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

Report
November 2016

Contents

Foreword

Foreword

Workplace safety is fundamental to a safe community and a thriving economy. The changes in where and how we work create new challenges for workplace safety.

WorkSafe Victoria (WorkSafe) is charged with ensuring that Victorian occupational health and safety (OHS) laws and standards are complied with, enforced and communicated.

Until recently WorkSafe has been recognised as a leading workplace health and safety regulator in Australia. Our review has focussed on strengthening OHS standards across the state and we hope that by implementing the recommendations from this review WorkSafe will continue to be a leading and modern regulator. An important element of this leadership is the way in which WorkSafe engages and consults with its stakeholders, its partners and with other regulators to work together to improve health and safety outcomes.

WorkSafe has adopted a constructive compliance approach to its regulatory activities – focusing on prevention and on deterrence. WorkSafe continues to refine its approach to targeting its compliance and enforcement activities to identified risks and the more structured and nuanced use of its broad range of tools. WorkSafe is developing more effective communication and engagement with its social partners and with co-regulators.
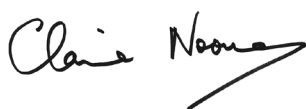
The Panel has been assisted by the expertise and input from a wide range of interested parties. The ideas shared with us about how WorkSafe can most effectively fulfil its compliance and enforcement functions have shaped the recommendations in this report.

We are grateful for the time of WorkSafe's Board, its Executive Leadership Team and key personnel who provided us with assistance throughout the course of the review. We would also like to acknowledge the valuable time and input given to us by other agencies – the Environment Protection Authority Victoria (EPA), the Victorian Building Authority (VBA), the Victorian Director of Public Prosecutions (DPP), Sustainability Victoria, SafeWork New South Wales and Workplace Health and Safety Queensland.

Foreword

We were also greatly assisted by the expertise of the Occupational Health and Safety Advisory Committee (OHSAC) and the Stakeholder Reference Group (SRG), and by the panel of experts who gave their time to us. Thank you to the Secretariat that supported the Panel and to the consultants who assisted us in the final preparation of this report.
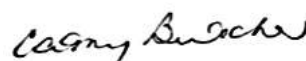
We believe our recommendations will provide useful guidance for the Minister for Finance to ensure WorkSafe improves its engagement with the community and maximises the impact of its compliance and enforcement activities. Recent changes at WorkSafe, the renewed commitment to modern regulatory practice and engaging social partners and co-regulators will enable WorkSafe to do its part in creating safe and healthy workplaces in Victoria and ensuring Victorians return home safely.

Dr Claire Noone (Chair)   Margaret Donnan (Member)   Cathy Butcher (Member)

Executive Summary

Executive Summary

Our review

This review has shone a light on the strengths and areas for improvement in the way in which WorkSafe undertakes its compliance and enforcement role and achieves its objectives as Victoria's OHS regulator.

The Minister for Finance asked us to examine the appropriateness and effectiveness of WorkSafe's OHS policies and activities. The objective is to ensure that OHS laws and standards in Victoria are complied with, enforced and communicated. Drawing on the experience and knowledge of stakeholders, experts, other health and safety regulators, co-regulators and the insights from the literature, we have sought to answer the question of how WorkSafe can best achieve that objective, what it needs to do better and what it needs to do differently.

The scope of this review is confined to examining the OHS compliance and enforcement policies and activities of WorkSafe. Our Terms of Reference were to:

1. Examine, review and make recommendations in relation to the relevance and appropriateness of WorkSafe's Compliance and Enforcement Policy.

2. Examine, review and make recommendations in relation to the appropriateness and effectiveness of WorkSafe's compliance and enforcement activities.

3. Examine and make recommendations in relation to aligning WorkSafe's Compliance and Enforcement Policy with the National Compliance and Enforcement Policy.

4. Examine, review and make recommendations on WorkSafe's effectiveness in discharging its functions in relation to providing OHS compliance information and promoting OHS.

Our findings and recommendations are presented in this report in four parts:

+ Section 1 details the legislative framework and the changing context in which WorkSafe operates.

Executive Summary

+ Section 2 focuses on the Compliance and Enforcement Framework that guides WorkSafe's compliance and enforcement activities and the alignment of WorkSafe's Compliance and Enforcement Policy with the National Compliance and Enforcement Policy.

+ Section 3 examines the way in which WorkSafe plans and targets its compliance and enforcement activities.

+ Section 4 addresses WorkSafe's compliance and enforcement activities that encourage workplace health and safety as well as activities that are designed to deter poor OHS performance.

Section 1   Background to the review

The legislative mandate

In Victoria, OHS is governed by a system of laws, regulations and compliance codes that set out the duties, obligations and rights of duty holders and others in relation to workplace health and safety. Central to this system is the *Occupational Health and Safety Act 2004* (the OHS Act), which provides a broad framework for improving standards of workplace health and safety to reduce work-related illness and injury.

WorkSafe administers Victoria's OHS laws, including the OHS Act, the *Dangerous Goods Act 1985* and the *Equipment (Public Safety) Act 1994*. The principal Act under which WorkSafe conducts its compliance and enforcement activities is the OHS Act. That Act establishes WorkSafe as the OHS regulator in Victoria.

For our review the legislative objectives and functions provide an important foundation for examining WorkSafe's policies and activities.

Drawing on expert knowledge and practical experience

Our review has drawn on expert knowledge and insight through a series of targeted consultations and a public submission process in response to our discussion paper.

Executive Summary

We met with:

+ The Occupational Health and Safety Advisory Committee (OHSAC)
+ The Stakeholder Reference Group (SRG)
+ The WorkSafe Executive Leadership Team
+ The WorkSafe Board
+ The Chair and CEO of the EPA
+ The CEO and Senior Executives of the VBA
+ The CEO of Sustainability Victoria
+ The Queensland and New South Wales occupational health and safety regulators
+ The Victorian Director of Public Prosecutions.

We also convened an expert roundtable with some of Australia's leading academic and practitioner experts in OHS compliance and enforcement and regulatory practice.

We received a total of 112 submissions in response to the discussion paper. The submissions were from a broad range of stakeholders including: employer groups, unions, health and safety representatives (HSRs), employers, employees and private individuals.

Building on previous reviews and inquiries

The OHS legislation and WorkSafe's regulatory approach and activities have been the subject of a number of reviews, and external and internal inquiries. Our review builds on the findings and recommendations of a number of previous reviews including:

+ the 2003, Maxwell review of the OHS Act
+ the 2007 Stensholt administrative review on the implementation of the OHS Act 2004 reforms
+ the 2007 Ombudsman Victoria investigation into the handling of a workplace bullying and harassment complaint

Executive Summary

+ recent Victorian Auditor-General's Office audits

+ WorkSafe's internal project "Reinvigorating the modern regulator".

In addition, WorkSafe's compliance and enforcement activities have also been a focus of recent parliamentary inquiries, most notably the Hazelwood Mine Fire Inquiry and the Inquiry into the CFA Training College at Fiskville.

Understanding the context

Our review has also considered the current context in which WorkSafe operates and the changing context in which it will operate in the future. We have considered how WorkSafe operates in the national context working with State, Territory and Commonwealth governments through its participation in Safe Work Australia (SWA). We have noted the clear expectations set by the Minister for Finance in contributing to the Government's Regulation Reform Program to reduce red tape and improve regulatory practices while ensuring that there is no reduction in worker safety.

We recognise that work practices have changed significantly over the past decade, and are expected to continue to change in the future. The changes in where and how Victorian's work, and the age profile of the workforce, create new challenges for workplace safety. For WorkSafe to continue to be an effective OHS regulator it will need to adapt to these changes in its operating environment.

Section 2   The OHS Compliance and Enforcement Framework

The OHS Compliance and Enforcement Framework (C&E Framework) is the set of policy and other documents in relation to compliance and enforcement activities that inform and guide duty holders about WorkSafe's regulatory approach and guide WorkSafe staff on how to implement that approach.

Executive Summary

Improving the OHS Compliance and Enforcement Framework

We examined the current C&E Framework with a view to understanding whether there is a comprehensive and up to date suite of documents that is easily accessible and makes it clear how each element of the Framework relates to the other. We found that it is not clear what is in the C&E Framework.

We also examined whether the policy and other documents comprising the C&E Framework are regularly reviewed, and whether the available documents are current. We found that the documents available online are not up to date, and that there does not appear to be an agreed process for managing and endorsing new policies or other documents in the suite of documents.

We formed the view that WorkSafe would benefit from a clear and transparent process for managing the C&E Framework and for regular review of the documents to ensure they remain current. This process should include mechanisms to consult with stakeholders on potential changes to the Framework, as well as letting people know that the Framework has changed and how to access the most up-to-date documents.

Reviewing and updating the Compliance and Enforcement Policy

The WorkSafe Compliance and Enforcement Policy (C&E Policy) is the key element of WorkSafe's C&E Framework and reflects the intent and objects of the relevant legislation. It sets out how WorkSafe's 'Constructive Compliance Strategy – a balanced combination of positive motivators and deterrents' is applied to WorkSafe's compliance and enforcement activities. The C&E Policy outlines its information and education strategy as well as its inspection and prosecution guidelines.

We examined whether the current C&E Policy was up to date and whether it is clear and simple to understand. We found that the C&E Policy has not been updated to reflect WorkSafe's approach to being a modern regulator and that it is difficult to navigate.

Executive Summary

We found that there is an opportunity to clarify the principles that underpin WorkSafe's approach and that this can best be driven by the Board. We also think WorkSafe should consider including collaboration and information sharing as a core principle to underpin its approach, in line with the National Compliance and Enforcement Policy.

We support the continued use of the constructive compliance strategy as a framework for describing the approach to compliance and enforcement activities. However, the elements of that framework and how it is illustrated have changed over time and an agreed description that is reflected in all relevant documents would be helpful.

Making clear the purpose of each compliance and enforcement tool and when it will be used would ensure the C&E Policy reflects best practice and will provide greater guidance for duty holders and for staff in this regard.

The current C&E Policy identifies strategic compliance and enforcement priorities. Our view is that a preferable approach is to articulate strategic priorities in an annual compliance and enforcement plan to better reflect the strategic planning and risk-based approach.

Enhancing the regulatory toolkit – the introduction of infringement notices

The OHS Act (as well as the *Dangerous Goods Act* and *Equipment Public Safety Act*) contains provisions allowing an infringement notice scheme to be prescribed by regulations. Supporting regulations are a prerequisite to the operation of an infringement notice scheme, however Victoria has not adopted regulations to enable this power. As part of our review we considered whether the current regulatory toolkit would be enhanced by the introduction of infringement notices. There are mixed views about the appropriateness and effectiveness of infringement notices. In our view there is merit in considering whether they be introduced for OHS enforcement in Victoria, noting they are used in a number of other regulatory domains.

Executive Summary

Improving the guidance for use of Enforceable Undertakings

The OHS Act provides WorkSafe with the power to accept undertakings relating to contraventions. WorkSafe's Policy on Enforceable Undertakings (the EU Policy) 'sets out the processes and criteria for considering an offer of an Enforceable Undertaking (EU) from a person who has allegedly committed an offence against the OHS Act. We agree EUs are a useful enforcement tool that can improve occupational health and safety outcomes. The current policy on when it is appropriate to consider an EU (and its contents) should be enhanced to encourage a wider use of this tool.

Specifying the approach to section 131 investigations

Section 131 of the OHS Act provides that if a person considers that an offence against the Act has occurred and no prosecution has been brought in respect of that occurrence within six months, the person may make a written request for WorkSafe to bring a prosecution. Section 131 requires WorkSafe, within three months, to conduct an investigation into those matters and advise whether a prosecution will be brought or give reasons why not. Where a prosecution will not be brought, WorkSafe must refer the matter to the Director of Public Prosecutions (DPP), if the person requests in writing that WorkSafe should prosecute.

We noted that the requirements of section 131 are only briefly described in the General Prosecution Guidelines. There is no procedure describing what occurs when the three-month timeframe is not met. There is currently no public document describing WorkSafe's procedures and decision making processes in relation to section 131 requests and there is no evidence to suggest that WorkSafe has a formal internal procedure for sharing the learnings that arise from requests under section 131. We also found that the current public reporting of section 131 requests is not transparent and is difficult to understand. It would be improved by clearly reporting against a longer timeframe so that the applications, the subject matter and the outcome can be understood across reporting periods.

Executive Summary

Amending prosecution guidelines

WorkSafe Victoria General Prosecution Guidelines state that they are incorporated into WorkSafe's C&E Policy. Our review proceeded on the basis that the 2014 guidelines replaced the earlier version in the first edition of the C&E Policy. We formed the view that the prosecution guidelines should be separate from the C&E Policy and should specifically adopt the Victorian DPP Prosecutions Policies.

Aligning with the National Compliance and Enforcement Policy

One of this review's Terms of Reference required examination and recommendations in relation to alignment of WorkSafe's C&E Policy with the National C&E Policy. Our analysis has confirmed that the WorkSafe C&E Policy and the National C&E Policy are largely aligned. We note that in revising and updating the C&E Policy, WorkSafe should have regard to continuing alignment with the National C&E Policy and specifically refer to collaboration and sharing information with co-regulators.

Section 3   WorkSafe's approach to planning and targeting

Modern regulators plan and target their activities by taking a risk-based approach. This involves understanding the changing environment in which they operate and measuring and evaluating their performance to ensure they understand whether their regulatory interventions work, and to enable them to learn and adopt new approaches.

Executive Summary

Adopting a risk-based approach to planning and targeting

A key characteristic of modern regulators is that their regulatory approach is risk-based. A risk-based approach is an acknowledgement of the limited resources at a regulator's disposal. Effective regulators must prioritise their activities to those areas that they consider high-risk, and other areas of identified strategic importance.

WorkSafe adopts a risk-based planning approach that uses robust and evidence-based processes to identify risks towards which resources should be allocated. In particular, WorkSafe uses an annual process to make decisions on compliance and enforcement activities – the Risk-Based Strategic Framework (RBSF) process. The RBSF seeks to identify the highest risk hazards and industries as focus areas for interventions. A delivery approach is then developed to establish the tools and interventions that will be used in the focus areas through detailed programs or projects. There is also a comprehensive approach to reporting on activities.

While the risk-based planning approach is comprehensive and represents better practice we found there is an opportunity for WorkSafe to enhance its engagement with stakeholders in shaping its strategies and programs and to gain insights as to what constitutes best practice interventions for the particular industry or organisational context.

We also consider there is value in continuing to monitor research and conduct environmental scanning and analysis in order to identify what work-related and community issues may emerge. WorkSafe could use its environmental scanning to inform a research agenda to assist with a better understanding of risks and how best to address them.

In addition to using research, we recommend establishing a formal evaluation and review process for assessing how effectively interventions achieve their intended outcomes.

Section 4   WorkSafe's compliance and enforcement activities

WorkSafe's compliance and enforcement functions include activities that encourage workplace health and safety as well as activities that are designed to deter poor OHS performance. Strategy 2017 states that 'WorkSafe seeks the right balance of encouragement for effective workplace safety and deterrence for poor performance. This involves providing people at work with clear advice on how to comply with the law before taking enforcement action.

Providing information and support

WorkSafe provides compliance assistance advice and information through various channels. These are delivered through the advisory service, inspectors at workplace visits, statutory and non-statutory guidance material, its website, road shows, seminars and conferences, field days, meetings with senior managers and business owners, and through social media channels. Our review of the information available and its accessibility found that there is information available in relation to priority hazards and industries and that the WorkSafe Injury Hotspots page is an example of well-developed targeted information.

We found that WorkSafe's website is cumbersome and in urgent need of an upgrade. The poor accessibility of information for duty holders on the WorkSafe website is an area that requires significant attention.

We also found there is an opportunity to better leverage community awareness campaigns by targeting specific audiences and providing a "call to action" to drive behaviour change.

Supporting the consultation provisions

We specifically examined the effectiveness of WorkSafe's approach to supporting the consultation provisions in the OHS Act. WorkSafe has developed comprehensive guidance material in relation to these provisions and has established a portal for HSRs. In addition it provides funding for a range of activities to support workplace parties.

Executive Summary

We considered the extent to which WorkSafe had enforced the consultation provisions. Stakeholders raised concerns about a lack of clarity and consistency regarding how failure to comply with the consultation provisions should be and is addressed by WorkSafe. They also raised concerns about a lack of enforcement of the provisions. Our analysis confirmed there is limited enforcement of these provisions and that increased emphasis on enforcing the consultation provisions could improve health and safety outcomes.

Expanding education and training

WorkSafe's legislative functions include promoting education and training by devising courses in occupational health, safety and approving access to those courses and initiating or promoting events relating to OHS.

As part of the Australian Strategy WorkSafe also participates in activities to build capability in occupational health and safety.

Our analysis indicates that while HSRs are accessing education and training there is a need for increased participation in training by managers and supervisors. We also found there is an opportunity for WorkSafe to ensure the training curriculum includes emphasis on understanding the C&E Policy.

Actively monitoring compliance and proactively remedying non-compliance

Workplace inspections are a frontline measure used to detect breaches of legislation and enforce remediation of any breaches. WorkSafe allocates considerable resources to workplace inspections. It conducted more than 46,000 inspector visits in 2015/16.

WorkSafe conducts statutory visits to fulfil statutory and regulatory functions, response visits and strategic visits. There is a continuing opportunity for WorkSafe to ensure it focuses its resources on strategic inspections.

Executive Summary

There is an opportunity to increase the use of its broad range of tools, especially the use of notices to address complex issues such as manual handling and psychological hazards. We also found there is an ongoing need to ensure the appropriate use of voluntary compliance. We identified an opportunity for WorkSafe to publish inspector tools and checklists, both as an indicator of transparency and to allow duty holders to focus on WorkSafe priorities to enhance their own compliance.

Taking enforcement action

The C&E Policy specifies that, where a comprehensive investigation is conducted by WorkSafe, consideration of the General Prosecution Guidelines will result in either: no further action, letters of caution, enforceable undertakings or commencement of prosecution proceedings.

We considered whether each of these enforcement tools was being used in accordance with the General Prosecution Guidelines. Our analysis suggests that in most cases the use of each tool was appropriate to the circumstances.

We consider that there is an opportunity for WorkSafe to pursue more strategic prosecutions. We also conclude there is an opportunity to better leverage the outcome of prosecutions through wider publication and using outcomes to provide timely compliance information and enhance industry learning from particular incidents.

Collaborating with others

WorkSafe is required to work with and cooperate with other regulators and agencies in the delivery of its functions. OHS compliance and enforcement activity often requires operating in partnership with other agencies.

We explored the effectiveness of WorkSafe's collaborative approaches both with other Victorian regulators and in the national context. Recent examples of collaborative approaches demonstrate increased emphasis on working with others to achieve broader health and safety outcomes.

Executive Summary

Conclusion

Our review looked at assessing how Victoria's OHS laws and standards were being complied with, enforced and communicated. To help inform our review we held a series of targeted consultations with stakeholders, experts, other regulators and WorkSafe's Board and Executive Leadership Team. We also sought the views of the community through a public consultation process. All of the information gathered assisted us greatly in developing our conclusions and recommendations about how WorkSafe can improve its approach to OHS compliance and enforcement activities.

Our report presents 22 recommendations for the Victorian Government to provide guidance to WorkSafe in its progress as a modern regulator. We believe our recommendations will inform WorkSafe's new strategic direction and assist it improve its compliance and enforcement activities.

Review Recommendations

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.

Recommendation 2

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

Recommendation 3

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

Executive Summary

+ 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.

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.

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.

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.

Executive Summary

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.

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.

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.

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.

Executive Summary

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.

Recommendation 12

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

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.

Recommendation 14

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

Executive Summary

Recommendation 15

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

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

Recommendation 18

That WorkSafe undertakes more strategic prosecutions.

Executive Summary

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.

Recommendation 20

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

Recommendation 21

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

Recommendation 22

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

Background to the review

1

Background to the review

The Independent Occupational Health and Safety Compliance and Enforcement Review (the review) was established in February 2016 by the Minister for Finance, Robin Scott MP. It was established to make recommendations to improve health and safety outcomes for Victorian workers.

1.1   Terms of Reference

The scope of the review was confined to examining the OHS compliance and enforcement policies and activities of WorkSafe. The Terms of Reference were to:

1.   Examine, review and make recommendations in relation to the relevance and appropriateness of WorkSafe's Compliance and Enforcement Policy.

2.   Examine, review and make recommendations in relation to the appropriateness and effectiveness of WorkSafe's compliance and enforcement activities.

3.   Examine and make recommendations in relation to aligning WorkSafe's Compliance and Enforcement Policy with the National Compliance and Enforcement Policy.

4.   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 scope of the review includes all of WorkSafe's health and safety functions: inspections, investigations, prosecutions, research, strategy and policy development, information and guidance, marketing and communications. The review has considered WorkSafe's effectiveness in light of modern regulatory practice.

The review was undertaken by an Independent Panel (the Panel), including Dr Claire Noone (Chair), Ms Margaret Donnan and Ms Cathy Butcher, who were appointed by the Minister for Finance.

Background to the review

1.2   WorkSafe's legislative mandate

1.2.1 The OHS legislative framework

In Victoria, OHS is governed by a system of laws, regulations and compliance codes that set out the duties, obligations and rights of duty holders and others in relation to workplace health and safety. Central to this system is the *Occupational Health and Safety Act 2004* (the OHS Act), which provides a broad framework for improving standards of workplace health and safety to reduce work-related illness and injury.

WorkSafe administers Victoria's OHS laws, including the OHS Act, the *Dangerous Goods Act 1985* and the *Equipment (Public Safety) Act 1994*. The principal Act under which WorkSafe conducts its compliance and enforcement activities is the OHS Act. That Act establishes WorkSafe as the OHS regulator in Victoria. The Act's objects and principles explain the purpose and intent of the legislation:

OHS Act objects

+   to secure the health, safety and welfare of employees and other persons at work

+   to eliminate at the source risks to the health, safety or welfare of employees and other persons at work

+   to ensure the health and safety of members of the public is not placed at risk by the conduct of undertakings by employers and self-employed persons, and

+   to provide for the involvement of employees, employers, and organisations representing those persons, in the formulation and implementation of health, safety and welfare standards.

OHS Act principles

+   The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

+   Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.

+   Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.

+   Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.

+   Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.

