On 1 December 2012, the Dangerous Goods (Storage and Handling) Regulations 2012 (DG (S&H) Regulations 2012) replaced the Dangerous Goods (Storage and Handling) Interim Regulations 2011 (Interim Regulations) which expired on this date. The DG (S&H) Regulations 2012 have retained most of the legal requirements contained in the Interim Regulations. There are only a small number of changes. This document has not yet been updated to reflect the changes introduced by the DG (S&H) Regulations 2012. More information on the key changes introduced by these new regulations can be found in the guidance titled Information about: Key changes to dangerous goods storage and handling requirements available at worksafe.vic.gov.au/dgkeychanges and More information about: Incident reporting available at worksafe.vic.gov.au/incidentreporting
OUR VISION
Workplaces free from injury and disease.

OUR MISSION
To work with all Victorians to progressively reduce the incidence, severity, and cost to the community of work-related injury and disease.

PRINCIPLES OF REGULATION
The following principles underpin WorkSafe’s approach to all its activities:

• constructive: WorkSafe will provide constructive advice to dutyholders and other stakeholders about compliance issues and its decision-making processes;
• accountable: Decision-making must be in accordance with the Authority’s policies, justifiable, and subject to public scrutiny;
• transparent: All decision-making will be transparent (i.e. clear processes and decisions with clear reasons provided), so that dutyholders can understand what is expected of them, and what they can expect in their dealings with the Authority;
• effective: WorkSafe staff will act in accordance with the duties, responsibilities, rights, and limitations of power specified in the legislation that WorkSafe administers, to a high professional standard. All compliance and enforcement activity will be aimed at deterring non-compliance with Victoria’s occupational health and safety laws.
LETTER FROM THE CHIEF EXECUTIVE OF THE VICTORIAN WORKCOVER AUTHORITY

WorkSafe Victoria, as part of the Victorian WorkCover Authority, is the state’s workplace safety regulator. Its vision is for all Victorian workplaces to be free from work-related injury and disease.

Our vision is achievable. But it will only be attained through widespread compliance with Victoria’s occupational health and safety laws. For this to occur, we must first achieve:

- widespread community support for the fundamental right to a healthy and safe workplace;
- workplaces moving beyond minimum compliance towards continuous improvement and effective occupational health and safety management; and
- participation of all workplace parties in occupational health and safety improvements in the workplace.

Only then can we progressively reduce the incidence, severity, and cost to the community of work-related injury and disease, and move towards the achievement of our final goal of a risk-free workplace for all Victorians.

The Occupational Health and Safety Act 2004 is a significant step towards the goal of a safe working environment for all Victorians. To support the new legislation, WorkSafe is transforming its operations to become a more constructive, transparent, accountable, and effective regulator. As a more transparent regulator, WorkSafe’s approach to its enforcement and prosecution activities must be appropriately targeted, proportionate, consistent, and fair.

As part of its transformation, WorkSafe has updated both the WorkSafe Compliance and Enforcement Policy and the Authority’s General Prosecution Guidelines. We have also developed a series of Supplementary Enforcement and Prosecution Policies to support the consistent and transparent application of the General Prosecution Guidelines and to clarify specific aspects of our prosecution decision-making processes.

Updating the WorkSafe Compliance and Enforcement Policy, the General Prosecution Guidelines and developing Supplementary Enforcement and Prosecution Policies involved significant engagement with stakeholders, and I thank them for their valuable suggestions and feedback.

I am confident that these policies and guidelines will provide a strong foundation for healthier and safer Victorian workplaces.

Greg Tweedly
Chief Executive
Victorian WorkCover Authority
July 2005
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1. SCOPE OF WORKSAFE COMPLIANCE AND ENFORCEMENT POLICY

The 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.

This Policy document also incorporates the VWA General Prosecution Guidelines, as published in the Victorian Government Gazette.

2. ROLE OF WORKSAFE (AS PART OF THE VWA)

The Victorian WorkCover Authority (VWA) is the manager and regulator of Victoria’s workplace safety system. The Authority’s overall responsibilities include:

- enforcing Victoria’s occupational health and safety laws;
- helping to prevent workplace and work-related deaths, injuries, and disease;
- providing adequate and just workplace injury insurance;
- assisting injured workers back into the workforce; and
- managing the workplace injury insurance scheme by ensuring the prompt delivery of appropriate services and by adopting prudent financial practices.

The Authority’s functions in relation to assisting and compensating injured workers and providing Victoria’s workplace insurance scheme are undertaken by VWA’s Rehabilitation and Compensation Business Unit.¹

The Authority’s regulatory functions in relation to preventing workplace and work-related deaths, injuries and disease and enforcing Victoria’s occupational health and safety laws are undertaken by VWA’s occupational health and safety arm, WorkSafe Victoria.

Note 1: The RCBU’s functions are performed in accordance with the Accident Compensation Act 1985 and Accident Compensation (WorkCover Insurance) Act 1993.
VICTORIA WORKCOVER AUTHORITY BUSINESS UNITS

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<td>• providing adequate and just workplace injury insurance;</td>
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3. VICTORIA’S OCCUPATIONAL HEALTH AND SAFETY LEGISLATION

WorkSafe administers Victoria’s occupational health and safety (“OHS”) laws, including the following Acts and associated regulations:

• Occupational Health and Safety Act 2004 (“the Act”); and
• Dangerous Goods Act 1985;
• Equipment (Public Safety) Act 1994;
• Road Transport (Dangerous Goods) Act 1995; and

(“Victoria’s other OHS laws”)

