

# IMPROVEMENT NOTICE

This is an Improvement Notice issued under section 191 of the Work Health and Safety Act 2011

## Information

**Notice number N-000001430**

Issued By: Michael FOSTER ID number: P05771

### To whom this notice is issued

Directorate Name: Justice and Community Safety Directorate Head of Directorate: Richard Glenn

Site/workplace:

Location within address of workplace:

Served on: Method of service: Email Date of issue: 14/05/2021

Due date to remedy the contravention or likely contravention: 14/11/2021

## Description

### The inspector believes the person:

- a) is contravening a provision of this Act; or
- b) has contravened a provision in circumstances that make it likely that the contravention will continue to be repeated; and

The provision that the inspector believes is being or has been contravened is **WHS Acts** Section number - **19**

Briefly, how the provision is being, or has been, contravened:

I, Michael FOSTER, reasonably believe that on the Thursday 15 April 2021, you are contravening a provision of the Work Health and Safety Act 2011, being Section 19 (3) (c).

A workplace visit has identified that the persons conducting the business or undertaking (PCBU) has a policy in place, being the Corrections Management (Smoking) Policy 2019, NI2019-487 (the Policy) to manage the identified risk of second-hand cigarette smoke in the workplace.

Observations made within the workplace established that the PCBU is not enforcing compliance with the Policy and is not adequately controlling an identified risk and as such, it has been identified that the control measures do not control the risks.

This Notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or matters or activities causing the contravention or likely contravention to which this notices relates.

The inspector directs you to:

A duty holder must review and, as necessary, revise control measures that are already implemented, being the Corrections Management (Smoking) Policy 2019, NI2019-487, so far as is reasonably practicable, to control the risk.  
S38 Work Health and Safety Regulations 2011.

The inspector recommends that you:

Refer to Corrections Management (Smoking) Policy 2019, NI2019-487,  
-Consult with affected workers.  
-Provide guidance and training about any changes to the policy.  
-Conduct a Hazard assessment of staff members lighting cigarettes for persons in the Mental Health Unit.

**See over for important information on your rights and responsibilities.**

## **Improvement Notice issued under section 191 of the Work Health and Safety Act 2011 - further information**

If you have any questions you may contact the inspector who issued this notice.

### **Display of Notices**

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

### **Compliance with direction or notice**

The person to whom a Improvement notice is issued must comply with the notice (s197). The maximum penalty for failing to comply with this requirement is \$100,000 for an individual or \$500,000 for a corporation.

### **Regulator may carry out action**

If a person to whom a Improvement notice is issued fails to take reasonable steps to comply with the notice, and after giving written notice of its intentions and the persons liability for the costs, the regulator (WorkSafe ACT) may take any remedial action it believes reasonable to make the workplace or situation safe (s 211). The regulator may then recover the reasonable costs of taking this remedial action (s213).

### **Contents of Notice**

This Notice may state one or more of the following: (a) a workplace, or part of a workplace, at which the activity is not to be carried out; (b) anything that is not to be used in connection with the activity; (c) any procedure that is not to be followed in connection with the activity (s196(3)).

### **Directions and recommendations**

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Improvement notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

### **Changes to notice by inspector**

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

### **Privacy statement**

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the *Work Health and Safety Act 2011* and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies. WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014*. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at [www.act.gov.au/privacy](http://www.act.gov.au/privacy).

### **Review of this *Work Health and Safety Act* notice**

If you have any questions or need more information you may contact the inspector who issued this notice, or email [worksafe@act.gov.au](mailto:worksafe@act.gov.au).

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days, or in the case of an improvement notice within the compliance date period specified in the notice, whichever is lesser. You may also make an application for the reviewer to stay the operation of the Improvement notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email:

[worksafe@act.gov.au](mailto:worksafe@act.gov.au)

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at

[www.acat.act.gov.au](http://www.acat.act.gov.au).

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court. Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

### **WorkSafe ACT contact details**

PO Box 158, Canberra ACT 2601

Email: [Worksafe@act.gov.au](mailto:Worksafe@act.gov.au)

Phone: (02) 6207 3000

Fax:(02) 6205 0336.

**Translating and Interpreting Service**

Phone: 131 450