

# Causal investigation policy



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## Purpose and scope

The NSW Department of Planning and Environment supports the timely dissemination of information about the causes of significant safety incidents and high potential safety incidents. Timely communication helps ensure that duty holders under the work health and safety laws are able to better understand the risks they must manage, and the necessary controls to prevent reoccurrences of similar safety incidents.

In particular, the objects of the *Work Health and Safety Act 2011* include:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work
- promoting the provision of information in relation to work health and safety
- providing a framework for continuous improvement and progressively higher standards of work health and safety.

The purpose of the causal investigation policy is to promote these objects by establishing a framework where, in appropriate circumstances, a causal investigation is conducted to enable the quick and full understanding of the causes of safety incidents, and publication of corresponding lessons to reduce the likelihood of recurrence.

This policy applies to all investigations designated as causal investigations carried out by the department to support the Secretary of the Department as the regulator of mines and petroleum sites under the *Work Health and Safety Act 2011* and *Work Health and Safety (Mines and Petroleum Sites) Act 2014*.

This policy forms part of and is to be read in conjunction with the department's compliance and enforcement policy for the regulation of health and safety at mines and petroleum sites.

## What is a causal investigation?

A causal investigation is an investigation into a safety incident notified to the department under the work health and safety laws, not to obtain evidence for a prosecution but rather to identify the causal factors of safety incidents, the effectiveness of the controls being used and what factors may have contributed to the failure of the controls.

## When may a causal investigation be carried out?

The regulator (delegated to the Chief Compliance Officer or the Coordinator General of the NSW Resources Regulator) may consider conducting a causal investigation on the recommendation of the Resources Regulator's senior executive team and any relevant technical experts. Recommendations may be made where there are clear early learnings for industry.

The regulator may make a decision to refer an incident for a causal investigation when the safety incident:

- did not involve the death or serious injury of any person, or
- did not involve any reckless conduct by persons that resulted in the safety incident, or

- did not involve the provision of false or misleading information to the regulator about the safety incident.

The regulator may decide to conduct a causal investigation whether parties involved in the safety incident wish to participate in the causal investigation in a voluntary capacity or not.

## Who will carry out a causal investigation?

A causal investigation may be undertaken by a team of investigators established for the purpose of investigating a safety incident. The investigation team may include:

- departmental officers from the Mine Safety branch, including WHS mines inspectors
- representatives of the mine operator
- health and safety representatives
- industry and mine safety and health representatives (in the case of coal mines)
- any other relevant people with expertise in investigations or in relation to the issues connected with the safety incident.

The regulator will decide on the composition of the investigation team in consultation with relevant stakeholders. These stakeholders would usually include the mine operator, other persons conducting a business or undertaking (PCBUs) involved in the safety incident, workers, health and safety representatives, and industry and mine safety and health representatives (in the case of coal mines). The actual composition of the team will be determined on a case-by-case basis, taking into account a range of factors including:

- the nature and complexity of the safety incident
- the likely resources required to investigate the safety incident
- the location of the safety incident site
- competing priorities for resources.

In the event that any relevant parties identified as participants in the investigation team decide not to participate, the regulator will still decide whether to commence the causal investigation. A party will not be penalised for deciding not to participate as a member of the investigation team.

Participation in a causal investigation or as part of the causal investigation team will not affect a person's legal rights.

## How will information from the causal investigation be used?

### Causal investigation outcomes

The primary objective of the causal investigation and this policy is to timely communicate information about the causes of safety incidents and ways to prevent any recurrences. Therefore, information collected by the causal

investigation will only be used to disseminate learnings about the causes, or likely causes, of the safety incident.

In particular, after commencement of a causal investigation the regulator will aim to release:

- within 14 days of commencement, a preliminary finding about the cause or likely cause of the safety incident
- within 3 months of commencement, a full report on the cause or likely cause of the safety incident.

Factors beyond the regulator's or the investigation team's control may prevent publication of the information within these timeframes.

These timeframes will not affect the regulator's ability to update reports already published or to issue new reports or information related to the safety incident.

Before publishing a report of the findings of a causal investigation, the regulator may provide a copy of the draft report to the relevant mine or petroleum site operator, or other person who may be relevantly affected, or may take some alternative step to provide procedural fairness. The regulator may include any response from the mine or petroleum site operator, or other person, when publishing the report.

## Use of information

The purpose for which a causal investigation is undertaken is to collect information from which safety lessons can be obtained and published in an appropriate report.

The timely communication of information about the cause(s) of safety incidents requires efficient and open investigations of safety incidents by mine and petroleum site operators and the regulator. Therefore, causal investigations require open and honest participation by all relevant parties, and proper consideration of all the factors that may have contributed to the cause of the safety incident. To achieve this, all people who are part of the investigation or voluntarily comply or cooperate with an investigation must be aware of their legal rights and obligations with respect to the causal investigation.

**All documents gathered, and information and statements provided to the causal investigation team about the safety incident, will not be used for or made available for any criminal or civil legal proceedings, or for disciplinary action, to the extent allowed by law.**

The regulator will endeavour to not divulge commercially sensitive information gathered through a causal investigation unless it is necessary to understanding or explaining the causal factors in a safety incident.

The regulator intends to claim public interest immunity to prevent information provided to a causal investigation being produced to, or used in evidence in, a court. In particular, the regulator considers that the admission of evidence obtained by the causal investigation team would be contrary to the public interest as it would undermine this policy and the objectives of work health and safety laws to which it relates.

Therefore, the regulator considers that it would be unfair to a defendant to use evidence adduced by a causal investigation having regard to circumstances where the purpose of the investigation is to create an

environment where persons can provide open and full information to minimise safety risks without the fear of prosecution (see for example section 90 of the *Evidence Act 1995*).

To support this protection, persons will only be appointed to a causal investigation team on the clear and express basis that they will treat information obtained by the team for the purposes of the investigation as strictly confidential.

However, the regulator reserves the right to commence a compliance investigation if it is later established that the safety incident involved reckless conduct, or the regulator was given false or misleading information about the safety incident. In this circumstance, a new compliance investigation will be commenced by the regulator and no information gathered as part of the causal investigation will be used for the purposes of any other proceedings initiated through this new compliance investigation.

The causal investigation team would be disbanded and information collected to date and the members of the causal investigation team would be quarantined and will not be made available to the new compliance investigation team. No person involved in the causal investigation team will be part of this new compliance investigation team, nor will they be permitted to brief or otherwise communicate with the new compliance investigation team about the safety incident in question. The regulator will ensure that its systems and work practices provide a clear delineation between the investigation teams and the information gathered.