



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**



**WorkSafe**  
Western Australia

POLICY

# Prosecution

## Reference

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# 1 Introduction

The *Work Health and Safety Act 2020* (WHS Act) was assented on 10 November 2020, bringing work health and safety of all workplaces, including mines and petroleum, under the same legislation to provide for more effective administration and greater consistency.

The WHS Act and the supporting regulations and codes of practice are part of a harmonised national framework for work health and safety legislation enacted pursuant to the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, signed by the Council of Australian Governments in July 2008.

Under the WHS Act, the WorkSafe Commissioner is the regulator. This policy has been prepared and published in accordance with the regulator's obligations under section 230(2)(a) of the WHS Act and should be read in conjunction with the *Compliance and enforcement policy* and the Director of Public Prosecutions *Statement of Prosecution Policy and Guidelines 2018* (DPP Guidelines).

This policy replaces the former Department of Mines and Petroleum's *Prosecution Guidelines* and the WorkSafe *Prosecution Policy* dated November 2008.

## 2 Purpose of this policy

This policy provides a framework for how decisions about prosecutions are to be made. Prosecutions under the WHS Act are discretionary and are just one of the enforcement tools available to deal with non-compliance with work health and safety laws. It is therefore important that decisions as to whether or not to prosecute an alleged contravention are appropriate.

The regulator operates as a risk-based safety regulator, and therefore requires the flexibility to make decisions based on priorities to effectively achieve the objects of the WHS Act using available resources.

The purposes of this policy is to:

- facilitate transparency and accountability in the enforcement of the WHS Act
- support the harmonisation of work health and safety across Australian jurisdictions, which is a central object of the WHS Act
- ensure that decisions relating to prosecutions under the WHS Act are based on appropriate criteria, which are capable of being applied fairly and consistently across a broad range of circumstances to which the WHS Act applies.

Above all, the main object of the WHS Act is to encourage the attainment of a safe working environment for workers and others at the workplace. Prosecutions undertaken pursuant to the WHS Act must contribute to that goal.

### 3 Role of the prosecutor

Under section 230 of the WHS Act, prosecutions (with the exception of industrial manslaughter) may be brought by the regulator or a public service officer working in the Department of Mines, Industry Regulation and Safety who has the written authorisation of the regulator.

Section 30A of the WHS Act designates industrial manslaughter to be a crime. It is therefore an indictable offence and is to be prosecuted only by the Director of Public Prosecutions in accordance with section 80 of the *Criminal Procedure Act 2004* (CP Act).

The fundamental objectives of a criminal prosecution include:

- bringing justice to those who commit offences
- punishing those who deserve punishment for their offences
- protecting the community.

In the context of the WHS Act, there are also the specific objectives of improving compliance with work health and safety laws and reducing workplace injuries and deaths.

In pursuing these objectives, it is necessary to consider:

- the rights of the accused
- the rights and interests of victims
- the public interest.

The regulator is responsible for ensuring thorough and timely investigations in addition to authorising prosecutions. The investigation and prosecution of offences should be treated as separate and distinct functions within the criminal justice system.

Investigations may serve a number of functions, including ensuring compliance with the law, determining technical causes of an incident and what action needs to be taken to prevent a recurrence, and identifying who may be at fault for a failure. The nature of investigations vary from case to case depending on the particular circumstances. Prosecutors must act in compliance with the statutory obligations contained in the *Public Sector Management Act 1994 (WA)* and the *Legal Profession Conduct Rules 2010 (WA)*.

The regulator accepts the International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, which are set out in Appendix 1 to the DPP Guidelines. In all circumstances, the prosecutor is an officer of the court and a representative of the State and has certain responsibilities. A prosecutor represents the community as a whole and is not entitled to act as if representing a private party in litigation.

The prosecutor has a duty to act fairly and impartially to assist the court to arrive at the truth. This includes a duty to ensure that the prosecution case is presented properly and with fairness to the accused. The duty of the prosecutor, therefore, is:

*"...not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings<sup>1</sup>".*

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<sup>1</sup> *Boucher v. The Queen (1955) SCR 16 at 23-24*

A critical element in the prosecutor's role is ensuring that the prosecution case is presented with fairness to the accused<sup>2</sup>.