4. OCCUPATIONAL HEALTH AND SAFETY ACT 2004

The principal Act under which WorkSafe conducts its activities is the *Occupational Health and Safety Act 2004*. The objectives of the Act (which are set out in s 2) are, in summary:

*to achieve, through the active involvement of all workplace parties, a safe and healthy workplace for all Victorians, whereby risks to the health, safety, and welfare of employees, other persons at work, and the public are eliminated.*

Note 2: Under s 2 of the *Occupational Health and Safety Act 2004*, the objects of the Act are to:
(a) secure the health, safety, and welfare of employees and other persons at work;
(b) eliminate, at the source, risks to the health, safety or welfare of employees and other persons at work;
(c) 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
(d) provide for the involvement of employees, employers, and organisations representing those persons, in the formulation and implementation of health, safety, and welfare standards.
When performing its functions, WorkSafe has regard to these objectives and to the principles of health and safety protection set out in s 4 of the Act, which are as follows:

(1) 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 all the circumstances.

(2) 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.

(3) Employers and self-employed persons should be proactive, and take all reasonable measures, to ensure health and safety at workplaces and in the conduct of undertakings.

(4) 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.

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

The functions of WorkSafe include both activities that encourage the development of risk-free workplaces (e.g. providing advice to dutyholders) and activities that are designed to deter poor OHS performance (e.g. prosecutions).

5. CONSTRUCTIVE COMPLIANCE STRATEGY

In performing its functions, WorkSafe applies a strategy of ‘constructive compliance’ – a balanced combination of positive motivators and deterrents – to improve workplace health and safety.

Integral to WorkSafe’s Constructive Compliance Strategy is the recognition that real and sustainable improvement in workplace health and safety is achieved primarily by the active involvement of employers and employees in hazard identification, management, and elimination.

‘Constructive Compliance’ is the strategy within which the WorkSafe Compliance and Enforcement Policy has been developed and operates.

5.1 Encouraging Workplace Health and Safety

The key levers for encouraging workplace health and safety are:

- effective communication and engagement with stakeholders;
- the provision of practical and constructive advice and information to workplace parties (e.g. employers, employees, health and safety representatives) and other stakeholders about rights, duties, and responsibilities under Victoria’s OHS laws, and what is required to comply with these;
- fostering co-operative, consultative relationships between workplace parties (e.g. employees and employers) to achieve health and safety solutions that ‘work for everyone’;
- supporting and involving stakeholders in the provision and promotion of education and training in occupational health and safety; and
- financial incentives to workplace parties and their representatives for improved OHS performance (e.g. the Safety Development Fund, the Small Business Innovation Fund, Information and Education Fund, and incentives under the Workplace Injury Insurance Premium system – for details see www.workcover.vic.gov.au).
### Worksafe Compliance and Enforcement Policy

#### Transparency

- Workplace Injury Insurance system.
- Funding support including: Safety Development Fund, Small Business Innovation Fund, and Information and Education Fund.
- High involvement from industry associations and unions for targeting and delivery of funding.

#### Workplaces

- Provide advice and information to workplace parties on how to comply.
- Engage and communicate with stakeholders.
- Foster consultative relationships between employers and employees.
- Support and involve stakeholders in education and training.
- Internal review of decisions.

#### Support

- Workplace Parties Support
- Guidance
- Build Capability
- Education

#### Encouragement

- Premiums
- Funding Support

#### Deterrence

- Visible & Presence Detection
- Penalties & Prosecution

#### Enforcement

- Prosecute more serious breaches.
- Implement alternative penalties for relatively minor breaches (where appropriate).
- Seek appropriate sentencing options.
- Publish/utilise enforcement information and data to leverage the outcome of prosecution-related activity (e.g. to enhance deterrence; inform dutyholders in same and similar industries; inform future inspection activity).
5.2 Deterring Poor Workplace Performance

The key levers for deterring poor workplace performance and addressing non-compliance are:

- the discharge of WorkSafe’s inspection responsibilities;
- the enforcement of remedial measures whereby dutyholders must remedy breaches of Victoria’s OHS laws;
- the imposition by WorkSafe of alternative penalties (e.g. infringement notices, enforceable undertakings, letters of caution) for relatively minor breaches of Victoria’s OHS laws or where otherwise appropriate;
- prosecution of more serious breaches of Victoria’s OHS laws, whether or not a resulting in death, injury, or disease;
- seeking appropriate sentencing options; and
- publishing and/or utilising enforcement data and information to leverage the outcome of inspection and enforcement activity, including prosecution-related activity, for example:
  - publishing enforcement data/information in relation to the nature and outcome of prosecutions (and, where appropriate, the imposition of alternative penalties such as infringement notices, enforceable undertakings, and letters of caution) to enhance specific and general deterrence;
  - informing dutyholders in the same and similar industries of the nature and outcome of prosecutions (and, where appropriate, the imposition of alternative penalties) and providing advice in relation to how to prevent similar breaches; and
  - utilising enforcement data/information resulting from inspection activity, comprehensive investigations, the imposition of alternative penalties, and the outcome of prosecutions to inform future inspection activity on:
    - a systemic level; and,
    - where appropriate, in relation to individual dutyholders.

6. INTEGRATED APPROACH

Often, the most appropriate response to a breach of Victoria’s OHS laws is to apply an integrated strategy that combines the use of one or more enforcement measures with the provision of advice and guidance material.

Examples:

- an inspector issuing an improvement or prohibition notice will also provide advice and guidance material on what changes will enable a dutyholder to comply with the relevant Act or regulation;
- following a work-related fatality an inspector will usually place a prohibition notice on the equipment involved to deal with the immediate risk. A comprehensive investigation will also commence.

