



Australian Government
Comcare

Comcare inspections and investigations



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List of definitions

Below is a list of definitions for some of the technical and legal terms used within the Support Guide. The terms are denoted by a * throughout the guide.

- > **Culpability** – Responsibility for a fault or wrong.
- > **Enforcement Action** – Directions given by Comcare to a PCBU to undertake particular actions to make the workplace safe and healthy.
- > **Jurisdiction** – A specific area of responsibility. Comcare’s jurisdiction includes the Commonwealth, public authorities and a small number of companies (non-Commonwealth entities).
- > **Non-compliance** – A PCBU is not following the guidelines, rules and regulations set out by the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2011* and other relevant Codes of Practice
- > **Person conducting a business or undertaking (PCBU)** – An organisation or person who is usually ‘the employer’. A person who is engaged solely as a worker or an officer in a business or undertaking is not a PCBU. In some cases, there will be multiple PCBUs involved in work at the same workplace who will share duties under work health and safety laws in relation to the same matter. For example, a principal contractor and sub-contractors at a construction site.
- > **Statute of Limitations** – Legislation that prescribes the maximum amount of time for which legal proceedings can be initiated following an incident.
- > **WHS Undertaking (EU)** – WHS Undertakings were formerly known as Enforceable Undertakings and may still be referenced as this, or EU. It is a legally binding agreement between a PCBU and Comcare where, in exchange for non-prosecution of an alleged offence, the PCBU agrees to undertake measures to improve work health and safety outcomes. It is voluntary and Comcare cannot be compelled to accept an EU. See our website for Comcare’s [regulatory guide on WHS undertakings](#).

Introduction

It is likely that a number of organisations are involved in investigating a workplace incident, and it can be difficult to know who is doing what, and why.

This guide is designed to give an overview of Comcare’s role, responsibilities and procedures and what that means for you and your family.

As with all Comcare’s support guides, you do not need to read this all at once – use it as a resource when you need it. The Comcare Family Liaison Officer is available to help you navigate the guide and answer any questions you have.

What is the role of Comcare?

Comcare is the Commonwealth workplace health and safety regulator and workers' compensation authority. Comcare has a duty to conduct inquiries into work related incidents within the Commonwealth jurisdiction* under the *Work Health and Safety Act 2011* (Cth) (WHS Act) and the *Work Health and Safety Regulations 2011* (Cth) (WHS Regulations).

Comcare's role in responding to a workplace death or serious injury is to undertake an inspection to find out what happened, try to prevent it from happening again and determine whether any non-compliance with the WHS Act and/or WHS Regulations occurred.

Comcare may work collaboratively with the PCBU*, police and coroner as well as other regulators to assist in the progress of inquiries and potential investigations.

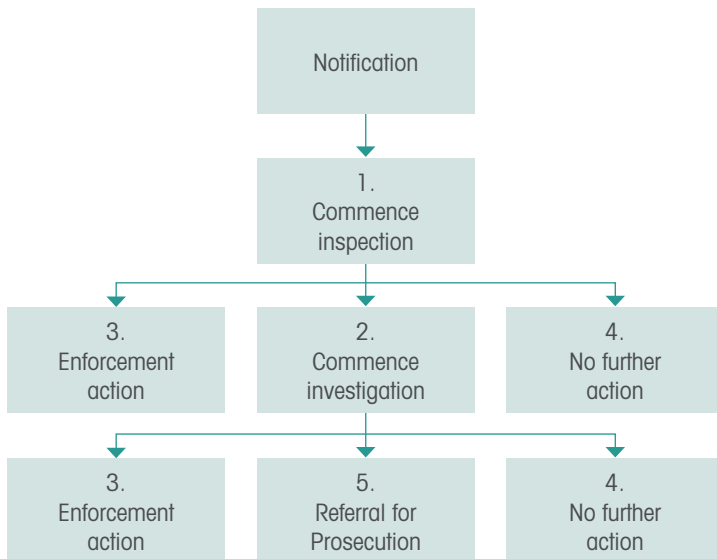
How is Comcare different from the police?

Comcare only makes inquiries about potential offences under the WHS Act. Police will conduct investigations into offences under state, territory and Commonwealth crimes legislation, as well as conducting inquiries on behalf of the coroner.

Where the police tend to look to individuals for culpability*, Comcare investigates whether a PCBU is compliant with the WHS Act. While not exhaustive, this includes employers, contractors, officers, workers, and directors of companies.

Comcare's process

Following a workplace incident resulting in death or serious injury, Comcare will receive a notification from the PCBU and commence an inspection. An inspection may also be commenced based on information received from a worker or member of the public. The below diagram shows the process that follows:



What is a Comcare inspection?

An inspection is Comcare's initial response to a notification received from the PCBU or other person.

Comcare conducts an inspection (1), and makes inquiries to:

- > Determine whether the incident occurred because of the activities of the PCBU;
- > Determine the circumstances of an incident – to find out what happened;
- > Determine whether any non-compliance of the WHS Act has occurred, which may lead to an investigation;
- > Identify reasonable actions or steps that should be taken to prevent the incident from occurring again; and
- > Decide if enforcement action is necessary. This could involve issuing enforcement notices, accepting a WHS Undertaking*, or recommending prosecution to the Commonwealth Director of Public Prosecutions (CDPP).