WorkSafe's functions outlined in the OHS Act include:

+ monitoring and enforcing compliance with the Act

+ fostering cooperative and consultative relationships between workplace parties on OHS matters

+ formulating standards, specifications and other forms of guidance to assist with compliance with duties and obligations

+ disseminating information about duties, obligations and rights under the Act.

In addition to the Acts, WorkSafe administers health and safety regulations, which set out mandatory requirements under the Acts and are supported by statutory subordinate instruments, such as compliance codes and Section 12 guidelines (also known as WorkSafe Positions) and non-statutory guidance.

1.2.2 WorkSafe's governance and structure

WorkSafe Victoria is the trading name of the Victorian WorkCover Authority, which administers health and safety, and workers' compensation legislation for Victorian employers and workers. It is an independent statutory authority established under the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act).

WorkSafe is governed by a Board of Management, established under the WIRC Act, which can exercise all the regulator's powers and give general directions to WorkSafe in fulfilling its functions and objectives. The Board delegates WorkSafe's operational management and administration to the Chief Executive, who manages and controls WorkSafe's activities in accordance with the Board's policies. In addition, WorkSafe is subject to the general direction and control of the Victorian Minister for Finance and any relevant written directions given by the Minister, including the Minister's Statement of Expectations for WorkSafe (described more fully in section 1.3.6).

Background to
the review

WorkSafe has a number of formal committees established under its legislation that provide for stakeholder engagement on OHS matters. Section 19 of the OHS Act establishes the Occupational Health and Safety Advisory Committee (OHSAC). OHSAC's role is to advise WorkSafe's Board in relation to promoting a healthy and safe working environment and the operation and administration of the OHS Act. It also responds to matters referred to it by the Board. OHSAC members are appointed by the Minister for Finance. The Stakeholder Reference Group (SRG) is a subcommittee of OHSAC.

WorkSafe's organisational structure aligns with five priority areas: safety, return to work, service, sustainability, culture and place. The divisions delivering safety functions are outlined below.

The Health and Safety Business Unit delivers occupational health and safety services including information, inspection, enforcement, licensing, strategic programs, technical expertise, emergency occupational health and safety response and compliance monitoring.

The Legal Services division is responsible for investigating and prosecuting OHS breaches. In conjunction with the Health and Safety Business Unit, it is responsible for developing compliance information and guidance to support enforcement activities.

The External Affairs division delivers external services, in collaboration with the Health and Safety Business Unit. It is responsible for raising community awareness about OHS. This division is also responsible for the WorkSafe Advisory Services.

The Strategy division develops WorkSafe's corporate strategy and supports governance and business planning functions.

1.3   Approach to the review

Our review aims to build on the previous reviews and inquiries into WorkSafe's compliance and enforcement activities. Our findings and recommendations provide practical and implementable recommendations which are intended to identify areas where WorkSafe can enhance its performance.

Background to
the review

To answer the Terms of Reference we sought information from a range of
sources including consulting stakeholders, the WorkSafe Board and Executive
Leadership Team, other regulators, co-regulators and experts. We reviewed
relevant academic literature, previous reviews into WorkSafe and publicly
available C&E policies.

1.3.1 Consultations

We sought to test and refine our thinking and our understanding through a
series of targeted consultations. We met with:

+ The Occupational Health and Safety Advisory Committee (OHSAC)

+ The Stakeholder Reference Group (SRG)

+ The WorkSafe Executive Leadership Team

+ The WorkSafe Board

+ The Chair and CEO of the EPA

+ The CEO and Senior Executives of the VBA

+ The CEO of Sustainability Victoria

+ The Deputy Director General, Office of Industrial Relations Queensland

+ The Executive Director of SafeWork NSW

+ The Victorian Director of Public Prosecutions.

We also convened an expert roundtable with some of Australia's leading
academic and practitioner experts in OHS compliance and enforcement and
regulatory practice (participants are listed at Appendix 1).

As part of our consultation process, we released a discussion paper for public
comment. The discussion paper was released in June 2016, and sought
comment on the following issues:

+ The Victorian OHS Compliance and Enforcement Framework

+ WorkSafe's use of data to drive compliance and enforcement activities

Background to
the review

+ Communication and engagement with stakeholders

+ Constructive advice and information

+ Consultative relationships

+ Inspectorate activity

+ Enforcement measures

+ Working with other agencies.

We received a total of 112 submissions in response to the discussion paper. The submissions were from a broad range of stakeholders including: employer groups, unions, health and safety representatives, employers, employees and private individuals (submissions received are listed in Appendix 2). The feedback received from the submissions was considered and is incorporated throughout this report. We received some feedback in the public comment process that was outside the scope of the Terms of Reference for this review. Some of these issues were:

+ legislative changes

+ WorkSafe's structure

+ governance of WorkSafe.

1.3.2 Previous legislative and implementation reviews

In 2003, the Victorian Government commissioned Chris Maxwell QC to undertake a major review of the 1985 OHS Act. The 'Maxwell Review' led to the OHS Act 2004, which came into operation on 1 July 2005. Maxwell noted that for the regulatory regime to become more effective, the approach to OHS regulation needed refreshing including:

+ greater emphasis on constructive support for workplace parties

+ more transparent enforcement

+ greater accountability and re-skilling within the organisation.

Background to the review

As a result, WorkSafe entered a period of transformation between 2005 and 2008 to implement the reforms to support the objectives of the Act.

Some of the key changes were:

+ development of a new Compliance and Enforcement Policy (subject of this review)

+ increased inspectorate capability, with various training initiatives to improve inspectors' skills and confidence to engage workplace parties and provide advice and support to them on compliance issues

+ effective communication campaigns to support the new Act and key OHS issues, such as the consultation duty

+ development of surveys to measure perceptions of WorkSafe's effectiveness as the regulator and the OHS performance of Victorian workplaces

+ redevelopment of the website to ensure public accessibility of all key decision-making documents: such as licensing, registrations, notifications, OHS course approvals, prosecutions and enforcement

+ implementation of new complaints-handling system to improve effectiveness and transparency.

In 2007, the Victorian Government commissioned Bob Stensholt MP to conduct an administrative review on the reforms made with the implementation of the OHS Act 2004. While the Stensholt Review concluded the reforms were operating well, Stensholt's key findings included the need for WorkSafe to:

+ increase resourcing to aid enforcement, including better training and support for the inspectorate

+ increase investigation and prosecution resources to conduct more strategically targeted prosecutions and to reconsider its prosecution approach

+ provide greater use of statutory guidance, such as compliance codes and Section 12 guidelines

+ provide duty holders with certainty on what compliance looks like

+ actively respond to stress as an emerging issue

+ provide greater guidance on employers' duty to consult with health and safety representatives/employees.

Background to the review

A significant number of Stensholt's recommendations related to WorkSafe operations, and proposed changes to the processes, guidance and support for workplace parties. Many were consistent with operational changes WorkSafe was already implementing or planning. The review also found stakeholders generally viewed WorkSafe as a 'more constructive and transparent regulator' than they had previously.

The Stensholt Review coincided with the compliance framework project, which consolidated all the Victorian OHS regulations administered by WorkSafe into the *OHS Regulations 2007*. This project led to some significant WorkSafe initiatives, such as developing an OHS Compliance Framework Handbook, new compliance codes, section 12 guidelines and non-statutory guidance on consultation, issue resolution, representation and discrimination matters.

We note the timing of our review coincides with the sun-setting of the 2007 regulations. WorkSafe is currently developing replacement regulations and at the time of writing this report is considering public comment on its proposed regulations. WorkSafe states that it is proposed to make changes that streamline and modernise the content of the regulations to better reflect current Victorian work practices[1].

1.3.3 External inquiries and audits of WorkSafe's operations

In the last ten years WorkSafe has been subject to a number of external reviews and inquiries.

In 2007, the Victorian Ombudsman conducted an investigation into a disclosure about WorkSafe's and Victoria Police's handling of a workplace bullying and harassment complaint[2]. Following the release of the Victorian Ombudsman's report, which found that WorkSafe's handling of the complaint had been inadequate, in July 2007 WorkSafe commissioned a comprehensive review of its regulation of workplace bullying. The review recommended a number of changes to improve the regulation of workplace bullying. WorkSafe's response to the review included implementation of a specialist inspectorate.

Background to the review

In 2013, 2015 and 2016, the role of WorkSafe in the health sector was a focus of audits conducted by the Victorian Auditor-General's Office (VAGO)[3]. These audits made recommendations in relation to WorkSafe's role in ensuring OHS in the health sector, and identified a range of shortcomings in WorkSafe's operations. In particular, findings relating to the use of education and enforcement activities to prevent occupational violence against healthcare workers, and findings in all three VAGO audits relating to the need for improved collaboration between WorkSafe and other agencies with health sector responsibilities. VAGO recommended that WorkSafe identify sector-wide OHS risks in public hospitals and provide this information to the Department of Health, public hospitals and health services. VAGO also recommended that WorkSafe more proactively use its full range of tools, including inspections. This recommendation was reiterated in its review of the management of staff OHS in schools where VAGO recommended that WorkSafe should evaluate all injury reduction tools to understand their impact on claims and workplace behaviour[4].

WorkSafe's compliance and enforcement activities have also been a focus of recent parliamentary inquiries, most notably the Hazelwood Mine Fire Inquiry and the Inquiry into the CFA Training College at Fiskville (the Fiskville Inquiry).

While WorkSafe was not a central focus of the Hazelwood Mine Fire Inquiry, there were references to its role as the Victorian OHS regulator. In particular, discussions regarding WorkSafe and the Mining Regulator's 'narrow reading of the statutory regime underlying their respective areas of responsibility which resulted in a real practical gap in regulation of the Hazelwood mine[5].' The report notes a Memorandum of Understanding (MoU) was in place between WorkSafe and the Mining Regulator at the time of the Hazelwood mine fire, which sought to recognise areas of overlapping responsibility. The Inquiry found that had the Mining Regulator and WorkSafe approached their respective roles in the consultative manner contemplated by the MoU, this may have resulted in overlapping responsibilities, but that 'it would have been far preferable to there being a gap'[6]. The Inquiry also highlighted the need for strengthened relationships between WorkSafe, co-regulators and Victorian Government departments 'to ensure that information is shared, and that there is consistency and cooperation in carrying out regulatory functions'[7]. For more detail about WorkSafe's relationships with co-regulators see section 4.8.

Background to the review

The Fiskville Inquiry identified a number of significant shortcomings in WorkSafe's compliance and enforcement approach. These related to failings in how WorkSafe works with its co-regulators, and in particular the EPA, noting that 'the regulators operated in silos in circumstances when they should have cooperated'[8]. The Inquiry also made some specific recommendations in relation to WorkSafe's compliance and enforcement approach, including that the OHS Act be amended to require WorkSafe to include in its annual report the number of cases investigated under section 131 where WorkSafe failed to meet the statutory three-month time limit required by that section; and, in each of these cases, the time the investigation has taken and the reason why WorkSafe was unable to meet the deadline[9] (for more detail see section 2.5). The Victorian Government responded to the Fiskville Inquiry in late November 2016.

In October 2016, the Victorian Government published the final report of the Victorian Inquiry into the Labour Hire Industry and Insecure Work (Labour Hire Inquiry). The main recommendations of the report include a sector-specific licensing scheme for labour hire agencies, a voluntary code of practice for the Victorian labour hire industry, and the adoption of procurement policies by the Victorian Government[10]. The Inquiry made three recommendations in relation to OHS:

> That the Model Work Health and Safety Act approach to regulating labour hire relationships be adopted in Victoria. In the absence of Victoria adopting wholesale the approach under the model laws, I recommend that Victoria adapt an approach which matches the substantive provisions under the model laws in this regard[11].

> That the Model Work Health and Safety Act approach to regulating to provide for worker representation and to protect workers against victimisation for asserting their rights in occupational health and safety matters, by either a labour hire agency or a host, should be adopted in Victoria. In the absence of Victoria adopting wholesale the approach under the model laws, that Victoria adapt an approach which matches the substantive protections under the model laws in this regard[12].

Background to
the review

*An accurate picture of occupational health and safety risk factors in the
labour hire sector, and of injured labour hire workers in Victoria, requires
the establishment of an occupational injury and illness monitoring and
reporting system that extends beyond injury compensation claims data.
With such data available it would be possible to identify occupational
health and safety risks for labour hire workers, and develop interventions
to minimise or remove those risks. That the Victorian Government collect
this data and, periodically, make it publicly available[13].*

1.3.4 Internal organisational reviews

WorkSafe embarked on a significant period of transformation in its regulatory
approach following the implementation of the 2004 OHS Act. This was reflected
in WorkSafe's practices and approach to regulation, and in 2007, WorkSafe first
began referring to itself as a 'modern regulator'. At this time, WorkSafe sought
to clarify the concept of a modern regulator by describing the characteristics as:

+ has a 'client focus'

+ reflects and evolves with the community's needs and concerns

+ uses its regulatory powers in a constructive, accountable, transparent,
  effective and caring manner

+ has experienced, professional and well-trained people capable of dealing
  with each situation on its merits

+ is proactive and positive, identifying and focusing its resources on the
  areas of greatest risk and impact

+ helps people be on the right side of the law by showing them how to
  comply

+ ensures there are fair and swift consequences for those who do not do the
  right thing[14].

In 2013, an internal project titled 'Reinvigorating our focus as a modern
regulator' was commenced within WorkSafe[15]. It examined the extent to which
the recommendations of the Maxwell Review had been implemented, and how
much WorkSafe had refocused its efforts towards the implementation of a
modern regulatory approach.

Background to
the review

1.3.5 National context

WorkSafe works with state, territory and commonwealth governments through its participation in Safe Work Australia (SWA). SWA was established by the *Safe Work Australia Act 2008* with primary responsibility to lead the development of policy to improve work health and safety and workers' compensation arrangements across Australia. The Chief Executive of WorkSafe is a member of SWA's tripartite members' group and represents the Victorian Government at this forum.

The Australian Work Health and Safety Strategy 2012–2022 (Australian Strategy) is a framework to help improve work health and safety in Australia[16]. Its vision is healthy, safe and productive working lives. It promotes collaboration between the commonwealth, state and territory governments, industry, unions and other organisations to achieve the vision. The Australian Strategy was formally endorsed by Workplace Relations Ministers, the ACTU, ACCI and Ai Group and was launched by the Commonwealth Minister in October 2012.

The Australian Strategy identifies national priority industries and disorders to help direct prevention activities to where they are needed the most. All jurisdictions undertake activities to support improved workplace performance with particular attention paid to the national priority industries and disorders. National priorities are also a focus of national compliance and enforcement activity by the Heads of Workplace Safety Authorities[17].

SWA developed the model work health and safety laws which consist of the *Model Work Health and Safety (WHS)* Act, supported by model WHS regulations, model Codes of Practice (model WHS laws) and a National Compliance and Enforcement Policy (National C&E Policy).

In the course of the review we became aware of a number of yet to be published research projects on the effectiveness of the model WHS laws being undertaken and funded by SWA. The projects are:

1. How the courts are interpreting the WHS laws, and how they are using fines and non-pecuniary sanctions in sentencing those found to be in breach of the laws.

2. How WHS regulators support compliance, undertake inspections and enforce the WHS Acts and regulations.

3. The effectiveness of approved codes of practice and guidance/advisory material in providing practical guidance to support compliance with the WHS laws.

4. The application of risk-based principles in regulatory design, administration, inspection and enforcement, and the strengths and weaknesses of this approach in WHS regulation.

5. The use and effectiveness of documentation standards (Safe Work method statements (SWMS) and WHS management plans in construction work.

6. National and international regulatory and advisory frameworks for managing psychosocial risks such as stressors, violence, bullying and harassment at work[18].

The SWA research will become available to WorkSafe in the near future and the findings should be considered by WorkSafe to change or update its practice as appropriate.

1.3.6 Minister's Statement of Expectations

The Minister for Finance released a Statement of Expectations (SOE) for WorkSafe on 16 September 2016. The SOE sets out the Minister's expectations of WorkSafe's contribution to the Government's Regulation Reform Program to reduce red tape and improve regulatory practices while ensuring that there is no reduction in worker safety. Relevant to this review, the SOE states that the Minister expects that WorkSafe:

+ will design and deliver changes to processes and practices as a result of decisions made under the OHS Compliance and Enforcement Review

+ will continue to apply a risk-based and targeted approach to guide the delivery of its operations

+ improve regulatory practices including streamlining processes, improving the timeliness of decision making and working collaboratively with other regulators

+ needs to operate in a way that ensures it remains relevant to the Victorian Community … and is recognised as the trusted advisor and leader in OHS

+ continue to adopt a collaborative approach to regulation by supporting employers to understand their obligations and how best to meet these

+ communication with employers will be relevant, simple to understand and tailored for industry type and employer size

+ continue to formally coordinate feedback from workers and businesses to identify opportunities to improve regulatory design and interaction with stakeholders[19].

1.4   The changing workplace context

Work practices have changed significantly over the past decade, and are expected to continue to change in the future. The changes in where and how Victorian's work, and the age profile of the workforce, create new challenges for workplace safety.

For WorkSafe to continue to be an effective OHS regulator it will need to adapt to these changes in its operating environment. The discussion paper outlined some current and future challenges for WorkSafe. It outlined that while new ways of working are likely to emerge, growth in existing industries with high injury rates will lead to some OHS risks persisting. For example, Victoria and Australia's aging population has led to, and will continue to result in, an increase in employment in the health, aged care and disability direct care sectors. The main cause of injury in these sectors is manual handling. That hazard is likely to increase due to growth in the sector and an increase in the demand for direct care services for aging Victorians.

The discussion paper asked for input on what other future challenges will affect WorkSafe's ability to enforce OHS laws. The submissions provided a range of subjects that WorkSafe should be aware of. These included:

+ fragmentation of the labour market

+ evolution of new types of workplaces, i.e. virtual businesses with mobile workplaces causing impracticability of consultation and representation mechanisms

Background to the review

+ precarious and casual work, as well as rapid movement of workers between different employers

+ labour hire continuing to expand

+ growth in self-employment

+ work intensification, increase in workloads

+ increased vulnerability of young workers due to reduction of training and supervision in new types of workplaces.

Each year WorkSafe scans the environment to inform its corporate planning for the next three years. WorkSafe's current corporate plan, Strategy 2017, details the key themes from their scanning and the actions to be taken by WorkSafe to address/consider them. We are aware that WorkSafe recently commenced development work on its next long-term strategy, Strategy 2030. In planning this Strategy, WorkSafe staff have commenced consultations with stakeholders.

At the August 2016 OHSAC meeting, WorkSafe made a presentation to the committee on challenges for the OHS regulator of the future. That presentation covered:

+ the changing nature of work

+ the regulatory challenges surrounding new employment relationships

+ the changing industry mix in Victoria

+ joint agency/regulator responses

+ how all of these issues may impact WorkSafe's Constructive Compliance model.

This presentation and other information that we reviewed from WorkSafe Board briefings, demonstrates to us that WorkSafe is aware of and considers the changing environment in which it operates and incorporates these considerations into its planning and implementation processes.

1. See: consultation.worksafe.vic.gov.au/OHS-Regulations-Reform.
2. Ombudsman Victoria (April 2007).
3. Victorian Auditor-General (November 2013); (May 2015); and (March 2016).
4. Victorian Auditor-General (May 2013).
5. Hazelwood Mine Fire Inquiry (2014), *Hazelwood mine fire inquiry report*, 'Part three – fire risk management', p. 169.
6. ibid., p.169.
7. Hazelwood Mine Fire Inquiry (2016), *Hazelwood mine fire inquiry report 2015/2016: vol. 4 – mine rehabilitation*, p. 176.
8. Parliament of Victoria (2016), p. 220.
9. ibid.
10. Industrial Relations Victoria (2016).
11. ibid., p. 136.
12. ibid., p. 140.
13. ibid., p. 146.
14. WorkSafe (June 2008), p 33.
15. WorkSafe Victoria (2013).
16. See: www.safeworkaustralia.gov.au/sites/swa/australian-strategy/pages/australian-strategy
17. See: www.worksafe.vic.gov.au/__data/assets/pdf_file/0016/10609/Signed-HWSA-MoU-2012.pdf
18. See: regnet.anu.edu.au/research/research-projects/details/510/effectiveness-model-work-health-and-safety-laws.
19. Minister for Finance (2016), 'Statement of expectations', worksafe.vic.gov.au/__data/assets/pdf_file/0004/198796/Statement-of-Expectation-Letter.pdf.

The OHS Compliance and Enforcement Framework

2

The OHS Compliance and Enforcement Framework

2.1 Improving the Compliance and Enforcement Framework

When the current OHS Act was introduced in 2004, it was intended that there be a set of transparent and exhaustive policy documents in relation to compliance and enforcement activity that would inform duty holders about WorkSafe's regulatory approach and guide staff in how to implement that approach. A set of contemporaneous documents was produced, including the Compliance and Enforcement Policy, General Prosecution Guidelines, and other supporting documents.

We consider the WorkSafe Compliance and Enforcement Policy is the 'cornerstone' document that guides WorkSafe's activities – this view was confirmed in consultations and in many of the submissions received, for example:

> *Master Builders regards the C&E Policy to be a cornerstone document of the compliance framework and considers that the C&E Policy is currently sound and does not need improvement. However, we welcome the current Review and consider that steps to introduce a periodical review of the policy by WorkSafe in consultation with stakeholders could be taken.*
>
> *MBAV submission*

We examined whether the current Compliance and Enforcement Framework is:

+ comprehensive

+ clear and easy to understand

+ current and up to date.

2.1.1 Being clear on what is in the Compliance and Enforcement Framework

We had expected that a coherent suite of documents and their interrelationships would be represented clearly in the C&E Framework and be readily accessible on the website. We did not find this to be the case. There is no clear articulation of what the elements of the Framework are, and how the components fit together. In addition, it is difficult to identify the suite of policies and guidelines that guide WorkSafe's compliance and enforcement activities.

The OHS Compliance and Enforcement Framework

The criteria we considered for documents that should be included in the C&E Framework was any document that explains for internal and external audiences how WorkSafe exercises discretion in relation to compliance and enforcement activities. Table 1 describes WorkSafe's key documents that comprise the C&E Framework.

In identifying these documents as comprising WorkSafe's C&E Framework, we note that they are not easily located on the WorkSafe website.

