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SafeWork NSW has Updated its Prosecution Guidelines

SafeWork NSW has recently released a publication titled, *SafeWork NSW Prosecution Guidelines Jan 2018*, that provides you with easy to read guidelines about when, why and who they will prosecute. Safework NSW does not automatically prosecute every breach of WHS legislation. It is one of the options available to them.

This article looks at the matters that motivate SafeWork to consider and decide to prosecute and who to prosecute. Having some familiarity with this, a PCBU and its Officers and Managers can consider and focus on any priority actions they must take in their workplace to avoid the risk of prosecution.

SafeWork's Decision to Prosecute

If SafeWork NSW became aware that a workplace has breached WHS legislation they will be more likely to prosecute the PCBU, and possibly others involved in the breach, if situations such as those listed below occurred at that workplace:

- A fatality
- A serious injury
- A high risk of serious injury or fatality
- Prior breaches or convictions of WHS legislation
- Failing to comply with a Prohibition Notice
- The workplace is in an industry that SafeWork NSW has on their list of target industries (eg Agriculture, Manufacturing, Government, Transport, Construction, Health Care and Social Assistance).
- The work activities involve a risk of injury that SafeWork NSW has targeted as a priority (eg musculo-skeletal injuries & illnesses)

The items in the above list and other details can be found in sections 3.4, 3.9 and 3.13 on pages 6 and 7 of *Safework NSW Prosecution Guidelines*.

Who to Prosecute

The general principles that SafeWork NSW uses to decide who they should prosecute, is set out in sections 3.17, to 3.20 of their Guidelines.

- SafeWork NSW can prosecute PCBU's, Officers, Workers, and Others in the workplace for breaches of WHS legislation. Their policy is to prosecute duty holders including PCBUs and Officers when it is in the public interest to do so. See section 3.9.
- SafeWork pays particular regard to whether the Officer(s) of the PCBU can show that they exercised due diligence to see that the PCBU complied with its WHS duties and obligations.
- SafeWork also considers who was primarily responsible for the offence and who was primarily responsible for acts or omissions and circumstances that led to the offence.

Note:

1. You can download a copy of *SafeWork NSW Prosecution Guidelines Jan 2018* by copy/pasting this link: https://www.safework.nsw.gov.au/__data/assets/pdf_file/0012/50160/SW08683-0318-402497.pdf
2. You can copy/paste this link to download a copy of the WHS Roadmap for NSW 2022 that lists SafeWork NSW's target industries and hazards: <https://www.safework.nsw.gov.au/roadmap>
3. This article updates our article of 23/5/16 titled, *Avoid WHS Prosecution by SafeWork NSW*.