
Request for Urgent Referral and Criminal Prosecution | MA-ODPP-CRIM-WHITMARSH-2025-03

From Ian Francis | MaxAccountability <ian.francis@maxaccountability.org>

Date Wed 30-July-2025 10:10 AM

To odpp@odpp.nsw.gov.au <odpp@odpp.nsw.gov.au>; enquiries@odpp.nsw.gov.au <enquiries@odpp.nsw.gov.au>

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 23 attachments (9 MB)

20250730 - MaxAccountability_Letter to ODPP_Ref-MA-ODPP-CRIM-WHITMARSH-2025-03.pdf; Attachment 1 - SafeWork NSW v Paul Whitmarsh (No. 4) - NSW Caselaw.pdf; Attachment 2 - SafeWork NSW v Paul Whitmarsh (No.2) - NSW Caselaw.pdf; Attachment 3 - Letter to ASIC from MaxAccountability.org dated 28 July 2025.pdf; Attachment 4 - ASIC Extract - Current and historical company information for AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 5 - ASIC Extract - Roles and Relationship Details for AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 6 - ASIC Extract - Current & Historical Company Extract for AWB Contractors Pty Ltd ACN 102 299 409.pdf; Attachment 7 - Liquidator's Report to Creditors dated 27 February 2025.pdf; Attachment 8 - End of Administration Return - AWB Contractors Pty Ltd ACN 102 299 409.pdf; Attachment 9 - ASIC Insolvency Notice – Appointment of Liquidator for AWB Contractors Pty Ltd.pdf; Attachment 10 - ASIC Insolvency Notice – Appointment of Liquidator for ACN 101 989 075 Pty Ltd.pdf; Attachment 11 - NSW Parliament - AQON and Attachment A.pdf; Attachment 12 - ASIC Personal Name Extract - Paul Whitmarsh.pdf; Attachment 13 - ABN Current Details - 36 112 130 786 - The Trustee for PLW INVESTMENTS TRUST (AWB CONTRACTORS & AWB GROUP).pdf; Attachment 14 - PPSR Search Certificate - 6873538351650001 - PURSERS PTY LTD - VESSEL HIN AUWWA077410BS0.pdf; Attachment 15 - Current and historical company information - AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 16 - Roles and relationship extract - AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 17 - Change to company details - AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 18 - Notification of resolution - change of company name - AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 19 - Details of registration of corporations - AWB WATERFRONT CONSTRUCTIONS PTY LTD - ACN 097 667 206.pdf; Attachment 20 - SafeWork NSW v AWB Contractors Pty Ltd (In Liquidation) - NSW Caselaw.pdf; Attachment 21 - Relational Company Extract - PLW Investments Pty. Limited.pdf; Attachment 22 - Letter to ATO from MaxAccountability.org dated 29 July 2025.pdf;

Dear Director,

Please find attached formal correspondence dated 30 July 2025, submitted to your Office. The letter outlines our request for urgent referral and criminal prosecution of Mr. Paul Whitmarsh for manslaughter in relation to the workplace death of Mr. Max Haywood. It presents legal findings, court judgments, and company records evidencing reckless disregard for safety, systemic breaches of legal duties, and post-incident concealment through interrelated entities.

We respectfully request an acknowledgement of receipt and, where possible, an indication of the anticipated timeline for your preliminary review by **August 13, 2025**.

Note: All official responses, submissions, and correspondence are to be sent to team@MaxAccountability.org for prompt and proper handling.

Kind Regards,
MaxAccountability.org

Ian Francis
Founder
 ian.francis@MaxAccountability.org
 www.MaxAccountability.org

Advocating for transparency, accountability, and justice in workplace safety and industrial fatalities.

MaxAccountability.org

Our Mission

We exist to honour Max Haywood by demanding justice, exposing unsafe work practices, and driving real accountability.

Our Vision

Companies and Directors are held accountable for their decisions and the lives they impact. Justice is not delayed, denied, or dodged.

Our Action

We expose unsafe practices, pursue justice through legal and regulatory channels, and give voice to those silenced by fear or loss.