Table 1: Compliance and Enforcement Framework documents

Policy	
WorkSafe Compliance and Enforcement Policy	Provides an overview of the legislative framework within which WorkSafe operates and sets out how WorkSafe's 'Constructive Compliance Strategy' is applied to its enforcement and prosecution activities.
General Prosecution Guidelines	General guidelines about the prosecution of offences under Victoria's occupational health and safety and workers compensation laws.
Supplementary enforcement policies	
Enforceable Undertakings	Sets out WorkSafe's processes and criteria for considering an offer of an Enforceable Undertaking (EU) from a person who has allegedly committed an offence against the OHS Act.
Letters of Caution	Provides policy and procedural guidance to ensure a consistent approach to the publication and utilisation of information arising from investigation and enforcement activities undertaken by the WorkSafe.
Request for prosecution under Section 131 of the OHS Act	Sets out the process to make a Section 131 request.
Criminal Justice Diversion Program	Sets out WorkSafe processes and criteria for considering a request from a person who has allegedly committed an offence against the legislation administered by WorkSafe to undertake the Criminal Justice Diversion Program.

The OHS Compliance and Enforcement Framework

Publishing prosecution outcomes	Provides guidance to ensure a consistent spproach to the publication and use of information arising from enforcement activities.
	Guidelines
Victorian OHS Compliance Framework Handbook	Explains the OHS compliance framework and WorkSafe's approach to developing the various elements of that framework (e.g.: regulations, compliance codes, guidance material). Also documents an engagement strategy for the Victorian OHS compliance framework.
Stakeholder Engagement Framework	Explains how WorkSafe will engage with its stakeholders. Its audience is both WorkSafe employees and its stakeholders.
Section 12 Guidelines	WorkSafe has 5 Section 12 guidelines on how it applies the OHS act in relation to: + hazards and risks + so far as is reasonably practicable + the requirement to answer questions + discrimination on health and safety grounds + employing or engaging suitably qualified persons to provide OHS advice.
Internal Review policies/procedures	Set out the decision-making process used by WorkSafe to deal with applications for internal review.
A guide for workplaces – How inspectors deal with specific issues	Provides guidance on how inspectors use their powers at workplaces; and information on how they deal with certain issues, including: failure to consult on OHS; determining designated work groups; and workplace bullying.

The OHS Compliance and Enforcement Framework

The Environment Protection Authority Victoria (EPA) has adopted a comprehensive and accessible suite of policy documents. The EPA underwent a review of its compliance and enforcement approach in 2010, which resulted in a series of recommendations aimed at re-establishing it as an effective and modern regulator. Among other changes, this included the development of a revised compliance and enforcement policy, which is described simply on the website as 'a rule book on how EPA will exercise its discretion around compliance and enforcement.' The overarching policy document is accompanied by 'subordinate policies and guidelines' that can all be found on the one page and which is easily accessible[1]. Similarly, Workplace Health and Safety Queensland (WHS Qld) and SafeWork NSW each has a compliance and enforcement section that is easily accessible through the website, and contains all the information related to its compliance and enforcement approach in one place[2].

2.1.2 Establishing a process for keeping documents up to date

This review also seeks to determine whether the policy documents comprising the Compliance and Enforcement Framework are regularly reviewed, and whether the available documents are current. It is unclear as to whether the documents available online are up to date, and there does not appear to be an agreed process for managing and endorsing new policies or other documents in the suite.

For example, the General Prosecution Guidelines were originally issued and incorporated into the 2005 Compliance and Enforcement Policy. The guidelines were subsequently updated in 2014, but the C&E Policy was not. This means two different sets of guidelines are available to duty holders, creating uncertainty about what applies and what is current policy.

This is no evidence of a formal procedure or process for:

+ curating the policy documents and ensuring only current documents are available

+ ensuring that the removal of policy or procedure documents includes communication with relevant stakeholders.

The OHS Compliance and Enforcement Framework

This is likely to contribute to ambiguities, inconsistencies and confusion.

We heard stakeholder views that WorkSafe currently has an ad hoc approach to managing its C&E Framework. Specifically, stakeholders identified instances of waiting for supporting policy documents to be developed for some time, with no communication from WorkSafe to update them on progress[3]. In other instances, stakeholders reported the removal of policy documents from the WorkSafe website with no communication explaining the change or if the policy would be replaced[4].

Our expert roundtable signalled to us that a clear process for managing the C&E Framework is an important issue, and suggested there should be a formal process to regularly review the documents that make up the Policy Framework in consultation with key stakeholders and experts.

WorkSafe would benefit from a clear and transparent process for managing the C&E Framework and for regular review of the documents to ensure they remain current. This process should include mechanisms to consult with stakeholders on potential changes to the Framework, as well as letting people know that the Framework has changed and how to access the most up to date documents.

Further, in order to ensure that the Framework remains comprehensive and up to date, WorkSafe should embed commitments to these processes within the Compliance and Enforcement Policy itself.

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.

Recommendation 2

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

The OHS Compliance and Enforcement Framework

2.2 Reviewing and updating the Compliance and Enforcement Policy

The WorkSafe C&E Policy is a key element of WorkSafe's C&E Framework and reflects the intent and objects of the relevant legislation.

The C&E Policy sets out how WorkSafe's 'Constructive Compliance Strategy – a balanced combination of positive motivators and deterrents' is applied to WorkSafe's enforcement and prosecution activities to improve workplace health and safety. This includes outlining its information and education strategy as well as its inspection and prosecution guidelines.

The C&E Policy sets out guidelines to explain how WorkSafe will approach compliance and enforcement activities:

+ WorkSafe's strategic priorities

+ The role of WorkSafe inspectors

+ The circumstances in which workplace inspections will occur

+ How WorkSafe will provide practical and constructive advice to duty holders

+ Enforcement criteria and remedial measures

+ When investigations will be conducted

+ Prosecution criteria.

The C&E Policy has not been updated since it was first released in July 2005, and it now needs to be modernised to reflect current regulatory practice and changes in communication style.

The OHS Compliance and Enforcement Framework

2.2.1 Ensuring the Compliance and Enforcement Policy is clear and simple

Since 2007 WorkSafe has been working to embed the features of a modern regulator in its practice, but the C&E Policy has not been revised to explicitly reflect this. Stakeholders also identified the importance of WorkSafe conducting periodic reviews of the C&E Policy. This was considered important for:

+ ensuring that the policy remains accurate, and references current legislation, regulation and related policies

+ ensuring the policy reflects best practice approaches to compliance and enforcement.

In addition, many commented that the policy could be improved with refreshed language and a new layout to make it clearer.

> *Written in 2005, WorkSafe's Compliance and Enforcement Policy contains many outdated references and requires updating. Updating should include improvements in language and layout to ensure the material is accessible to readers.*
>
> *VCCI Submission*

Expert roundtable participants highlighted the importance of regularly reviewing WorkSafe's compliance and enforcement approach in order to identify what is working in Victoria, what is working well for other regulators, and embedding the learnings into the C&E Policy. The WorkSafe Executive Leadership Team also recognised the importance of adapting WorkSafe's approach to compliance and enforcement based on what works.

The C&E Policy document itself is not reader-friendly in its current form. Many stakeholders and experts emphasised the importance of having a clear C&E Policy that allows the public to understand WorkSafe operations. This is illustrated in the following:

The OHS Compliance and Enforcement Framework

The current document has some important detail which is lost in a long winded approach, much of which focuses on repeating the parts of the OHS Act 2004. This approach is very clinical and legalistic rather than outlining how WorkSafe intends to act within the Framework of compliance and enforcement. Repeating the law in plain English adds nothing to the knowledge – though we understand that in certain circumstances this may be needed to emphasise a point.

Confidential submission

2.2.2 Clarifying the principles

The characteristics of a good C&E Policy include a statement of the underpinning principles[5]. The commonly identified principles that underpin 'good regulation' and govern decision-making by regulators include:

+   Proportionate

+   Accountable

+   Consistent

+   Transparent

+   Targeted[6].

In recent work on modern regulators, a number of additional principles have been identified, including responsiveness[7]. Neil Gunningham identified that compliance and enforcement guidelines should be based on the principles listed above.

WorkSafe's policies incorporate underlying principles in a few ways. WorkSafe commonly describes its set of values as applying to everything it does. For example, its 2015–16 Annual Report states: 'Our values – constructive, accountable, transparent, effective and caring – guide us in everything we do.' Its C&E Policy states that 'in addition to the principles that underpin all WorkSafe's activities, the following principles also apply to WorkSafe's inspection and enforcement activities, including its prosecution-related activities…'

+ Targeted: WorkSafe should target its activities to areas of most need and effect.

+ Proportionate: All enforcement action should be proportionate to the seriousness of non-compliance.

+ Consistent: A consistent approach should be taken in similar situations to achieve consistent outcomes.

+ Fair: All compliance and enforcement activities must be fair and undertaken with impartiality, balance and integrity.

The General Prosecution Guidelines indicate the compliance and enforcement activities should be:

+ Constructive

+ Accountable

+ Transparent

+ Effective.

This lack of clarity regarding the principles that underpin the activity is a concern. A unified set of principles needs to be capable of driving all of WorkSafe's compliance and enforcement activity. The WorkSafe 2013 'Reinvigorating our focus as a modern regulator' review provided a suggested set of principles, which were:

+ Constructiveness

+ Accountability

+ Transparency

+ Consistency

+ Impartiality

+ Fairness

+ Proportionality.

Valuable and more recent work in considering appropriate regulatory principles has been done by other regulators, including the recent EPA Victoria update.

The OHS Compliance and Enforcement Framework

The EPA advised that its principles were actively work-shopped by the Chairman and its executive before approval. This leadership was critical to making the EPA's policy for compliance and enforcement a central pillar in its communications and activities. The EPA has also established KPIs that monitor the continued alignment of its performance with its agreed principles.

We also understand that SWA has commissioned research to be released in 2017 which may include coverage of the principles underlying the National Compliance and Enforcement Policy. We have referred to this earlier at section 1.3.5. This may yield valuable information that can steer WorkSafe in its consideration of the principles it will adopt.

We consider that re-setting the principles which drive the organisation's compliance and enforcement activities is an important strategic piece and should be driven from, and then maintained at, Board level.

2.2.3 Including collaboration and information sharing as a principle

In addition to the range of principles adopted by regulators, an issue emerging in modern regulatory practice is the importance of sharing information with other regulators.

The Hazelwood Mine Fire Inquiry and the Fiskville Inquiry are recent parliamentary inquiries that identified particular areas for improvement. These Inquiries suggest that collaboration with co-regulators is an issue which needs to be highlighted. We also note that the SOE requires WorkSafe to continue to work collaboratively with other regulators.

The National C&E Policy gives specific attention to working with other regulators. It recognises that national WHS laws provide regulators with information sharing functions, and also provides that:

> to ensure consistency, responsiveness and the efficient use of resources, the regulators work collaboratively. This includes the sharing of information and intelligence, sharing tools and strategic initiatives and working together to develop and implement national campaigns. Campaigns may be implemented by collaborative efforts, for example through a coordinated national effort, or may be implemented by each jurisdiction locally[8].

The OHS Compliance and Enforcement Framework

During consultations with the OHSAC and SRG, participants raised concerns that WorkSafe does not work as collaboratively in gathering and sharing information as it should. Consequently, there is a view that WorkSafe does not use a lot of information and intelligence, which also contributes to a view among stakeholders that WorkSafe is reinventing the wheel. Making a clear commitment to collaboration and information sharing in WorkSafe's C&E Policy is one way to signal to all WorkSafe employees the importance and benefits of information sharing.

We support the inclusion of collaboration and information sharing as a principle in the C&E Policy.

2.2.4 Clarifying WorkSafe's regulatory approach

WorkSafe describes its regulatory approach to OHS compliance and enforcement as the constructive compliance approach. In its Strategy 2017 it describes this as:

> Our 'modern regulator' and constructive compliance approach seeks the right balance of encouragement for effective workplace safety and deterrence for poor performance. This involves prioritising risks, working with industry, stakeholders and the community, and providing people at work with clear advice on how to comply with the law before taking enforcement action.

The way that the constructive compliance model is represented visually has changed over time. Our discussion paper illustrated the 2005 constructive compliance model. A new representation of the model was included in recent WorkSafe publications. Figures 1 and 2 illustrate the constructive compliance strategy.

The OHS Compliance and Enforcement Framework

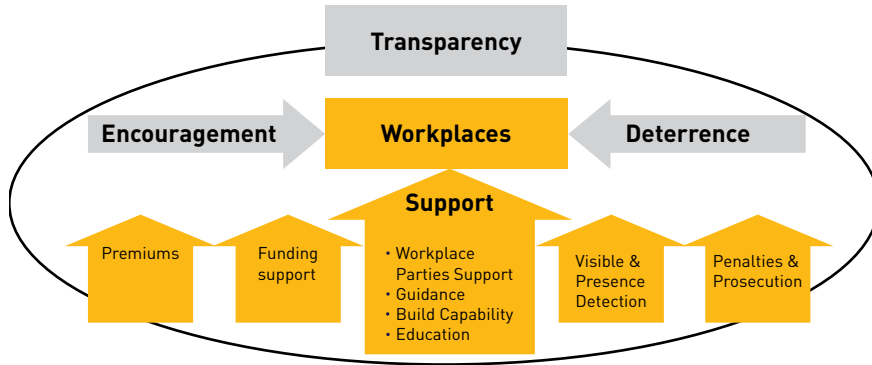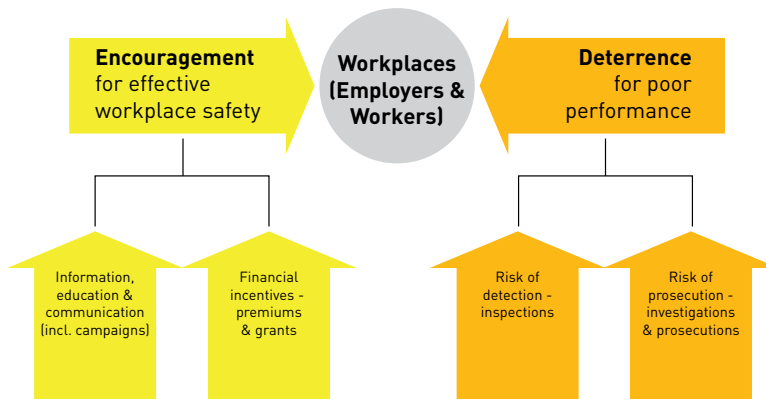Figure 1: Constructive Compliance Strategy 2005

Figure 2: Constructive Compliance Strategy 2014

EPA Victoria present its regulatory model that governs its approach to compliance and enforcement in more detail in its C&E policy. EPA Victoria's regulatory model is represented in Figure 3.

Figure 3: EPA regulatory model

The OHS Compliance and Enforcement Framework

In recommending that WorkSafe updates its C&E Policy, it is timely to also update the visual representation of the constructive compliance model to demonstrate the components of WorkSafe's regulatory approach. The EPA regulatory model description is a clear model and should be considered in WorkSafe's review.

2.2.5 Being clear on the purpose of each compliance and enforcement tool and when it will be used

Regulators must use tools that are suitable and proportionate to the particular issue, and the decision-making process for selecting that tool should be clear, transparent and easy to understand. The expert roundtable highlighted the importance of WorkSafe management and staff having access to a robust decision-making framework to support them to select suitable and proportionate tools that are appropriately tailored for the situation[9].

WorkSafe's C&E Policy lists and describes each of the tools that WorkSafe can use to improve workplace health and safety as follows.

Encouragement tools

+ Effective communication and engagement with stakeholders.

+ Practical and constructive advice and information to workplace parties.

+ Fostering cooperative and consultative relationships between workplace parties.

+ Supporting and involving stakeholders in the provision and promotion of OHS education and training.

Deterrence tools

+ Inspections and remedial notices/direction.

+ Letters of Caution.

+ Infringement notices

+ Enforceable Undertakings.

+ Prosecution.

+ Appropriate sentencing options.

+ Publishing enforcement action and prosecutions.

+ Informing duty holders in similar industries of prosecutions and advising how to prevent similar breaches.

The OHS Compliance and Enforcement Framework

OHSAC, SRG and the expert roundtable all raised the need for WorkSafe inspectors to take a more consistent and transparent approach to selecting compliance and enforcement tools. For example:

> *The C&E Policy is broadly sound but should reflect the full range of mechanisms and tools available to and used by WorkSafe Victoria and the agency's inspectors, and indicate how and when the agency and/or inspectors make use of the different mechanisms and tools.*
>
> *E. Bluff submission*

An example of better practice is the EPA's 2011 Compliance and Enforcement policy. The EPA's policy includes:

+ identification of each tool available to the regulator

+ an overview of each tool

+ detailed information on the circumstances under which different types of tools are likely to be used, and where they are inappropriate

+ a risk matrix that provides overall guidance on how the EPA will determine which tool to use depending on its assessment of the culpability of the offender and the risk or harm to health and environment[10].

Figure 4: EPA risk matrix

EPA's enforcement response

Licence/permit revocation
Prosecution
Licence/permit suspension
Injunction
Enforceable undertaking
Notice of contravention
Penalty infringement notice
Remedial Action
Warning

CULPABILITY OF OFFENDER — Serious, Major, Moderate, Minor, Low

RISK OR HARM TO HEALTH AND ENVIRONMENT — Low, Minor, Moderate, Major, Severe
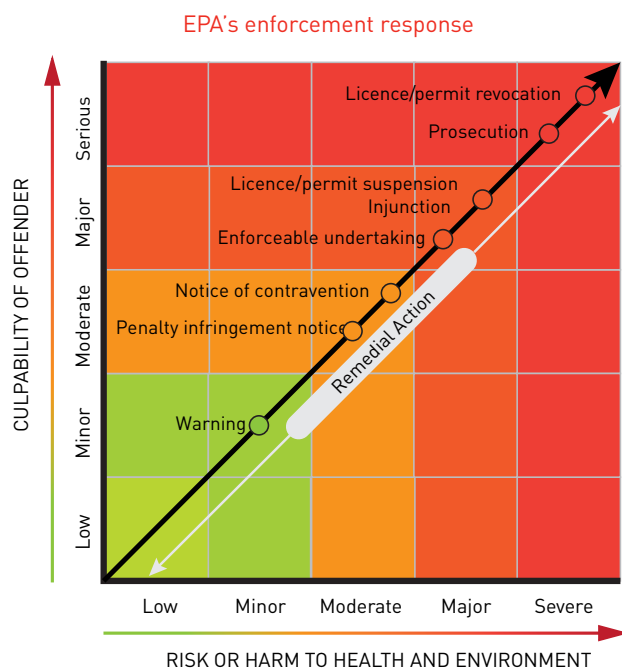
The OHS Compliance and Enforcement Framework

Other regulators, such as the United Kingdom Health and Safety Executive (HSE), articulate what tools they use, and in which situation, to address particular types of risks.

Our review found that none of the documents in the C&E Framework sets out which particular tool should be used to address a specific compliance and enforcement issue. WorkSafe should emulate the approach of other regulators by clearly identifying and documenting in its C&E Policy each of its tools, and the circumstances in which these tools should be used. The absence of clear guidance in the C&E Policy and the documents that make up the overall C&E Framework about which tools to use in what circumstances is contributing to stakeholder views that there is confusion and a lack of consistency in the approaches taken by WorkSafe inspectors[11].

2.2.6 Developing a compliance and enforcement plan for strategic priorities

The C&E Policy sets out the strategic priorities for WorkSafe. Part 10 of the C&E Policy states in the section 'Strategic Enforcement Priorities' that 'WorkSafe has a clear strategic focus for its inspection and other enforcement activities, which target the following priorities: Incident and Emergency Response Notification … (and) … Focus Areas for Prevention.'

The C&E policy then describes what the focus areas of prevention are:

> *Focus areas of prevention are as determined by WorkSafe in its multi-year strategies and other business plans, for example:*

> *(i)   high-hazard and high-risk industries and occupations (e.g. construction, farming, transport)*

> *(ii)   the causes of common injury types (e.g. manual handling injuries).*

From time to time, WorkSafe targets additional focus areas of prevention and publishes this information on its website (www.worksafe.vic.gov.au) and/or in the media.

The OHS Compliance and Enforcement Framework

The General Prosecution Guidelines also refer to strategic priorities. These 2014 guidelines contain largely the same material as the 2005 version, and they repeat material from the C&E Policy:

> *Strategic enforcement priorities – target areas*
>
> *WorkSafe sets strategic priorities for its compliance and enforcement activities. Inquiries or investigations and any appropriate enforcement actions will usually occur in the following target areas:*
>
> + *target areas for prosecutions under health and safety laws*
>
> + *WorkSafe's focus areas for prevention, as determined by WorkSafe in its published strategies and business plans, for example:*
>
>   + *high-hazard and high-risk industries and occupations (e.g. construction, farming and transport)*
>
>   + *common injury types (e.g. musculoskeletal injuries)*
>
>   + *other target areas as published from time to time by WorkSafe.*

The C&E Policy makes reference to the guidelines, although as noted earlier, the 2005 guidelines were replaced in 2014, and the reference is no longer correctly made. The narrative across the two documents for an inspector in deciding appropriate action, particularly referral of matters for comprehensive investigation and prosecution, has become very unclear. The inclusion of strategic priorities in an overarching policy document creates a challenge for keeping the policy up to date as priorities change. As an overarching policy document the C&E Policy would be more enduring if it did not contain specific strategic priorities that change over time.

We examined how other regulators set and communicate priorities for enforcement and prosecution. For example, the EPA's Annual Compliance Plan clearly sets out its priority areas for compliance and enforcement activity. Importantly, this document is separate to the Compliance and Enforcement Policy.

The Australian Competition and Consumer Commission's (ACCC) Compliance and Enforcement Policy is another useful model. The policy provides two very clear approaches to indicating priority matters. The first approach is to list

factors which prioritise matters ('To assist with this determination, the ACCC gives compliance and enforcement priority to matters that demonstrate one or more of the following factors…') and the second approach is to specify particular types of matters that take priority at that time ('In addition to those matters that demonstrate the factors above, the ACCC is currently prioritising its work in the following areas…')[12].

WorkSafe should adopt a similar approach to articulate its strategic compliance and enforcement priorities, and to develop an annual compliance and enforcement plan. The annual compliance and enforcement plan would be one of the suite of documents that comprises the Compliance and Enforcement Framework and would be clearly linked to the C&E Policy.

