Government Response to the Independent Review of Occupational Health and Safety Compliance and Enforcement in Victoria Report

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# Abbreviations

EU enforceable undertaking

HSR health and safety representative

HWSA Heads of Workplace Safety Authorities

Independent Review Independent Review of Occupational Health and Safety Compliance and Enforcement in Victoria

OHS occupational health and safety

OHSAC Occupational Health and Safety Advisory Committee

SRG stakeholder reference group

SWA Safe Work Australia

The Report the Independent Review Report

WHS work health and safety

# Response – Independent Review of OHS Compliance and Enforcement in Victoria

# 1 Introduction

The Independent Review of OHS Compliance and Enforcement in Victoria (the Independent Review) was undertaken over ten months from February 2016 to November 2016. The Independent Review was conducted by a panel appointed by the Minister for Finance, Robin Scott. The panel was chaired by Dr Claire Noone and its other members were Cathy Butcher and Margaret Donnan. The Independent Review’s terms of reference were:

1. to examine, review and make recommendations in relation to the relevance and appropriateness of WorkSafe’s compliance and enforcement policy
2. to examine, review and make recommendations in relation to the appropriateness and effectiveness of WorkSafe’s compliance and enforcement activities
3. to examine and make recommendations in relation to the alignment of WorkSafe’s compliance and enforcement policy with the national compliance and enforcement policy, and
4. to examine, review and make recommendations on WorkSafe’s effectiveness in discharging its functions in relation to providing OHS compliance information and promoting OHS awareness, education and training.

The Independent Review Report (the Report) made 22 recommendations that focussed on WorkSafe’s: compliance and enforcement framework; approach to planning and targeting; provision of information and support; and approach to collaboration and engagement.

# 2 The review in context

The Report delivers on the Government’s commitment to review Victoria’s occupational health and safety framework. The Independent Review coincided with development of WorkSafe’s next long-term strategy, providing an opportunity to renew our focus on working together to ensure high safety standards in Victorian workplaces.

The response to the recommendations and WorkSafe’s new strategy address the matters considered by the Independent Review and focus on delivering improved occupational health and safety outcomes for Victoria in the context of changing community expectations.

Underpinning WorkSafe’s new strategy is a prevention-led ethos, which builds on the traditional concept of ‘prevention’ to encompass the prevention of further harm.

The strategy will enable WorkSafe to strengthen its client-centric approach, focussing on the needs of workers, employers and the Victorian community (see WorkSafe Strategy 2030 at www.worksafe.vic.gov.au/strategy2030).

# Government Response to the Independent Review of OHS Compliance and Enforcement Report Recommendations

# 3 WorkSafe’s OHS Compliance and Enforcement Framework

***Recommendation 1***

*That WorkSafe clearly articulates the hierarchy of compliance and enforcement documents and explains each policy, supplementary enforcement policy and guideline, its purpose and audience and how it fits within the suite of documents that comprise the Compliance and Enforcement Framework.*

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| **Recommendation response:** Supported  The Compliance and Enforcement framework is the cornerstone of all of WorkSafe’s compliance and enforcement activities and the development of a guide outlining the purpose of each document in that framework is supported to implement this recommendation. The guide will provide clarity to duty holders on the suite of documents and policies that govern WorkSafe’s compliance and enforcement activities (see recommendation 3). The guide will be designed, developed and delivered by June 2018. |

***Recommendation 2***

*That WorkSafe establishes a formal process to review the Compliance and Enforcement Framework documents every three years, or when circumstances change.*

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| **Recommendation response:** Supported  The establishment of a formal process to review the documents in the compliance and enforcement framework every three years is supported. Following the update of the WorkSafe compliance and enforcement policy (see recommendation 3) and as part of its continuous improvement approach, WorkSafe will ensure review of the compliance and enforcement framework occurs at least every three years. The formal review process will be delivered by June 2018. |

# 4 WorkSafe’s compliance and enforcement policy

***Recommendation 3***

*That WorkSafe’s Board reviews/updates its OHS Compliance and Enforcement Policy, in consultation with OHSAC to:*

* *make the language clear and easy to understand for internal and external audiences*
* *clarify the principles that apply to all of WorkSafe’s activities*
* *remove strategic compliance and enforcement priorities*
* *include collaboration and information sharing as a new principle*
* *develop KPIs to enable monitoring against the agreed principles*
* *set out clearly the purpose of each of the compliance and enforcement tools and when they will be used.*

