



Victorian WorkCover
Authority

**CODE OF PRACTICE
FOR
PRIVATE INVESTIGATORS**

Version 2.0

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1. INTRODUCTION

1.1. Purpose

- 1.1.1. The objectives, powers and functions of the Victorian WorkCover Authority (VWA) are set out in the Workplace Injury Rehabilitation and Compensation Act 2013 (WIRC Act).
- 1.1.2. One of the VWA's primary responsibilities is to manage the Victorian accident compensation scheme as effectively, efficiently and economically as possible. To do this, the VWA has appointed authorised agents to carry out a wide range of functions relating to accident compensation claims. The VWA also approves some employers as self-insurers, to manage accident compensation claims submitted by their workers.
- 1.1.3. Authorised agents and self-insurers must ensure that appropriate compensation is paid to injured workers. In order to properly determine whether a person is entitled to receive compensation, it may be necessary to conduct an investigation. Authorised agents and self-insurers may engage private investigation firms to conduct these investigations.
- 1.1.4. The VWA is determined to ensure that persons providing investigation services are suitably qualified and meet the highest standards of behaviour and performance that could reasonably be expected.
- 1.1.5. This Code sets out:
 - the eligibility criteria for persons seeking registration as a provider of investigation services; and
 - the ongoing obligations of providers after registration.

1.2. Amendments

- 1.2.1. The VWA may amend this Code at any time. The VWA will advise providers of any amendment. Providers must comply with any amendment from the date of notification unless otherwise stated.

1.3. Definitions

“authorised agent” means a person appointed as an agent pursuant to section 501 of the WIRC Act;

“authorised representative” means any authorised agent, self-insurer or legal firm;

“cloud storage facilities” means technology applications, software, platforms, services and data that do not exist on the device that a person is using. They are accessed – if not exclusively – via a web browser on the person's device. The services are accessed over a network, which can be the Internet for off-site clouds.

“Code” means the VWA Code of Practice for Private Investigators;

“complaint” includes any matter coming to the VWA’s knowledge relating to any action or behaviour of a provider, whether in the conduct of an investigation or otherwise, that may involve a breach of any law or of the Code, or which may amount to unprofessional or improper conduct.

“conflict of interest” occurs when a provider is serving or attempting to serve two or more interests that are not compatible, in particular when the conflict is between their private or commercial interests and their public duty; e.g. Receiving instructions from an authorised representative in circumstances where the provider has previously received instructions from the relevant employer in a private capacity.

“continuity of evidence” means a documented record of the collection, handling and possession of each piece of evidence (this is also referred to as the chain of custody);

“criminal offence” means any offence under a law of the State of Victoria, the Commonwealth of Australia or any other State or Territory of Australia.

“film” means all digital and/or magnetic records of moving pictures or still pictures.

“gift, benefit or reward” includes any discounted items, intangible benefits or preferential treatment, favours or other advantage;

“instructing officer” means an employee of an authorised representative who has responsibility for the management of the claim to which the investigation relates;

“investigator” means any person with a current investigation licence issued by an authorised body, who is engaged by a provider to conduct investigations;

“legal firm” means any legal practitioner instructed to act for the VWA or any authorised representative;

“misconduct” means any act or behaviour of a provider which, in the opinion of the VWA, is inconsistent with the Code;

“officer” has the same meaning as officer of a corporation has in section 9 of the Corporations Act 2001;

“original image” means a byte for byte duplication of the data, irrespective of the media on which it is stored. There can be any number of original images. The file name may be changed but the actual image data must remain exact.

“pretext activity” includes any communication or conduct whereby the given or ostensible reason for the communication or conduct conceals the true reason.

“primary image” means the first instance in which data is recorded in memory and from which the image can be generated. The primary image

is usually created by the capture device, or will be the first download from the capture device to a clean medium.

“provider” means the body corporate which is registered with the VWA as a provider of investigation services, and, where the context permits, includes any employee or person engaged by a provider to conduct investigations.