The prosecutor is entitled to firmly and robustly present their case and to properly test, and if necessary, challenge the view put forward on behalf of the accused. However, this must be done temperately and with appropriate restraint.

The prosecutor must not:

- seek to persuade a court to a point of view by introducing prejudice or emotion
- advance any argument that does not carry weight in his or her own mind
- try to exclude any legally admissible evidence that would be important to the interests of the accused.

The prosecutor must inform the court of evidence, authorities or trial directions appropriate to the case, even when unfavourable to the prosecution.

## 4 The decision to prosecute

The regulator's decision to prosecute a matter must include a consideration of the following key elements:

- whether the available evidence discloses a prima facie case
- the public interest to prosecute.

The regulator will consider legal advice to assist in the assessment of a proposed prosecution. The decision to charge a person with an offence under the WHS Act and subsequently prosecute is one for the regulator or delegate, although the decision maker will be entitled to act on a lawyer's recommendation.

In order to ensure that there is sufficient time for legal advice to be prepared, and if necessary, for further inquiries to be made in response to the advice, investigations around Category 1 and Category 2 offences should be completed within twelve months of the offence first coming to the notice of the regulator.

Under section 231 of the WHS Act, a person who reasonably considers that a Category 1 or Category 2 offence or industrial manslaughter has been committed may request that a prosecution be brought by the regulator. Such a request must be made no earlier than six months after the event in question and no later than twelve months after the event.

Within three months of receiving a request, the regulator must advise the person making the request and the alleged offender whether the investigation is complete. If the investigation has been completed, the regulator must also advise whether a prosecution will be brought, and if not, the reasons why. A request under section 231 of the WHS Act should be made in accordance with the *Prosecution policy*.

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<sup>2</sup> *Richardson (1974) HCA 19; (1974) 131 CLR 116 at 119*

## 4.1 Prima facie case

A prima facie case is established if the available material appears, on its face or initial assessment, to prove the offence which has been charged. It means that if the available evidence is believed by the court, the evidence would be capable of proving beyond a reasonable doubt all the elements of the offence. Whether there is a prima facie case is a threshold test.

As early as practicable in the prosecution process, attention should be given to whether the evidence establishes a prima facie case. Where the available material does not establish a prima facie case, the prosecution should be discontinued.

## 4.2 Public interest

If a prima facie case exists, a prosecution should only proceed if it is in the public interest. Whether a prosecution is in the public interest is determined by considering:

- firstly, whether there are reasonable prospects of success
- if the first point is satisfied, then a range of other factors need to be considered if they are relevant to the case.

### 4.2.1 Reasonable prospects of conviction

It is not in the public interest to proceed with a prosecution that, on the available admissible evidence, has no reasonable prospect of resulting in a conviction. The evaluation of prospects of conviction is a matter of dispassionate judgment based on a prosecutor's experience and may, on occasions, be difficult.

However, this does not mean that only cases perceived as 'strong' should be prosecuted. Generally, the resolution of disputed questions of fact is for the court and not the prosecutor. A case considered 'weak' by some may not seem so to others.

The assessment of prospects of conviction is not to be understood as a usurpation of the role of the court but rather as an exercise of discretion in the public interest.

A preconception as to beliefs which may be held by a court is not a material factor as courts can be presumed to act impartially.

The evaluation of the prospects of conviction includes consideration of:

- the voluntariness of any alleged voluntary confession and whether there are grounds for reaching the view that a confession will not meet the various criteria for admission into evidence
- the likelihood of the exclusion from the trial of a confession or other important evidence in the exercise of a judicial discretion. In the case of an alleged confession, consideration should be given to whether a confession may be unreliable having regard to the intelligence of the accused, or linguistic or cultural factors
- the competence, reliability and availability of witnesses
- matters known to the prosecution that may significantly lessen the likelihood of acceptance of the testimony of a witness, with regard to the following:
  - Has the witness made prior inconsistent statements relevant to the matter?
  - Is the witness friendly or hostile to the defence?
  - Is the credibility of the witness affected by any physical or mental impairment?
- the existence of an essential conflict in any important particular of the case among prosecution witnesses

- where the identity of the alleged offender is in issue, the cogency and reliability of the identification evidence
- any lines of defence which have been indicated by or are otherwise plainly open to the defence, including statutory time limits
- inferences consistent with innocence
- the standard of proof.