Note 3: In this context, having regard to all the relevant circumstances, whether a matter is a ‘relatively minor’ or ‘more serious’ offence will be determined by application of the VWA General Prosecution Guidelines, in particular, the criteria for comprehensive investigation and the prosecution criteria – e.g. factors such as the actual or potential consequences of the breach are taken into consideration. It reflects the culpability involved in the offence.

Note 4: Ibid
7. PREVENTION IS KEY AIM OF INSPECTION AND ENFORCEMENT

Under the Occupational Health and Safety Act 2004, WorkSafe has a responsibility to “monitor and enforce compliance” with the Act and its associated regulations.

7.1 Nature of Compliance

Compliance with Victoria’s OHS laws is a continuous process which involves the development, improvement and maintenance of a healthy and safe working environment and systems of work. This on-going process must be sufficient to fulfil the dutyholder’s obligations and duties under OHS laws before compliance is achieved.

7.2 Key Aim

The key aim of WorkSafe’s inspection and other enforcement activities (i.e. remedial and punitive measures, including prosecution) is to deter non-compliance with Victoria’s OHS laws and thereby prevent workplace and work-related deaths, injuries, and disease. (For this reason, enforcement action may be taken whether or not a breach of Victoria’s OHS laws has resulted in death, injury, or disease.) Related aims include the promotion of good OHS values and practices and, where relevant, organisational rehabilitation.

8. WHO IS SUBJECT TO INSPECTION AND ENFORCEMENT?

Occupational health and safety duties apply to dutyholders, i.e. all persons associated with the operation of workplaces and other undertakings, including:

- employers, including contractors with employees and labour hire companies (ss 21 to 24);
- employees (s 25) and other workers (ss 23-24);
- officers (ss 144-145);
- other persons who manage or control a workplace (s 26);
- designers of plant, buildings, and structures (ss 27-28);
- manufacturers of plant or substances (s 29);
- suppliers of plant or substances (s 30); and
- persons who install, erect or commission plant (s 31).

All such dutyholders are subject to inspection by WorkSafe and, where appropriate, the use of enforcement measures (including prosecution in accordance with the General Prosecution Guidelines).^5

Victoria’s other OHS laws contain similar provisions in relation to dutyholders.

Note 5: For further details see the Supplementary Enforcement and Prosecution Policy Liability of organisations, officers, employees, and other dutyholders.
9. PRINCIPLES OF INSPECTION AND ENFORCEMENT

In addition to the principles that underpin all WorkSafe’s activities (i.e. that all activities should be constructive, transparent, accountable, and effective), the following principles also apply to WorkSafe’s inspection and enforcement activities, including its prosecution-related activities:

- **targeted**: WorkSafe should target its activities to the areas of most need and effect (e.g. high-hazard and high-risk situations and industries);
- **proportionate**: All enforcement action should be proportionate to the seriousness of the non-compliance;
- **consistent**: A consistent approach should be taken in similar fact situations/circumstances, to achieve consistent outcomes;
- **fair**: All compliance and enforcement activities (including decision-making) must be fair – i.e undertaken with impartiality, balance, and integrity. In addition, all prosecution-related activities must be undertaken in accordance with the VWA General Prosecution Guidelines.

WorkSafe strives to ensure that all its inspection and enforcement activities (including its prosecution-related activities) are undertaken according to the highest standards of ethics and work practice.

10. STRATEGIC ENFORCEMENT PRIORITIES (TARGET AREAS)

WorkSafe has a clear strategic focus for its inspection and other enforcement activities, which target the following priorities:

a) **Incident and Emergency Response Notifications**
   Incident and Emergency Response Notifications, including workplace fatalities.

b) **Focus Areas for Prevention**
   Focus areas of prevention, 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.

   Where WorkSafe targets a new focus area of prevention or hazard, an initial three-phase period of systems development and education will usually precede the increase in inspection and enforcement activity.

   Depending on the level to which safe systems of work have already been developed for the targeted focus area of prevention or hazard, the initial three-phase period will, to varying extents, involve WorkSafe engaging with dutyholders to:

   Phase 1: raise awareness (via public forums, the media, publications, etc.) that:
   - WorkSafe will be consulting with stakeholders to explore key issues and to build-up and consolidate knowledge in relation to what systems of work will constitute compliance for a targeted hazard or focus area of prevention; and
   - when the three-phase period of systems development and education is complete it will usually be followed by an increase in inspection and enforcement activity.

Note 6: For details, see the “Principles of Regulation” on the inside front cover of this WorkSafe Compliance and Enforcement Policy.
Phase 2: build up knowledge, through the trialling of techniques and approaches to managing and controlling risk, as to what systems of work will constitute compliance (e.g., WorkSafe and dutyholders jointly conduct and evaluate workplace-based trial approaches to risk control);

Phase 3: consolidate knowledge and understanding as to what systems of work will constitute compliance and be considered “reasonably practicable” risk management and control for the targeted hazard or focus area of prevention, for example:

- increase dutyholders’ understanding of systemic compliance requirements via public forums, consultations, publications, web information, media;
- provide training to WorkSafe inspectorate prior to increased inspection and enforcement activity.

Following completion of the initial three-phase period, an increase in inspection and enforcement activity will usually occur.

11. ROLE OF WORKSAFE INSPECTORS

The health and safety ("OHS") responsibilities and powers of WorkSafe inspectors are set out in the Act – primarily in Part 9 – and in Victoria’s other OHS laws, under which they may also be appointed.