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| **Recommendation response:** Supported  In consultation with OHSAC, the WorkSafe compliance and enforcement policy will be refreshed to clarify its underpinning principles and ensure it continues to be aligned with current regulatory practice. This will include outlining the purpose and use of the compliance and enforcement tools available to WorkSafe, modernising its language and style and enabling those principles to be monitored. The policy will be updated by June 2018. |

***Recommendation 4***

*That WorkSafe publishes an annual OHS compliance and enforcement plan that sets out its strategic compliance and enforcement priorities, activities and performance targets.*

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| **Recommendation response:** Supported  The publication of an OHS compliance and enforcement plan is supported. WorkSafe publishes its strategic and organisational priorities annually in its corporate plan. WorkSafe will provide additional detail on its strategic compliance and enforcement priorities, activities and performance targets in its 2018/19 Corporate Plan. This will expand upon the information currently provided to the Victorian community. |

***Recommendation 5***

*That the Victorian Government considers developing regulations to enable infringement notices to be used as one of the suite of compliance and enforcement tools.*

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| **Recommendation response:** Supported in principle  The OHS Act contains provisions allowing an infringement notice scheme to be prescribed by regulations. To date, Victoria has not adopted regulations to enable this power. Infringement notices are a common feature of regulatory schemes and are part of the model Work Health and Safety (WHS) laws. The Government will consider offences for which infringement notices may be used and consider the use of infringement notices to improve health and safety outcomes in Victoria. |

***Recommendation 6***

*That WorkSafe updates its Enforceable Undertakings (EU) Policy to clearly specify when it is appropriate to consider an EU and the range of content options to be included in an EU to achieve the compliance and enforcement outcomes sought.*

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| **Recommendation response:** Supported  Updating the enforceable undertakings policy is supported. The current enforceable undertakings policy outlines how enforceable undertakings can be used within the compliance and enforcement framework and the relevant circumstances when an enforceable undertaking will be considered. WorkSafe will continue to ensure that the policy is kept up to date and relevant as part of its ongoing periodic reviews. |

***Recommendation 7***

*That WorkSafe:*

* *updates and broadens its current policy on the handling of section 131 requests*
* *develops a process to ensure lessons from section 131 requests that lead to prosecution action are used to inform future decision-making*
* *commits to reporting on the outcomes and progress of section 131 requests across reporting years, to include timeframes to complete investigations initiated, as well as explaining why it had not met the statutory timeframe when this occurs.*

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| **Recommendation response:** Supported  Enhanced public reporting on the progress of section 131 requests is supported and will be included in WorkSafe’s 2018 Annual Report. Amendments to the policy on section 131 requests and a process to ensure lessons learnt are also supported.  As part of its response to the Inquiry into the CFA Training College at Fiskville final report, the Government has committed to review the current legislation and practices around section 131 requests. This work is currently being conducted. |

***Recommendation 8***

*That the WorkSafe General Prosecution Guidelines be maintained as a stand-alone document and be amended to refer to the Victorian DPP Prosecutions Policies.*

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| **Recommendation response:** Supported  This revision to the general prosecution guidelines is supported. Implementation of this recommendation was completed in March 2017. The revised guidelines are available on the WorkSafe website. |

# 5 How WorkSafe plans and targets its compliance and enforcement activities

***Recommendation 9***

*That WorkSafe enhances its engagement with stakeholders, consistent with the Stakeholder Engagement Framework, and gains their input into development of strategies and programs to address identified risks and priorities.*

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| **Recommendation response:** Supported  An enhanced approach to stakeholder engagement is supported. In September 2016, WorkSafe launched its Stakeholder Engagement Framework (the Framework) which restates WorkSafe’s commitment to stakeholder engagement. The Framework makes public its guiding principles and processes to engage with stakeholders and has been fully implemented across WorkSafe.  WorkSafe is committed to continuous improvement in the way it consults with stakeholders to improve safety outcomes for Victorians. |

***Recommendation 10***

*That WorkSafe publishes an OHS research agenda which clearly identifies WorkSafe’s research priorities and outlines how the research is linked to the achievement of WorkSafe’s strategic priorities. WorkSafe should focus on translating research outcomes into practice. Where possible, completed research should be made publicly available to contribute to the knowledge base.*