Evaluation of the prospects of conviction will generally not have regard to:

- material not disclosed to the prosecution by the defence
- notification of a defence which purports to rest upon unsubstantiated assertions of fact
- assertions or facts upon which a defence or excuse are based which are contentious, or rest on information which would not, in the opinion of the prosecutor, form the basis of credible cogent evidence.

#### 4.2.2 Public interest factors

Even if the evidence establishes a prima facie case and reasonable prospects of conviction, consideration must be given to whether it is in the public interest to proceed.

Factors to be considered in evaluating the public interest include:

- the need to maintain the rule of law
- the need to maintain public confidence in the basic constitutional institutions
- the objectives of sentencing, including deterrence, retribution, protection of the community, punishment and rehabilitation
- the circumstances of the alleged offence
- the age, health or vulnerability of the victim or a witness
- the circumstances of the accused, including their criminal history
- the lapse of time since the alleged offence, including delay in the prosecution process
- the degree of culpability of the accused
- the availability or efficacy of any alternatives to prosecution
- any actions taken by other agencies (such as MainRoads, the Department of Transport or the WA Police Force)
- the attitude of the victim of an alleged offence to a prosecution (see the section below headed 'Victims' for a discussion of victims in the context of the WHS Act)
- the attitude of the investigating officer responsible for the prosecution
- the likely length and expense of a trial if disproportionate to the seriousness of the alleged offending
- whether the alleged offender has cooperated in the investigation and prosecution of others or has indicated an intention to do so
- the likely sentence in the event of a finding of guilt
- the entitlement of the State or other person to compensation, reparation or forfeiture.



### 4.2.3 Specific relevant factors

Specific relevant factors which the regulator may consider are supportive in that the public interest would not be served by commencing prosecution action, include those where:

- the person who suffered serious injury or death in a workplace incident is the only identifiable individual, or only office holder of the only entity, with a duty under the WHS Act and caused the injury or death
- the person who suffered serious injury or death in a workplace incident has an inter familiar relationship with the only identifiable individual, or an office holder of the only entity, with a duty under the Act and caused the injury or death.

### 4.2.4 Irrelevant factors

The following matters are not to be taken into consideration in evaluating the public interest:

- the race, colour, ethnic origin, sex, religious beliefs, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender (except where this is an element of the offence)
- the possible political consequences of the exercise of the discretion
- the prosecutor's personal feelings concerning the alleged offender or victim
- the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

## 4.3 Decision not to prosecute

Prosecution action under the WHS Act is only taken in respect to alleged breaches of work health and safety laws. Not all deaths in the workplace are work-related and prosecution action will not be taken in situations where:

- a patient receiving qualified hospital medical care and treatment dies in the associated hospital or medical facility where the care is provided
- a worker dies in a workplace due to natural causes, including through a heart attack and stroke, where the cause is unrelated to the work, working conditions or the conduct of the business or undertaking.

# 5 Who to prosecute

## 5.1 Multiple offenders

Under section 16 of the WHS Act, a duty can be held by more than one person and it is possible for a number of people to commit an offence arising out of the same incident. Consideration should be given to prosecuting all of those who have allegedly failed in their duties under the WHS Act where it is in the public interest to do so.

In addition to the factors set out above, general considerations that may be taken into account in choosing who to prosecute in a particular case are:

- who is primarily responsible for the alleged offence, that is, who was primarily responsible for the acts or omissions giving rise to the alleged offence or the material circumstances leading to the alleged offence or who formed any relevant intention
- in relation to the point above, what was the culpability of the alleged offender or offenders
- the likely effectiveness of any court order that might be made against the alleged offender or offenders.

These are in addition to the usual factors outlined above, and do not override the public interest considerations which must be taken into account in all prosecutions.

## 5.2 Directors or other body corporate officers

Companies responsible for a breach, will usually be subject to prosecution. It is important to identify the company by its correct Australian Company Number.

