

November 2021

## How We Work with Victims

### This policy's purpose

This policy sets out how we work with victims of work health and safety and energy safety incidents.

This policy should be read alongside:

- [When we intervene.](#)
- [Prosecution policy.](#)

### Who is a victim?

For work health and safety incidents, a victim is:

- anyone who has had an offence committed or allegedly committed against them under the *Health and Safety at Work Act 2015* (HSWA)
- the parent or legal guardian of a victim, if the victim is a child or young person and the parent or legal guardian didn't commit the offence, and
- the immediate family<sup>1</sup> of a victim, if the victim dies or can no longer take care of themselves.

For energy safety incidents, a victim is:

- anyone who has suffered physical harm or had property damaged because of an offence committed or allegedly committed under the *Electricity Act 1992* or the *Gas Act 1992*
- anyone who has suffered physical harm or had property damaged because of a gas or electrical incident
- the parent or legal guardian of a victim, if the victim is a child or young person and the parent or legal guardian didn't commit the offence, and
- the immediate family of a victim, if the victim dies or can no longer take care of themselves.

We use this definition to determine who is a victim of work health and safety and energy safety incidents. It's based on the *Victims' Rights Act 2002* and how we see this applying to our health and safety system.<sup>2</sup> This definition doesn't apply to the prosecution process and entitlement to reparations. In those circumstances only the definition in the Victims' Rights Act applies.

### How we respond to incidents

Once we're aware of a work health and safety or energy safety incident we decide whether or not to intervene. If we do intervene, we have a range of options to choose from. We'll use our insights to select the best intervention for the circumstances.

Prosecution is one of our intervention options. We are only able to prosecute when the [Prosecution Test](#) is met. This is in two parts. We need to decide if:

- there's sufficient evidence for a reasonable likelihood of conviction, and
- prosecution is required in the public interest.

In certain circumstances victims and their whānau are entitled to take a private prosecution. More information is available [here](#).

### What victims can expect from us

We use this policy and the [Victims Code](#) to guide how we work with victims and their whānau. This means we:

- treat victims with dignity and compassion
- acknowledge and respect victims' cultural needs, values, and beliefs
- protect victims' privacy

<sup>1</sup> The Victims' Rights Act 2002 defines immediate family members as family, or whānau, or other culturally recognised family group who are in a close relationship with the victim at the time of the offence.

<sup>2</sup> Our health and safety system is the work health and safety system and the energy safety system.

- communicate with victims in a way that's easy for them to understand
- check with victims to identify who they nominate to be their support person, who they consider to be in their immediate family or whānau, and who can speak on their behalf (if appropriate)
- share information with victims about the support services they can access, including Court Services for Victims when applicable
- explain our role and the process ahead as soon as possible at each stage
- explain the nature of any investigation, and that for some investigations there may be no updates for months at a time
- provide updates about an investigation when there's been a development, including any charges to be laid or reasons why charges aren't being laid
- support victims to write a victim impact statement
- explain what victims can expect at court
- keep victims informed of a case's progress through court
- let victims know how to make a complaint about us or provide us with feedback
- make sure one of our Kaiarawhiti from our Te Pou Ora team is available to support Māori victims and our WorkSafe investigators
- ensure any property taken as evidence is returned as soon as possible
- tell victims in a timely way about their right to take a private prosecution.

We'll also apply our Mate Ohore protocol for fatalities where the victim identified as Māori or has a connection to Tikanga protocols.

## Our role as a regulator

When we intervene, there are limits to what we're able to do for victims and their whānau due to the nature of our role.

When our intervention is a prosecution, we're acting as a prosecutor and in the public interest. This means we aren't able to act on behalf of victims and their whānau, advocate for them, or provide victim support services to them.

## Victims can make a complaint

If victims believe we haven't carried out our legal responsibilities to them under the *Victims' Rights Act* or any other law, they're able to make a complaint.

We encourage victims to contact us directly on 0800 030 040 or at [feedback@worksafe.govt.nz](mailto:feedback@worksafe.govt.nz). When we receive a complaint, we'll respond promptly and fairly.

If victims still aren't satisfied after we've looked at the complaint, they're able to complain to the Office of the Ombudsman.

If Māori victims and whānau Māori believe we haven't met our obligations under Te Tiriti o Waitangi in how we work with them, they're able to submit a claim to the Waitangi Tribunal.