

Investigations

REGULATORY FUNCTION

December 2018



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Introduction

The Investigation Policy sets out the high-level approach WorkSafe New Zealand (WorkSafe) takes to investigating serious health and safety events.

Background

WorkSafe was established as a Crown entity under the WorkSafe New Zealand Act 2013 and is New Zealand's primary health and safety regulator. WorkSafe's primary objective is to promote and contribute to a balanced framework for securing the health and safety of workers and workplaces. Everyone who goes to work should come home healthy and safe.

New Zealand has high rates of workplace fatalities, serious harm injuries, and work related illness compared to other OECD countries. WorkSafe is aiming to achieve at least a 25 percent reduction in workplace fatalities and serious injuries by 2020; and a 50 percent reduction in the incidence of pleural cancer (mesothelioma), asbestos related lung cancer and asbestosis by 2040. Investigations into serious health and safety events are a critical step to understanding causation, learning and sharing lessons, and taking action to prevent recurrence.

Policy purpose

The *Investigations Policy* explains WorkSafe's approach to investigations and what it seeks to achieve from investigations.

This policy is for internal operational use and will guide WorkSafe's investigation activities and the development of more detailed internal operational documentation. Other related operational policies and operating models include the: *Response Policy*, *Enforcement Policy* and *Enforcement Decision Making Model (EDM)*.

This policy is not intended to be prescriptive in its application, but will guide investigators in their decision-making. Case-by-case decisions about the objectives, lines of inquiry, and outcomes of an investigation will be influenced by the specific event being investigated.

Policy scope

WorkSafe investigates under the following legislation and supporting regulations:

- Health and Safety at Work Act 2015 (HSWA)¹
- Electricity Act 1992
- Gas Act 1992
- Hazardous Substances and New Organisms Act 1996 (HSNO Act)²

This policy applies to WorkSafe investigations into events that are being separately investigated by another agency investigating under another regime. In these cases there is likely to be agreement between the agencies to cooperate on their respective investigations (eg a Memorandum of Understanding, or an ad hoc agreement in particular circumstances).

¹ This policy, and any more detailed procedures and guidance, also extend to include transitional investigations into events notifiable under the Health and Safety in Employment Act (HSE Act).

² This policy is compatible with the changing scope of WorkSafe's continuing role as an enforcement agency under the HSNO Act. The policy looks ahead to the planned limitation of that role where WorkSafe's investigations under the HSNO Act will be confined to work-related events that adversely affected the environment due to failures to safely contain or dispose of hazardous substances, and did not result in a notifiable health and safety risk or harm.

This policy covers all regulatory investigation functions carried out by WorkSafe. Investigations are carried out in response to death, injury, and illness, and also in response to accidents, incidents and other occurrences that could have caused death, injury or illness in different circumstances. For more detail on when WorkSafe investigates matters see the Response Policy and WorkSafe Triage Model.

For the purposes of this policy an investigation is defined as follows:

An investigation is a reactive intervention initiated in response to past events and in accordance with the legislation we administer. It is a formal, structured process of inquiry that is systematically and actively managed. Investigations are conducted to establish the facts, to identify any breaches of the law, to prevent recurrence, to recommend an appropriate response to any breaches identified, and to understand the causes and lessons learned where possible.

Once an event is allocated to an investigator, the investigation will begin. An investigation ends when managerial review of the investigation is completed. The outcomes of an investigation may be achieved after it has ended.

Out of scope

This policy does not cover the following:

- assessment or inspection work and other proactive interventions
- emergency responses involving WorkSafe (although the event generating the emergency might subsequently be investigated by WorkSafe)
- WorkSafe's responses to immediate concerns reported to it, including dealing with the cause of an immediate or imminent danger (these are not investigations)
- review of provisional improvement notices or resolution of work health and safety issues including cessation of work
- investigations that are part of WorkSafe's administrative systems (eg investigations about individuals or organisations authorised by WorkSafe under legislation to perform particular functions).

Many of the above responses will be covered by other policies, including the *Response Policy*.

Strategic approach to investigations

The strategic objectives WorkSafe seeks to achieve from investigations are to:

- determine breaches of the law, hold those in breach to account and secure justice
- provide information to improve health and safety performance
- target investigation activities on the most serious health and safety events.

Determine breaches of the law and secure justice

Investigation is WorkSafe's key intervention for determining whether there have been breaches of the law. When there has been a proven breach, investigation provides the mechanism to hold those in breach to account and to obtain justice for victims.

Investigation may lead to enforcement activities when it is necessary to:

- ensure immediate action by duty holder(s) to protect people and the environment from immediate risks of harm,
- obtain compliance with the law, and
- hold to account those that have breached the law.

When appropriate, evidence obtained as a result of an investigation may provide the basis for prosecution action against those that put others at risk and especially where there has been reckless conduct.

Responding to any breaches of the law, is guided by WorkSafe's *Enforcement Policy, Enforcement Decision-Making Model (EDM) and Prosecution Policy*.

Provide information to improve health and safety performance

Investigations provide valuable information that contribute to WorkSafe's focus of improving health and safety practices. The information obtained from investigations is crucial to understanding causation, sharing lessons learnt, and acting to prevent recurrence. It also increases WorkSafe's knowledge about health and safety performance of both individual PCBUs and business sectors.

