



Australian Government

Comcare

Comcare and CDPP prosecution



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List of Definitions

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

- > **Brief of evidence** – refers to a collection of material including statements from witnesses, experts, and medical professionals, as well as photographs and other physical evidence, which is used by the CDPP to decide whether there is enough evidence to commence a prosecution. Briefs are prepared by police or investigators, such as a Comcare investigator.
- > **CDPP** – the Office of the Commonwealth Director of Public Prosecutions is responsible for prosecuting offences against Commonwealth law.
- > **Charge** – the allegation that someone has committed a specific crime or offence.
- > **Defence** – the lawyers who represent an accused person in court.
- > **Defendant** – the defendant is the person accused of breaking the law. They may also be known as ‘the accused’ or ‘alleged offender’. Once they have been found to have broken the law (because for example, they have pleaded guilty) they are referred to as ‘the offender’.
- > **Person Conducting a Business or Undertaking (PCBU)** – an organisation or person more commonly known as ‘the employer’ within the scope of the Work Health and Safety Act 2011 (Cth) (WHS Act). The term PCBU can be used to refer to the Commonwealth, Commonwealth public authorities and certain licenced corporations within the context of the WHS Act.
- > **Prosecution** – criminal proceedings in court.
- > **Prosecutor** – lawyers employed by or acting on behalf of the Office of the Commonwealth Director of Public Prosecutions.
- > **Reparation order** – a court may order an offender to make some form of payment to the Commonwealth or to a public authority under the Commonwealth or to any person for any loss suffered, or expense incurred, by reason of the offence.
- > **Summons** – an order from a lower court (such as a Local/Magistrates court) that requires the accused to attend court to answer to a charge.
- > **Victim Impact Statement (VIS)** – a VIS is a written or spoken statement that describes the impact of the crime on those affected by it, and the harm the victim suffered as a result. Such harm may include physical, psychological and emotional suffering, economic and other loss, and damage. If the court agrees, a family member may provide a VIS. A VIS is given to the sentencing judge or magistrate before they sentence an offender. It helps them better understand the personal impact the crime has had on the victim/s when deciding what the appropriate penalty should be. See the CDPP website for more information on [Victim Impact Statements](#).
- > **Victim of crime** – the CDPP Victims of Crime policy defines a victim of crime as an identified individual who has suffered harm as a direct result of an offence or offences committed, or apparently committed against Commonwealth law or prosecuted by Commonwealth authorities. “Harm” includes physical or mental injury, pregnancy, emotional suffering or economic loss.
- > **WHS Undertaking (EU)** – WHS Undertakings were formerly known as Enforceable Undertakings and may still be referenced as this, or EUs. It is a legally binding agreement between a PCBU and Comcare, in exchange for non-prosecution of an alleged offence. It is voluntary and Comcare cannot be compelled to accept a WHS Undertaking. See our website for Comcare’s [regulatory guide on WHS undertakings](#).

Introduction

One of the potential outcomes of a Comcare investigation is to proceed to a prosecution for criminal offences. The prosecution process can be long and complex. This guide is designed to help you understand and navigate the process.

During this process, Comcare prepares a brief of evidence* following an investigation and refers the brief to the Commonwealth Director of Public Prosecutions (CDPP*). The CDPP is the organisation that prosecutes crimes against Commonwealth laws including the Work Health Safety Act 2011 (WHS Act) on behalf of Comcare.

As with all Comcare's information, you do not need to read this guide 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.

Office of the Commonwealth Director of Public Prosecutions (CDPP) and the Witness Assistance Service (WAS)

Role of the CDPP

The CDPP is an independent prosecution service established by the Australian Parliament. The CDPP aims to provide an effective, ethical, high quality and independent criminal prosecution service for Australia in accordance with the [Prosecution Policy](#) of the Commonwealth.

Whilst the CDPP may have contact with many victims of crime and witnesses, it does not represent them. Rather, the CDPP acts on behalf of the Australian community.

The CDPP prosecute* alleged offences against Commonwealth law. The ultimate decision about whether or not to commence a prosecution is made by the CDPP. This means that although Comcare might consider there is sufficient evidence to commence a prosecution, the CDPP may disagree (see further information below under the heading titled "Procedure if prosecution is not brought").

If a prosecution is commenced, Comcare works closely with the CDPP during the prosecution process by providing the CDPP with assistance and support as required.