30 July 2025

The Director
Office of the Director of Public Prosecutions (NSW)
Level 15, 175 Liverpool Street
Sydney NSW 2000

By Email: odpp@odpp.nsw.gov.au and enquiries@odpp.nsw.gov.au
Our Reference: MA-ODPP-CRIM-WHITMARSH-2025-03

Subject: Request for Referral and Criminal Prosecution: Consideration of Criminal Manslaughter Charges over the Death of Mr. Max Haywood (2021)

Dear Director,

On 27 January 2021, Mr. Max Haywood – a 59-year-old husband and father – was killed during a crane lift on a barge operated by AWB Contractors Pty Ltd in Rozelle, Sydney. The lift was conducted without basic safety precautions or engineering oversight. In 2025, both Mr. Paul Whitmarsh and AWB Contractors were convicted and fined under the Work Health and Safety Act. Despite these findings, no criminal charges have been pursued for the loss of life. This letter seeks to address that omission by requesting urgent consideration of whether the conduct meets the threshold for criminal manslaughter.

Legal Convictions Already Secured

In *SafeWork NSW v Paul Whitmarsh* (No. 4) [2024] NSWDC 274, Mr. Whitmarsh was personally convicted and fined \$300,000 under s 27 and s 32 of the Work Health and Safety Act 2011 (NSW), and the company, AWB Contractors Pty Ltd, was fined \$765,000 under s 19 and s 32. The Court found that:

- The incident was foreseeable, avoidable, and arose from serious breaches of WHS duties,
- Mr. Whitmarsh personally failed to implement even the most basic lifting plans, risk controls, or supervision protocols,
- The lifting device involved was non-compliant and uncertified,
- There were no Safe Work Method Statements (SWMS) in use on the day of the incident,

Please note: A copy of this letter will be made publicly available on MaxAccountability.org, along with any official response(s) received from the primary addressee or a copied party. In the interest of transparency, if no response, preliminary or otherwise, is received within fourteen (14) days from the date of this correspondence, that fact will also be noted and published on the same platform.

- No divers, lifting certifications, or engineering guidance were used,
- No supervision or fall protection was in place,
- Mr. Whitmarsh personally oversaw and authorised the work.

The Court found Mr. Whitmarsh bore direct and personal responsibility for the incident, describing his conduct as involving a complete absence of risk assessment, no safety systems whatsoever, and a failure to implement even the most basic protective measures. His actions were found to be of the highest objective seriousness, constituting a grave and systemic disregard for worker safety. Despite these findings, no custodial sentence was imposed, and the maximum penalty available was a fine.

Clear Elements of Criminal Manslaughter

We submit that the facts of the matter, supported by legal judgments and liquidator evidence, clearly meet the threshold for referral under s 18 of the Crimes Act 1900 (NSW) for manslaughter by criminal negligence.

Mr. Whitmarsh's reckless indifference to worker safety, despite full awareness of the hazards involved and prior complaints to SafeWork NSW, constitutes a gross breach of his duty of care and the standard of a reasonable person.

Mr. Haywood's death was not merely a tragic accident – it was the inevitable and fatal consequence of deliberate disregard for safety, systemic non-compliance with legal obligations, and a complete failure of duty by the person in control.

Suspected Pheonix Activity and Concealment after the Death

After the incident and while insolvency proceedings were underway:

- Mr. Whitmarsh reactivated a dormant company, AWB Racing Pty Ltd, and renamed it AWB Waterfront Constructions Pty Ltd;
- This new company operates from the same address, uses the same assets (including vessels and cranes), and engages in materially identical, if not functionally indistinguishable business operations;
- The business resumed without reported disclosure to creditors, regulators, or the court.

Company records (ASIC Attachments 4, 5, 16, 17, and 21) show that all entities involved are interrelated and held through PLW Investments Pty Ltd, another entity under Mr. Whitmarsh's control. This confirms common ownership, control, and a deliberate effort to avoid accountability.

Moral Gravity and Public Interest

Mr. Haywood was killed while following directions from a man he had known for decades. The breach of trust, the systemic failures, and the orchestrated concealment that followed demand a response that reflects the moral seriousness of the conduct.