Responsibility for delivery of C&E activities is spread across a number of areas in WorkSafe. It is vital that leadership and coordination is clear to ensure WorkSafe has an effective and integrated approach to compliance and enforcement. The development and publication of the annual compliance and enforcement plan would provide a valuable opportunity for WorkSafe to outline its key priority areas for compliance and enforcement activity, explain how its activities are coordinated across areas and report on progress against priorities.

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.

The OHS Compliance and Enforcement Framework

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.

2.3 Enhancing the regulatory toolkit – the introduction of infringement notices

The OHS Act (as well as the *Dangerous Goods Act* and *Equipment Public Safety Act*) contains provisions allowing an infringement notice scheme to be prescribed by regulations. Supporting regulations are a prerequisite to the operation of an infringement notice scheme, however to date Victoria has not adopted regulations to enable this power. The C&E Policy refers to infringement notices. The key provisions are at Part 17.1 of the Policy.

In his review of the OHS Act in 2004, Maxwell noted the same situation existing under the previous OHS Act (1985):

> *No such regulations have ever been made. Oddly enough, the Authority's Compliance and Enforcement Policy refers to infringement notices as part of the existing enforcement framework, even though the necessary regulations have not been made to enable their use … In my view, a regime for the issue of infringement notices should be introduced without delay. The power to make regulations providing for such notices has been in the Act for 13 years. I am unaware of any explanation for the power having lain dormant for so long[13].*

WorkSafe last considered initiating an infringement notices scheme in 2010 in the context of the develoment model WHS laws. WorkSafe advised that at that time key concerns held by the Victorian Government were:

+ Academic research queried the effectiveness of infringement notice schemes in the OHS context[14].

The OHS Compliance and Enforcement Framework

+ Employer stakeholders raised concerns that a scheme could disproportionately affect small businesses and be seen as revenue raising by the regulator.

+ Union stakeholders supported the concept of a scheme, but also raised some concerns that workers could be disproportionately targeted.

+ The issuing of infringement notices (as an alternative to prosecution) could impact the perception of the seriousness of offences[15].

Infringement notices are a common feature of regulatory schemes. The National C&E Policy provides that 'infringement notices are a mechanism for regulators and inspectors to impose an immediate form of punishment for certain types of breaches, sending a clear and timely message that there are consequences for non-compliance. Infringement notices will generally be issued where there is some punishment warranted for the breach but the nature of the breach is not serious enough to warrant prosecution'[16].

Both SafeWork NSW and QLD WHS advised us that they find infringement notices a valuable tool for driving behaviour change. SafeWork NSW also advised that infringement notices can be used in a graduated process for escalating the enforcement response. We note that infringement notices are a part of the model WHS laws and provide a level of escalation for enforcement that is not currently available to WorkSafe.

In the public comment process, union stakeholders advocated for the introduction of infringement notices:

> *In some circumstances the ability of Inspectors to issue on the spot fines for some breaches and non-compliances would send a strong message that WorkSafe is serious about enforcing its policy and compliance with the legislative framework.*
>
> *IEUV submission*

> *Infringement Notices could be considered for less significant breaches of the Act. The AMIEU would support the use of 'on the spot fines' or 'penalty notices' as used by SafeWork NSW and Workplace Health and Safety Queensland as long as this did not replace prosecution.*
>
> *AMIEU submission*

The OHS Compliance and Enforcement Framework

However, the Australian Industry Group noted that inclusion of infringement notices in the current policy is incorrect, and submitted that this should be corrected by removing the references.

> *… throughout the C&E Policy there is reference to infringement notices as a punitive tool available to the regulator. As the Act has now been in place for 14 years and regulations have not been made to introduce infringement notices, it would seem to be appropriate to remove all reference to infringement notices from the C&E policy.*
>
> *Ai Group submission*

Relevant literature suggests that there is an evidence base for inspections with penalties in encouraging compliance. In particular, infringement notices may provide value when used as specific deterrence tools, and 'focused awareness campaigns and inspection blitzes might also be a way to provide acute awareness on a particular hazard'[17]. Recent literature suggests there is scope to consider a more strategic approach to the use of infringement notices in the context of responsive enforcement – that is that they may be an appropriate intermediate tool (alongside improvement and prohibition notices) available to the regulator in seeking to apply the right mix of approaches to best address a specific problem[18].

The Victorian EPA uses infringement notices as a way of dealing with common breaches of the law where the effects are not considered serious enough to warrant prosecution. Offences for which infringement notices may be applied are defined in the legislation and there is usually a low to moderate level of danger to the environment, health or wellbeing. In our consultation with the EPA, they advised us they found infringement notices a useful addition to the compliance toolkit.

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.

The OHS Compliance and Enforcement Framework

2.4 Improving the guidance for use of Enforceable Undertakings

The OHS Act provides WorkSafe with the power to accept undertakings relating to contraventions, WorkSafe's Policy on Enforceable Undertakings (the EU Policy) 'sets out the processes and criteria for considering an offer of an Enforceable Undertaking (EU) from a person who has allegedly committed an offence against the Occupational Health and Safety Act'[19].

Enforceable Undertakings (EUs) have the potential to provide non-adversarial, constructive and flexible solutions to health and safety regulatory issues, and form an important part of WorkSafe's constructive compliance toolkit.

In recommending the introduction of EUs in Victorian OHS regulation, Maxwell noted:

> *'Enforceable Undertakings provide the regulator and the alleged offender with an opportunity to avoid the delays and cost inherent in prosecution. It has also been said that undertakings "may be used to achieve more focused, tangible outcomes", such as the implementation by an offender of an appropriate health and safety management system'[20].*

Johnstone and Parker also reported observations of the value of an EU policy and noted that:

> *'EUs can achieve outcomes that cannot generally be achieved in court, or using other sanctions available to regulators, such as administrative sanctions. They allow regulators to tailor enforcement methods to the firm, providing a specific and systematic response particularised to the circumstances of the firm, as well as to the alleged contravention[21].'*

2.4.1 Making the appropriate use of Enforceable Undertakings clear

Through the review's public comment process, there was general support for the continuing use of EUs from unions and employer associations. Submissions provided additional comment, variously seeking to ensure that they are used in an appropriate way, maximise health and safety benefits, and go beyond merely fixing the cause of the breach.

EUs provide an opportunity for money and other resources that would otherwise be expended on defending a prosecution and paying a fine, being utilised on activities that are directed at improving health and safety; these EUs must include a contribution that is outside the organisation's direct activities … Ai Group has always supported the concept of EUs as a way to get good outcomes from unfortunate circumstances.

Ai Group Submission

Enforceable Undertakings must address two issues. Firstly, Enforceable Undertakings must address the issue or breach of the Act so that further incidents do not take place. The cost of making the workplace compliant should not be perceived as substitute for a penalty. Secondly, the actions prescribed by the undertaking must act as a genuine punishment and act as deterrence to other employers.

VTHC Submission

Our review of the EU Policy, the C&E Policy and the General Prosecution Guidelines found a number of inconsistencies including:

+ The Policy on EUs states that it is 'consistent with, and supports the Guidelines and the Act.' But the Policy on EUs does not refer to the overarching C&E Policy.

+ WorkSafe Victoria's General Prosecution Guidelines (2014) are almost silent on the issue of EUs.

The OHS Compliance and Enforcement Framework

+ There is inconsistency between the C&E Policy and Policy on Enforceable Undertakings. While the former provides: 'As part of the undertaking, the duty holder must remedy the alleged contravention in the manner specified, and take any other actions agreed to in the undertaking', the latter states: 'There is no requirement that the undertakings offered within the EU address the root cause of any incident or directly relate to the contravention, particularly where such matters have already been addressed voluntarily or via other means of enforcement.'

+ The C&E Policy still cross-references to the previous Supplementary Enforcement and Prosecution Policy Enforceable Undertakings (2005), now superseded by the Policy on Enforceable Undertakings (2014).

These policy documents do not provide a clear view of the role of EUs within the suite of compliance and enforcement tools available, or what the objectives of individual EUs should be geared towards. Johnstone and Parker note that:

> Developing a decision-making process for enforceable undertakings raise challenges for regulators, faced with the tension between the need to act in a consistent, predictable way and the opportunity to use the EUs power to negotiate tailored, individual, forward-looking solutions to idiosyncratic problems[22].

Meeting this challenge would be better supported by clearer articulation of the purposes of EUs within the regulatory toolkit, and the objectives individual EUs should meet, and a clear and consistent presentation of information.

The 2014 EU Policy takes a more prescriptive approach than the earlier EU policy. The more prescriptive elements are:

+ The C&E Policy provides that as part of the undertaking the duty holder must remedy the alleged contravention in the manner specified, and take any other actions agreed to in the undertaking … Its purpose is to focus the duty holder on the tasks to be carried out to remedy the alleged breach and/or prevent a similar contravention of OHS laws in the future (although as previously noted the EU Policy states that there is no requirement that the undertakings offered within the EU address the root cause of any incident or directly relate to the contravention).

The policy provides essential criteria for the acceptance of an EU:

+ The EU extends beyond the applicant's obligations to comply with the Act or the Occupational Health and Safety Regulations 2007

+ The EU offers tangible health and safety benefits to improve health and safety outcomes in:

    + the workplace/the workforce

    + the industry

    + the community

    + the EU is in the public interest.

+ The policy also contains 'secondary criteria', which are designed to take into account matters such as the seriousness of offence, injuries caused, aggravating circumstances and applicant history. These criteria look toward the culpability of the offender and accommodate WorkSafe's prosecution principles, such as the requirement that WorkSafe act in a manner proportionate to the offence.

+ EUs will usually not be appropriate in cases of death or reckless endangerment under Section 32 of the OHS Act. The policy also contains other requirements/exclusions, for example that the EU must not seek to blame another person or entity for the alleged contravention.

The EU Policy as currently drafted includes coverage of what is appropriate content for an EU and WorkSafe's process for considering an EU. The ordering and presentation of information in the Policy can be improved by separating out clear statements of objectives and criteria from the assessment process. For example, SafeWork NSW's document 'Enforceable Undertakings – an Overview' provides a procedural flowchart. The ACCC guidelines also provide a very clear step through of purpose and content for EUs in that context.

The EU Policy requires that evaluation criteria be met, yet does not indicate whether all, or some, criteria need to be met in each instance. The NSW and Queensland OHS regulators' policy documents adopt similar formulations, which require benefit to the workplace, industry and community. NSW goes on to provide a list of 'possible strategies' – being examples of the types of activities which could be done as part of an EU.

The Australian Law Reform Commission (ALRC) made specific recommendations as to required terms for EUs, and also recommendations as to the publication of guidelines for EUs[23]. The elements of those recommendations that could be more clearly articulated in a revised EU Policy, include:

+ The EU should bear a clear or direct relationship with the alleged breach

+ The EU should be proportionate to the breach

+ The EU should not require the payment of money to the regulator

+ The EU policy should state the circumstances in which the regulator will accept enforceable undertakings, including:

    + examples of acceptable and unacceptable terms in enforceableundertakings

    + when and how third party interests will be taken into consideration.

In relation to third party interests, the EU Policy provides that:

> *Where the EU Panel has recommended an EU, the investigator, the inspector and the injured person or family should be consulted and each of their views about potential acceptance of the EU sought. In matters of concern to the Director of Public Prosecutions, a resolution by way of EU will be canvassed with representatives of the Office of Public Prosecutions[24].*

The EU Policy does not discuss the extent to which the views of third parties should influence decision-making on an EU. The views are sought after a panel makes a recommendation, so there is no real involvement of those parties in the formulation of the EU.

A review of the use of EUs in the Queensland OHS jurisdiction – *'Review of the adequacy of the processes, policies, procedures, work instructions and guidelines used to administer the enforceable undertaking scheme in Queensland'* – is yet to be published. WorkSafe should review its current EU policy with reference to other examples noted above and the findings of the Queensland review when they are published.

Recommendation 6

That WorkSafe updates its 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.

2.5 Specifying the approach to section 131 investigations

Section 131 of the OHS Act provides that if a person considers that an offence
against the Act has occurred and no prosecution has been brought in respect of
that occurrence within six months, the person may make a written request for
WorkSafe to bring a prosecution. Section 131 requires WorkSafe, within three
months, to conduct an investigation into those matters and advise whether
a prosecution will be brought or give reasons why not. Where a prosecution
will not be brought, WorkSafe must refer the matter to the Director of Public
Prosecutions (DPP) if the person requests in writing that WorkSafe should
prosecute.

Similar provisions existed under the previous 1985 OHS Act. On reviewing those
provisions in 2004, Maxwell indicated that the mechanism could be further
enhanced by additional requirements[26]. The additional requirements included:

+ WorkSafe to carry out an investigation before deciding on the request

+ if it decides not to follow review advice from the DPP, to give reasons for
   that decision

+ public reporting in relation to the number of requests received, the
   outcomes of the requests, and the outcomes of any DPP reviews.

These recommendations were implemented in the 2004 OHS Act. The pre-
existing three-month timeframe from the 1985 Act was retained.

The OHS Compliance and Enforcement Framework

The Fiskville Inquiry was critical of WorkSafe's failure to meet the three-month time limitation, in response to a section 131 request made on behalf of the United Firefighter's Union to investigate the CFA at Fiskville[27]. The Inquiry recommended as follows:

> that 'the Victorian Government amend the Occupational Health and Safety Act 2004 to require WorkSafe to include in its annual report under section 131(6):
>
> a)   The number of cases in which WorkSafe fails to meet the three month time limit in section 131(2)
>
> b)   In each such case, the time the investigation has taken and the reason why WorkSafe was unable to meet the deadline.
>
> In addition, WorkSafe should be required to report to the responsible Minister in each case it fails to meet the deadline imposed by section 131(2). A copy of the report should be provided to the applicant.

The Victorian Government recently published its response to the Inquiry.

Table 2 provides a summary of outcomes of requests to bring a prosecution made under section 131, for 2013, 2014 and 2015. Of the 32 requests received, only 6 were completed within the statutory timeframe. Four took more than one year to complete. 12 matters were referred to the DPP for review in those years; none resulted in advice to prosecute. Of all 32 requests, five were referred for prosecution, 4 were successful prosecutions and one is still in progress.

Table 2: Outcomes of WorkSafe investigations requested under section 131

Nature of allegation	Days	Outcome
Serious incident/injury – involving a fallen 100kg lino press	discontinued	Request to investigate was withdrawn
Allegations of bullying	discontinued	Investigation discontinued; evidence unavailable to substantiate
Serious incident/injury – nurse assaulted by a patient	105	no prosecution, no request to refer to DPP

Nature of allegation	Days	Outcome
Allegations of bullying	102	no prosecution, no request to refer to DPP
Allegations of bullying	166	no prosecution, no request to refer to DPP
Serious incident/injury – mini bus accident	120	no prosecution, no request to refer to DPP
Serious incident – supplements program	240	no prosecution, no request to refer to DPP
Serious incident/injury – involving plant	55	no prosecution, no request to refer to DPP
Serious incident – supplements program	424	no prosecution, no request to refer to DPP
Serious incident/injury – exposure to EMR	191	no prosecution, no request to refer to DPP
Allegations of bullying	101	no prosecution, no request to refer to DPP
Serious incident/injury – amputation of two fingers	61	no prosecution, no request to refer to DPP
Serious incident/injury – alleged failure to supply and install interlocked guards	150	no prosecution, no request to refer to DPP
Allegations of bullying	83	no prosecution, no request to refer to DPP
Fatality	97	no prosecution, no request to refer to DPP
Allegations of bullying	77	no prosecution, referral to DPP –> No prosecution
Allegations of bullying	93	no prosecution, referral to DPP –> No prosecution
Allegations of discrimination	124	no prosecution, referral to DPP –> No prosecution
Serious incident/injury	84	no prosecution, referral to DPP –> No prosecution
Serious incident/injury – exposure to lead dust	289	no prosecution, referral to DPP –> No prosecution
Serious incident/injury – nurse assaulted by a patient	133	no prosecution, referral to DPP –> No prosecution
Serious incident – asbestos	81	no prosecution, referral to DPP –> No prosecution
Serious incident/injury	115	no prosecution, referral to DPP –> No prosecution
Serious incident – alleged failure to comply with PIN	170	no prosecution, referral to DPP –> No prosecution

Nature of allegation	Days	Outcome
Allegations of bullying	103	no prosecution, referral to DPP –> No prosecution
Serious incident/injury – allegations related to operations at mine	148	no prosecution, referral to DPP –> No prosecution
Serious incident/injury – allegations related to operations at mine	148	no prosecution, referral to DPP –> No prosecution
Serious incident – supplements program	421	no prosecution, referral to DPP –> No prosecution
Serious incident – supplements program	553	prosecution decision –> Convicted & fined charge 1 – $50,000, charge 2 – $150,000 plus $20,000 costs
Serious incident – supplements program	504	prosecution decision –> Convicted & fined charge 1 – $50,000, charge 2 – $150,000 plus $20,000 costs
Serious incident/injury – employee struck by the blade of an angle grinder	116	prosecution decision –> convicted fined $40,000 with costs
Serious incident/injury	167	prosecution decision –> fined $15,000 with costs
Serious incident/injury – motor vehicle accident	246	prosecution decision –> ongoing matter

Some concerns have been raised about the operation of section 131. Stensholt noted:

> WorkSafe's experience is that this can lead to a diversion of significant investigative and legal resources, having the effect of potentially undermining the Compliance and Enforcement Policy. WorkSafe advises that, when combined with the mandatory time period, this can effectively prioritise a request from any person under section 131 ahead of a fatality for instance and divert scarce investigative resources from high end culpable offences[28].

While Stensholt's view (noting he had recommended in 2007 providing additional resources for investigations) was that the three-month timeframe was appropriate, the Fiskville Inquiry shows WorkSafe is not currently meeting that timeframe.

There are several key differences to how the equivalent to section 131 is handled under the model WHS laws: These include:

+ Only more serious offences are subject to the review provisions (compared to section 131 of the OHS Act, under which any offence, including summary offences, can be subject to a request to prosecute).

+ The person making the request must 'reasonably consider' that an offence has been committed.

+ There is no requirement on the regulator to complete an investigation within three months, only to advise whether the investigation is complete.

The provisions in the model WHS laws represent appropriate safeguards to ensure that adequate time is allowed to complete an investigation pursuant to a prosecution request. Further to amending the reporting and C&E Policy, consideration should be given to legislative amendments that more closely reflect the national provisions.

2.5.1 Developing a policy that clearly articulates the approach to section 131 investigations

The requirements of section 131 are only briefly described in the General Prosecution Guidelines. There is no procedure describing what occurs when the three-month timeframe is not met. There is no document describing WorkSafe's procedures and decision making processes in relation to section 131 requests. These may be best articulated in a supplementary policy.

There is no evidence to suggest that WorkSafe has a formal internal procedure for sharing the learnings that arise from requests under section 131. In particular, where WorkSafe has declined to investigate or prosecute a matter, and that decision changes as a result of a section 131 request, this may indicate a problem in earlier decision-making. An approach to review and learn from these decisions should be developed and documented.

The OHS Compliance and Enforcement Framework

Although the OHS Act requires WorkSafe to report, the public reporting of section 131 requests is not transparent and is difficult to understand. The analysis in Table 2 relied on data provided directly by WorkSafe which could not be synthesised from what is available in the annual reports. For example, where a request is made in one reporting year but the outcome (WorkSafe decision or DPP review) is not yet resolved, the outcome is reported as unknown. It is difficult to discern how this outcome is reflected in the following year's annual report. The nature of the matters is not disclosed. The transparency would be improved by clearly reporting across a longer timeframe so that the applications, the subject matter and the outcome can be understood across reporting periods.

WorkSafe should consider amending its public reporting approach to enhance its accountability. WorkSafe should report on timeframes to complete investigations initiated under section 131, as well as any instances, with reasons, where it has not met the statutory timeframe.

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.

2.6   Amending prosecution guidelines

WorkSafe Victoria's General Prosecution Guidelines state that they are incorporated into WorkSafe's C&E Policy. Our review proceeded on the basis that the 2014 guidelines replaced the earlier version in the first edition of the C&E Policy.

Our review considered whether the prosecution guidelines should be separate from the C&E Policy. We are guided by the EPA whose policy decouples decisions on strategic enforcement from decisions on prosecution.

We are also guided by other factors, including:

+ the desirability of maintaining a single set of prosecution guidelines which may have application to WorkSafe's OHS and compensation prosecutions

+ the fact that the guidelines are based on third party documents (currently the commonwealth prosecution guidelines)

+ the more recent redrafting of the guidelines which focuses directly on the making of decisions to prosecute.

WorkSafe should maintain its prosecution guidelines as a separate document. The Victorian DPP advised that the guidelines should refer to the Victorian DPP Prosecutions Policies. We agree that WorkSafe should adopt the Prosecutions Policies of the Victorian DPP[29].

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.

2.7 Aligning with the National Compliance and Enforcement Policy

One of this review's Terms of Reference required examination and recommendations in relation to alignment of WorkSafe's C&E Policy with the National C&E Policy.

The National C&E Policy sets out the approach regulators were to apply to work health and safety compliance and enforcement under the model WHS laws. It lists the criteria used to guide enforcement decisions and the use of enforcement tools. The approach is a mix of compliance assistance and enforcement, building capacity and willingness to comply and sanctioning serious non-compliance.