“records” includes investigation reports, audio and film, running sheets or notes, instructions, invoices, documents and any form of electronic data relating to a VWA investigation;

“subject” means the person that the provider has been instructed to investigate;

“subjective comment” means an expression of opinion in the form of a deduction, inference, conclusion, criticism, judgment, remark or assumption whether or not supported by evidence;

“working copy” means any image that has been altered from its primary or original state - such as changing the file format, orientation, size, cropping, filtering or brightness.

2. ELIGIBILITY FOR REGISTRATION

- 2.1.1. Only a body corporate which is registered with the Victoria Police Licensing & Regulations Division as a Private Investigation Firm is eligible to be registered as a VWA private investigation service provider; save and except that a private investigation firm which is licensed under the laws of another State or Territory may be registered but only to provide services within the State or Territory in which it is licensed.
- 2.1.2. The eligibility criteria are set out in Appendix A of this Code. The criteria and the necessary documents that must accompany an application are contained in the Provider Registration Application Pack which is available from the VWA. It is a condition of registration that a registered provider continues to satisfy the eligibility criteria.
- 2.1.3. If the VWA approves the application, it will allocate a VWA Provider Registration Number, which can only be used by the provider to which it is allocated.
- 2.1.4. A provider accepts that registration does not guarantee, or give rise to any right or expectation, that referrals will be made by the VWA or its authorised representatives.

3. ALLOCATION OF INVESTIGATIONS

3.1. VWA Discretion

- 3.1.1. The provider acknowledges that the VWA or an authorised representative may allocate work to any provider at their discretion.

3.2. Diligence

- 3.2.1. In accepting an allocated investigation, the provider undertakes to conduct the investigation in accordance with the Code.
- 3.2.2. The provider must disclose to the VWA or the authorised representative any actual or potential conflict of interest as soon as it becomes aware such a conflict exists or may exist.

3.3. Instructions

- 3.3.1. A provider must not accept instructions unless it has the necessary resources to carry out the investigation itself in accordance with VWA requirements.
- 3.3.2. A provider must ensure that any investigator it employs or engages in the conduct of a VWA investigation is fully aware of the Code and meets all of its requirements.
- 3.3.3. On receiving instructions, a provider must acknowledge the date of receipt to the instructing officer by close of business on the next business day.
- 3.3.4. A provider must only take instructions relating to an investigation from the instructing officer. Any approach or request for information from an employer or any third party regarding any person being investigated must be referred to the instructing officer.
- 3.3.5. A provider may only act outside its original instructions with the approval of the instructing officer or other officer nominated by the authorised representative.
- 3.3.6. It is the provider's responsibility to comply with the Code; it must advise the authorised representative if it believes its instructions are inconsistent with its obligations under the Code.
- 3.3.7. A provider must promptly notify the instructing officer if it is, or may be, unable to comply with instructions in any way.
- 3.3.8. Subject to 3.3.5 a provider must comply with the requirements of the authorised representative (including written or verbal instructions, time limits, interviews, contact rules and procedures).
- 3.3.9. A provider must provide investigation reports of the highest quality, fully consistent with instructions and which provide all relevant factual information.

4. CONDUCT OF INVESTIGATIONS

4.1. Compliance

4.1.1. A provider must comply with this Code and all State and Commonwealth laws, including the following:

- *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)*
- *Accident Compensation Act 1985 (Vic)*
- *Crimes Act 1958 (Vic)*
- *Private Security Act 2004 (Vic)*
- *Surveillance Devices Act 1999 (Vic)*
- *Surveillance Devices (Workplace Privacy) Act 2006 (Vic)*
- *Summary Offences Act 1966 (Vic)*
- *Information Privacy Act 2000 (Vic)*
- *Health Records Act 2001 (Vic)*
- *Privacy Act 1988 (Cth)*
- *Evidence Act 2008 (Vic)*
- *Occupational Health & Safety Act 2004 (Vic)*
- *Equal Opportunity Act 1995 (Vic)*
- *Racial Discrimination Act 1975 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*

4.2. VWA Reputation

4.2.1. A provider must conduct investigations in a way that will not damage the reputation or integrity of the VWA or its authorised representatives.