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| **Recommendation response:** Supported  WorkSafe currently facilitates research into a range of OHS topics to inform its strategic priorities and this will continue.  WorkSafe’s current research partner, the Institute for Safety Compensation and Recovery Research (ISCRR), makes its research publically available from the ISCRR web site: [www.iscrr.com.au/workplace-health-and-safety](http://www.iscrr.com.au/workplace-health-and-safety). Research undertaken by ISCRR aligns with WorkSafe’s strategic priorities and includes research into hazardous manual handling and prevention of falls from height.  WorkSafe’s new long term strategy reaffirms the importance of research and anticipates the development of a research roadmap which will articulate WorkSafe's vision for research, outline the "big research questions", address key knowledge gaps and aligned with WorkSafe’s strategic priorities. There will be a focus on the translation of research outcomes into practical assessment tools, information, and guidance for duty holders and others. Publication of the research agenda and phased delivery will commence in 2018. |

***Recommendation 11***

*That WorkSafe implements a formal process for evaluation of its strategic interventions, which includes ongoing monitoring of performance and outcome measures (established at project commencement) and concludes with a documented review of intervention effectiveness.*

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| **Recommendation response:** Supported  Monitoring and evaluation of strategic interventions is critical to ensuring that improvements are integrated into future programs.  WorkSafe takes a continuous improvement approach to all of its activities and this includes ensuring lessons learnt from project and program outcomes are captured and incorporated into the design of future programs. WorkSafe implemented an evaluation framework in 2015 and applies this to strategic OHS initiatives.  There is an opportunity to build on this framework and ensure a systematic approach to monitoring and evaluation of strategic initiatives; this is recognised in the work that is underway to develop WorkSafe’s next long term strategy. Improved identification, targeting, monitoring and evaluation of strategic initiatives using better integrated and interrelated data, analytics and improved risk analysis will be fundamental to the strategy’s success. |

# 6 WorkSafe’s compliance and enforcement activities

***Recommendation 12***

*That WorkSafe urgently upgrades its website and broadens the range of targeted compliance assistance information available to duty holders.*

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| **Recommendation response:** Supported  Work to upgrade WorkSafe’s website has commenced and improved usability and accessibility of information are the primary aim of the design enhancements. The first phase of the website upgrade was completed in March 2017 and simplified the home page, main landing pages, updated information about insurance and claims and improved search and navigation. Ongoing improvements will be made to the website over the next year to make it easier for people to find the information they need.  Better targeting and tailoring of compliance assistance and information, and ensuring that the information sought by employers and workers is accessible in a format - and through a channel that is convenient and effective - is a major focus for WorkSafe. This will continue as implementation of its new strategy progresses. |

***Recommendation 13***

*That WorkSafe:*

* *establishes a training sub group of the SRG to examine and report to OHSAC on ways to improve access to training for managers and supervisors*
* *ensures that all HSR and manager/supervisor OHS training includes information on WorkSafe’s compliance and enforcement policy and compliance and enforcement plans*
* *publicly reports on their activities to implement the Australian Strategy priority to promote OHS capability.*

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| **Recommendation response:** Supported  Improving the OHS capability of employers, workers, and other duty holders is a key enabler of improved workplace safety in Victoria and will continue to be a focus for WorkSafe.  The OHS Act requires WorkSafe to approve HSR training modules and HSR training providers. While employers have a duty to ensure that their supervisors are appropriately trained and capable of fulfilling the role of supervisor and manager, WorkSafe has an important role to play in supporting improved OHS capability.  A representative sub-group of SRG on HSR training and capability has been engaged and input will be sought from this group on improving access to training for managers and supervisors. WorkSafe’s next long-term strategy also aims to build the capability of Victorian businesses to focus on prevention in its broader sense.  Where WorkSafe approves HSR training, it will ensure the inclusion of information on its compliance and enforcement policy. WorkSafe will provide the new compliance and enforcement framework to HSR training providers so that the information is provided as supplementary reading. The new compliance and enforcement framework will be available from July 2018.  As a member of Safe Work Australia (SWA), WorkSafe will continue to contribute to SWA’s reporting on the Australian Work Health and Safety Strategy 2012-2022 including the promotion of OHS capability. WorkSafe will continue to provide regular updates to OHSAC and SRG on its progress toward delivering the priorities outlined in the Australian Strategy including the promotion of OHS capability. |