Experts and stakeholder submissions to this review agree that the two policies are largely consistent:

> *Both the National and Victorian C&E Policy appear to align with each other and provide a level of consistency one would expect across a national OHS/WHS framework.*
>
> *CFMEU submission*

But the National C&E Policy was developed with an eye toward maintaining a consistent approach among regulators adopting that model. As stated in one submission:

> *The NC&E Policy was developed with the express purpose of outlining how regulators would approach the implementation and enforcement of harmonised laws in a similar manner. The aim was consistency, not detail. Accordingly, the NC&E Policy is a document with a high-level focus, as distinct from the more detailed approach taken in Victoria. Accordingly, the two documents cannot be directly compared.*
>
> *Ai Group submission*

A number of stakeholders highlighted that the Victorian C&E Policy is much more detailed and specific than the National C&E Policy:

> *In principle, the two policy documents align, however the focus on guidance and awareness-raising is greater in Victoria. The Victorian C&E Policy is more detailed, whereas the NC&E Policy appears to be more guidance for Regulators across Australia. Therefore, the NC&E Policy doesn't hold much weight in each state.*
>
> *VACC submission*

This issue was also discussed at the expert roundtable, where participants raised concerns about the National C&E Policy not providing adequate guidance on how the compliance and enforcement tools work in practice, or the circumstances under which they should be used. As a result of a lack of articulation of the circumstances in which compliance and enforcement tools should be applied, individual regulators are relying on their own methodologies, such as risk-based targeting. In principle, an approach with national-level policy, principles and operating protocols may be desirable, but the National C&E Policy has not achieved these aims among its own participants:

> *Based on interviews and analysis of documentation in the jurisdictions with harmonised WHS laws, most of the WHS regulators have adopted the NC&E Policy and made it available by linking to the NC&E Policy on Safe Work Australia's website, but some have simply incorporated some elements of the NC&E Policy in their own policy or framework for compliance and enforcement. Also, the NC&E Policy is a high level, principle based document which reflects the broad functions and powers of the regulators, and is less detailed than WorkSafe Victoria's C&E Policy. Specifically, the NC&E Policy has less information about how and when different types of mechanisms and tools will be used.*
>
> *E. Bluff submission*

A confidential submission highlighted that the National C&E Policy 'commits regulators to the sharing of information'. Section 2.2.3 recommends that collaboration and information sharing is included as an underpinning principle in the revised C&E Policy. This commitment should explicitly include reference to sharing information and collaborating with all other OHS regulators in Australia.

When WorkSafe revises its C&E Policy it should consider the National C&E Policy and the outcomes of the SWA research referred to in section 1.3.5.

The OHS Compliance and Enforcement Framework

1. See: epa.vic.gov.au/our-work/compliance-and-enforcement/ce-policy.
2. See: worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement and safework.nsw.gov.au/law-and-policy/enforcement.
3. OSHAC consultation (17 May 2016).
4. SRG consultation (7 April 2016).
5. Coglianese, C. (2015), p. 18–19.
6. Better Regulation Task Force (2003).
7. Coglianese, C. (2015).
8. Safe Work Australia (2011), p. 3.
9. Expert roundtable (19 July 2016).
10. EPA Victoria (2011), p. 21.
11. OHSAC consultation (17 May 2016).
12. Australian Competition and Consumer Commission (2016), p. 2–3.
13. Maxwell, C. (2004), p. 347–350.
14. Johnstone, R. and King, M. (2008), p. 21.
15. Bluff, E. (April 2004).
16. Safe Work Australia (2011), National Compliance and Enforcement Policy
17. Tompa, E. et al. (2015)
18. Bluff, E. (April 2004).
19. Other legislation contemplated by WorkSafe's Compliance and Enforcement Policy, including the EPS Act and DG Act, provide similar powers for WorkSafe to accept undertakings. The 2014 policy only addresses undertakings in accordance with the OHS Act. The Supplementary Enforcement and Prosecution Policy – Enforceable Undertakings (2005) addressed the other legislation, however appears to have been superseded by the 2014 policy.
20. Maxwell, C. (2004), p. 350.
21. Johnstone, R. and Parker, C. (2010), p. 280–315.
22. ibid
23. Recommendations 16.2 and 16.3, respectively.
24. WorkSafe Victoria, (2014), Enforceable Undertakings Policy
25. Section 49, Occupational Health and Safety Act 1985.
26. Maxwell, C. (2004), par. 1940.
27. Parliament of Victoria (2016).
28. Stensholt MP, B. (2007).
29. See: opp.vic.gov.au/resources/dpp-s-policies.

WorkSafe's approach to planning and targeting

3

WorkSafe's approach to planning and targeting

Modern regulators plan and target their activities by taking a risk-based approach. This involves understanding the changing environment in which they operate and measuring and evaluating their performance to ensure they understand whether their regulatory interventions work, and to enable them to learn and adopt new approaches.

3.1 Adopting a risk-based approach to planning and targeting

A key characteristic of modern regulators is that their regulatory approach is risk-based. A risk-based approach is an acknowledgement of the limited resources at a regulator's disposal[1]. Effective regulators must prioritise their activities to those areas that they consider high-risk, and other areas of identified strategic importance.

According to WorkSafe's Corporate Plan, WorkSafe uses 'a risk-based strategic approach to target the highest risk hazards and industries. It is important for WorkSafe to continue being a modern regulator, and strive to use the most effective tools to regulate safety by adopting an appropriate balance of encouragement and deterrence[2].

The Commonwealth Government's Regulator Performance Framework identifies that measures of good regulatory performance include regulators:

+ taking actions which are proportionate to the risk being managed.

+ applying a risk-based, proportionate approach to compliance, engagement and enforcement actions.

+ amending strategies, activities and enforcement actions to reflect changing priorities without diminishing regulatory certainty or impact[3].

3.1.1 WorkSafe's risk-based planning process

WorkSafe adopts a risk-based planning approach that uses robust and evidence-based processes to identify risks towards which resources should be allocated. In particular, WorkSafe uses an annual process to make decisions on compliance and enforcement activities – the Risk-Based Strategic Framework (RBSF) process. The RBSF seeks to identify the highest risk hazards and industries as focus areas for interventions. A delivery approach is then developed to establish the tools and interventions that will be used in the focus areas through detailed programs or projects. There is also a comprehensive approach to reporting on activities.

3.1.2 Strategy 2017

Strategy 2017 sets out the health and safety goals:

+ Raising awareness: building community support for the importance of OHS

+ Targeted interventions: promoting better injury prevention through targeted hazard, industry and workplace interventions

+ Balancing the use of encouragement (information and education) and deterrence activities

+ Mandatory programs: reducing risks associated with regulated industries, substances and materials

+ Improvement initiatives.

WorkSafe has made a commitment to continuous improvement both in the use of its tools and the effectiveness of its regulatory function more broadly. WorkSafe's Health and Safety Strategic Framework outlines how WorkSafe will achieve the health and safety goals in Strategy 2017. It highlights the importance of research, measurement and evaluation of its programs as one of the guiding principles for the organisation[4]. It also adds the importance of doing so in collaboration with stakeholders and the Institute for Safety, Compensation and Recovery Research (ISCRR). Similarly, ISCRR's Strategy 2020 states that one of its deliverables for WorkSafe is to evaluate the effectiveness of different policy interventions in the Victorian safety and compensation system.

WorkSafe also has a role in working towards the delivery of the Australian Strategy. We note other state OHS regulators afford a much higher priority to reporting on the programs supporting the delivery of the Strategy and driving outcomes to achieve the targets. As a result, those other jurisdictions are seen to be playing a national leadership role in driving health and safety outcomes.

3.1.3 Identifying the risks to focus on

The RBSF determines the strategic priorities for WorkSafe. WorkSafe advised us it uses a broad range of information sources to identify priority areas to direct its resources and intervention activities. Hazard and industry risk profile summaries are an output from the RBSF. The 2016–17 industry and hazard profile summaries contain a detailed analysis of the reasons WorkSafe selected the areas as priority hazards and industries. The focus areas selected are:

Strategic Work	Industries in Focus	Mandatory Work
+ Musculoskeletal Disorders	+ Health	+ Statutory work
+ Psychological Health	+ Construction	+ Quarries and Mines
+ Vulnerable Workers	+ Agriculture	+ Major Hazard Facilities
+ Occupational disease	+ Supply Chain	
+ Asbestos	+ Public Sector	
+ Safe Design		
+ Dangerous Goods		

3.2 Developing the appropriate response to identified risks

Once the RBSF identifies focus areas for interventions, a delivery approach is developed to establish the tools and interventions that will be used in the focus areas.

The delivery approach sets out the way in which interventions will be delivered, through detailed programs and projects. For example the Health Practice delivery approach sets out five areas for strategic intervention and details the tools that will be used in each area:

+ Hospital intervention program

+ Industry level engagement

+ Manual handling

+ Occupational violence and aggression

+ Psychological health.

WorkSafe identified the healthcare industry risks for targeting through the RBSF. WorkSafe's combination of risk identification (through the RBSF) and development of targeted interventions (through the delivery approach) represents a sound risk-based approach.

> *In the recent 12–18 months we have seen an improvement in use of data. It is evident that the healthcare sector has the second highest number of claims in the state, yet when we compare the amount of WSV interventions, healthcare comes in at number four or five down the list – or even lower in some years. With the introduction of Health Practice Group this has increased but still requires further progress in order for healthcare to reduce the number and severity of injuries and WSV interventions must increase in order for this to occur.*
>
> *ANMF submission*

3.2.1 Using data and information to inform strategic priorities

The RBSF is a comprehensive process that uses data and information to inform WorkSafe's focus areas, sources of data include: environmental scans, industry research papers, workers' compensation claims and injury data, stakeholder workshops, inspector and regional intelligence. Figure 5 provides an illustration of the RBSF.

Figure 5: Risk-Based Strategic Framework

RISK CATEGORIES		RISK MODEL				OUTPUTS	OUTPUTS	
	Steps	Set the context	Identification of Threats, Opportunities and Hazards	Risk Analysis	Risk Evaluation	Focus Area Recommendations	Assessment of Recommendations & Decisions on Results for Action	Delievery Approach
Risks to the health and safety of workers (Weighting = 1.0)	**Tasks**	PESTLE and SWOT Analysis process	Risk Description	Analysis of likelihood / consequence	Synthesis of Risk Analysis	Focus Area Priority Review by HSLT		
Risks to the health and safety of the community (Weighting = 0.8)	**Inputs**	Corporate Documents	Quantative and qualitative information on risks	Historical data of past events	Likelihood and Consequence scores	External review of analysis		
Risks to the scheme's viability (Weighting = 1.0)		External intelligence including industry trend papers, business activity data and government policy actions	Technical, Specialist and Inspectorate judgement	Technical, Specialist and Inspectorate judgement	Confidence Ratings			
Risks to regulatory function and reputation (Weighting = 0.6)			Research		Information on existing controls			
Risks to the Victorian and Federal Government (Weighting = 0.6)			External Stakeholders					

Our consultation process showed that stakeholders have concerns about how risks are identified, and the data sets that are used to inform this process. Views were expressed in a number of stakeholder submissions that WorkSafe's risk-prioritisation process had an over-reliance on workers' compensation claims data:

Whilst some more sophisticated approaches to developing targeted areas of focus have been applied in recent years, there continues to be a strong focus on the use of claims data. Claims data is flawed in determining where risks exist: significant risks may not manifest themselves in injuries, due to luck or a range of intervening, mitigating factors; injuries that occur may not result in a worker lodging a claim with their employer; a claim lodged with an employer may not find its way into the system; good return to work may result in a significant injury not becoming a 'four-week' statistic.

Ai Group Submission

... a key consideration is using sound and diverse sources to triangulate data and information (not preferring claims data). This may include conducting and/or commissioning research and analysis, reviewing the literature and published research, using hospital surveillance (admissions data), work hazard surveillance studies, population surveys, research into persistent and emerging issues for particular sectors and workforce groups, and analysis of work-related deaths.

E. Bluff submission

WorkSafe advised us that a broad range of sources is used to inform its strategic priorities. However exactly how targeting decisions are drawn from these sources is not clear to stakeholders.

3.2.2 Drawing on stakeholders to develop regulatory interventions

Effective communication and engagement with stakeholders is a key lever for encouraging workplace health and safety. The central role of stakeholders in ensuring workplace safety is enshrined in the OHS Act. The involvement of employers, employees and their organisations in the formulation and implementation of workplace health, safety and welfare standards is an object of the legislation.

While WorkSafe has formal processes in place to support stakeholder engagement, in the recent past there was a focus on presenting information to stakeholders. These formal processes tended to be used as a forum for WorkSafe to disseminate information about operational issues, or specific issues and projects, rather than in the formulation of strategic approaches, or in determining the effectiveness or appropriateness of WorkSafe compliance and enforcement activities. OHSAC noted a lack of involvement in the development of WorkSafe's strategies and expressed their willingness to be meaningfully engaged and to improve the impact and reach of programs. Several submissions to this review also raised concerns about the lack of genuine stakeholder engagement.

WorkSafe regularly engages stakeholders in regards to some elements of the compliance and enforcement framework. However, whilst recognising the important role that key external stakeholders can play at improving OHS outcomes, to date, stakeholder engagement has generally been focused on informing stakeholders about the activities of WorkSafe as opposed to seeking stakeholders' feedback in relation to decision-making.

HIA submission

WorkSafe's engagement in the formal consultative forums such as OHSAC and the SRG has improved recently. However, for too long they have been forums where stakeholders were in effect informed rather than consulted. True consultation must take place at all stages of the development of any of WorkSafe's major work activities and the development of new programs or activities.

CPSU submission

There is scope for WorkSafe to more effectively engage its stakeholders in the development of approaches to address priority risks. A number of submissions highlighted willingness for meaningful engagement with WorkSafe in shaping strategies, programs, activities and policies.

WorkSafe should better use its existing processes to genuinely collaborate with stakeholders and seek their input in developing, testing and refining strategies and interventions that address workplace risks. Adopting a more collaborative approach should help WorkSafe to develop more nuanced and effective strategies and interventions, and also to leverage stakeholders and their networks to extend the reach of programs.

WorkSafe has recently published a stakeholder engagement framework as a statement of its intent and commitment to engaging with its stakeholders[5].

It is regarded as a foundation document that sets out its approach to stakeholder engagement, its values and guiding principles for engagement. The document forms part of WorkSafe's response to reinvigorating its approach to engagement and aims to:

+ ensure a coherent and consistent approach to stakeholder engagement across WorkSafe

+ commit to a set of clear guiding principles for all stakeholder engagement activity

+ build capacity for WorkSafe's staff to effectively manage stakeholder relationships

+ strengthen oversight and accountability measures to ensure the framework is implemented

+ confirm WorkSafe's commitment to and principles for engaging with stakeholders.

We note that the framework includes processes to measure the effectiveness of stakeholder engagement. We support the stakeholder engagement framework and its measurement processes and consider that the reporting against the accountability measures should be made public.

3.2.3 Using research to inform strategic priorities and responses

Ensuring that WorkSafe is able to meet current strategic challenges, as well as emerging risks, necessitates engagement with the academic community and strategic investment in research. As described by Gunningham: 'much of our knowledge about compliance and enforcement strategies, and in particular about what works and when, remains tentative or incomplete[6].' To prepare for the future, WorkSafe should invest in and monitor research and conduct environmental scanning and analysis in order to identify what work-related and community issues may emerge with potential to cause harm and adversely affect health and safety.

WorkSafe's 2015 internal research strategy states that all research commissioned must have a direct linkage to Strategy 2017. For the health and safety research portfolio, that focus was on 'workplace safety and risk control are continually improved in Victoria'. The research strategy also sets out the proportion of research that will be allocated to the three areas of exploratory, strategic and operational and evaluations. Figure 6 shows how WorkSafe allocates its research projects to those three areas.

Figure 6: WorkSafe research project allocation

Exploratory **10%**
Research that investigates broader and future-focused scheme issues

Strategic & Operational **60%**
Strategic: research that tightly aims with Strategy 2017 objectives, aimed at providing an evidence base to achieve desired outcomes. **Operational**: research on the systems, processes and functions

Evaluations **30%**
Research that develops, improves and passes judgement on projects/programs to improve efficiency & effectiveness

Employer / employee attitudes and behaviours

Efficiency & effectiveness

Innovation & the future

Industry focussed hazards solutions

Improving RTW outcomes

The Institute for Safety, Compensation and Recovery Research (ISCRR) is a research-policy partnership between WorkSafe, the Transport Accident Commission and Monash University. One of the five areas of focus for ISCRR in its current strategy is 'Safe and Healthy Workplaces'.

WorkSafe funds ISCRR to provide it with OHS intelligence and up-to-date data, trends, research new hazards and risk controls, literature reviews and benchmarking analysis. After examining ISCRR's health and safety research pages, and reading some of its published reports and reviews, there is quite a focus on manual handling and musculoskeletal disorders. WorkSafe's website does not include the research strategy or how the research agenda is applied.

Good practice in this area involves publishing a regulator's research agenda. SWA publishes its research agenda and sets out what research they are doing and why it is important[7]. Similarly, EPA Victoria's Research and Development Program 2013–2016 outlines the regulator's strategic research priorities.

WorkSafe should produce a defined and publically available research agenda, which is updated on a regular basis and reported on annually. The EPA's three-year model is an appropriate model on which WorkSafe could base its own research agenda.

The priorities for the research agenda should be identified as part of the risk identification and prioritisation process. This process should identify WorkSafe's short-term research priorities or knowledge gaps that need to be addressed to support the regulator, as well as strategic priority issues and areas of emerging risk that WorkSafe needs to tackle in the future.

Recommendation 9

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

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.

3.3 Reviewing the effectiveness of its strategic interventions

We consider a key marker of a modern regulator to be its engagement in learning and its ability to adapt its approach in response to new evidence[8].

This review has found limited evidence of a formal evaluation or review process to assess how effectively interventions achieve their intended outcomes (with the exception of monitoring general awareness following public information campaigns). Similar observations have been made by VAGO regarding the evaluation of WorkSafe's strategic interventions in the health sector.

In February 2015, WorkSafe commissioned a review of the RBSF implementation process. That review included a recommendation to implement a formal monitoring and evaluation process of intervention strategies and projects aimed at addressing risks as a matter of priority.

3.4 Measuring and reporting on performance

WorkSafe measures its performance for interventions through monitoring inspector activity and provides information on the year-to-date performance to its stakeholders through OHSAC and SRG meetings. WorkSafe also reports to these groups on the organisation's progress in meeting its KPIs. We reviewed a number of presentations to OHSAC and SRG and acknowledge that WorkSafe is transparent in its reporting on organisational performance.

WorkSafe publicly reports on corporate performance measures, which are based on workers' compensation data (e.g. claims per million hours worked). In line with its corporate plan, WorkSafe should report on performance measures that reflect OHS outcomes (e.g. reducing exposure to risk or improving risk control measures). WorkSafe should also develop KPIs to measure performance against the principles in the C&E Policy and as noted in section 2.2.6, performance against the annual OHS compliance and enforcement plan.

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.

1. Better Regulation Office NSW (September 2008).
2. WorkSafe (2015a).
3. Australian Government (2014).
4. WorkSafe internal working document.
5. See: www.worksafe.vic.gov.au/about-vwa/about-vwa/stakeholder-engagement-framework.
6. Gunningham, N (2015).
7. See: ohsbok.org.au/wp-content/uploads/2014/04/Session-2-SWA.pdf.
8. Gunningham, N. (2015), p. 11.

WorkSafe's Compliance and Enforcement Activities

4

WorkSafe's compliance and enforcement functions include activities that encourage workplace health and safety as well as activities that are designed to deter poor OHS performance. Strategy 2017 states that 'WorkSafe seeks the right balance of encouragement for effective workplace safety and deterrence for poor performance. This involves providing people at work with clear advice on how to comply with the law before taking enforcement action.'

4.1   Providing information and support

WorkSafe's regulatory approach is based on the premise that a range of tools can be used to support and assist duty holders with compliance. Maxwell indicated that to achieve compliance in workplaces, duty holders must be provided with information on how to comply with OHS standards and must be supported with compliance efforts. Ultimately, the greater the spread of information about what the Act requires, and how to comply with it, the less WorkSafe will need to do by way of enforcement[1]. In addition, Stensholt recommended WorkSafe:

+ provide greater use of statutory guidance, such as compliance codes and Section 12 guidelines

+ provide greater guidance on employers' duty to consult with their HSRs and employees.

A key tool for encouraging effective workplace health and safety is the provision of practical and constructive advice and information. WorkSafe's OHS functions include the dissemination of this information to duty holders[2]. The provision of guidance material promotes effective workplace health and safety management and provides duty holders with the information they need to comply with their legislative obligations. Guidance on hazard and/or specific industries needs to be written in plain language and be presented clearly in a range of media.

The C&E Policy states that 'WorkSafe assists workplace change by providing practical, accessible, and customised guidance material on a large range of topics relating to compliance with standards'[3]. As a tool to encourage compliance, advice and information provides a broad reach, especially when it is offered to workplace parties through various channels.

Both Maxwell and Stensholt recommended the implementation and development of compliance codes to strengthen and promote OHS compliance. Stakeholders agree that compliance codes are a useful compliance assistance tool and said they would like to see WorkSafe develop more:

> *Members have advised us that they see a need for more Compliance Codes (which should be satisfied by work currently underway within WorkSafe) and for simple, practical guidance.*
>
> *Ai Group Submission*

Compliance codes provide practical guidance to those who have duties or obligations under the OHS Act and OHS Regulations. Duty holders who appropriately follow the guidance are deemed to have complied with their obligations under the OHS legislation. The current compliance codes are:

+ Communicating OHS across languages

+ Workplace amenities and work environment

+ Confined spaces

+ First aid in the workplace

+ Falls in general construction

+ Foundries

+ Managing asbestos in workplaces

+ Removing asbestos in workplaces.

There are also a number of codes of practice including:

+ Prevention of falls in housing and construction

+ Building and construction

+ Safety precautions in trenching operations

+ Demolition

+ Manual handing

+ Plant

+ Hazardous substances

+ Lead.

As part of the 2017 regulations review, WorkSafe is developing a new compliance code on noise, and is updating existing codes to reflect proposed regulations. A package of proposed compliance codes is expected to be released for public comment in early 2017. We note stakeholder concern at the low number of compliance codes, but acknowledge that WorkSafe has been working to create more.

4.1.1 Improving the accessibility of information and advice

WorkSafe provides advice and information through various channels. These are delivered through: the advisory service, inspectors at workplace visits, statutory and non-statutory guidance material, its website, road shows, seminars and conferences, field days, meetings with senior managers and business owners, and through social media channels. We note that other regulators make very effective use of LinkedIn and Facebook to disseminate information to target audiences.

In the provision of advice and information, Maxwell stated 'one of the first ports of call for Victorians seeking information about workplace hazards and their obligations under OHS legislation is the authority's website'[4]. Duty holders should be able to easily access compliance information on WorkSafe's website.

To examine whether duty holders can easily access compliance information on WorkSafe's website, we looked for information that WorkSafe provides on the strategic priorities listed in the C&E Policy. We expected there would be a broad range of easily accessible compliance information. While WorkSafe has prepared compliance information on the hazards and industries described in Table 3 it was difficult to find. Duty holders searching for information to assist them comply with their duties in relation to these hazards and industries would be unlikely to find material to assist them unless they were already aware of its existence.

