

# ICAM investigations - avoiding the pitfalls

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The undertaking of an investigation and the preparation of investigation reports, often under the ICAM model, is a well accepted component of the health and safety systems of organisations operating in the mining and resources sector.

The ability of investigations, and investigation reports, to assist an organisation to partake in continuous safety improvement and prevent future incidents is undisputable.

Investigation reports can also be considered key evidence in multiple types of legal proceedings that may stem from a health or safety incident. For instance:

- (a) A prosecution under health and safety legislation such as the *Coal Mining Safety and Health Act 1999* (QLD);
- (b) Legal proceedings and claims associated with an injured worker;
- (c) Insurance claims and disputes;
- (d) Public liability claims; and
- (e) Commercial disputes between effected companies.

As investigation reports can, and often do, end up playing a key role in subsequent legal proceedings arising from an incident, the purpose of this presentation is to consider investigation reports from this perspective so as to assist organisations to minimise legal risks, liabilities and implications for mine operators, contractors and individuals.

There are two main ways that an organisation can minimise the likelihood of an investigation report and associated material becoming damaging evidence:

- (a) Protect the contents of ICAM investigations and reports from inappropriate or damaging use; and
- (b) Maximise the quality of the investigation and subsequent report.

This presentation will provide information about, and an understanding of, these two keys methods so as to assist organisations to minimise the likelihood of their internal investigation unnecessarily increasing the legal risk and liability of the organisation and its individuals.

## **Protect the contents of ICAM investigations and reports**

There are a number of legal and practical ways to maximise the quality of an investigation report through enabling full and frank disclosure during the investigation process.

One of the best ways to do this, and as a result, minimise the liability and risk that can arise from investigation reports, is to ensure the organisation has as much control as possible over the content and use of the ICAM investigation and report to encourage a 'warts and all' investigation.

This presentation will address the knowledge necessary to make informed decisions regarding the type of investigation an organisation wishes to undertake.

### **Maximising quality**

A high quality report will also minimise the potential legal risks and liabilities following an incident.

When preparing an investigation report, those preparing it should be aware that the contents of the report are likely to hold significant weight in any subsequent legal proceedings. In particular, any conclusions or recommendations could be used against an organisation. In such circumstances, it can be extremely difficult for an organisation to refute or mitigate evidence that is found in their own investigation report. Further, material within reports can ultimately open up an organisation to further liability, unconnected with the direct causes of an incident.

It is therefore crucial that what is contained within an ICAM or investigation report is accurate and well considered.

To assist organisations to minimise legal risks, a number of steps that can be taken to maximise the quality of investigations will be addressed in this presentation. These steps will be canvassed within the following broad categories:

- (a) Sources of evidence and information;
- (b) Relevance and accuracy;
- (c) Contemporaneous investigations; and
- (d) Statutory limitations.

A well-written and accurate ICAM or investigation report can prove invaluable in uncovering the causes of an incident or near-miss, identifying contributing factors and general deficiencies across a breadth of areas, improve health and safety systems and ensure accurate factual information is relied upon to ascertain potential legal risk and liabilities.

This presentation will go through step by step the factors and considerations to be mindful of when commencing, preparing and utilising the contents of an ICAM or investigation report. By having regard to such factors, and by making conscious decisions based on a solid understanding of the law and good investigative techniques, an organisation can:

- (a) Maximise the likelihood that an investigation is of benefit to an organisation;  
and
- (b) Minimise the likelihood of an investigation unnecessarily becoming damaging evidence against itself or its individuals in legal proceedings.