In combination with data and intelligence already held by WorkSafe, investigation information is valuable in helping identify broader patterns of failure, attitudes and behaviours. This information is used to inform WorkSafe's priorities and strategies to improve health and safety performance.

Target activities

WorkSafe targets its investigation activity on the most serious health and safety events. This is in line with the *Response Policy* which describes how the level and risk of harm are factors taken into account when deciding which events to investigate.

In the case of events involving the supply and use of electricity or gas, WorkSafe's jurisdiction extends beyond the risk of harm to those at work (or public safety) to include damage to property. Investigations may also be carried out in response to hazardous substance incidents arising from work that have adversely affected the environment.

See the *WorkSafe Triage Model* for more details on when WorkSafe investigates. See also the WorkSafe website for the sectors WorkSafe is currently focused on.

WorkSafe will collaborate with other regulatory agencies to avoid duplication of investigation effort and where practicable, ensure interactions and responses are co-ordinated, consistent and proportionate.

Purpose of investigations

WorkSafe investigates an event to:

- provide an informed explanation of what occurred
- prevent the occurrence or recurrence of harm to people and of adverse effects on the environment arising from similar hazards or situations
- identify and respond appropriately to any breaches of legislation.

When providing an informed explanation, WorkSafe will consider the parties who will need an explanation depending on the event being investigated and the findings made (eg a victim and their family, an employer, a coroner, upstream duty holders, industry associations, another regulator or government agency). Information will be provided subject to any legal and privacy constraints.

Objectives of an investigation

The objectives of all WorkSafe's investigations are to:

- establish the key facts relating to the causes of the event, and the evidence that substantiates the facts
- determine the immediate and underlying causes of the event
- identify any lessons learned, including lessons that reinforce existing knowledge as well as those that provide new knowledge

- ensure action by the duty holder(s) concerned to prevent a recurrence of the event (including addressing any immediate risk of harm)
- identify any wider ramifications beyond the duty holder(s) concerned, and recommend action to address them
- determine the relevant law and whether there are any significant breaches
- reach a conclusion about appropriate enforcement responses.

Management of investigations

Investigators and their managers work together to plan, conduct and complete investigations. They do this in accordance with WorkSafe's operational policies, procedures and practice guidance. They work to meet WorkSafe's performance standards for completing investigations, including time frames. Timeframes take account of the need to comply with statutory time periods and to provide timely explanations to relevant parties.

Interactions with victims will be in accordance with the *Victim's Rights Act 2002*, including that victims and their families:

- be treated with courtesy and compassion, with their dignity and privacy respected
- receive relevant information about programmes, services and remedies available to assist them, taking into account their specific circumstances
- are given information about the progress of investigations and proceedings.

Outcomes of investigations

There are various outcomes that can occur during and after an investigation to achieve its purpose and objectives.

Outcomes during an investigation may include to:

- ensure that duty holders act immediately to deal with immediate risks of harm - this may include using enforcement activities
- initiate safety alerts and bulletins, and media releases
- establish findings and make recommendations for changes to prevent recurrence and to address immediate and underlying causes
- use enforcement activities as appropriate to enforce recommendations
- issue infringement notices appropriately to hold duty holders to account
- recommend prosecution to hold duty holders to account and to secure justice for victims if this would be in the public interest
- provide relevant parties an explanation of what occurred, and share learnings
- refer an event to another regulatory body or investigating authority.

Outcomes after an investigation may include to:

- follow-up with PCBUs and other duty holders involved to help them understand good practice ways to meet legal requirements
- carry out other interventions (eg assessments, inspections, audits) to examine wider issues emerged during the course of an investigation
- proceed to a prosecution and use the evidence obtained during an investigation to secure a conviction, and to seek an appropriate sentence when a duty holder has been convicted (including arranging victim impact statements to be provided to court)
- provide a report on a fatality to a coroner with information to help them establish the causes and circumstances of death
- refer an event to another regulatory body, authority or agency

- initiate an information campaign
- publish safety alerts and bulletins, and media releases
- draw findings and make recommendations to relevant duty holders in the supply chain (eg importers suppliers, designers, manufacturers, installers etc) relevant industry associations or to the public.
- recommend new publications or changes to existing, approved codes of practice, guidance and standards (whether published by WorkSafe, industry groups, or standard-setting bodies)
- draw attention to matters that raise legislative issues with the Ministry of Business, Innovation and Employment and the Minister for Workplace Relations and Safety as necessary.

Closing investigations

Investigations can be closed at any stage. In general they will not be closed until the scene of a notifiable event or incident has been visited, and injured or affected persons have been contacted.

Investigations may be closed where one or more of the following applies:

- The outcomes of the investigation have been achieved.
- The matter does not meet WorkSafe's criteria for investigation.
- The investigation relates to matters outside WorkSafe's jurisdiction.
- Another agency is better placed to manage an investigation.
- The investigation is not expected to contribute proportionately to delivery of WorkSafe's purpose and functions.
- The investigation determines there is not sufficient information or it is not practical to continue.
- There is no perceived benefit expected to come from investigating further.
- Sufficient information has been gathered to conclude there been no significant breach of the law.

The decision to close an investigation should be discussed and agreed to by the Inspector and their Manager.

The decision to close an investigation and the reasons for doing so must be recorded.

The Inspector/Manager can choose to refer the matter to another WorkSafe team so we can take other interventions if needed.

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