***Recommendation 14***

*That WorkSafe provides more operational focus to enforce the consultation provisions in the OHS Act.*

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| **Recommendation response:** Supported  Consultation is an essential process in a continuous improvement approach to OHS; it is a legal requirement and an essential part of managing health and safety at work. WorkSafe’s compliance and enforcement activities continually reinforce these messages to duty holders. WorkSafe’s operational procedures outline that a focus on consultation is integral to every workplace visit undertaken by WorkSafe inspectors. This is emphasised through inspector training and WorkSafe’s quality assurance processes for workplace inspections. Following on from the training on the OHS Regulations 2017, WorkSafe is conducting Inspector Refresher Training for all inspectors including investigators. This training will cover consultation along with a range of other topics.  WorkSafe’s public messaging and industry presentations communicate the vital importance of consultation in promoting health and safety and a legal requirement for employers. WorkSafe will continue to emphasise the importance of consultation with its inspectorate, industry and duty holders. |

***Recommendation 15***

*That the Victorian Government considers amending the OHS Act to include an offence provision in relation to section 36.*

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| **Recommendation response:** Supported  Legal advice has confirmed that section 36 of the OHS Act is subject to a penalty under section 35 of the OHS Act.  The Victorian Government will explore options to ensure that is it clear that the requirements under section 36 of the OHS Act which cover how employees are to be consulted, are expressly linked to the offence provision attached to the duty to consult employees to provide clarity to employees and employers.  The field operations manual, which is used by inspectors and investigators, will be updated to ensure that inspectors and investigators are aware penalties apply to section 36. |

***Recommendation 16***

That WorkSafe:

* increases its focus on strategic workplace visits
* increases the use of compliance tools to address strategic risks
* increases the use of risk control plans and collects data to ensure it can report on the use of this tool
* reinforces the appropriate use of voluntary compliance
* reports on the use of voluntary compliance and the circumstances in which it is used.

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| **Recommendation response:** Supported in part  The use of strategic workplace visits and other compliance tools to address strategic risks is supported. WorkSafe’s new long-term strategy will support an increased focus on strategic activities.  Strategic workplace visits play an important role in achieving WorkSafe’s strategic priorities and ensuring workplace safety. WorkSafe’s compliance and enforcement activities are part of its ‘constructive compliance’ approach, which combines positive motivators and deterrents that help to change behaviour and improve workplace health and safety. This approach recognises that the right tools need to be used for the right circumstances. Voluntary compliance can be an appropriate tool to use when a breach is observed and can be remedied immediately. Risk control plans are a selective tool that can be used to closely monitor compliance behaviour in complex scenarios. WorkSafe’s quality assurance process helps to assess whether its compliance tools are being used appropriately.  Insights into employer compliance behaviour are key to achieving constructive compliance. Better use of data, analytics and risk analysis is a key foundation of WorkSafe’s next strategy. In the short term WorkSafe will maintain its increased inspectorate presence and continue to focus on strategic targeting. It will also ensure that inspectors are trained and supported to select and use the most appropriate compliance tools for the circumstances they are presented with.  WorkSafe will continue to provide data on inspectorate operational activity to OHSAC and the OHS SRG containing a breakdown of compliance activity including notices issued and voluntary compliances. Compliance activity is also reported in WorkSafe’s Annual Report. |

***Recommendation 17***

*That WorkSafe improves the value of the use of inspection resources by:*

* *continuing to ensure that inspectors have the capability to address complex priority hazards such as manual handling and psychosocial hazards, including the appropriate use of notices*
* *publishing inspector checklists to better inform duty holders about WorkSafe’s priorities, compliance requirements and what to expect*
* *ensuring that lessons learnt from internal review and quality assurance are used to continue to improve the use of tools*

