the *Work Health and Safety Act 2011*, having failed to comply with its primary health and safety duty.

The company was fined \$140,000 and no conviction was recorded.

Teacher fined after two international students drowned at Lake McKenzie on K'gari¹¹

On 29 March 2019, whilst on a guided tour of K'gari (Fraser Island), two 16 year-old students drowned in Lake McKenzie, a freshwater lake on the island. The two students were part of a group of fifteen students from a high school in Japan (the School).

On 26 February 2024, a teacher employed by the School and in charge of the overseas study program was sentenced in the Hervey Bay Magistrates Court for breaching section 32 of the *Work Health and Safety Act 2011* (the Act). The defendant pleaded guilty to failing to comply with his health and safety duty as a worker pursuant to section 28 of the Act, thereby exposing individuals to the risk of death or serious injury.

The Magistrate fined the defendant \$55,000 and exercised a discretion not to record a conviction.

⁸ E305838

⁹ E296200

¹⁰ E296847

¹¹ E270071

Construction company fined for silica dust exposure breach¹²

On 25 October 2023, a company providing civil construction services to various locations within Queensland was providing these services at a large housing construction workplace located at Upper Coomera. On this date Workplace Health and Safety Queensland ('WHSQ') Inspectors attended to undertake a compliance audit of the workplace. The inspectors observed excavation works to be generating dust, which was dispersing, uncontrolled, around the workplace. The inspectors reasonably believed the rock wall to be comprised of sandstone which they knew to have an element of crystalline silica present, the dust of which is hazardous if inhaled by humans.

On 9 April 2024, the company was sentenced in the Southport Magistrates Court and fined \$2,000 for breaching section 300(1) of the *Work Health and Safety Regulations 2011*. The defendant company's director pleaded guilty to failing to put in place arrangements to ensure high risk construction work was carried out in compliance with its safe work method statement at its workplace. No conviction was recorded.

Queensland's third Industrial Manslaughter conviction¹³

The defendant company manufactures, distributes and sells inground fibreglass swimming pools.

On 19 August 2021, a 42-year-old worker acting as a dogger was killed at the worksite of the defendant company in Stapylton, when he was struck by a Franna 12 tonne mobile crane used to move pools during different parts of the manufacture and delivery process.

On 30 January 2024, the mobile crane operator was sentenced and fined \$25,000 in the Beenleigh Magistrates Court for breaching section 32 of the *Work Health and Safety Act 2011* (the Act), having failed to comply with his health and safety duty as a worker pursuant to section 28 of the Act. No conviction was recorded.

On 14 June 2024, the defendant company was convicted and fined \$1.5 million after pleading guilty to Industrial Manslaughter contrary to section 34C(1) of the Act, in the District Court at Brisbane.

A conviction was recorded.

Accredited Assessor improperly assessed candidates in high-risk work competencies¹⁴

When assessing candidates for the high-risk Reach Stacker competency in August 2022, the defendant provided the answers to the questions in the National Assessment Instrument before they undertook the assessment, provided assistance for candidates while undertaking the assessment, and provided assistance to candidates in the hearing of other candidates still undertaking their assessments.

When assessing candidates for the high-risk Open Crane ('CO') competency in October 2022, the defendant failed to assess all six performance tasks, undertook a group performance assessment rather than individual ones, and deemed candidates competent in calculations questions, where they had failed to answer questions correctly. Each of these acts breached conditions placed on his accreditation.

On 18 June 2024, the defendant was sentenced in the Richlands Magistrates Court after pleading guilty to two offences against section 45 of the *Work Health and Safety Act 2011*, committed between 15 August to 7 October 2022.

The defendant was ordered to pay a fine totalling \$7,000. No conviction was recorded.

¹² E527562

¹³ E305983

¹⁴ LC2022-001

Mine fined a total of \$720,000 for causing grievous bodily harm and death to workers¹⁵

On 7 September 2019, a coal mine worker (aged 37) suffered grievous bodily harm after being crushed by falling strata and, less than three months later, another coal mine worker (aged 57) lost his life after being crushed by falling strata.