For more information see the [CDPP website](#).

CDPP Witness Assistance Service

Once a prosecution has commenced, the prosecutor may refer you to the CDPP's Witness Assistance Service (WAS) which is a small team of social workers located in their Sydney and Melbourne offices. If you are allocated a WAS officer, the Comcare Family Liaison Officer and the WAS Officer will work in collaboration to support you until the prosecution process has concluded.

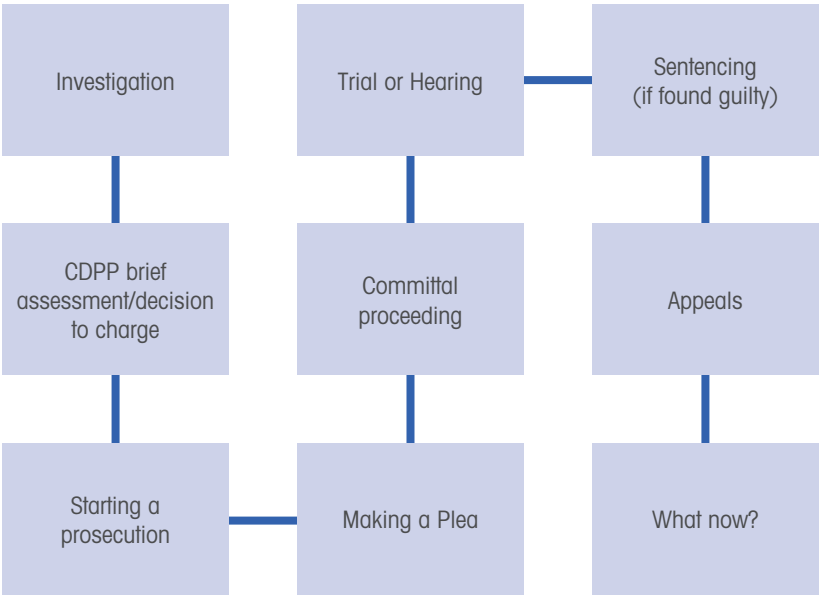
The WAS can assist victims, witnesses and in some cases families of victims, noting that everybody's support and information needs will be different. Some of the ways the WAS can help are by providing and/or arranging the following:

- > General updates concerning the prosecution case
- > Information/explanations concerning the legal process and court procedures
- > Information concerning policy entitlements and avenues for review or complaint
- > Information concerning the role of a witness
- > A consistent point of contact within the CDPP for the duration of the prosecution process
- > Support during meetings with prosecutors
- > Court familiarisation tours
- > Support at court and during the trial
- > Referrals to counselling and other services in the community
- > Information about Victim Impact Statements and reparation orders.

The CDPP's Victims of Crime Policy sets out its primary obligations towards victims of crime and provides information regarding a wide range of issues relevant to victims and witnesses.

Prosecution process

The diagram below shows the process that may occur after there has been a referral by Comcare to the CDPP for prosecution, and the text below gives a brief description of the possible stages. Please note that this is a general guide. Prosecution proceedings are complex and each matter may progress in a different manner, including some unexpected steps that are not reflected below.



Investigation

Following a workplace incident, a Comcare investigator can commence an investigation to determine whether a criminal offence may have been committed against the WHS Act and/or WHS Regulations. If the investigator forms a view that a criminal offence has been committed, they prepare a brief of evidence and submit it to the CDPP for their consideration and assessment.

In most cases, proceedings for an offence against the WHS Act or WHS Regulations must be initiated within two years of the offence first coming to Comcare's notice. In limited cases, there may be exceptions to this timeframe.

Brief Assessment/decision to charge

After Comcare refers a brief of evidence to the CDPP, the CDPP assesses the evidence against the Prosecution Policy. In deciding whether to commence a prosecution the CDPP must be satisfied that there is a reasonable prospect of conviction and a public interest in the prosecution. Briefs of evidence are assessed throughout the prosecution process and views regarding the prosecution may change at any stage. If you are a victim of crime your views may be sought and taken into account in relation to certain prosecution decisions, for example a decision to discontinue a prosecution or agree to a plea negotiation.

Starting a prosecution

If the CDPP decides to start a prosecution, the defendant* will be served with the charge/s* and summons* requiring them to attend court. In WHS-related matters, the defendant is often a body corporate (or a company) rather than an individual. All matters referred to the CDPP will start in the local court, also known as the Magistrates Court (depending on which state/territory the prosecution is commenced in). The procedures of each state or territory court will vary.