Factors that will be considered in taking prosecution action against individuals, directors or other officers are the:

- circumstances, seriousness and the outcome of the breach
- level of criminal culpability of the alleged offender against whom a charge is proposed
- alleged offender's knowledge of the risk of the potential harm, including whether or not the hazard was obvious or would have been obvious to a reasonable person in their position
- level of involvement of the alleged offender in the events that led to the breach, including the degree to which the alleged offender was personally responsible for what occurred
- ease with which the breach could have been avoided or rectified
- need to conduct a criminal prosecution of an individual, consistent with the objects of the legislation.

When applying the public interest test, it should be kept in mind that the penalty imposed upon a body corporate is not relevant to the penalty imposed upon an officer of that body corporate. That is, a penalty imposed upon an officer is not to be reduced because the officer is viewed as having been punished by the penalty imposed upon the body corporate: *Fry v. Keating* [2013] WASCA 109.

When prosecuting a body corporate, separate consideration should always be given to the culpability of body corporate officers and the prospects of prosecuting those officers. Prosecution of a body corporate should not be considered as an alternative to, or a bar to, prosecuting relevant body corporate officers.

## 5.3 Public authorities and prosecution of the Crown

The WHS Act specifically provides that the Crown in any capacity may be prosecuted for an offence against the WHS Act.

Where an act or omission constituting an offence is alleged against a body corporate that is an agent of the Crown, proceedings must be taken against the body corporate. This includes circumstances where the body corporate is a successor in law to a Crown agency or where the Minister has made a determination where an agency has ceased to exist.

In other cases where a prosecution is to be brought against a Crown agent that is not a body corporate (including a department of the Public Service, the WA Police or any other agency of the Crown that is not a body corporate) the prosecution is to be brought under the title "State of Western Australia".

The fact that the WHS Act expressly provides for prosecution of the Crown clearly signals Parliament's intent that the Crown be treated no differently to any other duty holder under the WHS Act.

This policy applies to the prosecution of Government entities and agencies, so far as it is capable, in the same way that it applies to other alleged offenders.

To maintain communication across Government, the regulator will advise the responsible Minister whenever they authorise a prosecution of an agency of the Crown, with a view to allowing the Minister to advise the minister responsible for the offending agency.

## 6 Immunity from prosecution

The power to grant immunity from prosecution is different from the discretion as to whether or not to commence a prosecution against a person. The regulator does not have the power to grant immunity. The power to grant immunity from prosecution is an aspect of the prerogative power of the Crown and it is exercisable only by the Attorney General on behalf of the Crown and the Director of Public Prosecutions (under s20(2)(c) of the *Director of Public Prosecutions Act 1991*).

The considerations relevant to a grant of immunity by the Director of Public Prosecutions are set out in the DPP Guidelines.

Where a particular case warrants a grant of immunity to a particular party, the grant must be formally requested from the Director of Public Prosecutions by the regulator. In order for such a request to be made, the requirements of the DPP Guidelines must be met and there must be a strong public interest in providing immunity.

## 7 Charge negotiation

The law recognises that a plea of guilty is a factor to be considered in mitigation of sentence. There are obvious benefits to the criminal justice system resulting from a plea of guilty. The earlier it is offered, the greater will be the benefits accruing to the accused person and the community.

Negotiations between the parties are to be encouraged and may occur at any stage of the progress of a matter through the courts. Charge negotiations must be based on principle and reason, not on expedience alone. A written record of the charge negotiation must be kept in the interests of transparency and probity.

The DPP guidelines outline the benefits of a plea of guilty and encourages negotiations between the parties (with a view to securing a plea of guilty) at any stage of the progress of a matter through the courts. The regulator is responsible for considering any plea that is offered in charge negotiations taking into account legal advice and the factors listed in the DPP Guidelines for charge negotiations.

In considering whether to accept a plea, regard may be had to the views of the investigating inspector and, where known, of the victim of the offence.

## 8 Discontinuing a prosecution

After a prosecution has been listed for trial, the question may arise, either on the initiative of the prosecutor, or as a result of an application by the defence, whether the trial should proceed.

Events may have occurred after the listing for trial that make it no longer appropriate for the prosecution to proceed. Where a question arises as to whether a notice of discontinuance should be tendered, it is to be determined based on the criteria governing the decision to prosecute set out earlier in this policy. The overriding consideration is the public interest.

Where a decision has been made not to proceed with a trial, that decision will not be reversed unless:

- significant fresh evidence has been produced that was not previously available for consideration; or
- the decision was obtained by fraud; or
- the decision was based on a mistake of fact or law.