Table 3: Availability of information on industries and hazards causing most injuries

	Injury hotspots	Industry specific guidance	Easy to find on WorkSafe website
Manual handling	✓	✓	✕
Psychosocial	✓	✕	✕
Farming	✓	✓	✕
Healthcare and Social Assistance Sector	✓	✓	✕
Transport	✓	✓	✕

WorkSafe provides targeted information about most industries and hazards causing the most injuries, but stakeholders pointed out that locating this information on the WorkSafe website is difficult.

> *Victorian Chamber members have reported that while experienced or 'tech savvy' users are generally able to find relevant information on the WorkSafe website, its layout and organisation falls short of best practice website design*
>
> + *The lack of an effective search function.*
>
> + *The complicated layout and organisation of information.*
>
> + *Poor accessibility for people from diverse cultural backgrounds.*
>
> + *Poor accessibility for people with limited levels of education.*
>
> + *The currency of guidance material (some of which lists publication dates more than 10 years old).*
>
> *VCCI submission*

The WorkSafe Injury Hotspots[5] is an example of well-developed, targeted information. It pinpoints areas on the body that are most likely to be injured, and offers a list of practical ways to reduce the risk of those injuries occurring. Injury Hotspots is a quick and easy tool to provide compliance assistance information. Other jurisdictions use the same model for compliance assistance, Queensland Workplace Health and Safety's hotspots approach combines advice on how to comply, with information on where the OHS regulator is focusing its activities[6]. We found that the Injury Hotspots approach is an important and useful compliance assistance tool, however we found locating it on the WorkSafe website difficult.

The expert roundtable consultation reinforced the importance of ensuring that information is properly directed so that those who need the information receive it. Dr Elizabeth Bluff from the ANU explained it well:

> *Regulators do a lot to get the information out there but it falls on empty ground. They need to have a better communication channels especially to those that need the information. For example, how can compliance officers in workplaces be supported and have access to relevant guidance materials. Regulators often take a one-sided approach to information provision.*
>
> *Expert roundtable, 19 July 2016*

WorkSafe's website is cumbersome and in urgent need of an upgrade. The poor accessibility of information on the website is an area which requires significant attention.

Recommendation 12

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

4.2 Leveraging community awareness campaigns

One of WorkSafe's legislative functions is 'to promote public awareness and discussion of occupational health, safety and welfare issues and an understanding and acceptance of the principles of health and safety protection'[7]. Raising community awareness is a key element in strengthening workplace commitment and recognising the importance of OHS. Community awareness can be used to extend WorkSafe's regulatory reach and increase understanding around work-related injuries; that they are preventable and not just 'part of the job'.

Regulatory research highlights that community awareness programs need to be targeted to specific audiences and must provide opportunities to respond through structured follow-up activities, events and programs[8]. The intent is to develop targeted campaigns that can help change attitudes and beliefs around safety and that can also encourage employers and workers to build their knowledge and take action. Research shows that awareness campaigns are effective, however, feedback suggests stakeholders are not convinced that undertaking these activities is a valuable use of money:

> *There is an over-reliance on expensive and untargeted television advertising*
>
> *AMIEU submission*

Another reform could be to consider repeating campaigns. For example:

> *In addition to the website Master Builders has urged, and continues to urge, WorkSafe to repeat its safety messages on a regular basis. We outlined in Question 8 how communications campaigns could be reformed. Another reform could be to consider a strategy for repeating campaigns. For example, WorkSafe ran a very strong campaign around bullying in 2010 on the back of the high profile Café Vamp OHS prosecution. The campaign was supported by guidance for employers and workers which was developed in consultation with stakeholders. Despite bullying still being a serious workplace issue we consider that this issue should have been reinforced with the community about workplace bullying (e.g. employers re-communicating their bullying policy) beyond that time.*
>
> *MBAV Submission*

WorkSafe uses social media, the WorkSafe website, events and sponsorships to generate awareness and change people's attitudes and beliefs around safety. Over the past few years, WorkSafe has launched different campaigns as part of its strategic priorities. WorkSafe targets specific at-risk groups and also conducts general awareness campaigns. WorkSafe also conducts campaigns which are more broadly directed at raising knowledge about OHS risks and increasing interest in compliance to generate community support. Campaigns also engender social support for regulatory activities.

Some examples of recent WorkSafe awareness campaigns include:
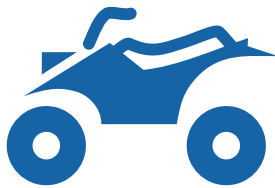
The Agriculture and Quad Bike Safety Campaign:

following the launch of the overarching Farm Safety Campaign, WorkSafe continued its agricultural campaign, focusing on quad bike safety and the revised approach to risk management and prevention.

The Young Workers Communications Campaign:

a six-week campaign targeting young workers launched on 15 August 2016. It aimed to encourage young workers across the manufacturing, construction, retail and hospitality sectors to speak up about unsafe work environment, and offered employers practical information on how to support young workers. The campaign ran primarily on social and online media channels.
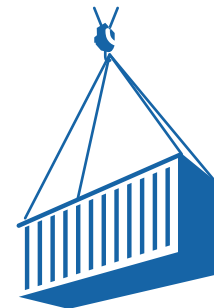
The Manual Handling Campaign – Shipping Containers Campaign:

a targeted program aimed at the employers involved in the wholesale trade, transport, postal and warehousing and food manufacturing industries was launched. The campaign aimed to increase awareness of the benefits of taking a supply chain management approach to packing and unpacking shipping containers, and encouraged employers to take action and talk to their suppliers and downstream recipients about how to work together to reduce risk of injury. Channels included print, online, guidance materials and fact sheets, and electronic direct mail media.

According to the review of OHS Regulatory Enforcement Report 2015 awareness campaigns can improve compliance outcomes[9]. WorkSafe reports on the reach of its awareness campaigns. WorkSafe's Asbestos Awareness Campaign for example, saw the following results:

+ Over 4 million online adverts

+ Over 5,000 clicks to the website

+ Almost 10,000 people sent to the website through Google search adverts, 12% of whom clicked through to find more information

+ 25,000 tradespeople sent electronic direct mail

+ 35% of tradespeople aged 18 to 59 heard the radio advert at least once and 20% heard it three times or more

+ A 189% increase in visits to the asbestos.vic.gov.au website[10].

WorkSafe should continue to review the effectiveness of its OHS awareness campaigns to ensure it reaches the right people.

4.3 Expanding education and training

WorkSafe's legislative functions include promoting education and training by devising courses in occupational health, safety and welfare and approving courses, facilitating access to those courses and initiating or promoting events relating to OHS.

The Australian Strategy includes an action area on health and safety capabilities which aims to support the following:

+ Providing the appropriate capabilities to those who require work health and safety education, training and advice.

+ Providing inspectors, work health staff and safety regulators with the necessary work health and safety capabilities to effectively perform their roles.

+ Integrating work health and safety development effectively into relevant education and training programs.

There is limited information about the Australian Strategy on the WorkSafe website and no information on specific activities being undertaken as part of its commitment to the Australian Strategy. The SWA website includes the National Work Health and Safety Capabilities Activity Plan 2014 to 2019. This document outlines key national activities undertaken to improve work health and safety capabilities, including those being undertaken in Victoria[11].

WorkSafe approves certain OHS training or education courses as part of its statutory functions, for example, for HSRs and workplace parties. Another example of where WorkSafe seeks to influence content in OHS tertiary courses includes its position as a regulator representative on the Australian OHS Education Assessment Board. The purpose of the Board is to accredit tertiary qualifications using set criteria to ensure that graduates are prepared as OHS professionals.

Data on the number of HSRs and other workplace parties attending WorkSafe-approved OHS training courses for 2011 to 2015 is shown in Figures 7 and 8.
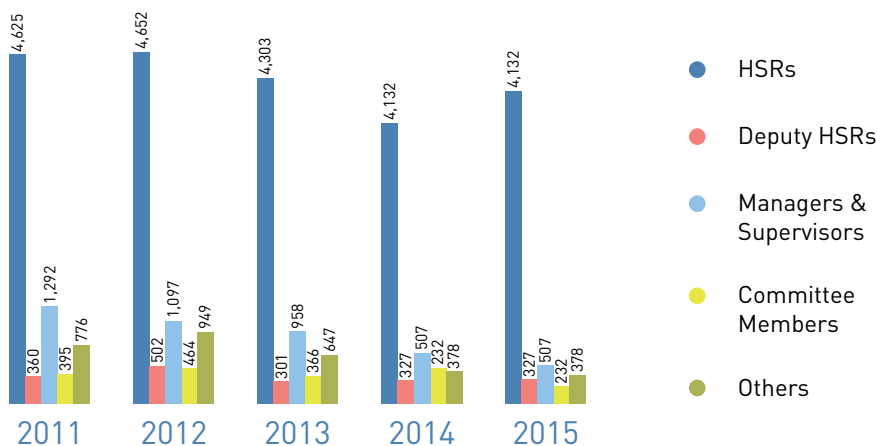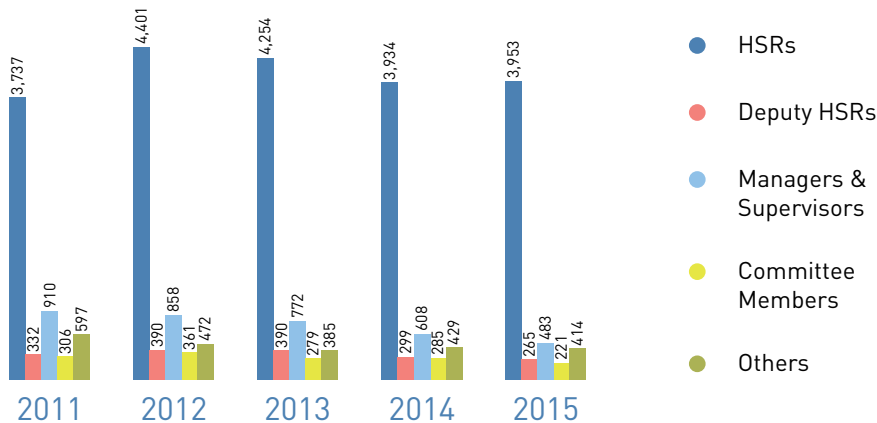
Figure 7: Attendance at initial OHS courses

Figure 8: Attendance at refresher OHS courses

Legend:
- HSRs
- Deputy HSRs
- Managers & Supervisors
- Committee Members
- Others

2011: 3,737 | 332 | 910 | 306 | 597
2012: 4,401 | 390 | 858 | 361 | 472
2013: 4,254 | 390 | 772 | 279 | 385
2014: 3,934 | 299 | 608 | 285 | 429
2015: 3,953 | 265 | 483 | 221 | 414

There is very good reach in terms of HSR take up of the five day HSR training and also of HSRs undertaking refresher training. There was a significantly lower proportion of managers and supervisors attending approved training to achieve management competency in OHS. This is key to improving OHS outcomes in workplaces. The need for an appropriate level of competency in management was also emphasised by Maxwell:

> It has repeatedly been pointed out to me that an untrained manager is at a significant disadvantage dealing with a trained HSR, and that this 'knowledge imbalance' is inimical to effective consultation. The expertise of the HSR also has the consequence that the HSR ends up carrying out risk assessment and control functions which are properly the obligations of the employer[12].

Stakeholders expressed frustration at the current process for HSR training course approval and advised that the six day OHS training course for managers and supervisors has not been a success as the course is too long and costly for an organisation. WorkSafe should assess whether its current approach to HSR training approval and access to supervisor/manager OHS training can be improved.

Having been involved in the process of application for HSR training course approval, I would suggest that WSV spends less time on bureaucratic controls and much effort on delivery and preparing of educational materials for sectors of the community that are information poor eg casual workers, SMEs etc… WSV should spend more effort on innovations such a Workplace advisors, regional and roving HSRs –separate from the inspectorate with the role of upskilling duty holders.

Confidential submission

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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4.4   Supporting the consultation provisions

Effective consultation about health and safety can result in healthier and safer workplaces, a stronger commitment to implementing decisions or actions, and greater co-operation and trust. The duty to consult is based on the recognition that employee input and participation improves decision-making about health and safety matters and assists in reducing hazards and risks.

Walters et al. found that effective consultation between workplace parties can lead to improved health and safety performance, increases in health and safety awareness and increased employee satisfaction. The literature tells us that consultation works and it is a cornerstone of the continuous improvement approach to OHS.

The ability of an OHS regulator to effectively promote and enforce these provisions is crucial. Stensholt recommended that WorkSafe develop guidance on what an employer needed to do to achieve compliance with the consultation duty and to ensure that the guidance:

+ clearly articulates what employers need to do as a minimum to comply with the duty;

+ explains compliance for those workplaces that have elected HSRs and those that do not

WorkSafe has progressively developed guidance materials on the duty to consult by publishing:

+ A guide for Victorian workplaces on consultation, 2012.

+ Guide for health and safety representatives on consultation, representations and resolving health and safety issues 2012.

+ Guide for workers on consultation, representation and resolving health and safety issues 2012.

+ Designated Work Groups for health and safety representatives 2012.

+ Consultation for health and safety representatives 2012.

+ Electing health and safety representatives 2012.

+ Consultation, minimum requirements for complying with the employer duty 2009.

+ Your health and safety guide to consultation 2007.

+ Checklist for health and safety consultation 2010.

The WorkSafe website has a specific HSR portal that includes information on these provisions[13]. The website contains information on employee representation, HSR training entitlements and information on health and safety consultation provisions. WorkSafe's Advisory Service is often the first port of call for HSRs and others seeking advice from WorkSafe.

WorkSafe also provides financial and other support to HSRs through funding of the OHS Reps @ Work via the Victorian Trades Hall, WorkSafe Health and Safety month and through the accreditation of HSR training courses and providers.

HSRs are surveyed as a part of WorkSafe's client service survey; that survey includes questions about the quality of service received from the Advisory Service. Over the past five years HSR satisfaction with advice from Advisory has risen from 90.4% to 93.5%, however, in our consultation process we received mixed feedback from HSRs about their experience.

> *I have used WorkSafe's advisory service and found the advice I got was very useful in assisting me to progress appropriately towards resolutions for staff in an unsafe working environment.*
>
> *S. Mathews submission*
>
> *I have used WorkSafe's Advisory service and found them to be difficult and not interested in the issues.*
>
> *R. Cetrangolo submission*

4.5. Increasing enforcement of the consultation provisions

Section 102 of the OHS Act requires an inspector to take all reasonable steps to immediately on entry, notify the occupier of the entry and the HSR where they exist at the workplace. A number of submissions including from HSRs raised concerns that WorkSafe policies and guidance on representation, consultation and issue resolution were not consistently followed by inspectors.

The SRG reinforced that WorkSafe provides information and advice on these provisions but this is not backed up by enforcement. Feedback received through the public comment process also confirmed to us that WorkSafe does not have a record of enforcement action on the consultation provisions particularly on the required consultation with HSRs in the OHS Act:

It has never prosecuted any employer for a breach of consultation provisions yet this is probably the most often ignored component of engendering effective workplace health and safety when conducted properly.

J. Ward submission

The importance of genuine consultation with workers should be a part of every inspector visit; the focus should be on the benefits that can be derived by drawing on the knowledge of workers.

AiGroup submission

Consultation is the bedrock of our OHS system and if it is not supported by the regulator then it will not be taken seriously by employers.

VTHC submission

Union stakeholders informed us of their concerns regarding whether PINs and improvement notices can be issued for a breach of the duty to consult with the HSR as prescribed by Section 36(2) of the Act. There has been a lack of clarity as to whether notices can be applied in the absence of an offence provision relating to Section 36. Union stakeholders complained to us of PINs being issued under Section 36 being cancelled by inspectors. We sought to confirm WorkSafe's position in relation to this question. WorkSafe confirmed that although there is no applicable offence provision, since section 36 must be complied with and an employer who fails to comply with the requirements of Section 36 also fails to comply with Section 35, to which an offence provision does apply, a notice or PIN can properly be issued for a breach of Section 36 (under Section 35). The obvious complexity of the proper application of the Act leads to confusion for inspectors and HSRs. It also appears to us to undermine the consultation provisions and the rights of HSRs under the OHS Act. We note that WorkSafe has provided conflicting legal opinion on this issue over time.

The C&E policy requires WorkSafe to investigate offences against HSRs, non-compliance with a PIN, discrimination and coercion. In the course of the review, we looked for data to assess the extent to which WorkSafe had done so in the last five years. We asked for data on prosecution of offences against HSRs,

A PIN is a written direction from an HSR requiring a person to remedy a breach (or likely breach) of the OHS Act.

including on the requirement to consult and/or HSR elections. It was reported to us there were no prosecutions on elections or the requirement to consult, however, there was one prosecution for non-compliance with a PIN. We also requested data on improvement notices issued under Section 35 and/or 36. We were informed that no notices were issued under those provisions in the last five years.

WorkSafe recently re-released 'A guide for workplaces: How inspectors deal with specific issues[14].' This document explains the role of inspectors in dealing with a range of disputes at the workplace level including: failure to consult, work cessations and disputed or non-complied PINs.

Recommendation 14

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

Recommendation 15

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

4.6 Actively monitoring compliance and proactively remedying non-compliance

Workplace inspections are a frontline measure used to detect breaches of legislation and enforce remediation of any breaches. WorkSafe allocates considerable resources to workplace inspections. It conducted more than 46,000 inspector visits 2015/16.

4.6.1 Workplace inspections are a key means of achieving compliance and improving workplace health and safety

WorkSafe reports that it has one inspector for every 10,000 Victorian employees[15]. Tompa et al. found strong evidence to suggest that specific deterrence from inspections with penalties results in a decrease of injuries; they also found that a first inspection has the largest impact on compliance rates. This research indicates that workplace inspections are most likely to affect change when enforcement action is undertaken by the inspector.

Table 4 shows the number of visits by inspectors between 2011/12 and 2015/16.

Table 4: Visits by inspectors

Year	2011/12	2012/13	2013/14	2014/15	2015/16
Inspector Visits	41,781	42,191	41,566	40,711	46,259

4.6.2 Focusing on strategic visits

Section 3 of this Report discussed the importance of OHS regulators taking a risk-based and strategic approach to both encouragement and deterrence activities. The consultations reinforced the importance of focusing compliance efforts in a structured and targeted way:

> *WorkSafe must have a greater focus on properly planned, consulted on and agreed strategic approaches to prevention, compliance and enforcement.*
>
> *AMIEU submission*

> *WorkSafe's approach to inspections can be improved by inspector activities being closer aligned to the broader organisational strategy and inspectors being targeted towards key risk areas as part of the overall prevention strategy.*
>
> *MBAV submission*

While WorkSafe says it is focusing on strategic visits, the number and percentage of strategic visits has remained static over time. This is illustrated in Table 5. Given that strategic inspections are a key method of WorkSafe delivering its various programs of work we had anticipated an increased focus on strategic visits.

Table 5: Percentage of strategic visits

Year	2011/12	2012/13	2013/14	2014/15	2015/16
Primary visits	34,565	32,759	34,254	33,776	36,987
Strategic visits	19,302	17,944	19,352	19,253	19,944
Statutory or response visits	15,263	14,815	14,902	14,523	17,043
Percentage of Strategic visits	56%	55%	56%	57%	54%

4.6.3 Using the comprehensive range of tools

The OHS Act provides a comprehensive range of tools that can be used by inspectors when they are monitoring compliance and proactively remedying non-compliance. These tools are described in Figure 9.

Primary visits – are visits where a field entry report is issued.

Strategic visits are proactive, and undertaken as part of a project or program intervention that focuses on particular hazards or industries

Statutory visits are undertaken to fulfil statutory and regulatory functions, and occur in industries including construction, mines and quarries, and major hazard facilities.

Response visits are service requests, assessment and response to incident notifications, follow-up on notices, workplace disputes, provision of information, trenching notifications and asbestos removals.

Figure 9: Tools for inspectors

Prohibition Notices	Used when there is an immediate risk to health and safety, and it is necessary to prohibit the activity to manage that risk. Similar to improvement notices, conditions may be put around the activity to ensure that the risk is remedied.
Improvement Notice	Used when a breach is not remedied at the time of detection and does not involve an immediate risk to health and safety.
Directions	Used when an inspector reasonably believes that it is necessary to manage an immediate risk to the health or safety of any person.
Other Notices	Detection of numerous hazards may give rise to a need to issue a number of notices, along with a Risk Control Plan to be implemented by the duty holder. Although Risk Control Plans are not specifically provided for in the OHS Act 2004, their use is supported through the inspector's discretion to issue notices and give directions.
Other Powers and Functions	Inspectors also have the power to review a Provisional Improvement Notice (PIN), review a direction to cease work, and to issue non-disturbance notices. Inspectors conduct reviews on the request of workplace parties on attendance at the site.
Voluntary Compliance	Used when a breach is remedied at the time of detection.

4.6.4 Using notices

Improvement notices are the most commonly used compliance tool by WorkSafe inspectors. On average, the total number of notices issued by WorkSafe inspectors remained constant although there was an increase in the number of notices issued between 2014/15 and 2015/16. Voluntary compliance (VC) is the second most commonly used compliance tool by WorkSafe inspectors. This is illustrated in Figure 10.

