

INFORMATION BULLETIN

REQUEST FOR SAFEWORK SA TO COMMENCE A PROSECUTION Under Section 231 of the *Work Health & Safety Act 2012 (SA)*

1. What can I do if I think SafeWork SA should prosecute someone for a serious Work Health and Safety offence but SafeWork SA has not yet done anything?

Section 231(1) of the *Work Health and Safety Act 2012 (SA)* (the *Act*) allows a person who reasonably considers that a certain offence has been committed but where no prosecution has been brought, to ask SafeWork SA in writing to bring a prosecution. The request can only be made if no prosecution has been brought between six and twelve months after the event has occurred.

2. Can I make a request about any offence under the Act?

No, the procedure under section 231 only applies to Category 1 or 2 offences, which are the most serious criminal offences under the *Act*. These offences are provided for under sections 31 and 32 of the *Act* respectively.

A Category 1 offence occurs when a person has a health and safety duty, and without reasonable excuse engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and the person is reckless as to the risk to an individual of death or serious injury or illness.

A Category 2 offence occurs where a person has a health and safety duty and fails to comply with that duty, and the failure exposes an individual to a risk of death or serious injury or illness.

There is a further category of offence, Category 3, which occurs where a person has a health and safety duty and the person fails to comply with the duty. The Category 3 offence is not covered by the section 231 procedure.

3. What information should be provided with the request?

The request should refer to section 231 of the *Act* and state that it is a request under that section. To assist SafeWork SA in assessing and progressing your request you should set out the facts of the event, including the date, place and names of people concerned, and the nature of the offence you believe has occurred. The request should identify the person you believe committed the offence.

The request should also include your contact details, so that SafeWork SA can contact you to obtain further information. In some cases SafeWork SA may ask you to provide a statement or other information in support of your request.

4. How to make a request to SafeWork SA

A form is attached to this information sheet to assist you should you wish to apply. It is important to note that proper completion and submission of the form will allow for a timely assessment of the request by SafeWork SA. It is not necessary to use the attached form, however your request must be in writing and can be made in the form of a letter, fax or email and contain the same information in the form.

5. If I make a request how long will it take for SafeWork SA to respond?

SafeWork SA must provide a written response to a request within three months, and must advise you whether the investigation is complete, and if it is complete whether a prosecution will be brought.

If the decision has been made not to bring a prosecution, SafeWork SA must tell you the reasons for that decision.

6. If I make a request will my details remain confidential?

SafeWork SA will maintain confidentiality over your details to the extent required and permissible by law.

However to properly investigate some matters it may be necessary to disclose to another person some of the details of the information you have provided.

Section 231 of the *Act* also requires SafeWork SA to tell the person who you believe committed the offence of the application and SafeWork SA's decision.

7. What can I do if SafeWork SA advises me that it has decided not to prosecute an offence, but I still think that there should be a prosecution?

If SafeWork SA informs you that it has decided not to bring a prosecution for a Category 1 or 2 offence, SafeWork SA must also advise you that you may ask for the matter to be referred to the Director of Public Prosecutions (DPP) for consideration. The DPP is the independent prosecution authority in your jurisdiction.

If you make a request in writing for SafeWork SA to refer the matter to the DPP, SafeWork SA must refer the matter to the DPP within one month of your request.

8. How do I request SafeWork SA refer the matter to the DPP?

Should you be advised of a SafeWork SA decision not to prosecute, SafeWork SA will include an application form as part of their advice to assist you in making the request for the matter to be referred to DPP.

A request for SafeWork SA to refer a matter to the DPP should be sent to SafeWork SA, GPO Box 465, Adelaide, SA, 5001.

SafeWork SA is obliged to forward your request for a referral to the DPP within one month of the request.

9. What will the DPP do and how long will it take?

The DPP will then consider the matter and advise SafeWork SA in writing within one month as to whether the DPP considers that a prosecution should be brought. The SafeWork SA must ensure that a copy of the DPP's advice is given to you and to the person you believe committed the offence.

10. If the DPP advises that a prosecution should be brought, does SafeWork SA have to prosecute?

No. If SafeWork SA declines to follow the DPP's advice to bring proceedings, SafeWork SA must give written reasons for the decision. The reasons must be given to the applicant who made the request and the person who the applicant believes committed the offence.

11. If SafeWork SA declines to follow the DPP's advice that a prosecution should be brought, can anyone else prosecute?

Section 230(9) of the *Act* provides that nothing in section 230 affects the ability of the DPP to bring proceedings for an offence against the *Act*.

12. What happens if I make a request to the regulator to commence a prosecution at the same time a work health and safety undertaking (Enforceable Undertaking) proposal is under consideration?

The regulator will not enter into any proposed undertaking until such time as the request under section 231 of the *Act* has been assessed and determined

13. If the regulator has accepted a work health and safety undertaking can a prosecution be commenced?

Yes, but only if the undertaking has been contravened.

Further information is available by contacting SafeWork SA's Legal Team via email at swsaproperofficer@sa.gov.au



REQUEST FOR SAFEWORK SA TO COMMENCE A PROSECUTION

MADE UNDER SECTION 231 OF THE WORK HEALTH & SAFETY ACT 2012 (SA)

Your details:	
Full name: Mr / Mrs / Miss / Ms (<i>circle</i>) (<i>First name and last name</i>)	Contact telephone number(s):
Email address:	
Postal address:	
What is your relationship with the workplace to which your issue relates?	
Nature of the work health and safety issue:	
Description of the issue (nature of risk, perceived contravention of law):	

Details of the person conducting the business or undertaking you believe has committed the offence:

Name of business:

Business address:

ABN/ACN:

Businesses telephone contact number - working hours:

Businesses mobile telephone contact number:

Business Email address:

Names and positions of people concerned:

Please submit this request via post, facsimile or email to:

SafeWork SA
GPO Box 465
ADELAIDE SA 5001

Email: swsaproperofficer@sa.gov.au

Facsimile: 8463 4966

Note:

1. *SafeWork SA will maintain confidentiality over your personal details to the extent permissible and required by law.*
2. *It may be necessary for SafeWork SA to formally take a statement from you arising from your request.*
3. *You are advised that it is a requirement of the Act that as a result of your request to SafeWork SA to commence a prosecution, the person you believe committed the offence will be informed by SafeWork SA of the request and of SafeWork SA's decision.*
4. *SafeWork SA will advise you in writing of the outcome of your request within three months of receiving the request.*