Subject to the Authority’s directions, WorkSafe inspectors:

- inspect workplaces for compliance with Victoria’s OHS laws;
- provide practical, constructive advice and information to dutyholders about how to comply with their OHS duties and obligations (and provide advice and information to health and safety representatives); and
- enforce Victoria’s OHS laws by:
  - compelling dutyholders to undertake remedial action to rectify health and safety breaches; and/or
  - recommending punitive action, i.e.:
    (i) the issuing of an infringement notice; or
    (ii) a comprehensive investigation to determine whether a breach of the OHS laws has occurred that may warrant prosecution or other punitive action (and to gather data that can be used to assist in preventing future OHS breaches).

11.1 Powers of Inspectors

The Act gives inspectors extensive powers of entry, enquiry and investigation. In most circumstances, it is an offence not to provide “reasonable assistance” to an inspector without “reasonable excuse”.

WorkSafe, itself, has all the powers of an inspector (s 8).

11.1.1 Inspector’s Power of Entry

Under s 98 of the Act, a WorkSafe inspector may enter a place that the inspector reasonably believes is a workplace at any time during working hours. The inspector may also enter any place (including a car, truck, ship, boat, airplane or any other vehicle) at any time if the inspector reasonably believes that there is an immediate risk to the occupational health or safety of a person.

Inspectors have a range of obligations relating to entry of premises, including notification of their presence (s 102) and the provision of a written report (s 103). Their powers of entry do not extend to premises which are only used for residential purposes (s 107).
11.1.2 Inspectors’ Powers of Investigation
Inspectors have extensive powers of investigation, including:
- general powers of inspection and seizure (s 99);
  and the power to:
- compel the production of documents and answering of questions (this power does not, however, infringe on a person’s right to avoid self incrimination: s 100);
- take samples of substances for analysis (s 101);
- apply to a magistrate, in certain circumstances, for a search warrant (s 104);
- require a person to provide their name and address (s 119); and
- give directions to a person at a workplace where the inspector reasonably believes that it is necessary to do so because of an immediate risk to the health and safety of any person (s 120).

The process by which WorkSafe inspectors apply for search warrants is set out in the Supplementary Enforcement and Prosecution Policy Search Warrants, which is available from WorkSafe and at www.workcover.vic.gov.au.

11.1.3 Assistance to be provided to WorkSafe Inspector
It is an offence for workplace occupiers, employers and employees to refuse or fail, without reasonable excuse, to provide reasonable assistance to a WorkSafe inspector in the performance of their duties under the Act or regulations (s 121).

11.1.4 Information to be provided by WorkSafe Inspectors
Under s 100(3) of the Act, before requiring a person to produce a document or answer questions, an inspector must:
- produce their identity card;
- warn the person that “a refusal or failure to comply with the requirement, without reasonable excuse, is an offence”; and
- inform the person that “he or she may refuse or fail to answer any question if answering the question would tend to incriminate him or her”.

Similar protection against self-incrimination exists in relation to notices issued by the Authority under s 9 of the Act requiring the giving of information or production of documents for the purpose of ascertaining whether the Act/regulations have been complied with or the investigation of a suspected contravention.

For further information in relation to dutyholders’ rights and obligations during a WorkSafe inspection see WorkSafe Victoria Inspectors, which is available from WorkSafe and at www.worksafe.vic.gov.au.

11.2 Monitoring and Review of Inspector’s Decisions
A range of internal and external quality-monitoring systems exist to ensure that inspectors exercise their powers under OHS laws appropriately, in accordance with WorkSafe policies and guidelines.

11.2.1 Qualifications and Training
WorkSafe inspectors have technical or professional qualifications and/or backgrounds in occupational health and safety. They are expected to develop and maintain the competencies to perform their functions and exercise their powers through a range of competency-based training and assessment programs, which are conducted by, or on behalf of, WorkSafe – e.g. the Diploma of Government (Workplace Inspection).

11.2.2 Regular Systemic Auditing of Inspectors’ Decisions
WorkSafe regularly audits inspector reports and notices/directions issued in relation to workplace or other site interventions to assess whether appropriate enforcement action is being taken by inspectors. This includes the auditing of matters that have not been referred for comprehensive investigation.
11.2.3 Internal and External Review of Inspectors’ Decisions

Certain decisions made by inspectors under the *Occupational Health and Safety Act 2004* are ‘reviewable decisions’ (s 127). Upon application by an ‘eligible person’, such decisions are subject to internal review by the Authority (s 128).

Subsequently, the eligible person can apply to the Victorian Civil and Administrative Tribunal for external review of the Authority’s decision (s 129).

For further information see www.workcover.vic.gov.au.

12. WHEN WILL AN INSPECTION OCCUR?

A WorkSafe inspector will inspect a workplace for compliance with Victoria’s OHS laws in the following circumstances.

12.1 Notifiable Incident

Under s 38 of the *Occupational Health and Safety Act 2004*, an employer or self-employed person has a duty to notify the Authority where, at a workplace under their management and control, a ‘notifiable incident’ has occurred.

An inspector will attend a workplace where a workplace death occurs. Where another form of notifiable incident occurs, being:

- a serious injury (as described by s 37); or
- exposure of a person to an immediate risk (as described by s 37)

an inspector may attend the workplace, depending on the nature and circumstances of the incident.

For guidance on what constitutes a ‘notifiable incident’ under s 37 of the Act see www.worksafe.vic.gov.au

12.2 VWA Programs of Inspection

The majority of inspections occur as part of WorkSafe’s on-going programs of inspection, in particular, as part of programs that target focus areas for prevention (i.e. areas of activity identified by WorkSafe as strategic priorities for its enforcement activities – see topic 10 for details).

12.2.1 Inspector-initiated Inspections

In addition to conducting planned inspections under WorkSafe’s programs of inspection, from time-to-time WorkSafe inspectors initiate inspections in response to observations made or information received by the inspector (e.g. if an inspector is passing a construction site and observes a workplace activity that may pose an immediate risk, the inspector will initiate an inspection).