# 9 The trial

## 9.1 Expedition

It is in the interests of justice that matters are brought to trial expeditiously. Prosecutors should actively assist in attaining this objective.

As far as practicable, adjournments after a matter has been allocated a trial date should be avoided by prompt attention to the form of the charge, the availability of witnesses and any other matter which may cause delay.

## 9.2 Disclosure of material

### 9.2.1 Duties of investigators/inspectors

In all matters, the departmental investigator/inspector must deliver to the prosecutors, all documentation, material, and any other information that might be of assistance or interest to either the prosecution or the defence.

The investigator should also provide a list of material that has been obtained as part of the investigation but that the investigator does not consider is relevant. This list or index is commonly referred to as “Unused Material”.

### 9.2.2 Obligations on the prosecution

Once a plea of not guilty is entered in accordance with section 60 of the CP Act, the prosecution must disclose all such documentation, material or information referred to in section 61 of the CP Act by making copies available or allowing inspection. In the case of a prosecution for industrial manslaughter under section 30A, disclosure must be given whether a plea of guilty or not guilty is entered.

Some material, however, may give rise to a need to balance competing public interests. On the one hand, there is a public interest in full disclosure to assist the attainment of justice. On the other, there is also a public interest in maintaining the confidentiality of certain material, particularly material not directly relevant to the case.

A prosecutor may seek an order pursuant to section 138 of the CP Act to withhold or delay disclosure of specific material, where the prosecutor is of the opinion that it is in the public interest for the material to be immune from disclosure.

The court may make an order dispensing with all or part of the disclosure requirement if it is satisfied that there is a good reason to do so and no miscarriage of justice will result.

The regulator’s duty of disclosure is a continuing obligation.

# 10 Unrepresented accused

Care must be exercised by a prosecutor in dealing with an accused person without legal representation.

The basic requirement, while complying in all other respects with this policy, is to ensure that the accused person is properly informed of the prosecution case.

Communication with an unrepresented accused should be in writing where possible. Any oral communications with an unrepresented accused person, so far as practicable, should be witnessed, if face to face, and promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused person. Prosecutors may also, where appropriate, communicate with the accused person through the court.

While a prosecutor has a duty of fairness to an accused person, it is not a prosecutor's function to advise an accused person about legal issues; evidence, inquiries and investigations that might be made; possible defences; or the conduct of the defence.

# 11 Victims

Alleged breaches of the WHS Act may be brought to the courts in the absence of any harm to any person.

The WHS Act is generally not intended to provide redress for work related injury or harm. Such mechanisms are available through workers' compensation legislation and common law claims for personal injury. However, there are powers for courts to order compensation or reinstatement under the WHS Act if a person engages in discriminatory action in contravention of part 6 of the WHS Act<sup>3</sup>.

The regulator acts in the best interests of the community as a whole, especially the working community. Taking prosecution under the WHS Act is about changing behavior across workplaces. Prosecution is as much about general deterrence as it is about individual deterrence and punishment.

A victim of crime is a person who suffers harm as a direct result of an act committed, or allegedly committed, by another person in the course of a criminal offence and includes a member or nominated representative of the victim's immediate family in the event of the death, incapacity, or young age of the victim. "Harm" includes physical or psychological harm, the loss of an immediate family member or having property taken, destroyed or damaged.

Prosecutors must have regard to the *Victims of Crimes Act 1994*. Victims must be treated with courtesy, compassion and respect, in a manner that is responsive to their age, gender, background or other special need.

Victims, whether witnesses or not, should have the prosecution process and their role in it explained to them at an early stage of proceedings. The victim, or where appropriate, their family, is to be contacted and provided with information about the progress of the case on an ongoing basis.

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<sup>3</sup> *Regard should be had to the fact that a person may bring civil proceedings under part 6 division of the WHS Act.*

Information as to the following matters is to be provided in a timely manner:

- charges laid or reasons for not laying charges
- any decision to discontinue or to change substantially the charges laid and any decision to accept a plea to a lesser or alternative charge or charges
- the date and place of hearing of any charge laid
- the outcome of proceedings, including appeal proceedings, and any sentence imposed.

