

Fact sheet - How WHS matters are dealt with once referred to the Resources Regulator, Department of Regional NSW

This fact sheet sets out the work health and safety (WHS) referral arrangements between the Department of Customer Service (DCS) and the Department of Regional NSW (DRNSW).

The arrangements are managed by SafeWork NSW on behalf of DCS, whilst the Resources Regulator fulfils a similar role on behalf of DRNSW.

The aim is to assist both DCS and DRNSW in managing a perceived conflict of interest where they are both required to regulate WHS and also comply with WHS laws as a person conducting a business or undertaking (PCBU).

The WHS referral arrangements are governed by an overarching Memorandum of Understanding (MOU), Instruments of Delegation, and a protocol establishing administrative arrangements for the referral of matters from DCS (via SafeWork NSW) to DRNSW. The arrangements ensure that appropriate levels of proportionality, transparency, independence and accountability exist regarding compliance with WHS laws by each party.

This fact sheet provides information on how and when WHS incidents, complaints and other matters referred by SafeWork NSW to DRNSW are responded to, managed and investigated.

Referrals and incident investigation

REFERRAL BY SAFEWORK NSW

The MOU provides for the referral of WHS matters to DRNSW by SafeWork NSW.

The administrative process for the referral of matters is set out in a protocol, developed by SafeWork NSW and agreed to by DRNSW.

All DCS WHS incidents or requests for service will be reported to SafeWork NSW's Investigation Decision Making Panel (IDMP) for review and final determination. The IDMP will review the triage and response outcome and will make a final determination on any referral to the Resources Regulator.

Should a DCS staff member requesting a referral not agree with the action and decision of SafeWork NSW on a particular matter, the person may upon request ask for the matter to be referred to the DRNSW.

Please refer to the Protocol for more detailed information on the reporting, triage, response and referral process used within SafeWork NSW.

RECEIPT AND ASSESSMENT BY THE RESOURCES REGULATOR

The assessment, determination and investigation of matters is undertaken by the Major Safety Investigations Unit within the Resources Regulator.

Upon receipt of the referral, the Major Safety Investigations unit will assign a dedicated investigator to conduct its own assessment of the matter. At that stage, the usual actions taken by the investigator will include contact with:

- the person(s) who originally notified the matter
- a representative of the DCS (Director, People and Culture)
- other interested parties.

Following the initial assessment, the Major Investigations and Emergency Response Unit will decide whether or not a further investigation of the matter is required.

INVESTIGATION BY THE RESOURCES REGULATOR

If a further investigation is conducted, by the Resources Regulator, the functions and powers exercised by the investigator will be in line with the provisions of the work health and safety laws. Investigators are appointed as WHS inspectors. Accordingly, the following activities are likely to occur:

- interviews may be conducted
- notices may be issued
- relevant documents or other evidence may be collected
- an investigation report will be completed – this report will consider whether follow-up compliance action is required
- outcomes will be communicated to the original notifier of the matter, interested parties (if relevant) and the PCBU
- if follow-up compliance action has been recommended, this will be progressed as required.

These powers ensure that the investigator can arrive at the facts surrounding an incident, or other matter, identify any situation that may lead to further risk to people in the workplace, allow the Resources Regulator to take appropriate enforcement actions, and make recommendations for improvement.

An investigator will speak to anyone who can assist with information about a WHS matter. This will be done by formal arrangement and conducted with fairness and sensitivity. Those who speak to an investigator are afforded certain legal protections and will generally have the opportunity of having another person present to provide support during the process.

COMMUNICATION BY THE RESOURCES REGULATOR

At a minimum, the Major Safety Investigations unit will ensure timely communication with all interested parties at the following times:

- receipt of referral
- assessment outcome
- investigation outcome

Additional communication is likely to occur during the assessment and investigation process (if undertaken).

STAFF SUPPORT BY THE DEPARTMENT OF CUSTOMER SERVICE

Staff who are required to participate in the investigation can access the support services available within DCS, this includes the Employee Assistance Program and support from your Manager or People and Culture. Staff may also be granted access to Legal Advice where this is appropriate.

ABOUT THE MAJOR SAFETY INVESTIGATIONS UNIT

The Major Safety Investigations unit operates within the Resources Regulator, NSW Department of Regional NSW.

The unit investigates the nature, cause and circumstances of major incidents in the NSW mining, extractives and petroleum industry. It uses the outcomes of investigations to help the department and industry learn about incident causes so that mines and petroleum sites can take steps to prevent similar occurrences.

As a discrete and specialised incident investigation unit within the department, it is intended to improve mine safety and assist the department to promote changes in the safety culture of the mining and extractives industry.

Its role is to carry out a deep analysis of incidents to ensure that lessons can be applied for the safety of workers at other mines, and to give effect to the Department's Compliance and Enforcement Policy.