12.3 Attendance in Response to Requests under the OHS Act

In accordance with the *Occupational Health and Safety Act 2004*, WorkSafe must attend a workplace in response to:

- a request from a person issued with a Provisional Improvement Notice (PIN), or their employer, that a WorkSafe inspector enquire into the issuing of the PIN and either affirm (with or without modification) or cancel the PIN (s 63);
- a request from a party to an unresolved OHS issue or Direction to Cease Work that a WorkSafe inspector enquire into the issue and perform any function and/or exercise any power under the Act that the inspector considers to be reasonably necessary in all the circumstances, including the issuing of a prohibition notice (s 75);
- a request from a party to an unresolved issue between an Authorised Representative of a Registered Employee Organisation who enters a workplace to enquire into a suspected contravention of the Act and the employer at the premises that a WorkSafe inspector attend to resolve the issue (s 89);
- a request from a party to unresolved negotiations relating to a Designated Work Group that a WorkSafe inspector attend to resolve the matter (s 45).
Whilst attending a workplace upon such a request, in addition to taking whatever action is necessary to resolve the original issue, the inspector has the right to make an unrelated inspection of the premises (e.g. where an inspector observes an immediate risk that is unrelated to the original purpose of the visit).

12.4 Attendance in Response to Other Requests

A member of the public or person in a workplace (e.g. an OHS representative, union representative, employee or other worker) can request that WorkSafe send an inspector to the workplace to enquire into alleged non-compliance with Victoria’s OHS laws, for example, a reported breach of the duty to consult under the consultative provisions of the Act (s 35).

Where such a request is received, WorkSafe may send an inspector, depending on the nature and circumstances of the request (e.g. whether the alleged breach relates to a focus area for prevention).7

Whilst attending a workplace upon such a request, the inspector has the right to make an unrelated inspection of the premises (e.g. where an inspector observes an immediate risk that is unrelated to the original purpose of the visit).

13. PROVISION OF ADVICE AND INFORMATION

WorkSafe provides guidance material and advice to dutyholders both on a proactive basis, to encourage compliance, and as a remedial measure, to assist dutyholders to remedy a breach of Victoria’s OHS laws.

13.1 Information and Education

An important way in which WorkSafe assists workplace change is by providing practical, accessible, and customised guidance material on a large range of topics relating to compliance with standards. Guidance material is developed with the involvement of stakeholders on topics such as:

• guidelines and compliance codes (which set out how duties may be complied with);
• effective OHS management;
• hazard identification, risk assessment, and risk control processes; and
• avenues for further assistance.

WorkSafe’s information and education activities assist all parties involved in workplace health and safety, including: employers, employees and other workers, health and safety representatives, contractors, designers, manufacturers, and suppliers. Its information and education activities promote effective workplace health and safety management that emphasises:

• a planned and proactive approach;
• commitment and involvement of managers at all levels;
• the meaningful and effective involvement of employees and other workers;
• the identification and assessment of all risks and the control of hazards at their source;
• the development of a workplace culture that stresses occupational health and safety as a paramount priority;
• appropriate provision of training, information, and supervision; and
• systematic management of health and safety issues.

WorkSafe promotes the establishment of designated work groups and health and safety committees, and the overall development of effective workplace consultation and issue resolution – all of which are vital to improving health and safety in the workplace. WorkSafe also actively supports the election of health and safety representatives and the development of their skills.

Note 7: Where a person contacts WorkSafe in relation to a health and safety issue in the workplace, and the issue has not yet been through the relevant agreed or prescribed resolution procedures, WorkSafe may refer the matter back to the workplace parties for resolution in accordance with s 73 of the Act.
13.2 Advice from WorkSafe Inspectors

One of the key functions of WorkSafe is to provide advice to dutyholders. Section 18 of the Occupational Health and Safety Act 2004 states that WorkSafe may “give advice to a person who has a duty or obligation under this Act or the regulations about complying with that duty or obligation”.

WorkSafe inspectors will provide practical and constructive advice to dutyholders in relation to how to comply with Victoria’s OHS laws, and, where a breach is detected, how to remedy the breach. This advice includes referring dutyholders to applicable guidelines and compliance codes, and to other relevant information to assist with compliance.

Advice given under s 18 does not provide the dutyholder with any additional rights or defence under the Act in relation to an alleged breach. However, in accordance with the VWA General Prosecution Guidelines, the degree to which the dutyholder acted in accordance with such advice will be taken into account in assessing their level of culpability when deciding whether to prosecute.

14. ENFORCEMENT CRITERIA

A WorkSafe inspector who detects a breach of an OHS Act or regulation during an inspection must decide:

- what advice/information should be given to the dutyholder;
- what enforcement measures should be applied by WorkSafe to ensure that remedial action is taken by the dutyholder to remedy the breach; and
- whether the circumstances are such that the inspector should recommend that:
  - the Authority issue an infringement notice as a punitive measure; or
  - a comprehensive investigation be undertaken to determine whether a breach has occurred that may warrant prosecution (or other punitive action).

Where an inspector detects a breach of Victoria’s OHS laws, the inspector will take action to ensure that the breach is remedied by the dutyholder.

Prior to determining what enforcement action to take, the inspector will make enquiries – to the extent that is appropriate – with the dutyholder (or their nominated representative), relevant health and safety representatives, and other relevant parties.