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| **Recommendation response:** Supported  WorkSafe is committed to continuing to ensure that its inspectors have the capacity to address complex hazards and to use the appropriate tools through strategic planning, prevention program development, resource allocation and its extensive inspector training program and future capability development.  WorkSafe will continue to enhance its approach to improving inspector’s ongoing capability by using simulation based coaching to focus on developing and improving inspector behavioural competencies.  WorkSafe will also continue to work towards more client-centric, tailored products, services and support for the needs of the broad range of duty holders in Victoria. This will include making tools such as guidance, injury hotspots, and some inspector checklists available to duty holders. It will also evolve the technology used by WorkSafe, enabling inspectors to be more effective in their interactions with the workplace. WorkSafe will provide an opportunity for stakeholder input about its future business model and how it can work better.  WorkSafe uses a quality assurance process for its inspectorate and lessons learnt from that process are regularly communicated to inspectors and their team leaders. WorkSafe is currently implementing improvements in the way that it communicates lessons learnt from internal review decisions across the inspectorate in line with its continuous improvement approach. |

***Recommendation 18***

*That WorkSafe undertakes more strategic prosecutions.*

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| **Recommendation response:** Supported  WorkSafe will commence measuring and reporting on the alignment of prosecutions with strategic priorities based on the greatest risks to workplace safety. WorkSafe will improve the use of data and analytics through its next long term strategy to identify priority areas and support better measurement and reporting of the effectiveness of prosecutions as a strategic tool.  WorkSafe acknowledges the importance of a strategic approach to prosecuting and the strong deterrence value they provide. WorkSafe has increased its investigation resources and WorkSafe’s strategic priorities will continue to inform all of its prosecution decisions. |

***Recommendation 19***

*That WorkSafe reports on the use of its enforcement actions in more detail including:*

* *use of letters of caution, consideration should be given to establishing a register of letters of caution issued, to whom and for what alleged offence*
* *whether letters of caution, enforceable undertakings and prosecutions focus on strategic priority industries and hazards*
* *supporting duty holders to learn from incidents and prosecutions by providing better information about the event and what could have been done to eliminate or reduce the risks.*

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| **Recommendation response:** Supported in part  WorkSafe will continue to report annually on the number of letters of caution issued and will expand it’s reporting on enforceable undertakings. As letters of caution do not constitute a conviction, WorkSafe is required to preserve anonymity in reporting.  WorkSafe will report annually on whether completed prosecutions are aligned with its strategic priorities. WorkSafe will also update stakeholders on how enforcement activity performance data is aligned with strategic priorities.  Further support will be provided to duty holders so that lessons learnt from incidents and prosecutions can be realised, for example, by including information in future media releases on specific solutions for hazards that caused incidents. |

***Recommendation 20***

*That WorkSafe makes better use of prosecution outcomes to drive OHS compliance.*

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| **Recommendation response:** Supported  WorkSafe uses prosecution outcomes as a key tool to drive OHS compliance by publishing prosecution results in a public database, its Annual Report, and through media releases and case studies used in OHS education activities.  Concurrently with the response to Recommendation 19, WorkSafe will also use media releases more effectively to highlight successful prosecutions and provide more safety information to duty holders on specific solutions for hazards that caused incidents.  In the longer-term more sophisticated analysis and specific reporting on workplaces will help WorkSafe to determine how to tailor the use of prosecution outcomes and safety information to specific duty holders and workplaces. |

***Recommendation 21***

*That WorkSafe develops a methodology to monitor and report on its performance on joint regulatory approaches.*

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| **Recommendation response:** Supported  WorkSafe recognises the importance of working with other regulators and uses Memorandum of Understanding (MoU) to document how WorkSafe will share information and collaborate with other regulators in performing its functions. WorkSafe monitors the commitments made by the parties to the MoUs to support the implementation of the MoUs.  WorkSafe will continue to regularly report on its performance to OHSAC and SRG on joint regulatory programs. WorkSafe will explore options for enhancing reporting on joint regulatory approaches and it will include a new section on joint activities in the 2018 Annual Report. |

***Recommendation 22***

*That WorkSafe ensures the active involvement of stakeholders, through OHSAC, in the development and implementation of national initiatives.*

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| **Recommendation response:** Supported  The involvement of stakeholders in developing and implementing national initiatives is important and WorkSafe will continue to actively involve stakeholders, through OHSAC, in the development and implementation of national initiatives that are part of Safe Work Australia's (SWA) programs.  WorkSafe will continue to provide information on SWA programs to SRG meetings and will continue to regularly engage with OHSAC on national initiatives. |