Despite convictions, Mr. Whitmarsh has demonstrated no remorse, no transparency, and no reform. The same business continues today under a new name, shielded by legal technicalities but controlled by the same individual.

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Urgent Request for Referral to Police and Prosecution

We urge your Office to:

1. Review the SafeWork NSW investigation brief and court findings in full;
2. Consider referring this matter to NSW Police for further criminal investigation,
3. Consult with SafeWork NSW under *s231 of the WHS Act*, which permits them to refer matters to the DPP where a more serious criminal offence is suspected,
4. Undertake direct consideration of whether criminal manslaughter charges are appropriate under Section 18 of the Crimes Act,
5. Where appropriate, pursue charges under s 18 or s 24 of the Crimes Act 1900 (NSW) (reckless indifference or criminal negligence causing death).

This is a matter of utmost public importance. Allowing Mr. Whitmarsh's conduct to go without further criminal scrutiny sends a message that the life of a worker can be disregarded without consequence beyond monetary fines.

Supporting Documentation

A full appendix of court rulings, company extracts, liquidation reports and PPSR searches is included. These documents provide evidence of:

- The safety failures that caused Mr. Haywood's death,
- The legal findings of guilt,
- The transfer of business, operations and assets to a new company,
- The concealment of business continuity from regulators and creditors.

Jurisdictional Referrals

Should your Office identify conduct arising from this matter that warrants referral beyond your direct prosecutorial remit – including, but not limited to, corporate dishonesty, deliberate concealment, asset transfers to avoid liability, or other potentially criminal conduct – we strongly urge that such matters be immediately referred to the appropriate investigative or regulatory authorities. We respectfully caution against any pre-emptive legal filtering that may downplay or prematurely exclude matters from scrutiny. It is imperative that the full extent of conduct be subject to the investigative and enforcement powers of all relevant competent agencies.

Closing

We submit that Mr. Whitmarsh's conduct – including the use of interrelated entities, the concealment of asset continuity, and the deliberate rebranding of corporate vehicles – evidences a misuse of corporate structure that should not shield him from personal criminal liability. His actions were not those of a passive director, but of the individual who designed, directed, and executed the unsafe operations that caused a worker's death.

A copy of this correspondence is provided to the family of Mr. Max Haywood as is outlined in the relevant section.

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I and the MaxAccountability.org team are available to assist further should ASIC require any additional documentation, evidence, or clarification.

Please note our disclosure policy on the first page regarding transparency and public reporting of correspondence with government agencies. This letter falls within that scope. Fourteen (14) days from the date of this letter is **13 August 2025**. We trust your Office can provide at minimum an initial acknowledgement of receipt and an indicative timeline for review or update within this period.

Kindly direct replies to team@MaxAccountability.org.

Yours sincerely,



Mr. Ian Francis
Founder, MaxAccountability.org

Attachments:

The following documents are attached and submitted in support of this request:

Attachment 1: SafeWork NSW v Paul Whitmarsh (No. 4) – NSW District Court judgment confirming conviction for breach of WHS Act and \$300,000 fine following a workplace fatality.

Attachment 2: SafeWork NSW v Paul Whitmarsh (No. 2) – Procedural ruling confirming interrelated entities, corporate control and non-compliance with discovery.

Attachment 3: Letter to ASIC from MaxAccountability.org dated 28 July 2025 – summarising evidence of phoenix activity, breaches of s588G and s596AB, and requesting director disqualification.

Attachment 4: ASIC Extract – Current and Historical Company Information for AWB Waterfront Constructions Pty Ltd (ACN 097 667 206) – confirming name change from AWB Racing Pty Ltd and reactivation timeline.

Attachment 5: ASIC Extract – Roles and Relationship Details for AWB Waterfront Constructions Pty Ltd – confirming sole directorship and continuity of control by Mr. Paul Whitmarsh.

Attachment 6: ASIC Extract – Current and Historical Company Information for AWB Contractors Pty Ltd (ACN 102 299 409) – confirming liquidation and prior trading identity.