In determining the most appropriate action to be taken, the inspector will take into account all of the following criteria:

14.1 Nature and Circumstances of the Alleged Breach

The nature and circumstances of the alleged breach, in particular:

- the seriousness of the alleged breach;
- the extent of the risk;
- the actual or potential consequence of the alleged breach (e.g. extent of injury caused to a person);
- the prevalence of the alleged offence; and
- any other relevant circumstances.

Note B: Infringement notices can only be issued in the circumstances/manner prescribed in the relevant Act and/or regulations and are only available for non-indictable offences.
14.2 Characteristics of the Dutyholder
The characteristics of the dutyholder will be taken into account in assessing the dutyholder’s level of culpability for the breach, in particular:

- the degree to which the dutyholder acted in accordance with any advice given by the Authority pursuant to s 18 of the Occupational Health and Safety Act 2004 in relation to complying with a duty or obligation under that Act;
- the relevant compliance history of the dutyholder (including the dutyholder’s response to WorkSafe’s previous enforcement and prevention activities); and
- the attitude of the dutyholder (including any relevant proactive measures taken to comply with Victoria’s OHS laws).

For information in relation to compliance for particular hazards and industries see www.worksafe.vic.gov.au

14.3 Deterrence
The impact of enforcement action on:
- general deterrence (i.e. reducing the likelihood that other dutyholders will commit similar offences or otherwise breach OHS laws); and
- specific deterrence (i.e. reducing the likelihood that the offender will commit a further breach of OHS laws).

14.4 WorkSafe’s Strategic Enforcement Priorities
The Authority’s strategic enforcement priorities – i.e. target areas (see topic 10 for details).

15. ENFORCEMENT MEASURES: REMEDIAL
Where non-compliance with Victoria’s OHS laws is detected, or where there is an immediate risk, the inspector will issue a notice or direction to compel the dutyholder to control the risk, unless the matter is addressed by the dutyholder at the time of its detection and in the presence of the inspector.

After consideration of the Enforcement Criteria, the following enforcement measures are available to an inspector to compel a dutyholder to take remedial action to rectify an alleged breach:

- voluntary compliance;
- improvement notice;
- prohibition notice;
- power to give directions;
- review of a PIN;
- review of a direction to cease work.

A non-disturbance notice may also be issued, where appropriate.

15.1 Voluntary Compliance
If the alleged breach is addressed by the dutyholder at the time of its detection by the inspector (i.e. immediate and satisfactory remedial action is taken) then – dependent upon consideration of the Enforcement Criteria – the inspector may decide to take no other enforcement action.

15.2 Improvement Notice
An inspector may issue an improvement notice if he/she reasonably believes that a breach of the Act or regulations is being committed, or has been committed and is likely to be committed again (s 111).

An improvement notice will generally be issued where non-compliance is detected which does not involve an immediate risk to health and safety and which is not corrected immediately.
The purpose of the improvement notice is to focus the dutyholder on the tasks to be carried out to remedy the alleged breach. The improvement notice will require the breach to be remedied by a certain date and may include directions on what remedial measures must be taken. Under s 113, an inspector can include a direction/condition that refers to a compliance code and offers a choice of ways to remedy the breach.

Because improvement notices do not require the breach activity to cease whilst the breach is being remedied, the notice may also contain directions/conditions on how the activity should be carried on in the interim (i.e. staged compliance), to minimise risks to health and safety. It can also state that if the breach is not remedied by a specified date, the breach activity must cease altogether.

If the dutyholder does not comply with the improvement notice by the specified date a comprehensive investigation may be commenced that may lead to prosecution for:

- failure to comply with the improvement notice; and/or
- the alleged breach of the Act or regulation for which the improvement notice was originally issued.

The Authority also has the power to apply to the Supreme Court for an order compelling a person to comply with an improvement notice (s 118).

A decision by an inspector to issue an improvement notice is subject to review upon application by an ‘eligible person’ (see topic 11.2.3 for details).


15.2.1 Risk Control Plan

Where numerous hazards are identified at a workplace (or across multiple workplaces controlled by the dutyholder) that do not involve an immediate risk an inspector may, as an alternative to issuing numerous improvement notices, and after discussion with the dutyholder:

(i) issue individual improvement notices in relation to the highest priority hazards; and

(ii) in addition, agree on a date by which the dutyholder will develop a risk control plan in respect to the systemic management of workplace hazards.

A risk control plan is a staged plan which can be used by a dutyholder to ensure that where numerous hazards are present at a workplace that do not involve an immediate risk they are addressed in a planned manner in order of priority.

When a satisfactory risk control plan has been developed by the dutyholder, its implementation may be monitored by WorkSafe. If the dutyholder fails to implement the risk control plan, further enforcement action may be taken by WorkSafe against the dutyholder.

15.3 Prohibition Notice

An inspector may issue a prohibition notice if he/she reasonably believes that there is an immediate risk to the health or safety of a person from an activity that is occurring or may occur in the workplace (s 112).

A prohibition notice requires that the risk activity cease (or cease to occur in the specified way) until the risk has been remedied. It can include directions on what measures must be taken to remedy the risk. Under s 113, an inspector can include in the notice a direction/condition that refers to a compliance code and offers a choice of ways to remedy the risk.

The purpose of a prohibition notice is to ensure that any activity which presents an immediate risk to workplace health and safety ceases at once and does not resume until the dutyholder has remedied the risk in accordance with the notice.
If the prohibition notice is not complied with, a comprehensive investigation will usually commence with a view to prosecution for:

- failure to comply with the prohibition notice; and/or
- where relevant, any alleged breach of OHS laws that resulted in the immediate risk.

The Authority also has the power to apply to the Supreme Court for an order compelling a person to comply with a prohibition notice (s 118).

