

# ICAM investigations – avoiding the pitfalls

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## Minimising Compliance Risk and Liability

- Investigation reports and ICAMs are key tools in continuous safety improvement and incident prevention
- ICAM model extremely effective in considering the matrix of contributing factors and enabling thorough investigation
- Steps that can be taken to ensure liability is minimised whilst still allowing for thorough investigations

# Overview

- The use of investigation reports in legal proceedings
- Maximising the benefits of investigations reports and minimising the creation of risk and liability
  - » Protecting the contents
  - » Maximising quality
    - › Tips to ensure quality
    - › Relevance and accuracy
    - › Contemporaneity

## Investigation reports as evidence in legal proceedings

- Can be key evidence in:
  - » Prosecutions under health and safety legislation
  - » Claims relating to an injured worker
  - » Insurance claims and disputes
  - » Public liability claims
  - » Commercial disputes

# Control distribution of content

- Protecting contents such as:
  - » Investigation report
  - » Witness interviews
  - » Photographs
  - » Video footage...

encourages a 'warts and all' investigation

## Risk and Compliance

- Contents of investigation report will likely hold significant weight in legal proceedings
- Any conclusions or recommendations can be used against an organisation or its individuals
- It is extremely difficult to refute/mitigate evidence from an organisation's own investigation report

*Therefore both control and quality is paramount*

# Tips to ensure quality

- Use multiple sources such as:
  - » Witness statements and interviews
  - » Videos and photographs
  - » Measurements and samples
  - » Mechanical assessments
  - » Review of relevant documentation
  - » Re-enactments
  - » Testing and inspection of vehicles, plant, equipment or machinery
  - » Review of weather, light and other workplace conditions
  - » Consideration of employee conditions e.g. length of shift, hours worked etc

## Tips to ensure quality contd.

- Use the most appropriately qualified person/s to gather and collate evidence
- Consider using lawyers or other specialists to request, facilitate and/or obtain relevant evidence
- Use information and material from primary sources and minimise the use of secondary sources where possible
- Reference all information and assertions



## Relevance and accuracy

- Avoid:
  - » Speculation as to causes and contributing factors
  - » Including perceived deficiencies not strictly related to the incident
  - » Apportioning blame
- Qualify any conclusions and ensure they are placed in context
  - » Allows mitigation if it becomes apparent at a later date that they were not correct

# Contemporaneity

- Commence investigations immediately
- Use good witness interview techniques
- Be mindful of non-disturbance provisions
  - » Note exceptions where action is needed to save a life or prevent further injury
  - » Consider whether some aspects of the investigation can still be commenced

# Conclusion

- Investigation reports/ICAMs are key in determining and addressing an incident or near-miss
- A carefully considered investigation can ensure continuous safety improvement whilst also avoiding increasing risk
- Steps to safeguard against internal investigation reports being used as evidence against an organisation or individual include maximising:
  - » Quality
  - » Control

# Thank you