Generally, the first Court date in the Magistrates/Local Court is referred to as a 'mention'. Ultimately, the defendant will be required to plead guilty or not guilty to the offence that they have been charged with. However, there may be many 'mentions' before it is clear how the defendant will plead. Reasons for having multiple 'mentions' may include the need to obtain additional evidence as identified by the CDPP and, the defendant's lawyer may need time to review the evidence and to speak to their client. This will vary from case to case.

Making a Plea

A defendant can plead guilty or not guilty to the charge/s laid against them.

If the defendant pleads guilty, the magistrate will sentence them or commit them to be sentenced by a higher court. If the defendant pleads not guilty, the matter will go to a hearing or trial and a date may be set for a committal or hearing.

Committal Proceeding

There are different rules about whether committal hearings are needed, depending on the State or Territory, so this step may not be relevant to everyone.

After the defendant enters a guilty plea and a committal hearing takes place, the magistrate will consider the prosecution evidence and decide if there is enough to take the matter to hearing or trial. If they decide there is not enough evidence, the magistrate will dismiss the matter and end the proceedings.

Hearing or Trial

A hearing takes place in the Magistrates or Local court, and the magistrate makes all the decisions and judgements – there is no jury. The majority of Comcare prosecutions are conducted as a hearing. A finding of guilty or not guilty is made during this process.

If a defendant is committed for trial, it will take place in either the Supreme, County or District Court and will be in front of a jury, who make the finding of guilty or not based on all the evidence presented, and the summation of both sides of the argument by the presiding judge.

Sentencing

Part of the prosecution process is sentencing an offender who has been convicted or found guilty of an offence. The offence provisions in the WHS Act and the WHS Regulations state specific penalty options, which may depend on factors such as whether the offender is an individual or a body corporate. Comcare prosecutions are generally focused on the body corporate or the PCBU*. This means that in most Comcare prosecutions the ultimate penalty a Court imposes will be a conviction and/or fine. You can find more information under the Sentencing tab [Regulatory guide – Prosecutions | Comcare](#)

Appeals

A defendant may lodge an appeal against a finding of guilt and the severity of the sentence. The prosecution can also appeal against the sentence imposed.

What Now?

Once the prosecution process is complete, you may experience a range of emotions. The result may not be the outcome you were hoping for, which can be challenging. Even if it is the outcome you had hoped for, your response might not be one you had anticipated. It can be helpful to reach out to your network throughout the prosecution process to ensure you have access to help and support. The Comcare Family Liaison Officer will continue to provide support and referrals if required.

Prosecution Alternatives

Procedure if prosecution is not brought

Under s231 of the WHS Act, if a person reasonably considers that a Category 1 or 2 offence has occurred, but no prosecution has been brought by Comcare in the 6-18 months after the alleged offence, they can make written request to Comcare to bring a prosecution. Comcare must advise the person, within 3 months of their request, whether the investigation is complete and whether a prosecution will be brought. If Comcare advises a prosecution will not be brought the person may ask Comcare to refer the matter to the CDPP for consideration. The CDPP will then consider the matter and advise Comcare whether it considers a prosecution should be brought.

See our website for more information, in the [regulatory guide on prosecutions](#).

WHS Undertakings

An alternative to prosecution is a WHS Undertaking under Part 11 of the WHS Act. The offender can propose a WHS Undertaking to Comcare before the prosecution commences or at any time until the prosecution has been finalised. When proposing a WHS Undertaking, the PCBU commits to deliver sustainable and measurable improvements to work health and safety in the workplace, industry and the community that exceed compliance with legislation. If Comcare decides to accept the WHS undertaking, they will take all reasonable steps to have the prosecution discontinued. Comcare would do this on the basis that the outcome of the WHS undertaking would likely have more benefit than a court proceeding. See our website for Comcare's [regulatory guide on WHS undertakings](#).

If you have any concerns or questions, your Family Liaison Officer is available to answer questions and to connect you to supports. Call us on 1300 366 979 or email us at familyliaison@comcare.gov.au.

You can also download the guide [Supports available \(following a death\)](#).

If you would like to provide feedback or make a complaint, please go to www.comcare.gov.au/flo#feedback.

Notes