A decision by an inspector to issue a prohibition notice is subject to review upon application by an ‘eligible person’ (see topic 11.2.3 for details).


### 15.4 Power to Give Directions

In addition to the power to issue improvement notices and prohibition notices, an inspector may give directions (either orally or in writing) to a person at a workplace if the inspector reasonably believes that it is necessary to do so because of an immediate risk to the health or safety of any person. It is an offence to refuse or fail to comply, without reasonable excuse, with such directions (s 120).

### 15.5 Review of a Provisional Improvement Notice (PIN)

A person issued with a provisional improvement notice (“PIN”) by a workplace health and safety representative, or the employer of the person issued with the notice, can request that a WorkSafe inspector “enquire into the circumstances which are the subject of the PIN”. After making appropriate enquiries, the inspector will either affirm (with or without modification) or cancel the PIN (s 63).

A health and safety representative who issues a PIN may also request that a WorkSafe inspector enquire into issues relating to the PIN. Alleged non-compliance with a PIN will be investigated by WorkSafe in the same manner as non-compliance with a notice issued by a WorkSafe inspector.

A decision by an inspector to affirm or cancel a PIN is subject to review upon application by an ‘eligible person’ (see topic 11.2.3 for details).

Similar provisions exist in other OHS legislation: Provisional Directions may be issued by Authorised Delegates under s 17A of the *Dangerous Goods Act 1985*.

### 15.6 Review of a Direction to Cease Work

Where a health and safety issue (s 73) or an issue relating to a Direction to Cease Work (s 74) is not resolved within a reasonable time, a party thereto can request that a WorkSafe inspector “enquire into the issue”. After making appropriate enquiries, the inspector will perform any function or exercise any power under the Act that he/she considers to be reasonably necessary in all the circumstances, including the issuing of a prohibition notice (s 75).

A decision by an inspector, pursuant to s 75(4)(b), in relation to whether reasonable cause existed for employees to be concerned for their health and safety is subject to review upon application by an ‘eligible person’ (see topic 11.2.3 for details).

### 15.7 Non-disturbance Notice

An inspector may issue a non-disturbance notice to an occupier of premises. This notice requires the occupier to stop the use of, and prevent disturbance to, specified plant, substances, etc. (s 110).

The purpose of a non-disturbance notice is to assist the inspector to perform his/her duties. The inspector will issue a notice when he/she believes that it is necessary to do so to “facilitate the performance of his or her functions or exercise of his or her rights under the Act or the regulations”.
e.g. a non-disturbance notice might be issued where a serious injury has occurred and the inspector is of the opinion that further inspection is necessary to determine whether a prohibition notice should be issued and/or that a comprehensive investigation should be undertaken to determine whether a breach has occurred that may warrant prosecution.

The Authority has the power to apply to the Supreme Court for an order compelling a person to comply with the non-disturbance notice (s 118).

A decision by an inspector to issue a non-disturbance notice is subject to review upon application by an ‘eligible person’ (see topic 11.2.3 for details).

16. ENFORCEMENT MEASURES: REVOCATION, SUSPENSION, CANCELLATION OF LICENSES ETC.

WorkSafe issues licenses, permits, certificates, registrations, notifications, and other regulatory permissions. In performing its enforcement activities, WorkSafe has the power to initiate the revocation, suspension or cancellation of any regulatory permission held by a dutyholder. Such action is a protective measure to ensure the safety of employees and/or the public. It may be undertaken even where a remedial measure (e.g. a prohibition notice) has been complied with by the dutyholder (ss 40-42).

In making a decision whether or not to issue or renew a regulatory permission WorkSafe will consider the person’s history of compliance.

The revocation, suspension, or cancellation of a regulatory permission may have serious consequences for the permission holder and may also have serious, adverse ‘flow on’ effects (e.g. for employees, dependent businesses, etc.). WorkSafe acknowledges this potential, which must be balanced against the paramount need to protect the health and safety of employees and/or the public.

In certain circumstances, non-compliance may also be reported to other regulatory agencies or statutory registration boards for consideration under their legislation.

In carrying out inspections and comprehensive investigations (in accordance with the VWA General Prosecution Guidelines) WorkSafe will consider whether a person has acted in accordance with any regulatory permissions.

17. ENFORCEMENT MEASURES: PUNITIVE

At times, after applying the Enforcement Criteria, WorkSafe will be of the opinion that – even if remedial action has occurred (e.g. a notice or direction has been issued) – punitive action may be warranted.

In such circumstances, the following options exist:

• infringement notice;
• recommendation for a comprehensive investigation.

17.1 Infringement Notice


Infringement Notices can only be issued in the circumstances/manner prescribed in the relevant Act and/or regulations and are only available for non-indictable offences.

Infringement Notices provide an immediate punitive effect, without the delay and cost of court proceedings. However, they can only impose a penalty of 10 units or one fifth of the maximum penalty that could be imposed by a court for the offence (s 139).

Note 9: As at July 2005, this equates to $1,048.10 (subject to change from time to time, as published in the Government Gazette).
An infringement notice is a punitive measure. It will not be withdrawn on the basis that an improvement notice or prohibition notice (i.e. a remedial measure) that was previously issued in relation to the breach has been complied with.

A person to whom an infringement notice is issued is entitled to reject the notice and to instead face prosecution proceedings in court.

Infringement notices can only be issued in the circumstances/manner prescribed in the relevant Act and/or regulations. For details see the Supplementary Enforcement and Prosecution Policy Infringement Notices at www.workcover.vic.gov.au

17.2 Recommendation for a Comprehensive Investigation

An inspector will recommend that a comprehensive investigation be undertaken by WorkSafe to determine whether a breach of the legislation has occurred that may warrant prosecution (or alternative punitive action) where:

- a work-related fatality has occurred (s 37); or
- the inspector is otherwise of the opinion that it is appropriate, taking into account the Criteria for Commencing a Comprehensive Investigation set out in part 11.1.3 of the VWA General Prosecution Guidelines.