4.2.2. A provider must not make any public statement on any matter concerning the Victorian accident compensation scheme, the VWA or its authorised representatives without the written permission of the VWA. This prohibition includes advertising, conferences or lectures (relating to any material or information gathered during the conduct of any investigation for the VWA), media interviews and the publishing of the provider's name in connection with the VWA.

4.2.3. A provider must not make any threat or promise, or offer any inducement to any person when conducting an investigation.

4.2.4. A provider must not seek or accept from, or offer to, any person any gifts, benefits or rewards in connection with a VWA investigation, other than modest hospitality such as light refreshments.

4.2.5. A provider must not disclose any information obtained in the course of any investigation to any other person or organisation without the express written permission of the VWA, unless that disclosure is required by law.

4.3. Privacy

4.3.1. The VWA acknowledges that the conduct of investigations is an activity that poses a potential risk to a person's legitimate expectation of privacy.

- 4.3.2. The VWA is determined to ensure that its authorised representatives and service providers are aware of and comply with the obligations imposed by the Information Privacy Act, the Health Records Act and all other privacy related legislation.
- 4.3.3. To that end, and without intending to in any way restrict the application of all relevant legislation, the VWA has approved a set of rules that cover investigation and surveillance activities, with which all providers must comply. These are set out in the following Section.

5. RULES FOR INVESTIGATION ACTIVITIES

5.1. General

- 5.1.1. A provider must only collect information relevant to its investigation.
- 5.1.2. A provider must not record an interview without authorisation from the VWA and the permission of the interviewee.
- 5.1.3. A provider must make and keep written contemporaneous records of all investigation activities in a separate bound 'day book', which is to be retained for 7 years. Contemporaneous notes should include details of:
- conversations held in person;
 - telephone conversations;
 - unanswered telephone calls, including messages left;
 - letters/faxes/emails sent;
 - travel;
 - details of any statement obtained;
 - any electronic checks, including government and social media sites (e.g. internet/land titles/Facebook/Business Affairs).
- 5.1.4. A provider must not entrap any person or use any dishonest or illegal means. Any attempt to induce a subject to enter into a situation, in which that person would not ordinarily enter, is prohibited.
- 5.1.5. A provider must not conduct any form of pretext activity in the course of an investigation.
- 5.1.6. A provider must conduct interviews and take statements face to face with the interviewee wherever possible. If it is not possible to conduct all or part of the interview in this way, the provider must be able to positively confirm the identity of the interviewee.

5.1.7. When contacting any person during an investigation, a provider must:

- fully identify themselves and provide the person with a business card or similar document;
- explain that they are not a direct employee of the VWA;
- inform the person the exact reason for contacting them;
- if the person is not present, a provider must leave a business card with a brief explanation for the visit; and
- if a person does not wish to be interviewed at their home, their workplace or other location, the interview must be conducted at the provider's office or other suitable premises.

5.1.9. If a provider knows that a subject is legally represented, it must make all reasonable efforts to contact the legal representative to obtain consent to interview the subject.

5.1.10. If a provider does not know whether a subject is legally represented, it must first ask the subject if they are legally represented. If so, the provider must seek the consent of the legal representative before any further contact, unless the subject advises that they have already obtained legal advice and agrees to be interviewed.

5.1.11. A provider must comply with any reasonable restrictions placed on the interview by the interviewee and/or their legal representative. (e.g. If the solicitor is to review the draft statement before it is signed and can do so in time to enable the authorised representative to make a decision on the claim within the statutory 28 day time limit).

5.1.12. Where the legal representative refuses permission to interview the subject, details should be included in the investigation report.

