

Identifying and managing the risk of prosecution of executive and senior officers

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Why is causation important?

- The ICAM / safety investigation report / root cause analysis / cause & effect investigation aims to identify causes for the incident e.g the death
- Assume it will become a public document and can be accessed by, amongst others:
 - DME Inspectors;
 - EPA Inspectors;
 - Police and Coroner;
 - licence or lease holders;
 - injured worker’s solicitor;
 - WorkCover;
 - contractors;
 - insurers;
 - media;
 - ASX;
- An ICAM is **not** a safety audit

Where could the ICAM find itself?

- prosecutions under the safety legislation;
- prosecutions under the Criminal Code;
- personal injury proceedings under PIPA or WC;
- Coronial Investigations;
- to comply with ongoing ASX reporting obligations;
- disciplinary proceedings against workers;
- proceedings in the AIRC;
- internal company investigations;
- due diligence for mergers and acquisitions;
- tenders.

Where does causation fit in?

- Step 1 - Risk at an acceptable level, namely, within acceptable limits and as low as reasonably achievable
- Step 2 - Contraventions that **CAUSE** death or GBH
- Step 3 - the onus to prove causation is on the prosecution
- Step 4 – it is a defence to comply with a regulation, standard or took reasonable precaution & exercise proper diligence

What is causality

- “Caused” is not defined in the legislation
- The NSW OH&S Act provides that a person’s conduct causes death if it **substantially contributes** to the death
- It is a factual common sense assessment
- The test therefore is whether the act or omission **substantially contributed** to the death
- Expert evidence may be necessary

Case study

- Review the handout and sample ICAM Report
- Identify the causes

How does all this improve safety?

- it overcomes the problem of making changes which might be considered to be admissions of a deficiency that caused the contravention;
- it removes the risk of too many causes being identified making improvements slow, inaccurate and impractical ;
- **IT IDENTIFIES THE TRUE CAUSE(S) OF THE CONTRAVENTION SO THAT RECTIFICATION CAN BE IMMEDIATE AND TARGETTED**

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