

WORKSAFE ACT INVESTIGATIONS

This fact sheet outlines the responsibilities of WorkSafe ACT in relation to alleged offences under the *Work Health and Safety Act 2011* and the process undertaken by Investigators, including contact with witnesses in the workplace.

WHY DO WORKSAFE ACT INVESTIGATE?

WorkSafe ACT Inspectors play a vital role in determining whether workplaces are complying with their work health and safety (WHS) obligations. If a workplace incident occurs that results in the death or traumatic injury of a worker, or an action is taken that places a person at risk of serious injury, illness or death, then the matter is referred to the WorkSafe ACT Investigations Team.

The Investigations Team will then conduct a thorough investigation to determine any contributing factors or possible causes of the incident. This could include a lack of employee training or workplace inductions, poor safety procedures or culture or a lack of supervision.

INVESTIGATORY POWERS AND PROCESS

Under the *Work Health and Safety Act 2011* (the WHS Act), WorkSafe ACT Inspectors can exercise their powers and request or obtain information to assist in the investigation. This could include, but is not limited to:

- Interviewing witnesses, managers and other people who were at the workplace
- Expert reports
- Internal WHS, systems and governance procedures
- Contracts and agreements
- High risk work licences and training records
- Notes of meetings and other correspondence, and
- Photographs or videos.


Once the Inspector has collected all the available evidence, a brief of evidence is prepared and provided to the Director of Public Prosecutions (DPP). The DPP reviews the brief and makes the decision on whether to prosecute.

TIMEFRAMES

The time it takes to complete an investigation depends on the amount and type of evidence required, the availability of evidence and the complexity of the case. An investigation will continue until all avenues of inquiry have been exhausted or until the statute of limitations expires. Simple matters can take a few months, while more complex cases can take up to 12 months or more.

WorkSafe ACT has a responsibility to conduct all investigations in a responsive and timely manner to afford procedural fairness to all those involved and takes this obligation very seriously. However, sometimes there can be unintentional delays in the process.





The length of investigation is limited by the statute of limitations that govern it. A statute of limitations is the length of time that WorkSafe ACT and the DPP must commence legal proceedings. After the statute of limitations has passed no further action can be taken on a matter. In the ACT the statute of limitations ranges between 12 and 24 months depending on the alleged offence.

WILL ANYONE ELSE BE INVOLVED IN THE INVESTIGATION?

Due to the unique position of the Australian Capital Territory (ACT), investigations conducted by WorkSafe ACT can be conducted in parallel with other organisations. This may result in joint ventures with Comcare, or Safework New South Wales (NSW).

Sometimes WorkSafe ACT investigations are conducted alongside those of with the Australia Federal Police (AFP). In these cases, the AFP will lead the investigation that focuses on alleged criminal acts and, WorkSafe ACT investigates any breaches of the WHS Act.

Where investigations are carried out under different laws, witnesses and duty holders may be asked to provide multiple copies of evidence or be interviewed by the different organisations.

WHAT DO I NEED TO DO IF I AM A DUTY HOLDER OR A WITNESS FOR A WORKSAFE ACT INVESTIGATION?

The Investigation team are extensively trained and highly professional. They understand an incident or near miss can result in a lot of stress on workers, duty holders and witnesses and are respectful of this.

If WorkSafe ACT are investigating something at your work or workplace, Inspectors will ask you questions about what happened. This could be at the time of the incident or as part of a record of conversation or interview at a later date. Where an Inspector needs to talk to a duty holder, worker or witness after an incident or near miss, the Inspector will schedule a reasonable time with that person.

WorkSafe ACT do not have to inform the workplace under investigation of who and when they are speaking with workers or witnesses.

Being a witness can be daunting. As a witness you must be truthful and honest when you answer questions and provide information. All participants in WorkSafe ACT investigations are required to maintain confidentiality of what is discussed during an investigation.

The Inspector will notify you of your rights and obligations before and while you are interviewed.





You should be aware that....

Any information you provide during an investigation may also be disclosed at part of a subsequent process such as Freedom of Information requests or legal appeals. However, there are strict laws around this that are followed by WorkSafe ACT.

WHO SHOULD I CONTACT IF I HAVE QUESTIONS?

If you have any questions about the investigation process, you should contact the WorkSafe ACT Investigation at worksafe@worksafe.act.gov.au