5.1.13. A provider must invoice in accordance with the relevant VWA Fee Schedule.

5.2 Surveillance

5.2.1. A provider must not conduct surveillance on business premises unless a reasonable person would believe that those business premises were open for persons to enter without necessarily expecting them to enter into any form of transaction.

5.2.2. A provider must not communicate with a neighbour, work colleague or other acquaintance of a subject, in a way which might directly or indirectly reveal that surveillance is being, will be, or has been conducted of that subject, or imply that the subject is involved in dishonest conduct.

5.2.3. A provider must not record film inside any court, tribunal, conciliation or mediation service or centre, or any other quasi-judicial facility.

5.2.4. A provider must not record film inside any medical or health service or centre

- 5.2.5. A provider must only conduct surveillance or observation and record film from a public vantage point during an investigation. A provider must avoid any act or behaviour which might unreasonably interfere with a person's legitimate expectation of, or right to, privacy. Examples of unreasonable interference include, but are not limited to observation and film recording of:
- 5.2.5.1. persons who are not the subject of the investigation, such as family and friends, where it would unreasonably interfere with their privacy;
 - 5.2.5.2. a subject within private residential premises used solely for domestic purposes where they would have a reasonable expectation of privacy. An exception would be when business activity is conducted from a separate building not attached to the home, e.g. garage, shed, bungalow or office, and if the subject's activity is performed in open view to the public without the use of any optical aids;
 - 5.2.5.3. any activity within change/wash rooms, showers, lactation rooms, toilets or bedrooms (including those in a workplace), swimming pools, gymnasiums or any indoor facility used by the person under investigation as part of their rehabilitation and/or treatment program;
 - 5.2.5.4. any religious or ceremonial occasion such as a christening, wedding or funeral, or whilst the subject is attending a place of worship;
 - 5.2.5.5. any educational facility where minors are under care and supervision, e.g. a school, kindergarten, or day care facility;
 - 5.2.5.6. any other place or circumstances specified by the VWA.
- 5.2.6. A provider must not continue surveillance if it suspects that the subject has become aware of the surveillance. Surveillance must not be recommenced until approved by the instructing officer.
- 5.2.7. If a provider is approached or confronted by the subject during an investigation, the provider must, having regard to their own personal safety, attempt to defuse the situation. This might involve departing the location. If considered advisable, it may provide identification to the subject, confirm that it has been instructed by a VWA authorised representative and advise that it will now cease the activity and notify the authorised representative.

5.3 Mental injury claims

- 5.3.1. All providers conducting circumstance investigations for mental injury claims are required to have obtained a certificate of competency from a VWA approved training program such as Applied Suicide Intervention Skills Training.

5.3.2. Providers conducting mental injury claim circumstance investigations must:

5.3.2.1. Allocate the investigation to an investigator with a minimum of 5 years relevant experience and who has completed the training referred to in 5.3.1;

5.3.2.2. Offer the subject the option of being interviewed by an investigator of the same sex;

5.3.2.3. Advise the subject of their right to have an independent representative or support person present during the interview and encourage them to exercise this right. If a subject requests or nominates an independent representative or support person, the provider must not commence the interview until that person is present;

5.3.2.4. Prepare all relevant information prior to commencing the interview, in order to minimise the time required for the interview;

5.3.2.5. When arranging the appointment, tactfully and carefully tell the subject what to expect during the interview. Appointments should be confirmed in writing;

5.3.2.6. At all times consider the demeanour and apparent mental state of the subject and determine if it is appropriate to commence or continue the interview at that time, and if necessary, terminate the interview;

5.3.2.7. At the start of the interview, clearly outline the subject's rights and advise of the following:

- the right to terminate or reschedule the interview, at any time;
- the right to suspend the interview to have a break at any time;
- the right not to answer a question that is put to them;
- that the provider is not responsible for making decisions related to their claim;
- that the provider has a responsibility to ask a wide range of relevant questions in order to enable the decision maker to assess their claim.

