

Proposed NSW Resources Regulator MOU and Referral Protocol - Consultation

Summary of current arrangements and proposed changes

Introduction

The Department takes very seriously all work health and safety (WHS) matters including bullying and harassment in the workplace.

The Department has recently introduced additional processes for reporting of WHS issues including bullying and harassment via the Integrity Hotline and the EAP hotline. These mechanisms allow employees anonymous reporting via independent organisations.

Information on these reporting avenues and other information is on the Department intranet site.

The Department has commenced a review of bullying and harassment reporting and training which includes a refresh of the current resources.

Other current initiatives are

- Forming a working group to develop a WHS Issue Resolution Procedure (led by BRD)
- Enhancement of EAP services
- Review of current training modules and development on new material as appropriate.

Background

As a result of a parliamentary enquiry into workplace bullying within WorkCover NSW in 2013 a report was published in June 2014. One of the recommendations was to formalise a Memorandum of Understanding (MOU) between WorkCover NSW and the then Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS) for the referral of work health and safety (WHS) matters for investigation.

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 comply with WHS laws as a person conducting a business or undertaking (PCBU).

The MOU requires updating due to Machinery of Government changes to accurately reflect the Departments involved.

DCS has completed an evaluation of the existing MOU and supporting Operating Protocol including surveys of staff who had referred matters to the Regulator and Regulator Staff. This process has recommended that it is appropriate for WHS matters involving the organisation to be triaged and responded to consistent with external matters notified to SafeWork NSW.

The WHS referral arrangements are governed by an overarching 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.

The Protocol that supports WHS matter referred to the Resources Regulator has been reviewed based on feedback from staff and the Resources Regulator.

Summary of changes

These arrangements cover DCS staff. They do not cover staff employed by Executive or separate Agencies, such as Service NSW, IPART, IPC, GWIC.

Changes to the WHS Matters Memorandum of Understanding with the Resources Regulator

- Changes references of Departments to the correct Agencies (machinery of government changes)
- Strengthens the annual report requirements.

Resource Regulator Fact Sheet

- New 'Fact Sheet' for employees
- Focuses on what to expect when a matter is referred to the Resource Regulator.

Referral Protocol – Proposed amendments

The purpose of the Protocol is to establish the principles and process flow (referral model) underlying the receipt, assessment and referral of work, health and safety matters for investigation and enforcement action from the Secretary of the Department of Customer Service (DCS), known as "SafeWork NSW" (Clause 2 of Schedule 2 to the WHS Act 2011), to the Secretary of the DRNSW.

The proposed changes to the referral model outlined in the protocol are

- All DCS WHS matters are assessed utilising normal SafeWork NSW triaging processes and are triaged as either an administrative response or an inspector response. (see process flow map in Protocol)
- If there is a conflict of interest in the referral to a relevant business unit or because of the seriousness it is deemed not appropriate to undertake an inspector response by SafeWork NSW, the matter will be reviewed by the Director, Investigations & Emergency Response, SafeWork NSW to determine if referral to the Resources Regulator is required.
- In a situation where a decision is reached not to refer a matter after SafeWork NSW's assessment and response, and the original notifier disputes the outcome, the matter is to be referred to the Resources Regulator for further assessment and action as required.