



Victoria Government Gazette

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SPECIAL

GENERAL GUIDELINES FOR PROSECUTION VICTORIAN WORKCOVER AUTHORITY **Introduction**

The Victorian WorkCover Authority has the following objectives:

- (i) To reduce work-related death, injury, illness and disease;
- (ii) To reduce health and safety risks to the public;
- (iii) To support injured workers to remain at work or return to work quickly following injury;
- (iv) To maintain a stable, fully-funded and internationally competitive system for employers, workers and the community.

Where prosecution is used to secure compliance with the legislation the Authority administers, it will be done in order to assist in the achievement of these objectives.

The Authority is charged with the administration of the following Acts and their associated regulations:

- **Accident Compensation Act 1985**
- **Accident Compensation (WorkCover Insurance) Act 1993**
- **Dangerous Goods Act 1985**
- **Equipment (Public Safety) Act 1994**
- **Occupational Health and Safety Act 1985**
- **Road Transport (Dangerous Goods) Act 1995**

Guidelines for Prosecution

Under Section 252(4) and (5) of the **Accident Compensation Act 1985**, Section 48(5) and (6) of the **Occupational Health and Safety Act 1985**, Section 40(2) and (3) of the **Dangerous Goods Act 1985** and Section 28(5) and (6) of the **Equipment (Public Safety) Act 1994** the Authority must issue and publish general guidelines for or with respect to the prosecution of offences under these Acts. These guidelines are issued and published in conformity with these requirements.

These guidelines will also apply to prosecutions for offences against the **Road Transport (Dangerous Goods) Act 1995** even though there is no requirement to issue guidelines under that Act.

The Authority is issuing these General Guidelines for Prosecution in order to achieve consistency, transparency and predictability in relation to WorkCover prosecutions, in relation to both compensation and health and safety.

The Authority will use promotion, education and advice to encourage compliance with the provisions of the legislation it administers.

Where these methods are inadequate, compliance will generally be secured through the use of formal notices and directions, civil recovery and other enforcement methods provided for under the legislation.

However, in some circumstances, prosecution will be considered as the only appropriate response to the offender and the only means of deterring other prospective offenders from contravening the legislation.

The Authority recognises that, when it files a charge or conducts a prosecution, it is not enforcing the legislation it administers in isolation, but is functioning as a prosecution agency within the criminal justice system. As with all public prosecutions agencies, the Authority will take this action when it is required in the public interest.

Public interest considerations that bear upon the decision whether or not to prosecute in a particular case include:

- a) the seriousness (including prevalence) of the offence
- b) mitigating or aggravating circumstances
- c) relevant history and other relevant characteristics (such as age, physical health, mental health etc) of the alleged offender
- d) age of the offence
- e) degree of culpability of the alleged offender in connection with the offence
- f) availability and effectiveness of alternatives to prosecution

- g) level of public concern
- h) the necessity to maintain public confidence in the administration of the law
- i) any entitlement of the Authority or other person or body to compensation or reparation.

A charge may be filed for any offence against the legislation. Prosecutions will generally be instituted in the circumstances mentioned below.

Accident Compensation Act 1985

Accident Compensation (WorkCover Insurance) Act 1993

Prosecutions will generally be instituted if investigations disclose -

- 1. Theft or fraud-related offences by a service provider, employer or worker.
- 2. Offences by an employer which prejudice the WorkCover rights of an injured worker.
- 3. Offences against persons exercising powers under the legislation.

Occupational Health and Safety Act 1985

Equipment (Public Safety) Act 1994

Dangerous Goods Act 1985

Prosecutions will generally be instituted if investigations disclose -

- 1. Offences involving a significant risk to health and safety, including a risk of death or serious injury (a "near miss") and a risk of serious ill health.
- 2. Offences that involve a high degree of culpability including recidivism, non-compliance with Notices and Directions issued under the legislation or a failure to control risks despite previous warnings, information or advice (whether from the Authority or any other source).
- 3. Offences that actually result in death, serious injury or serious ill health.
- 4. Offences involving the design, manufacture, importation and supply of any plant or substance for use in a workplace that creates a significant risk to health and safety.
- 5. Offences against inspectors or other persons exercising powers under the legislation.

- 6. Discrimination by an employer against employees or job-seekers who have been health & safety representatives or have assisted inspectors or have made a health & safety complaint.
- 7. Breaches of Governor-in-Council Orders under section 55 of the **Dangerous Goods Act 1985** or section 37 of the **Equipment (Public Safety) Act 1994** that impose an absolute prohibition in relation, respectively, to dangerous goods and prescribed equipment.
- 8. Offences involving a failure to comply with the **Dangerous Goods Act 1985** that results in substantial damage to property.