5.3.2.8. The provider must limit the length of the interview to 4 hours; if after 4 hours the interview is complete, the provider may extend the time for no longer than 30 minutes to enable the subject to read through and sign their statement, if the subject agrees.

5.4. Investigation information

5.4.1. A provider must store any material (including originals) collected for 7 years.

- 5.4.2. A provider must take all steps to ensure that the evidence it obtains in an investigation is stored securely and in such a way as to ensure its admissibility under the Evidence Act 2008.
- 5.4.3. A provider must document an audit trail of all digitally stored evidence in a way that:
- 5.4.3.1. Logs all subsequent original images made from the primary image and any person provided with a copy;
 - 5.4.3.2. Ensures any action performed on the original image, or subsequent copy, are appropriate and documented (e.g. dovetailing sequences from different cameras into a chronological sequence);
 - 5.4.3.3. Records all activity relating to the capture, access, storage or transfer of digital evidence.
 - 5.4.3.4. The audit trail documentation should include:
 - Details of the case;
 - Date and time of action;
 - Description and log of images or video footage taken;
 - Details of the media used to capture the images or video footage;
 - Details of how the primary image was created;
 - Details of how the original image was downloaded and created;
 - Details of how additional original images or working copies were created.
 - How the original image was stored.
 - Details of any person who has accessed the original image in a manner that could affect the integrity of the image.
 - Details of any copying that was required to ensure the longevity of the original image.
 - Details of what adjustments were made to the working copy and how they were done.

6. AUDIT & REVIEW

- 6.1.1. A provider must comply with this Code and any requirements of the VWA or its authorised representatives, including any performance standards and billing requirements.

- 6.1.2. The VWA may conduct audits or reviews of providers at any time to ensure that the Code and all other requirements and obligations are being met.
- 6.1.3. A provider must give the VWA any information and provide any documents that the VWA may require for the purpose of any such audit or review.

7. COMPLAINTS

7.1. Procedure

- 7.1.1. The VWA may investigate any complaint made about a provider, unless it determines that it would be more appropriate to first refer the complaint to another regulator, e.g. Victoria Police, the Privacy Commissioner or Ombudsman Victoria.
- 7.1.2. A provider must co-operate with any VWA investigation, and furnish any information or documents required by the VWA.
- 7.1.3. If the VWA believes that the complaint may have merit, the VWA will, at a time during the investigation that it deems appropriate, notify the provider in writing of the nature of the complaint and invite the provider to respond.
- 7.1.4. After considering all of the evidence obtained during the investigation and any submissions by the provider, the VWA will make a decision.
- 7.1.5. If the complaint is found to be unsubstantiated, the VWA will notify the provider in writing of its findings.
- 7.1.6. If the VWA finds the complaint is substantiated in any way, the VWA may:
 - 7.1.6.1. issue a caution to the provider and require any remedial action the VWA considers appropriate, which may include placing restrictions or conditions on the provider's VWA registration;
 - 7.1.6.2. suspend the provider's VWA registration for such time as the VWA deems appropriate;
 - 7.1.6.3. revoke the provider's VWA registration and disqualify it from being re-registered for such time as the VWA deems appropriate;
 - 7.1.6.4. refer the matter to Victoria Police Licensing & Regulation Division.
- 7.1.7. If the VWA proposes to take action under 7.1.6.2 or 7.1.6.3 it shall, before taking such action, invite the provider in writing to make any submission in writing as to why the VWA should not take such action.
- 7.1.8. The VWA shall consider any submissions made by the provider before making a final decision and will notify the provider in writing of its decision and the reasons for its decision.