Possible Outcomes of an Inspection

As shown in the above diagram, an inspection by Comcare following a workplace incident resulting in death or a serious injury can have a number of possible outcomes (3,4), depending on multiple factors. Your Family Liaison Officer will advise you when a decision is reached, and let you know the next steps.

How does Comcare decide when to investigate?

While conducting inspections, a Comcare inspector may:

- > Analyse data and intelligence received;
- > Consider the severity and scale of the alleged non-compliance;
- > Identify which enforcement options are available and appropriate in a particular situation; and
- > Consider a PCBU's compliance history.

By investigating alleged or potential non-compliance, Comcare aims to ensure those who are non-compliant with duties and obligations are held accountable. If the decision to investigate is made, the investigation will have the following features:

- > Comcare has formed a view that non-compliance may have occurred, this could be based on an allegation, a notification or intelligence;
- > Comcare considers that the alleged non-compliance is of a nature that could warrant prosecution; and
- > Comcare undertakes activities that are directed towards gathering evidence for the possible legal proceedings.

What is a Comcare investigation?

An investigation (2) is undertaken when there is alleged non-compliance with the WHS Act, which could warrant prosecution or an alternate form of compliance. An investigation includes activities that involve gathering evidence if the matter is taken to court.

During an investigation, the Comcare Family Liaison Officer will be your primary point of contact.

What happens during a Comcare investigation?

An investigator may:

- > Examine the incident scene and identify physical evidence;
- > Issue notices requiring the production of documents or seizure of evidence;
- > Interview witnesses such as workers, members of the public and representatives of the PCBU;
- > Consult with technical experts to obtain advice; and
- > Assess the safety management systems of a PCBU.

All Comcare investigations concern incidents that are work-related, including where the affected person is not a worker (for example, a visitor to a workplace). This also includes incidents arising from a work-related activity that may not occur at an actual workplace (for example, an incident that occurs while attending training in another location).

In the event of apparent self-harm, Comcare will make inquiries to determine whether there is a connection to the PCBU. Even if an incident of apparent self-harm occurred outside of work hours or a workplace, Comcare may investigate.

See our website for more information on Comcare's [compliance and enforcement policy](#).

How long will the investigation take?

The length of an investigation will differ for each matter as there are many factors that can affect the length of an investigation, including:

- > Complexity of an incident;
- > The volume of evidence that needs to be gathered and analysed;
- > Obtaining expert reports;
- > Involvement with other agencies;
- > The number of PCBUs involved in the incident;
- > Availability of witnesses; and incident scene accessibility (for example, remote locations and hazardous conditions can hinder the speed of an investigation).

Under the WHS Act the statute of limitations* is two years. This means from the date Comcare becomes aware of an incident, it has up to two years to commence criminal proceedings. In very specific instances, the WHS Act makes allowances for investigation outside of that timeframe. Your Family Liaison Officer can provide more information about this.

Possible outcomes of an investigation

As shown in the above diagram, an investigation by Comcare following a workplace incident resulting in serious injury or death can have a number of possible outcomes depending on multiple factors. Your Family Liaison Officer will advise you when a decision is reached, and let you know the next steps.

One possible outcome of an investigation is the referral for prosecution (5). This involves Comcare referring a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP) for advice. If an individual or PCBU is charged with criminal offences, this is referred to as the commencement of criminal proceedings.

How much information may Comcare share?

The Family Liaison Officer can provide general information updates only. This may include information such as:

- > The formal stages of Comcare's inspections or investigations processes;
- > Details of any new persons or organisations the injured person or family contact may need to be aware of. For example, the CDPP if the matter is referred for a prosecution; and
- > How the injured person, family contact or their representative can provide feedback to Comcare.

Comcare investigators are bound by confidentiality requirements under section 271 of the WHS Act and cannot share specific investigative information with the Family Liaison Officer. Further, much of the information is legally privileged and therefore cannot be shared. This means specific information that has the potential to affect the integrity of an ongoing investigation and may impact any possible prosecution, if shared. If you have questions about the process, contact your Family Liaison Officer.

The Family Liaison Officer is independent from all Comcare investigations. However, if they become aware of information that may be relevant to an investigation through conversations with you, the responsible Investigator may want to speak to you.

How else can you access information?

The *Freedom of Information Act 1982* (Cth) (FOI Act) gives you the right to request access to government-held information. A family member may apply to Comcare to access information about their loved one.

There are a number of exemptions to the requirement to release information, for example documents related to ongoing investigations, enquiries or prosecutions are generally exempt from release under section 37 of the FOI Act. Comcare is part of the Office of the Australian Information Commissioner's Information Publication Scheme which encourages Commonwealth agencies to proactively release information and fulfil the pro-disclosure goals of the FOI Act.

We encourage you to speak to the Family Liaison Officer first before making a Freedom of Information (FOI) request. For more information, see:

- > [Request to access information – Comcare](#)
- > [Exemptions – Office of the Australian Information Commissioner.](#)