Figure 10: The use of tools

Primary visits

Notices issued

Voluntary compliance
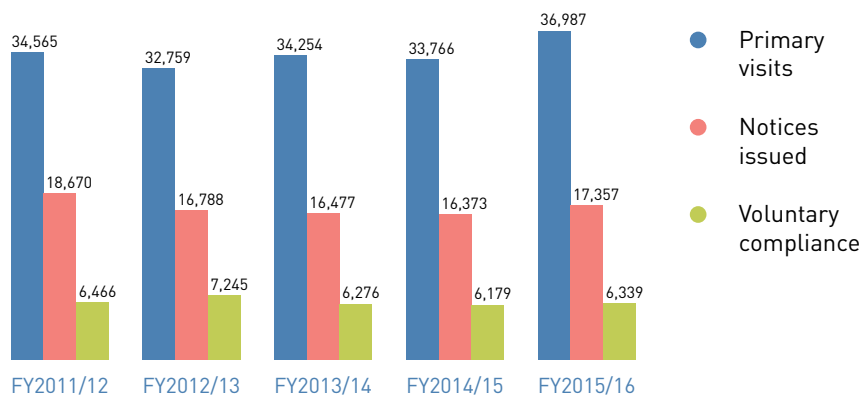
4.6.5 Appropriately using voluntary compliance

The use of voluntary compliance as a means to address breaches of the OHS Act was raised in a number of submissions to this review. Both union and employer stakeholders were concerned that voluntary compliance is being used in circumstances where an improvement notice would be more appropriate. Concerns were raised about an over-reliance on voluntary compliance in a number of industries:

> *We believe that inspectors are allowing voluntary compliance and are not issuing improvement or prohibition notices. We consider that WorkSafe must take an approach that is consistent with the C&E policy and only allow voluntary compliance if the alleged breach is addressed by the duty holder at the time of its detection by the inspector (i.e. immediate and satisfactory remedial action is taken).*
>
> *MBAV submission*

> *WorkSafe must focus on enforcement and not on voluntary compliance. As long as voluntary compliance is the default position, employers will continue to believe that they will not be caught, and if they are, they won't be punished. This is hardly an incentive for employers to comply. WorkSafe should make use of the knowledge that employers are mostly motivated by the fear of unannounced inspection, and this is what WorkSafe should do as a priority.*
>
> *CPSU submission*

In October 2015, WorkSafe conducted a review of the use of voluntary compliance following stakeholder concerns being raised. Over 300 randomly chosen voluntary compliances were reviewed. The results concluded that 83% were issued in accordance with the C&E Policy. There were 33 voluntary compliances that gave time for the duty holder to comply and therefore should have been an improvement notice. A further 19 were unclear on what the duty holder actions were. The use of voluntary compliance needs to be kept under review to ensure that inspectors continue to operate consistently with the C&E Policy.

4.6.6 Effectively using risk control plans

Risk control plans are compliance tools available for use by WorkSafe inspectors to address numerous or complex hazards. These plans facilitate effective inspections by enabling the inspector to issue notices and to supplement those notices with the requirement to develop a more comprehensive risk control plan.

Stakeholder feedback on the use of risk control plans indicated that this tool should be used more to achieve compliance and improve OHS performance.

> It is Ai Group's view that risk control plans can also provide a good compliance option when difficult issues, that require long term solutions, are identified by inspectors during workplace interactions; such issues might involve significant capital expenditure or development of solutions with third parties. Risk control plans can provide a tool that allows for longer term solutions to be agreed to, and monitored over time, and may be a more appropriate approach to achieving compliance than improvement notices with short timeframes for compliance.
>
> … The broader use of risk control plans could provide an additional enforcement tool; it could be utilised in such a way as to facilitate workplace consultation to achieve outcomes, rather than relying on compliance with an inspector's notice.
>
> Ai Group Submission

There was very limited data on the extent to which risk control plans are being used as compliance tools by inspectors. Table 6 indicates risk control plans are rarely used. Despite this, there is value in providing more detail in the C&E Policy about when it is appropriate to use this compliance tool. This should be supported by inspector training.

Table 6: Use of risk control plans

Report Year	Visit Observations with Risk Control Plan
2011/12	154
2012/13	110
2013/14	130
2014/15	130
2015/16	102

4.6.7 Using tools to address priority industries

As part of its strategic planning, WorkSafe has identified priority industries for inspector visits. Table 7 shows the number of visits for each industry sector undertaken in 2015/16.

Table 7: Number of visits for each industry sector 2015/16

Industry	Manufacturing	Construction	Wholesale	Retail	Agriculture	Healthcare
Primary visits	7,042	8,696	2,454	2,700	1,568	2,461
% Strategic visits	56.5%	3.4%	51.3%	49.5%	76.8%	64.2%
% Statutory/ response visits	43.5%	96.6%	48.7%	50.5%	23.2%	35.8%
Notices	5,014	3,404	1,357	1,239	1,264	604
Vol. compliance	1,040	2,564	440	339	158	237
% of notices to total compliance actions	83%	57%	75%	79%	89%	72%

The data in the table indicates that the construction industry has the highest proportion of voluntary compliances in comparison to improvement notices issued. In the 2015/16 financial year, 43% of compliance actions recorded in the construction industry were voluntary compliances and 57% were improvement or prohibition notices.

WorkSafe needs to enhance its strategic enforcement activity in identified priority industries, and ensure the use of the full range of tools available.

4.6.8 Using tools to address strategic risks

In addition to the analysis of WorkSafe's use of its tools across industries, different approaches were also taken in response to specific risks and hazards.

A number of the submissions we received suggested that WorkSafe inspectors find it more difficult to enforce compliance in relation to complex issues such as manual handling and psychosocial hazards.

> *Some risks appear to be easier to deal with than others, in terms of regulatory attention and response. There needs to be a flexible range of options to raise awareness and adopt an innovative response to the more hidden, complex and fluid risks such as manual handling.*
>
> *Ai Group submission*

> *We consider that the biggest area of risk (by volume of claims) today remains hazardous manual handling. Whilst WorkSafe reports through its annual reports that WorkCover claims contribute more than 60% of claims we understand that only 1.5% of improvement notices issued by Inspectors have related to hazardous manual handling.*
>
> *MBAV submission*

Manual handling has been a strategic priority focus for compliance and enforcement activity by WorkSafe for more than 15 years. Musculoskeletal disorders have accounted for a very significant percentage and also number of claims over the years – with body stressing claims accounting for 42% of all claims. The percentage of those claims has remained relatively steady over time.

The Australian Strategy also identifies musculoskeletal disorders as a priority work-related disorder based on the severity of consequences for workers, the number of workers estimated to be affected, and the existence of known prevention options. Despite this, we found in the 2015/16 financial year, manual handling did not feature in the top 5 most commonly issued notices/VCs.

The most commonly issued notices relate to plant and systems of work, plant regulations and prevention of falls. This appears to support the view expressed by stakeholders that notices are more likely to be used in relation to breaches that are easier to detect and address.

Risks to psychological health is a priority hazard and includes bullying, occupational violence, stress and fatigue. Psychological health risks are also addressed through activities on manual handling. WorkSafe has had a full time inspectorate dedicated to addressing bullying from 2008, and since 2011 has had a dedicated inspectorate to address the broad range of risks to psychological health.

According to Worksafe figures, there has been a steady increase in workplace visits and the issuing of improvement notices over the past three years. Figure 11 indicates that since 2011/12 inspectors have nearly doubled the numbers of improvement notices they issue in a year. The increase in notices occurred after the quality assurance process recommended an increased emphasis on the use of inspector powers.

Figure 11: Primary Visits conducted and Notices/VCs issued by the Psychosocial Team
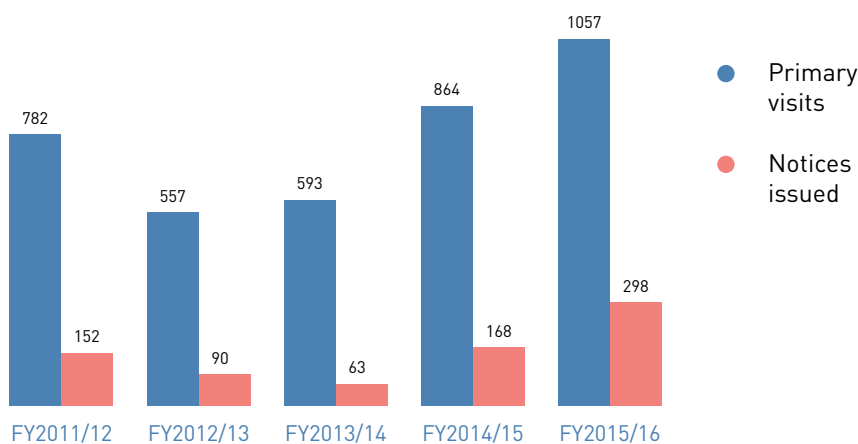
We recognise that recently there has been an increase in the numbers of inspector visits to workplaces and an increase in the numbers of improvement notices issued. This is a positive trend that WorkSafe should sustain and improve further by devoting more inspector visits to the purpose of strategic interventions where the expert advice given to us indicates they will have the most effect.

Recommendation 16

That WorkSafe:

+ increases its focus on strategic workplace visits

+ increases the use of compliance tools to address strategic risks

+ increase 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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4.6.9 Using tools consistently

WorkSafe has a number of processes to improve the appropriate and consistent use of tools.

We are aware that WorkSafe has a fieldwork quality assurance program which is a quarterly audit of inspector's entry reports and notices. This involves a desktop audit on a selection of entry reports and notices for each inspector against specified critical standards to ensure that there are no legislative gaps and/or opportunities to implement a corrective action plan. WorkSafe also provides ongoing support to inspectors via their line managers or other managers who review a selection of other teams' work to ensure a consistent approach and areas for improvement. It involves a joint workplace visit with the line manager and the inspector to assess if the visit was conducted in line with the C&E Policy and operational policy and procedures. While the quality assurance process exists we were informed by stakeholders of their concerns that there can be a lack of consistency in inspector decision making particularly in relation to issuing improvement notices:

There needs to be greater consistency of inspections and inspector findings. In section 9 of WorkSafe's compliance and enforcement policy one of the listed principles is 'consistency'. The policy states that a "consistent approach should be taken in similar fact situation/ circumstances, to achieve consistent outcomes." VTHC agrees with this statement but argues that there is a long way to go before this consistency is achieved. While the length of inspector training has increased, the VTHC has concerns with the quality of advice/understanding some inspectors are showing.

VTHC Submission.

The introduction of a formal process to internally review certain inspector decisions was a recommendation of the Maxwell Review. The Internal Review process is designed to provide accessible, timely and transparent decision making.

In the course of the review, we examined data on the last 5 years of applications for internal review. Figure 12 indicates that the majority of applications to the Internal Review Unit are for extensions of time to compliance dates.

Figure 12: Breakdown of extension of compliance date, decisions affirmed, varied or set aside[14]

Health and safety	2011/12	2012/13	2013/14	2014/15	2015/16
Compliance date only changed	1,455	1,124	1,185	881	1,077
Inspector's decision affirmed (no change)	108	54	51	70	43
Inspector's decision set aside	143	141	90	65	102
Inspector's decision varied (other than compliance date)	26	21	32	45	59

We understand that WorkSafe uses its quality assurance and Internal Review decisions to improve the quality of decision making by inspectors.

4.6.9 Sharing information about the approach to inspections

The principle of transparency is a marker of regulatory best practice. A number of stakeholders commented that the lack of transparency around policies and procedures, including inspector tools and checklists, contributed to the view that WorkSafe was not operating as transparently as it could.

> *Another area VACC has not found WorkSafe to be transparent on compliance and enforcement activities is regarding the supply of the WorkSafe inspectors' tools or checklists. VACC and other industry stakeholders have requested from WorkSafe the inspectors' tools for specific industry visits. WorkSafe reject the request and advise that it is for internal use only. WorkSafe should supply the Inspectors tools for campaigns to stakeholders. This will ensure transparency as per the C&E Policy.*
>
> *VACC submission*

We note that WorkSafe's operational procedures are not public documents. We recognise that other OHS regulators have published procedural documents on their web sites. The HSE in particular has a record of transparency in relation to operational activities of its inspectors. Its publically available information includes: Topic Inspection Packs (which outline how inspectors make decisions on particular issues), operational guidance; serious incident response manual and human factors toolkit[16]. The HSE website states:

> *This category (operational guidance) makes available the current internal instructions and guidance that HSE uses to carry out its core operational work of inspecting, investigating, permissioning and enforcing[177].*

WorkSafe should take a similar approach to the HSE. Topic inspection packs, inspector checklists and compliance checklists can be used as compliance assistance information for duty holders. Making inspector checklists available will enable improved collaboration and will reduce confusion around compliance requirements. This will also help to establish a consistent focus on identified priorities by WorkSafe and stakeholders.

Recommendation 17

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

+ continuing to ensure that inspectors have the capability to address more 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.

4.7   Taking enforcement action

The C&E Policy specifies that, where a comprehensive investigation is conducted by WorkSafe, consideration of the General Prosecution Guidelines will result in either:

+ No further action where no breach is established or there is insufficient evidence of a breach or it is not in the public interest to pursue the other enforcement options

+ Letters of Caution where it is in the public interest or in limited circumstances for relatively minor offences

+ Enforceable Undertakings

+ Commencement of prosecution proceedings.

4.7.1 Letters of Caution

Under the C&E Policy, a Letter of Caution may be issued as an alternative to prosecution. Further detail is provided in the *Supplementary Enforcement Policy – Letters of Caution*. According to this policy, the circumstances for the use of letters of caution are:

+ That a contravention of OHS law has occurred

+ That there is a reasonable prospect of obtaining a conviction

+ That it is not in the public interest to commence a prosecution against the duty holder with regard to the considerations set out in the General Prosecution Guidelines and C&E Policy.

In recent years, WorkSafe's annual reporting has included data on Letters of Caution issued in that year. In 2013/14 there were 23 Letters of Caution issued. This number increased to 42 in 2014/15 and 42 were also issued in 2015/16.

The annual report only provides information on the total number of cautions. Detailed information, such as: the nature of the offence, why a determination was made not to proceed with prosecution or that a Letter of Caution was the appropriate enforcement tool, is not specified.

Data on the sections of the Act that were subject to investigation and led to letters of caution being issued was reviewed. In 2015/16 of the 42 cautions issued, 27 were in relation to the Act's provisions. Table 8 shows the number of letters of caution issued for different offences. Without further information, we are unable to be confident that Letters of Caution have been appropriately used in all circumstances.

Table 8: Letters of Caution issued 2015/16

Section		Number of	Comment
21(1) &21(2)(a)	Primary duty of care (2)(a) refers to plant	3	
23(1)	Duty to other person	3	
25(1)(b)	Employee duty	1	
26(1)	Duty of person in control of workplace	4	
38(1)&(3)	Duty to notify of notifiable incident	5	Failure to notify is a strategic enforcement priority under the General Prosecution Guidelines.
40(4)	High risk work to be licensed	2	
111(4)	Duty to comply with improvement notice	6	Failure to comply with improvement notice is a strategic enforcement priority under the General Prosecution Guidelines
112	Duty to comply with prohibition notice	1	This would appear to be more than a relatively minor breach. Failure to comply with inspector notice is a strategic enforcement priority under the General Prosecution Guidelines
120(2)	Duty to comply with inspector direction	2	Failure to comply with inspector notice is a strategic enforcement priority under the General Prosecution Guidelines
DGAct		1	

4.7.2 Enforceable Undertakings

Enforceable Undertakings (EUs) may be accepted by WorkSafe in lieu of proceedings for an offence against the Act. They are an alternative to prosecution. The C&E Policy notes that its purpose is to focus the duty holder on the tasks to be carried out in order to remedy the alleged breach and/or prevent a similar contravention of the OHS laws in the future.

Earlier in this report, the role of EUs and broad stakeholder support for their use was noted. We made recommendations for redrafting of the C&E policy to better support their use, and to provide clearer guidance on what is appropriate content.

EUs are not an enforcement tool that WorkSafe 'selects', but rather 'accepts' as an alternative to prosecution. The WorkSafe Prosecution Result Summaries database discloses 43 enforceable undertakings entered since 2007. As at 2012/13, the only other Australian OHS jurisdictions issuing them were Queensland and NSW[18]. A comparison of the number of undertakings across Victoria, Queensland, and NSW is provided in Table 9[19].The use of EUs in Victoria is consistent with other states and there is nothing to suggest that they are being over-accepted or over-rejected.

Table 9: Enforcable Undertakings entered into each year

	Vic	NSW	Qld
2013	6	11	1
2014	12	8	3
2015	7	12	9
2016 (YTD)	4	3	7

A sample of undertakings entered since 2012 was evaluated against the EU Policy in the C&E Framework. Key provisions which stipulated what should be in an EU were taken into account.

The previous *Supplementary Enforcement and Prosecution Policy – Enforceable Undertakings* did not specify what an EU must do or contain. It provided a broad basis for EUs (as discussed earlier in this report) including list (in inclusive terms) of what WorkSafe might consider when deciding whether an EU gave rise to an appropriate regulatory outcome. Whether or not a particular undertaking was in accordance with that policy may largely be a matter of subjective view.

Our analysis suggests that most EUs met the evaluation criteria in the EU Policy.

The CSR undertaking (March 2014) saw several incidents involving moving blocks of glass by crane, resulting from failures in training and safe systems of work. CSR implemented improvements to its glass handling operations including fitting new physical risk control systems developed by CSR. It assisted by providing physical risk control systems, sharing information and training packages, and commissioning and sharing best practice research studies.

Rapidcrete Pty Ltd (December 2014) saw a worker sustain a serious crush injury while assisting a Mobile Concrete Pump Vehicle (MCPV) operator. The undertakings given included developing and installing a flashing light and alarm solution for its MCPVs and training employees on the solution. Activities to raise awareness of the solution and further benefit the industry included creating a generic safe work method statement for MCPVs, informing the industry association, preparing a safety bulletin for circulation by the industry association, and developing a digitally available MCPV safety video.

In the cases above, an appropriate OHS outcome was reached. However, stakeholders raised concern that this is not always the case:

> *The AMIEU considers that WorkSafe has been ineffective in using enforceable undertakings. For example: In 2011 a slaughterer who had worked at Wagstaff Cranbourne for 30 years had a serious injury to his left hand which was caught in a hide puller … Enforceable undertakings were given by Wagstaff Cranbourne in March 2014 … From the viewpoint of the AMIEU this looks like an undertaking to comply with the OHS Act. We consider that that enforceable undertakings must address the issue or breach of the Act so that further incidents do not take place. Secondly, the actions prescribed by the undertaking must act as a genuine punishment and act as a deterrence to other employers.*
>
> *AMIEU submission*

As raised by the AMIEU, a large part of the undertaking is to comply with the OHS Act. The remainder of the offering, in terms of cost and effort to Wagstaff, was largely related to the delivery of the training, from which Wagstaff would recover a significant benefit. Therefore, it is questioned whether the deterrence value, and community satisfaction generated by the undertaking, was sufficient given the nature and cause of the injury.

We note the statement by Maxwell: that 'Enforceable Undertakings provide the regulator and the alleged offender with an opportunity to avoid the delays and cost inherent in prosecution.' In their submission the CPSU detailed the time from the apparent breach to EU signing date. Their submission indicated that timeframes ranged between 22 months and 36 months in 2009 – 2016. The Panel has not been able to confirm this data, but recommends WorkSafe ensures the timely resolution by the use of EUs as envisaged by Maxwell.

4.7.3 Prosecutions

Although WorkSafe's policies do not provide a succinct statement on the role of prosecutions in the regulatory toolkit, it is widely understood that they serve as a sanction to offenders and act as a deterrent.

Gunningham noted the place of prosecutions at the top of the enforcement pyramid, a model in which regulators should begin by assuming virtue with progressively punitive and deterrent-oriented strategies until the regulated group conforms[20]. Gunningham also promotes the view that while prosecutions may have greater specific deterrence value than general deterrence, the reach of specific deterrence is limited – prosecutions should be carefully targeted to appropriate circumstances and to actors who are most likely to respond to it[21].

The expert roundtable noted that for a regulator to be effective, it must shine light on particular areas; an effective regulator will look at processes for targeting and triaging, with review and reflection, and target prosecutions relating to risk, not just based on fatalities or serious incidents.

Stensholt observed that it is clear that a tangible threat of prosecution is a powerful incentive to comply with the law, and was concerned that there was insufficient justification for WorkSafe's comparatively low level of prosecutions. His view was that:

> WorkSafe needs to seriously reconsider whether its policy of guidance and incentives, coupled with an arguably conservative deterrence approach, is sufficient to achieve its health and safety goals. Noting that 'an over-reliance on deterrence can be counterproductive and produce a culture of regulatory resistance from employers', nevertheless I believe there is a strong case for WorkSafe to increase the level of resourcing for its prosecutions branch[22].

He recommended that WorkSafe increase the level of resources in its prosecution and investigations branch to build capacity and to more effectively undertake additional strategically targeted prosecutions in the public interest. WorkSafe advised us that there had been no increase in resourcing in prosecution and investigations since that recommendation, until a recent intake of five investigators in late 2015.

We heard through our consultations, support for more prosecution activity, more strategically targeted prosecutions, and building capacity to leverage prosecution outcomes. Some submissions requested more prosecution activity and stronger enforcement.

> They need to get fair dinkum about prosecutions – not enough is done in this space... The prosecutions need to be high to companies that think they can float (sic) the Australian law. The prosecutions need to be high, hard and frequent. Penalties need to be increased for the illegal importation of asbestos.
>
> Asbestos Council of Victoria submission
>
> WorkSafe must pursue more prosecutions. As is stated in the Compliance and Enforcement Policy prosecution is a key to preventing breaches of the OHS and by extension injuries and fatalities. More prosecutions would be an important step in deterring future non-compliance ... The AMIEU would also like to see WorkSafe give sufficient resources to prosecute more cases.
>
> AMIEU submission

The Ai Group noted that prosecutions can only do so much. While the reach of the regulator remains small in the context of workplace numbers, the full suite of tools remains important.

> *Some will argue that there should be a greater emphasis on the issuing of notices and the initiation of prosecutions. However, the ratio of WorkSafe inspectors to the number of Victorian workplaces will always mean that broader initiatives such as guidance material and the communication of expectations will continue to be important levers.*
>
> *Ai Group submission*

4.7.4 Strategic use of prosecutions

While more prosecution activity may be desirable, it must be strategically targeted and the outcome leveraged to achieve maximum deterrent effect.

Purse et al made the following comment:

> *Historically, prosecutions have been used on a reactive basis, usually as a last resort, and almost invariably in circumstances where there has been a death or serious injury. By contrast a proactive approach would seek to target areas of high risk within a particular industry or specific hazards across a range of industries, especially where previous inspectorial interventions have not secured the requisite level of compliance[23].*

We heard support for prosecutions as part of targeted strategic interventions:

> *The CPSU notes that there appear to be few if any prosecutions on observation breaches, regulation breaches, occupational violence, psychological harm, manual handling and design issues … The rest were for common breaches such as unguarded machinery, failure to maintain plant, falls from height, falling objects, struck by vehicles, forklifts, and traffic management offences … We are concerned about the lack of diversity in prosecutions. This suggests that there are problems with how the C&E policy is being targeted. This underscored by the reliance on claims data to set WorkSafe priorities.*
>
> *CPSU submission*
>
> *The minimal number of prosecutions means that workplaces no longer see*

a financial penalty as a threat to their business … It appears that WorkSafe are fearful of taking on companies and prosecute them. Manual handling is the perfect example.