These obligations do not apply where the victim has indicated that they do not want to be consulted or their whereabouts cannot be ascertained after reasonable enquiry.

Regard shall be had to the views of the victims in making decisions about prosecutions, but those views will not alone be determinative. It is the public interest, not any private individual or sectional interest, which must be served.

Subject to the considerations listed in Section 5 – The decision to prosecute, careful consideration should be given to any request by a victim that proceedings be discontinued. Such requests properly considered and freely made, should be accorded significant weight. Where, in the event of the death, incapacity, or young age of the victim, the alleged offender is a member of the victim's immediate family, this may be taken into consideration as a factor weighing against prosecution. It must, however, be borne in mind, that the expressed wishes of victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the accused person or where the gravity of the alleged offence requires it, the public interest must prevail.

## 12 Witnesses

Witnesses need to be informed about court processes, and often require professional support.

A victim of crime, when called to testify, may need to relive the emotional and physical distress suffered from the offence. A prosecutor should pay due regard to this fact.

Where appropriate, victims and witnesses should be referred to the Victim Support Service and Child Witness Service for that support to be provided.

### 12.1 Calling of witnesses

The following general propositions which relate to a prosecutor's duty as to calling of witnesses are taken from *R v. Apostilides* [1984] 154 CLR 563 and are still applicable to the conduct of criminal trials in Western Australia:

- The prosecutor alone bears the responsibility of deciding whether a person will be called as a witness for the prosecution.
- The trial magistrate may, but is not obliged to, question the prosecutor, in order to discover the reasons that led the prosecutor to decline to call a particular person – the magistrate is not called upon to adjudicate the sufficiency of those reasons.
- Whilst at the close of the prosecution's case the trial magistrate may properly invite the prosecutor to reconsider such a decision and to have regard to the implications as they appear to the magistrate at that stage of the proceedings, the magistrate cannot direct the prosecutor to call a particular witness.

The discretion not to call a witness should be exercised only where the prosecutor has a bona fide belief (which should include a proper inquiry of the witness), based on reasonable information that the witness lacks credibility or is otherwise unreliable.

# 13 Sentence

## 13.1 Duty of the prosecutor

The responsibility of a prosecutor at a sentencing hearing is to put before the court all known information that is relevant to determining the appropriate sentence.

Where facts are asserted on behalf of an offender that are contrary to the prosecutor's instructions or understanding, the prosecutor should seek that the facts be determined by the court in accordance with the principle set out in *Law v. The State of Western Australia [2009] WASCA 193 at 25-34*.

Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.

A prosecutor should not in any way fetter the discretion to appeal against the inadequacy of a sentence (including by informing the court or the defence whether an appeal would or would not be likely, or whether or not a sentence imposed is regarded as appropriate and adequate). Instructions may be sought in advance in exceptional cases.

## 13.2 Victim impact statements

A victim should be offered the opportunity of presenting a written statement to the court particularising any injury, loss or damage suffered by the victim as a direct result of the offence and describing the effects on the victim of the commission of the offence. Where possible, a victim impact statement should be received at least seven days prior to the sentencing date and the court should be notified at least seven days in advance of any intention to produce an oral victim impact statement.

## 13.3 State appeals against sentence

The purpose of State appeals against sentence is to ensure that there are established and maintained adequate, just and proportionate standards of punishment for crime.

The question of whether to appeal against a sentence is a matter to be referred to the State Solicitors Office for advice and determination.



## 14 Enforcement measures and enforceable undertakings

Part 11 of the WHS Act allows for the regulator to accept a written undertaking, known as a WHS undertaking, given by a person in connection with a contravention or alleged contravention of the WHS Act. These are subject to separate guidelines set out in the *Compliance and enforcement policy*.

## 15 Publication

The outcomes of successful prosecutions will be published on the Department of Mines, Industry Regulation and Safety's website.

## 16 Role of Family Support Liaison Officer

The Family Support Liaison Officer (FSLO) will provide support services to a next of kin and family members of a workplace fatality through court proceedings relating to prosecutions brought under this policy.

Support services provided by the FSLO may include:

- notifying next of kin and family members of impending court proceedings, the nature of those proceedings and the outcomes of those proceedings
- providing assistance to the next of kin on the preparation of victim impact statements
- attending trials and sentencing hearings to support the next of kin and family members.