APPENDIX 'A'

8. REGISTRATION CRITERIA

8.1 Licensing

- 8.1.1 A provider must at all times hold a current Security Business Licence under the *Private Security Act 2004*, and must at all times provide the VWA with a copy of its current licence.
- 8.1.2 A provider must only engage an investigator who holds a current Private Security Licence under the *Private Security Act 2004*.
- 8.1.3 Any interstate investigator engaged by a provider in VWA investigations must be licensed with the relevant authorities for the State or Territory in which they work.
- 8.1.4 Where a provider is instructed to engage an investigator to conduct an investigation in a foreign country, the provider must ensure that the foreign investigator is authorised to conduct investigations pursuant to the laws of that country.
- 8.1.5 A provider must notify the VWA within 7 days of any changes to its Victoria Police Private Security Licence status or conditions.

8.2 Business and Integrity

- 8.2.1 A provider must be and continue to be incorporated under the *Corporations Act 2001*.
- 8.2.2 A provider must within 14 days provide the VWA with any Australian Securities & Investments Commission ("ASIC") documents it requests.
- 8.2.3 A provider must provide to the VWA within 14 days of being requested any information required to satisfy the VWA of the provider's financial position and its ability to provide investigation services to VWA's requirements.
- 8.2.4 In making an application for registration, the provider consents to, and expressly authorises the VWA to undertake credit reference checking with any credit providers or credit reporting agencies.
- 8.2.5 A provider must provide a national police check for each of its officers.

8.3 Insurance

- 8.3.1 A provider must have in force at all times, and provide the VWA with a copy of:
- registration with the VWA as an employer, and payment of any premium pursuant to the *Workplace Injury Rehabilitation and Compensation Act 2013*;

- a professional indemnity insurance policy with a minimum indemnity limit of \$1 million for any one or series of events arising in any one policy year;
- a public liability insurance policy with a minimum indemnity of \$5 million for any one or series of events arising in any one policy year;

8.4 Facilities and Security

8.4.1 A provider must have sufficient human and technical resources and facilities to ensure a professional business operation including state of the art film and surveillance equipment, up to date telecommunications, secure computer systems and compatible standard operating environment, secure document handling and destruction, administration processing facilities and the capability to transmit reports electronically.

8.4.2 A provider must have a business office in Victoria and be able to:

- conduct interviews at a secure premise if required;
- enable the on-site audit of files and premises;

8.4.3 Where a provider conducts its business from shared, serviced or mixed-use premises, the business must:

- be located in a self-contained office environment that is separated and secured from the rest of the premises;
- have a separate entry/exit that is accessible during normal business hours.

8.4.4 A provider must have a suitable meeting room available in which to conduct interviews.

8.4.5 A provider's business office must have an adequate level of security to protect VWA information against intrusion, loss, theft, unauthorised use or distribution. The minimum requirements are as follows:

8.4.5.1 commercial grade electronic intrusion detection system which must include back-to-base Grade 1 monitoring;

8.4.5.2 commercial grade electronic fire detection system which must include back-to-base Grade 1 monitoring;

8.4.5.3 commercial grade current firewall, anti-virus and back-up systems;

8.4.5.4 commercial dead latch locking mechanism on all external doors, window locking mechanism and/or bar barrier protection;

8.4.5.5 internal doors accessing storage room(s) with VWA information must have commercial dead latch locking mechanism or electronic access control system;

8.4.5.6 commercial grade lockable cabinet;

8.4.5.7 a cross-shredder or an arrangement with a registered security contractor to collect the material for destruction. The contractor must provide documentation confirming the date, time and method of destruction;

8.4.5.8 external archive storage must be in secure storage facilities which meet the VWA minimum requirements set out in 8.4.5.;

8.4.5.9 VWA material collected must be stored in a secure area separate from other routine administrative activities and which has adequate access control and activity monitoring;

8.4.5.10 VWA information in the field must be securely stored at all times.

8.5 IT Storage

8.5.1 A provider must not store any VWA information on cloud storage facilities.

8.6 Competency

8.6.1 At least one of the officers of the provider must have a minimum of seven years' experience in Victorian workers compensation investigations.

8.6.2 A provider must ensure that all investigators it employs or engages receive appropriate workers compensation investigation training to enable them to conduct investigations in accordance with the Code.