In appropriate circumstances the Authority will file charges under the **Crimes Act 1958** and may also refer matters to and liaise with the Office of Public Prosecutions.

The Authority will institute and conduct prosecutions according to the highest standards of ethics and prosecutorial practice.

THE COMMON SEAL of the)
 VICTORIAN WORKCOVER)
 AUTHORITY)
 was hereunto duly affixed in) (L.S.)
 accordance with section 18)
 of the **Accident Compensation)
 Act 1985)
 in the presence of:)**

R. A. RUSSELL
 Director

A. A. LINDBERG
 Director

Water Industry Act 1994

ORDER UNDER SECTION 139(2A)
Declaration of Declared Public Statutory
Authorities

The Governor in Council under section 139(2A) of the **Water Industry Act 1994** declares the following public statutory authorities constituted under the laws of Victoria to be declared public statutory authorities for the purposes of section 139(2) of that Act with effect from 1 July 1998:-

- Melbourne Water Corporation
- Transport Accident Commission

Urban Land Corporation
 Victorian Channels Authority
 Victorian Plantations Corporation

Dated 30 June 1998

Responsible Minister:
 MARIE TEHAN
 Minister for Conservation and Land
 Management

SHARNE BRYAN
 Clerk of the Executive Council

**SUBORDINATE LEGISLATION ACT 1994
 NOTICE OF MAKING OF STATUTORY
 RULES**

Notice is hereby given under Section 17 (2) of the **Subordinate Legislation Act 1994** of the making of the following Statutory Rule:

76. *Statutory Rule:* Residential Tenancies Regulations 1998

Authorising Act: Residential Tenancies Act 1997

Date of making: 30 June 1998

PUBLIC SECTOR MANAGEMENT AND EMPLOYMENT ACT 1998
 Declared Authorities

Pursuant to Section 47(2) of the **Public Sector Management and Employment Act 1998**, the Governor in Council:

- declares the authorities listed in Column 1 of the Schedule to this Order to be declared authorities;
- specifies that the persons or bodies listed in Column 2 of that Schedule in relation to each declared authority have the functions of Agency Head in relation to that declared authority; and
- specifies the provisions of the Public Sector Management and Employment Act 1998 listed in Column 3 of that Schedule in relation to each declared authority which are to apply to that declared authority.

This Order operates from 1 July 1998.

Responsible Minister:
 J. G. KENNETT
 Premier

SHARNE BRYAN
 Clerk of the Executive Council

SCHEDULE
DECLARED AUTHORITIES

Column 1	Column 2	Column 3
Authority	Person or Body having function of Agency Head	Provisions of Act or Regulations to apply to Authority
Staff employed under Section 5 of the Education Act 1958	Secretary, Department of Education	Divisions 4, 6 and 7 of Part 3 and Part 4
Director of the Council of Adult Education	Board of the Council of Adult Education	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Teaching Service established under the Teaching Service Act 1981	Secretary, Department of Education	All provisions of this Act except Part 3, Divisions 1, 2, 3, 4, 5
Victorian Transport Service established under the Transport Act 1983	Secretary, Department of Infrastructure	All provisions of this Act except Part 3 Divisions 1, 2, 3, 4, 5

Chief Executive, Public Transport Corporation	Secretary, Department of Infrastructure	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Public Transport Corporation	Chief Executive, Public Transport Corporation	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Chief Executive, Roads Corporation (trading as VicRoads)	Minister for Roads and Ports	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Roads Corporation	Chief Executive Roads Corporation	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Marine Board of Victoria	MarineBoard of Victoria	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Building Control Commissioner	Minister for Planning and Local Government	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Managing Director, Legal Aid	Secretary, Department of Justice	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Victoria Legal Aid	Mnaging Director, Victoria Legal Aid	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Director, Victoria State Emergency Service	Secretary to the Department of Justice	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Chairman, Country Fire Authority	Minister for Police and Emergency Services	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Deputy Chairman, Country Fire Authority	Chairman Country Fire Authority	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Assistant Commissioner of Police	Chief Commissioner of Police	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Director of Housing	Secretary, Department of Human Services	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Chief Executive Officer, Victorian Health Promotion Foundation	Minister for Health	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Full time Director of the Board of Management and Chief Executive of the Victorian WorkCover Authority appointed under Division 2 of Part II of the Accident Compensation Act 1985	Minister for Finance	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Director, Royal Botanic Gardens	Chairperson, Royal Botanic Gardens Board	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Chief Executive Officer, Zoological Parks and Gardens Board	Chairman, Zoological Parks and Gardens Board	Part 3, Division 5 and Sections 20(2)(d), 32 and 35