On 12 April 2024, the defendant, a mine operator, was sentenced in the Mackay Industrial Magistrates Court for offences pursuant to sections 41(1)(a) and 34 of the *Coal Mining Safety and Health Act 1999*, arising out of the two separate incidents.

The first offence comprised a failure by the mine operator to ensure that the risk to coal mine workers at a coal mine it operated was at an acceptable level between 18 August 2019 and 8 September 2019. That failure caused grievous bodily harm to a worker on 7 September 2019.

The second offence comprised a failure by the mine operator to ensure that the risk to coal mine workers at the same coal mine was at an acceptable level between 12 August 2019 and 26 November 2019. That failure caused the death of a coal mine worker on 25 November 2019.

The basis of each offence was a failure by the defendant to ensure that work health and safety procedures at the coal mine it operated were implemented. Those failures exposed coal mine workers to an unacceptable level of risk, which culminated in tragic consequences for two men.

Taking into account the mitigating features raised by the defendant the Industrial Magistrate imposed a \$240,000 fine for the offending which caused grievous bodily harm to a coal mine worker and a \$480,000 fine for the offending which caused death to a coal mine worker (a total amount of \$720,000).

No convictions were recorded.

¹⁵ RS2020-019; and RS2020-015

Annexure A

OWHSP Organisational Structure as at 30 June 2024

Simon Nicholson Work Health and Safety Prosecutor			
Assistant WHS Prosecutor Part-time	Senior Assistant WHS Prosecutor	A/Assistant WHS Prosecutor	Director Corporate Services
Principal Prosecutor Part-time	Principal Prosecutor	Principal Prosecutor	A/Practice Manager
Principal Prosecutor	Principal Prosecutor	Senior Prosecutor	Vacant Executive Assistant
A/Principal Prosecutor	Principal Prosecutor	A/Senior Prosecutor	Practice Administrator
Paralegal Part-time	A/Principal Prosecutor	Paralegal Part-time WPA	
	Paralegal Part-time		

Annexure B

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

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; and
- 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; or
 - d. matters that are likely to have an impact on a broader class of cases;
 - 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; and
 - 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 1/2019)

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; and
 - 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 2/2019)

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; and
- 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.
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

Annexure C

Disclosure (Guideline 2/2019)

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.

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.

Annexure C

Disclosure (Guideline 2/2019)

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; and
 - 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).¹

Material withheld from disclosure

22. Where material has been withheld from disclosure as:
 - a. it is considered that the material is immune from disclosure on public interest grounds; or
 - b. disclosure of the material is precluded by statute; or
 - c. 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.

¹ See Annexure to Disclosure Guideline 2/2019_Disclosure legislation

Annexure C

Disclosure (Guideline 2/2019)

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))². However, in certain circumstances, it may be appropriate to delay disclosure. Some examples of this may include the following:
- a. 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;
 - b. 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).

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; and
 - 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 2/2019)

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 2/2019)

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 2/2019)

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; and
 - 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.



Our services

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).

Our 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.

Our objectives



We act:

- with courtesy and professionalism
- to ensure we are consistent in our decision-making
- as model litigants
- to ensure the timely advice of decisions and outcomes to our stakeholders.

Our 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.

We perform transparently through

- liaison with stakeholders including investigators, affected workers and families
- communication of outcomes of proceedings on the OWHSP website.



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: 2019–2020 onwards

New referrals received					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
New briefs of evidence (briefs) referred	85	96	81	127	99
Suspects identified in those briefs (prima facie)	233	252	205	187	237
Ongoing brief assessments at EOFY					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
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 suspects)	61 briefs (relating to 105 suspects)
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)	3 briefs (relating to 6 suspects)
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)	64 briefs (relating to 111 suspects)
Pre-brief legal advice requests¹					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Requests for pre-brief advice	18	9	13	5	3
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	Nil

¹ A brief may or may not ultimately be referred to the OWHSP for consideration after pre-brief advice is given.