Confidential submission

We would like to see strategic measures, goals and targets – attached to the initiatives that are aimed at achieving them – so that WorkSafe can measure and track the performance … We consider that a clearly defined strategic approach to prosecutions would also be beneficial.

MBAV submission

The C&E Policy provides key tools for deterring poor workplace performance and addressing non-compliance. These include the prosecution of more serious breaches to Victoria's OHS laws (whether or not resulting in death, injury, or disease) and publishing and/or utilising enforcement data and information to leverage the outcomes of inspection and enforcement activity, including prosecutions. Section 5.2 of the General Prosecution Guidelines describes strategic target areas for prosecution and supports the publication of prosecution data.

WorkSafe Executive Leadership Team acknowledge that prosecutions are mostly reactive and that prosecutions need to be more strategic. The SRG also emphasised their view that there is a tendency for WorkSafe to focus on reactive rather than strategic prosecutions.

However, we have seen that WorkSafe can, and has in the past, worked towards prosecution-readiness for specific complex problems. An example is WorkSafe's approach to prosecuting workplace bullying:

For workplace bullying WorkSafe has been at the forefront of prosecutions under OHS law, it remains the jurisdiction with the most prosecutions relating to this hazard. In 2007 Lyon and Livermore recorded that WorkSafe had sixteen successful prosecutions for workplace bullying and that no other jurisdiction had prosecuted a case of workplace bullying under OHS law. Since that review WorkSafe has successfully prosecuted a further eight bullying cases, four apprentice abuse cases and entered into Australia's first enforceable undertaking for offences relating to workplace bullying[24].

We think that the work towards more strategic prosecutions can be supported through the use of the recommended annual compliance and enforcement plans. WorkSafe's progress against the plan should also be measured and reported.

4.7.5 Promotion of prosecution and enforcement outcomes

The General Prosecution Guidelines outline the purpose of disseminating prosecution-related information:

> 'Publishing the nature and outcome of enforcement actions draws attention to the consequences of violating the law. It is a valuable tool for both educating duty holders and deterring non-compliance. The VWA will publish and use enforcement data and information to maximise the outcome of its inspection, investigation and enforcement activity[25].'

Stakeholders' submissions raised issues around maximising the benefit from prosecutions:

> It is Ai Group's view that it is important to publicise prosecutions to ensure that employers do understand that a prosecution may be the final outcome of a workplace failure. However, many of the prosecutions highlighted are at the extreme end, allowing many readers to assess the situation and think that it is outrageous and was rightly prosecuted, but it wouldn't happen in my workplace.
>
> *Ai Group Submission*
>
> WorkSafe could also better enable duty holders to learn from incidents and prosecutions by providing better information in relation to prosecution outcomes and safety alerts about what can be done to eliminate or reduce risks.
>
> *HIA Submission*

Media exposure is an important tool to leverage prosecution outcomes. In addition to publicising prosecutions to drive deterrence, WorkSafe can develop strategies to provide timely compliance information and enhance industry learning from particular incidents.

We noted some good prevention work done previously by WorkSafe in response to incidents in high hazard industries. This work used the outcome of incident investigations to enhance deterrence, inform duty holders in similar industries, and inform future inspection activity. WorkSafe previously published reports of serious incidents that occurred at Victorian major hazard facilities (MHFs)[26]. Incident investigations were published to inform employers, workers and the community and to help prevent occurrences of similar incidents by sharing general safety and prevention lessons gained through the incidents. Those reports provided brief, factual descriptions of incidents and WorkSafe's response and comments on prevention actions and safety lessons arising from the incidents. The reports up to 2005 outline serious and significant incidents reported during those years; the reports from 2006 onward only contain serious incidents. WorkSafe stopped providing these reports in 2010. These reports were actively used by the chemical industry in Victoria and around Australia as an effective way of sharing learnings from incidents at specific companies and improving the systematic management of OHS at other sites.

Recommendation 18

That WorkSafe undertakes more strategic prosecutions.

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.

Recommendation 20

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

4.8 Collaborating with regulators and other agencies

WorkSafe is required to work and cooperate with other regulators and agencies in the delivery of its functions. OHS compliance and enforcement activity often requires operating in partnership with other agencies. In developing its draft policy statement on modern regulatory practice, in 2013, WorkSafe recognised a modern, contemporary regulator adopts a cooperative approach with co-regulators.

Operating requirements and overlaps are often handled, in part, through the development of Memoranda of Understanding (MoU) between government agencies. MoUs can be effective and flexible tools for documenting the common intent of two or more government parties[27]. During the last decade, WorkSafe has developed and implemented nearly 20 MoUs with a range of state and national regulatory agencies and authorities. For example, WorkSafe's MoU with EPA Victoria specifies areas in which the regulators have a shared interest and responsibility, such as major hazards, asbestos and occupational hygiene matters, and specifies that they will 'ensure information is provided to inform each other's staff of their roles and responsibilities in areas of shared regulatory space.' However, as suggested by the Hazelwood Mine Fire Inquiry, the establishment of MoUs alone is often not enough to ensure that regulators are delivering best practice approaches and managing risks arising from individual agency activity.

4.8.1 Collaborating in the Victorian context

In his review of the EPA Victoria Compliance and Enforcement approach, Krpan noted the opportunities for WorkSafe and the EPA to partner in undertaking joint interventions. As an example, he cites the 'safety case required of major hazard facilities to obtain a licence under the occupational health and safety laws generally reflects a demonstration of safety that is relevant to prevention of incidents with safety as well as environmental consequences[28].' We agree this opportunity should be further explored by the two agencies.

We also consulted with the EPA and the VBA to consider the current working relationships between these regulators and WorkSafe, and any existing barriers to collaboration and information sharing. Both agencies reported that formal processes with WorkSafe had been established for the exchange of information, and to directly notify WorkSafe of incidents.

Currently WorkSafe and the VBA are working on the asbestos non-compliant, non-conforming building products committee. WorkSafe has explored ways of working with joint regulators through a multi-agency program piloted in Bendigo in October 2016. That pilot involved inspectors from the VBA, Consumer Affairs Victoria, Energy Safe Victoria and EPA working together with WorkSafe to increase compliance with a range of laws, centred around the building and construction industry[29].

As the Victorian lead agency for asbestos regulation, WorkSafe coordinates with other relevant state agencies through the Victorian Asbestos Forum to develop a Victorian Government response to support the objectives of the national plan, which was established by the National Asbestos Eradication Agency[30].

WorkSafe is increasingly working with other regulators, particularly in the wake of Inquiry recommendations referred to earlier. However, there needs to be strong leadership from the WorkSafe Board and Executive that sets clear expectations around how WorkSafe works with its co-regulators. Section 2.2.3 of this report recommends that the C&E Policy needs to set clear expectations around information sharing and collaborating with co-regulators.

The SOE requires improved regulatory practices that specifically include working collaboratively with other regulators. The SOE requires that WorkSafe report on activities undertaken to achieve the improvements. Currently, limited reporting is available on activity under WorkSafe's collaborative arrangements, and the requirement to report under the SOE provides a useful adjunct. WorkSafe should explore how to best measure its collaborative approaches to enable it to report on its performance and to provide assurance to stakeholders and the community that it is working effectively with other agencies.

Recommendation 21

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

4.8.2 Collaborating in the national context

WorkSafe also cooperates with state, territory and commonwealth agencies through its participation in SWA's programs. Victoria currently participates in the following SWA health and safety-related groups:

+ Strategic Issues Group on Work Health and Safety

+ Strategic Issues Group on Explosives

+ Communications Reference Group

+ Research and Evaluation Reference Group

+ Data Reference Group

+ Emerging Issues Reference Group

+ Data Providers Network

+ High-risk Work Licensing Technical Advisory Group

+ Plant Temporary Advisory Group.

WorkSafe also participates as a technical representative directly or through SWA and as a regulator on Standards Australia's technical committees as required.

Through the Heads of Workplace Safety Authorities (HWSA) arrangements, agency leaders coordinate interventions with a particular emphasis on the Australian Strategy. WorkSafe is currently active on the following HWSA working groups:

+ Imported Materials Asbestos Working Group

+ Globally Harmonised System of Classification and Labelling of Chemicals Reference Group

+ Supply Chains and Networks Working Group

+ National Workplace Inspector Training and Development Reference Group

+ Health and Safety Capabilities Project Working Group.

In 2016, WorkSafe became the chair and secretariat of HWSA for a year. HWSA's 2016–17 work plan includes:

+ to examine the professional development of inspectors and regulatory officers

+ to manage consistent approaches to psycho-social-related incidents, complaints, and prevention responses to create nationally consistent approaches to addressing these matters

Given the relevance of these initiatives to the recommendations in our report we consider that WorkSafe should ensure active involvement of its stakeholders in the development and implementation of these national initiatives.

Recommendation 22

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

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1. Maxwell, C. (2004), p. 274.

2. WorkSafe Victoria (2005), p. 4. The OHS Act Section 7(1) (f) states that WorkSafe's functions include 'to disseminate information about the duties, obligations and rights of persons under this Act or the regulations and to formulate standards, specifications or other forms of guidance for the purpose of assisting persons to comply with their duties and obligations'.

3. WorkSafe Victoria (2005).

4. Maxwell, C. (2004), p. 275.

5. WorkSafe Victoria, Hotspots, see: worksafe.vic.gov.au/hotspots.

6. Queensland Workplace Health and Safety, Workplace Health and Safety Injury hotspots factsheets. See: worksafe.qld.gov.au/manufacturing/ articles/workplace-health-and-safety-injury-hotspots-factsheets.

7. Occupational Health and Safety Act 2004, Section 7(1)(j).

8. Gunningham, N (2015).

9. Tompa, E. et al. (2016).

10. WorkSafe Victoria, internal evaluation report 2015–16.

11. See: safeworkaustralia.gov.au/sites/swa/australian-strategy/related-activities/documents/whs-capabilities-activities.pdf.

12. Maxwell, C. (2004), p. 147.

13. See: worksafe.vic.gov.au/hsr.

14. See: worksafe.vic.gov.au/info/__data/assets/pdf_file/0009/198270/ WorkSafe_WSV17430109.16_Guidebook_final.pdf

15. WorkSafe Victoria Annual report 2011-2016.

16. See UK Health and Safety Executive, hse.gov.uk/foi/internalops/fod/inspect/ for topic inspection packs and hse.gov.uk/foi/internalops/og/ogprocedures/ inspection/index.htm for operational procedures.

17. See: hse.gov.uk/foi/internalops/index.htm#class0.

18. Safe Work Australia (2015), p. 19.

19. From data disclosed on each regulator's website, which is more recent than that available through Safe Work Australia's Comparative performance monitoring report.

20. Gunningham, N. (2007).

21. ibid., p. 370

22. Stensholt, B. (2007), p 84.

23. Purse, K. et al. (2010), p 57.

24. WorkSafe Victoria (2015b).

25. Further detail and procedural matters are addressed in WorkSafe (2014), Enforcement Group Policy on Publishing Prosecution Outcomes.

26. See: worksafe.vic.gov.au/safety-and-prevention/your-industry/major-hazard-facilities/about-the-industry/incidents-at-major-hazard-facilities.

27. See: vgso.vic.gov.au/content/memoranda-understanding#footnotes.

28. Krpan, S. (2011), p. 116.

29. See: epa.vic.gov.au/about-us/news-centre/news-and-updates/news/2016/october/05/bendigo-building-site-inspection-program-a-government-first.

30. See: asbestossafety.gov.au/national-strategic-plan

Appendix 1

Expert Roundtable Participants

Appendix 1

Expert Roundtable Participants

Name	Background
Dr Elizabeth Bluff	Elizabeth Bluff is a Research Fellow with the National Research Centre for OHS Regulation, in the School of Regulation and Global Governance (RegNet).
Cath Duane	Cath Duane is a consultant and coach in the field of public sector regulatory practice.
Professor Neil Gunningham	Neil Gunningham holds a joint appointment in the Regulatory Institutions Network (RegNet) and the Fenner School of Environment and Society and is currently a director of the National Research Centre for Occupational Health and Safety Regulation.
Professor Fiona Haines	Fiona Haines is Professor of Criminology in the School of Social and Political Sciences and Honorary Professor at RegNet in the College of Asia and Pacific at ANU.
Professor Richard Johnstone	Richard Johnstone is the Director of the Centre for Socio-Legal Research and Director of the Occupational Health and Safety Unit, within the Socio-Legal Research Centre.
Barry Sherriff	Principal consultant and lawyer at Sherriff consulting, Chairperson of the Safety Rehabilitation Compensation Commission and Chair of the Seacare Authority.
Professor Malcolm Sim	Malcolm Sim is an Occupational Physician who is Director of the Centre for Occupational and Environmental Health in the School of Public Health and Preventive Medicine, Monash University, Australia.

Appendix 2
Submissions Received

Appendix 2

Submissions Received

	Name	Job Title	Organisation
1	Peter Moylan	Retired – former OHS Officer with ANMF (Vic Branch) and the ACTU	Previously with ANMF (Vic Branch) & ACTU
2	Jim Ward	National OHS Director	Australian Workers' Union
3	Vicki Hamilton	CEO/Secretary	Asbestos Council of Victoria/GARDS
4	Vasalia Govender	Disability Development Support Officer	Department of Health & Human Services
5	Dr Gerry Ayers	OHS&E Manager	CFMEU C&G Division Vic/Tas Branch
6	James Cox	Trainer/Research Officer	Shop Distributive Allied Employee's Association
7	Hugh Horsfall	Manager, Economics and Industry Policy	Victorian Chamber of Commerce and Industry
8	Barry Naismith	Operator	OHSIntros
9	Patrick D'Alessandri	Occupational Health Safety Environment Manager	Victorian Automobile Chamber of Commerce
10	Tony Lopez	Assistant Director OHS Policy	Housing Industry Association
11	CONFIDENTIAL		
12	Tracey Browne	Manager – National Safety & Workers' Compensation Policy and Membership Services	Australian Industry Group
13	Carolyn Davis	Director Work Health and Safety and Workers Compensation Policy	Australian Chamber of Commerce and Industry
14	Dru Marsh & Leveasque Peterson	Solicitors	
15	Geoffrey Gasperotti	HSR (Senior Operator – Paper Machine 4 – Manufacturing Industry)	
16	Paul Conway	Secretary	The Australasian Meat Industry Employees' Union (Victorian Branch)
17	John Darcy	Head of OHS	Master Builders Association of Victoria

Appendix 2

	Name	Job Title	Organisation
18	Claire King	OH&S Officer	Australian Nursing and Midwifery Federation – Victorian Branch
19	Tim Johnston	CEO	Victorian Association of Forest Industries
20	Adrian Ferrara	Concrete patcher	Construction Industry
21	Alex Tadic	OHS Advisor	Construction industry
22	Andrew Murray	ESA	Accommodation and food services industry
23	Andy Hawkes	Rigger/crane operator	Construction industry
24	Angela McCarthy	Union Official	Australian Manufacturing Workers' Union
25	Angelo La Riccia	Storeperson	Transport and warehousing industry
26	Angelo Ruffato	HSR	Construction industry
27	Ashleigh Phillips	Performing Arts Co-ordinator and HSR	Secondary School
28	Cam Hill	Electrician	Construction industry
29	Charles Spratt	HSR and shop steward	Construction industry
30	Christopher Lovelee	Tower crane driver	Construction industry
31	Colin Reddie	Crane crew	Construction industry
32	Dang Kenny Ho	Labourer and currently a HSR	Construction industry
33	Dave Clencie	Labourer	Construction industry
34	Name Withheld		
35	Name Withheld		
36	Dennis Cross	Orderly	Health Care and Social Assistance industry
37	Greg Cevasco	HSR and first aid officer	Construction industry
38	Hugh Fraser	HSR	Health Care and Social Assistance industry
39	Hugo Testa	Disability Support Worker	Health Care and Social Assistance industry
40	Jamie Sibbald	Assistant reelman and HSR	Manufacturing industry
41	Jacqui Taylor	Hoist operator	Construction industry
42	Jason Atkinson	Stevedore and HSR	Transport industry
43	Jason Cash	HSR	Construction industry

Appendix 2

	Name	Job Title	Organisation
44	Jason Goodwin	Construction labourer, machine operator, rail labourer and truck driver	Construction industry
45	Jason Hutchieson		Construction industry
46	Jeremy Williams	Traffic controller and HSR	Construction industry
47	John Joseph	Machine Operator/Forklift Driver	Transport, postal and warehousing industry
48	Kent Williams	Maintenance and HSR	Construction industry
49	Kerry Ashford	Former HSR	Construction industry.
50	Name Withheld		
51	Kylie Struhs	Disability support worker and HSR.	Health Care and Social Assistance sector
52	Lachlan Wylie	Machine operator and HSR	Manufacturing industry
53	Liam Walker	Waste driver and HSR	Waste services industry
54	Luke Winzar	Crane crew	Construction industry
55	Margaret O'Brien	Receival grader and HSR	
56	Mark McNamara	Crane operator	Construction industry
57	Martin Peri	Storeman and HSR.	Warehousing industry
58	Matt Morgan	Carpenter	Construction industry
59	Michael Binns	Labourer	Construction industry
60	Michael Kennedy	Materials handling	
61	Michael Sharpe	Electrician and HSR	
62	Mick Egan	HSR and site delegate	Construction industry.
63	Nick Niland	Crane operator and HSR	Construction industry
64	Nick Vamvas	HSR	Construction industry
65	Nigel Davies	Union official	CFMEU Construction Division
66	Paul Degenhardt	Storeman and HSR	Warehousing industry
67	Paul Lavery	Machine operator and HSR	Food manufacturing industry
68	Peter Zarebski	Leading hand and HSR	Manufacturing industry
69	Phil Darcy	Shop steward and HSR	Construction industry
70	Rease Skews	Dogman	Construction industry

Appendix 2

	Name	Job Title	Organisation
71	Robbie Cetrangolo	Labourer	Construction industry
72	Robert Korn	Forklift driver	Warehousing industry
73	Robert Perry	Maintenance Officer and HSR	Aged Care industry
74	Name Withheld		
75	Ronny Bajzek	HSR	Demolition Industry
76	Rory Prosser	Trainer and assessor	RTO
77	Rufus Wehyee	Butcher and HSR	
78	Ruth Slocum	Enrolled Nurse and HSR	Health Care and Social Assistance industry
79	Sam McNeill	Union organiser	Australian Workers' Union
80	Samantha Stewart	Disability Support Worker and HSR.	Health Care and Social Assistance sector
81	Sean Mathews	Equipment/Resource Nurse/Project Officer and HSR	Health care sector
82	Scott Crocker	Steel fixer	Construction industry
83	Rohan Griffiths	Teacher and HSR	
84	Robert Bell	Crane operator, rigger and dogman	Construction industry
85	Sean Crotty	Store person and HSR	Warehousing industry
86	Shawn Byrne	Mine operator and HSR	Mining industry
87	Steve Bennett	Mechanical fitter and HSR	Manufacturing industry
88	Steve Burt	Carpenter	Construction industry
89	Stuart Gray	Labourer and HSR	Construction industry
90	Suzanne Smith	Enrolled Nurse and HSR	Health Care and Social Assistance industry
91	Terry Camille	Storeman and HSR	
92	Tesfaye Wayessa		Health support services
93	Tina Skerry	Team Leader	Health Care and Social Assistance industry
94	Tom Keating	Rigger and HSR	Construction industry
95	Tony Begg	Crane crew	Construction industry
96	Vasalia Govender	Disability Development Support Officer and HSR	Health Care and Social Assistance sector
97	Luke Martin	Secretary	Bendigo Trades Hall Council

Appendix 2

	Name	Job Title	Organisation
98	Tim Boyanton	Store person	Warehousing industry
99	Sam Hatfield	Stevedore	Transport industry
100	Eileen Kelly	Medical laboratory scientist	Public hospital
101	Terry Lee	Rigger/scaffolder	Construction industry
102	David Ball	Stevedore and HSR	
103	Dean Salfinger	Stevedore and HSR	Transport industry
104	John Ploegmakers	Enrolled Nurse (Psychiatry) and HSR	Health care sector
105	CONFIDENTIAL		
106	Sajan James	Chair Victorian Branch	Safety Institute of Australia
107	Brian Martin	OHS Organiser	Independent Education Union Victoria Tasmania
108	Carl Marsich	OHS Officer	Community and Public Sector Union Victoria
109	Dr Paul Sutton	OHS Lead Organiser	Victorian Trades Hall Council
110	Lisa Heap	Lead – WAUW team	We Are Union Women (WAUW) team at VTHC
111	Mary McCauley	Company Director	Caldream Pty Ltd
112	Elizabeth Bluff	Research Fellow	National Research Centre for OHS Regulation
			School of Regulation and Global Governance, Australian National University

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Glossary and Abbreviations

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ACCC	Australian Competition and Consumer Commission
Ai Group	Australian Industry Group
AMIEU	Australian Meat Industry Employees Union
Australian Strategy	Australian Work Health and Safety Strategy 2012-2022
C&E Policy	Compliance and Enforcement Policy
CPSU	Community and Public Sector Union
DPP	Department of Public Prosecutions
EPA	Environment Protection Authority Victoria
EU	Enforceable Undertaking
HIA	Housing Industry Association
HSBU	Health and Safety Business Unit
HSE	Health and Safety Executive
IBU	Insurance Business Unit
IEUV	Independent Education Union of Victoria
MBAV	Master Builders' Association of Victoria
MoU	memorandum of understanding
NC&E Policy	National Compliance and Enforcement Policy
OHS	occupational health and safety
OHSAC	Occupational Health and Safety Advisory Committee
PIN	Provisional Improvement Notice
SafeWork NSW	SafeWork New South Wales
SOE	Statement of Expectations
SRG	Stakeholder Reference Group
SWA	Safe Work Australia
TAC	Transport Accident Commission
The review	the independent OHS compliance and enforcement review
VACC	Victorian Automobile Chamber of Commerce
VAGO	Victorian Auditor-General's Office
VBA	Victorian Building Authority
VC	voluntary compliance
VTHC	Victorian Trades Hall Council
VCCI	Victorian Chamber of Commerce and Industry
VWA	Victorian WorkCover Authority
WHS Qld	Workplace Health and Safety Queensland
WorkSafe	WorkSafe Victoria

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