

August 2018

## Private prosecutions

---

The *Health and Safety at Work Act* (2015) (the Act) specifically provides that in certain circumstances private prosecutions may be initiated (S 144) when the regulator cannot or chooses not to prosecute a work health and safety event.

This position sets out WorkSafe New Zealand's view on private prosecutions and what you can expect if you need information held by WorkSafe to enable a private prosecution.

### What is WorkSafe's view on private prosecutions?

We value private prosecutions as an important tool in the work health and safety system. They provide an opportunity for victims, their families or other parties to take a prosecution when WorkSafe does not.

WorkSafe targets its limited resources to where we think they will make the most difference to the work health and safety system. We will not always investigate work health and safety events. When we have investigated an event, we may still decide not to prosecute (even when there is sufficient evidence) because of other factors we have to consider.

### How does WorkSafe make its prosecution decisions?

WorkSafe makes prosecution decisions in accordance with the [Solicitor General's Prosecution Guidelines](#)

The Guidelines have a two part test for prosecution: the evidential test and the public interest test. An offence that meets the evidential test might not be prosecuted if WorkSafe decides prosecution is not in the public interest. Private litigants are not constrained by the Guidelines.

For more information about how prosecution decisions are made see WorkSafe's [Prosecution Policy](#)

### Who can bring a private prosecution?

Anyone can bring a private prosecution – you do not have to be a victim or a victim's family member. Under the Act you are entitled to bring a private prosecution in relation to an offence if:

- neither WorkSafe nor any regulatory agency has taken or intends to take any action, **and**
- a person has received notification of this from WorkSafe.

If you would like to receive a notification, you must first inform WorkSafe of your interest in knowing of any action taken over the particular incident.

We do not advise any external party, such as the Person Conducting the Business or Undertaking (PCBU), that you have expressed interest.

You can also bring a private prosecution with leave of the Court.

### When do I need to bring a private prosecution by?

There are time limitations set out in the Act. It must be brought within the **latest** of the following:

- Two years after the date on which the incident, situation or set of circumstances to which the offence relates first become known to WorkSafe or ought reasonably to have become known to WorkSafe.
- Six months after the date on which a Coroner completes and signs a Certificate of Findings if it appears from the Certificate of Findings – or the proceeding of an inquiry – that an offence has been committed under the Act.
- Three months after the expiry date of an extension granted to WorkSafe to make a decision to prosecute.

- If an [enforceable undertaking](#) has been given in relation to the offence, six months after either:
  - the enforceable undertaking is contravened or it comes to WorkSafe's notice that the enforceable undertaking has been contravened or
  - WorkSafe has agreed to withdraw the enforceable undertaking under section 128 of the Act.

## **What can I expect from WorkSafe if I bring a private prosecution?**

WorkSafe will meet its obligations under the *Victims' Rights Act 2002* while carrying out its investigation. During a private prosecution process WorkSafe must be fair and impartial to all parties involved in the incident because it is a Crown Entity. This means we are not able to:

- provide advice on private prosecutions, including legal advice
- support victims in their interactions with the party bringing the private prosecution or
- advocate for victims as part of the private prosecution process.

If you request information for a private prosecution we will meet our obligations under the *Official Information Act 1982*. We can point you to industry – and topic-specific information available on WorkSafe's [website](#). If WorkSafe Inspectors are summoned, they will make themselves available to give evidence in Court. They may also be available prior to a court proceeding.

You can find out more about information requests [here](#)

---

**PUBLISHED: AUGUST 2018**