Annexure E

Performance, efficiency and effectiveness data: 2019–2020 onwards

Prosecutions successfully finalised during FY²					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Prosecutions successfully finalised	42	83	72	53 ³	85
Fines imposed in relation to successful prosecutions	\$5,501,200	\$8,430,600	\$3,589,600	\$2,915,760 ⁴	\$6,826,260
Number of successful matters where a guilty plea was entered	Not previously reported	77	64	51 ⁵	81
Number of successful matters which proceeded ex parte	Not previously reported	2	1	Nil	2
Unsuccessful or discontinued prosecutions during FY					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Unsuccessful prosecutions	2	5	7	2	7
Prosecutions withdrawn⁶	1	18	18	19 ⁷	19
Prosecutions withdrawn – EU⁸	2	1	8	9	4
Total prosecutions finalised in the FY					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Total prosecutions finalised	47	107	105	83 ⁹	115

² 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.

³ A lower number of successful matters (46) was reported in the OWHSP Annual Report 2022–2023 due to administrative error.

⁴ A lower amount of Court awarded fines (\$2,662,160) was reported in the OWHSP Annual Report 2022–2023 due to administrative error.

⁵ A lower number of successful matters involving a guilty plea (44) was reported in the OWHSP Annual Report 2022–2023 due to administrative error.

⁶ 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.

⁷ A lower number of withdrawn matters (16) was reported in the OWHSP Annual Report 2022–2023 due to administrative error.

⁸ Discontinued as a result of an Enforceable Undertaking being entered by the defendant with the WHS Regulator.

⁹ A lower number of finalised matters (73) was reported in the OWHSP Annual Report 2022–2023 due to administrative error.

Annexure E

Performance, efficiency and effectiveness data: 2019–2020 onwards

Complaints before the Court at the EOFY					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Complaints before the Court at EOFY	108	164	135	130	169
Prosecutorial decisions made in the FY					
	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Total prosecution decisions (to prosecute or not prosecute)	202	387	184	231	457
Number of briefs of evidence related to those decisions	85	104	51	70	154
Decisions to prosecute	105	149	58	76	165
<i>No of bodies corporate prosecuted</i>	64	77	35	47	99
<i>No of individuals prosecuted</i>	41	72	23	29	66
<i>Officers, within those individuals, prosecuted</i>	15	16	12	7	21
<i>Workers, within those individuals, prosecuted</i>	<i>Not previously reported</i>	<i>Not previously reported</i>	<i>Not previously reported</i>	8	22
Decisions not to prosecute	107	238	126	155	292
<i>No prima facie case</i>	82	197	94	102	183
<i>No reasonable prospects of conviction</i>	12	20	21	36	76
<i>Not in the public interest</i>	13	21	11	17	33

Annexure 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	Result FY 2023/24
100% in relation to 202 decisions	100% in relation to 408 decisions	100% in relation to 215 decisions	100% in relation to 258 decisions	100% in relation to 482 decisions

KPI: Prosecutions resulting in a conviction (90%)

Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23	Result FY 2023/24
KPI exceeded 95.4%	KPI exceeded 95.4%	KPI exceeded 91.4%	KPI exceeded 96.4% ¹⁰	KPI exceeded 92.4%

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	Result FY 2023/24
KPI not met 50%	KPI not met 44.4%	KPI not met 16.7%	KPI exceeded 100%	KPI not met 28.6%

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

Result FY 2019/20	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23	Result FY 2023/24
KPI not met 0%	Nil cases	KPI not met 66.6%	KPI exceeded 100%	Nil cases

¹⁰ This was incorrectly reported as 97.9% in the OWHSP Annual Report 2022–2023 due to administrative error. Of the 55 matters that proceeded to a decision or verdict, 53 were successful and two were unsuccessful.

Annexure E

Efficiency measures

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

Result FY 2019/20 ¹¹	Result FY 2020/21	Result FY 2021/22	Result FY 2022/23	Result FY 2023/24
KPI not met 33.6%	KPI not met 23.1%	KPI not met 25%	KPI not met 10%	KPI not met 11.4%

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	Result FY 2023/24
161	202	178.2	262	246

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	Result FY 2023/24
Data not reported	KPI not met 55%	KPI not met 45.5%	KPI not met 80%	KPI met 100%

¹¹ The KPI in this reporting period was briefs of evidence assessed within 90 days of referral (85%).

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