Attachment 7: Liquidator's Report to Creditors dated 27 February 2025 – details of unpaid liabilities, insolvent trading indicators, and likely breaches of director duties.

Attachment 8: End of Administration Return – AWB Contractors Pty Ltd – confirms cessation of trading and no dividend to creditors.

Attachment 9: ASIC Insolvency Notice – Appointment of Liquidator for AWB Contractors Pty Ltd – confirms the date of winding up commenced.

Attachment 10: ASIC Insolvency Notice – Appointment of Liquidator for ACN 101 989 075 Pty Ltd – further entity linked to Mr. Whitmarsh and broader pattern of winding up related companies.

Attachment 11: NSW Parliament – AQON and Attachment A – includes records of prior workplace complaints and awareness of safety issues at AWB Contractors prior to fatality.

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Attachment 12: ASIC Personal Name Extract – Paul Whitmarsh – confirms directorships, secretary roles, and shareholdings in active and liquidated companies, evidencing interrelated control structures and possible phoenixing behaviour.

Attachment 13: ABN Current Details – The Trustee for PLW INVESTMENTS TRUST (ABN 36 112 130 786) – confirms registration of the trust since 2000 and shows the business names "AWB Contractors" and "AWB GROUP" were registered under the trust on 30 October 2024.

Attachment 14: PPSR Search Certificate – PURSERS PTY LTD – confirms a security interest over a vessel (HIN AUWWA077410BS0) registered under the same trust entity as the re-formed "AWB Contractors", suggesting asset holding and concealment potential.

Attachment 15: ASIC Extract – Current and Historical Company Information for AWB WATERFRONT CONSTRUCTIONS PTY LTD – confirms company name change from AWB Racing Pty Ltd to AWB Waterfront Constructions Pty Ltd on 22 October 2024, after years of inactivity.

Attachment 16: ASIC Extract – Roles and Relationship Details for AWB WATERFRONT CONSTRUCTIONS PTY LTD – confirms that Mr. Paul Whitmarsh is the sole director and ultimate controller, aligning with other entities linked to him.

Attachment 17: ASIC Form 484 – Change to Company Details – confirms change of residential address for Paul Whitmarsh on 30 August 2022, linking him to the company prior to name reactivation and relaunch.

Attachment 18: ASIC Form 205A – Notification of Resolution – confirms formal resolution to change the company name from AWB Racing Pty Ltd to AWB Waterfront Constructions Pty Ltd on 22 October 2024.

Attachment 19: Certificate of Registration – Confirms incorporation of AWB Racing Pty Ltd (ACN 097 667 206) on 31 July 2001 and formal name change to AWB Waterfront Constructions Pty Ltd effective 22 October 2024.

Attachment 20: SafeWork NSW v AWB Contractors Pty Ltd (In Liquidation) – District Court ruling confirming conviction of the company over the death of Mr. Max Haywood and imposition of \$765,000 fine.

Attachment 21: ASIC Relational Company Extract – PLW INVESTMENTS PTY. LIMITED – confirms that PLW Investments holds shares in AWB Contractors Pty Ltd, AWB Waterfront Constructions Pty Ltd, and ACN 101 989 075 Pty Ltd, evidencing corporate linkage and common control structure.

Attachment 22: Letter to ATO from MaxAccountability.org dated 29 July 2025 – detailing evidence of phoenix activity, asset concealment, director misconduct and tax evasion. Requests urgent ATO investigation, prosecution, veil piercing, and potential jurisdictional referrals to law enforcement for criminal breaches.

Copy to:

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NSW Police	Homicide Squad	homicide@police.nsw.gov.au
NSW Police	State Crime Command	statecrimecommand@police.nsw.gov.au
Hon. Yasmin Catley MP	Minister for Police & Counter Terrorism	lakemba@parliament.nsw.gov.au
Hon. Chris Minns MP	Premier of NSW	office@premier.nsw.gov.au
Hon. Mark Speakman MP	Leader of the Opposition	leader.opposition@parliament.nsw.gov.au
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