Chief Executive, EcoRecycle Victoria	Chairperson, EcoRecycle Victoria	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Managing Director, Cinemia	Chairman of the Board, Cinemia	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
Museum of Victoria	Museums Board of Victoria	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
State Library of Victoria	Library Board of Victoria	Part 3, Division 5 and Sections 20(2)(d), 32 and 35
National Gallery of Victoria	Council of Turstees of the National Gallery of Victoria	Part 3, Division 5 and Sections 20(2)(d), 32 and 35

PUBLIC SECTOR MANAGEMENT AND EMPLOYMENT ACT 1998
Executive Employment

Pursuant to sections 21(1)(d) and 21(2) of the **Public Sector Management and Employment Act 1998**, the Governor in Council declares in relation to the declared authorities listed in Column 1 of the Schedule to this Order:-

- the type of employment listed in column 3 of the Schedule to be employment as an executive; and
- the person or body listed in column 2 of the Schedule to be the employer of the person who is employed in the type of employment listed in column 3.

This Order operates from 1 July 1998.

Responsible Minister:

J. G. KENNETT

Premier

SHARNE BRYAN
Clerk of the Executive Council

SCHEDULE
PUBLIC SECTOR MANAGEMENT AND EMPLOYMENT ACT 1998
EXECUTIVE EMPLOYMENT

Column 1	Column 2	Column 3
Declared Authority	Employer	Employment
Marine Board of Victoria	Marine Board of Victoria	Employment by the declared authority at an annual rate not less than the remuneration of any executive employed under Part 3 of the Public Sector Management and Employment Act 1998
State Library of Victoria	Library Board of Victoria	Employment by the declared authority at an annual rate not less than the remuneration of any executive employed under Part 3 of the Public Sector Management and Employment Act 1998

Victoria Legal Aid	Managing Director, Victoria Legal Aid	Employment by the declared authority at an annual rate not less than the remuneration of any executive employed under Part 3 of the Public Sector Management and Employment Act 1998
Museum of Victoria	Museums Board of Victoria	Employment by the declared authority at an annual rate not less than the remuneration of any executive employed under Part 3 of the Public Sector Management and Employment Act 1998
Public Transport Corporation	Chief Executive Officer, Public Transport Corporation	Employment by the declared authority at an annual rate not less than the remuneration of any executive employed under Part 3 of the Public Sector Management and Employment Act 1998
National Gallery of Victoria	Council of Trustees of the National Gallery of Victoria	Employment by the declared authority at an annual rate not less than the remuneration of any executive employed under Part 3 of the Public Sector Management and Employment Act 1998

**Public Sector Management and
Employment Act 1998**

NOTICE UNDER SECTION 40(1)

I, Peter Salway, Commissioner for Public Employment, hereby give notice pursuant to section 40(1) of the **Public Sector Management and Employment Act 1998**, that I have issued *Directions* under section 37(1)(b) of the Act.

The *Directions* may be obtained from the Office of Public Employment web site at <http://www.vic.gov.au/opsc/opsc.htm> or by contacting telephone 96515603 or 96515706.

Dated 1 July 1998

P R SALWAY
Commissioner for Public Employment

**SUBORDINATE LEGISLATION ACT 1994
NOTICE OF MAKING OF STATUTORY
RULES**

Notice is hereby given under Section 17 (2) of the **Subordinate Legislation Act 1994** of the making of the following Statutory Rule:

75. *Statutory Rule:* Introduction Agents Regulations 1998

Authorising Act: Introduction Agents Act 1997

Date of making: 30 June 1998

Fisheries Act 1995
(Act No. 92/1995)

QUOTA ORDER FOR THE SCALLOP
(OCEAN) FISHERY UNDER SECTION 64
OF THE FISHERIES ACT 1995

The Governor, with the advice of the Executive Council, acting under section 64 of the **Fisheries Act 1995** and on the recommendation of the Minister for Agriculture and Resources, makes the following Order.

1. This Order applies for the period starting on 1 July 1998 and ending on 31 July 1998 (“the quota period”).
2. The Total Allowable Catch for the Scallop (Ocean) Fishery for the quota period is 10,152 sacks or 3,760 crates.
3. An individual quota unit for the Scallop (Ocean) Fishery in the quota period is 27 sacks or 10 crates.
4. Each Scallop (Ocean) Fishery Access Licence holder is to be allocated 4 individual quota units for the quota period.
5. Individual quota units may only be transferred to a holder of a Scallop (Ocean) Fishery Access Licence.
6. Transferred quota units may only be held over until a later quota period ending on or before 31 December 1998.
7. In this Order the words “sack” and “crate” have the same meaning as the Fisheries Regulations 1998.

This Order commences on 1 July 1998.

Dated 30 June 1998

Responsible Minister:
PATRICK McNAMARA
Minister for Agriculture and Resources

SHARNE BRYAN
Clerk of the Executive Council

Gazette Services

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