18. PROSECUTION AND OTHER RESULTS OF A COMPREHENSIVE INVESTIGATION

Where a comprehensive investigation is conducted by WorkSafe then, after consideration of the prosecution criteria set out in part 12 of the VWA General Prosecution Guidelines, it will result in either:

- commencement of prosecution proceedings;
- an enforceable undertaking;
- a letter of caution; or
- no further action.

18.1 Prosecution Proceedings

Where sufficient admissible evidence exists of a breach of OHS laws and prosecution would be in the public interest, the Authority will commence proceedings under the relevant Act/regulations and conduct the prosecution in accordance with the VWA General Prosecution Guidelines. Where prosecution results in a finding of guilt, a range of sentencing options are available to the court. Depending on the nature of the offence, these may include, for example: monetary fines, imprisonment, adverse publicity orders (s 135); orders to undertake improvement projects (s 136), health and safety undertakings (s 137).

18.2 Enforceable Undertaking

Where it is in the public interest, a written undertaking may be accepted by the Authority in lieu of proceedings for an offence against the Act or regulations (s 16). As part of the undertaking, the dutyholder must remedy the alleged contravention in the manner specified, and take any other actions agreed to in the undertaking.

An enforceable undertaking is an alternative to prosecution. Its purpose is to focus the dutyholder on the tasks to be carried out to remedy the alleged breach and/or prevent a similar contravention of OHS laws in the future.

If an enforceable undertaking is not complied with, the Authority may apply to the Magistrates’ Court for an order enforcing the undertaking (s 17).

For details see the Supplementary Enforcement and Prosecution Policy Enforceable Undertakings at www.workcover.vic.gov.au

Note 10: In certain circumstances, matters may be referred to the Director of Public Prosecutions.
18.3 Letter of Caution
Where it is in the public interest, then, in limited circumstances for relatively minor offences, a Letter of Caution may be issued as an alternative to prosecution.

For details see the Supplementary Enforcement and Prosecution Policy Letters of Caution at www.workcover.vic.gov.au

18.4 No Further Action
No further action, where no breach is established OR there is insufficient admissible evidence of the breach OR it is not in the public interest to commence prosecution proceedings, accept an enforceable undertaking, or issue a Letter of Caution.

19. PROSECUTION-RELATED ACTIVITIES
All OHS prosecution-related activities are conducted in accordance with the VWA General Prosecution Guidelines. A range of Supplementary Enforcement and Prosecution Policies exist which provide details of the implementation of the principles set out in the General Prosecution Guidelines.

The VWA General Prosecution Guidelines and all Supplementary Enforcement and Prosecution Policies are available on request from the Authority, as well as being published on the WorkCover website (www.workcover.vic.gov.au).
1. NATURE OF GENERAL PROSECUTION GUIDELINES
The General Prosecution Guidelines set out the Victorian WorkCover Authority’s criteria for, and approach to, prosecution decisions. They guide the Authority in the exercise of its prosecutorial discretion.11

The General Prosecution Guidelines apply to all prosecution-related decisions made by the Authority under Victoria’s occupational health and safety (“OHS”) laws. They also apply to all prosecution-related decisions made by the Authority under Victoria’s accident compensation laws. The General Prosecution Guidelines replace any and all prosecution guidelines previously issued by the Authority.

2. LEGISLATION UNDER WHICH PROSECUTION MAY OCCUR

2.1 Occupational Health and Safety Prosecutions
Prosecutions for OHS offences are commenced/undertaken by WorkSafe as the regulatory arm of the Authority. Prosecutions relate to breaches of Victoria’s OHS laws, including breaches of the following Acts and associated regulations:

- **Occupational Health and Safety Act 2004**;
- **Dangerous Goods Act 1985**;
- **Equipment (Public Safety) Act 1994**;

The power to issue and conduct OHS prosecutions is delegated to the Chief Executive of the Victorian WorkCover Authority and the Executive Director, WorkSafe Victoria.

2.1.1 Referral to Director of Public Prosecutions
In appropriate circumstances, the Authority will refer matters to the Director of Public Prosecutions (“DPP”) for prosecution (e.g. under the Crimes Act 1958) and may, in certain circumstances, commence proceedings in consultation with the DPP.


Note 11: For further information in relation to the status of these Guidelines see Part 5 “Non-Adherence to Guidelines Does Not Affect Prosecution”.
2.2 Accident Compensation Prosecutions

Prosecutions for offences against Victoria’s accident compensation laws are commenced/undertaken by the Authority’s Rehabilitation and Compensation Business Unit, including prosecutions under the following Acts and associated regulations:

- **Accident Compensation Act 1985**;
- **Accident Compensation (WorkCover Insurance) Act 1993**; and
- **Crimes Act 1958**.

The power to issue and conduct accident compensation prosecutions is delegated to the Chief Executive of the Victorian WorkCover Authority and the Executive Director, Rehabilitation and Compensation Business Unit or, for limited offences, the Director, Business Support Division.

3. PUBLICATION OF GENERAL PROSECUTION GUIDELINES

The General Prosecution Guidelines are published in the Government Gazette in conformity with the requirements of s 130(4) of the Occupational Health and Safety Act 2004; s 40(3) of the Dangerous Goods Act; s 28(6) of the Equipment (Public Safety) Act; and s 252(6) of the Accident Compensation Act 1985.

The Guidelines are also:

- published on the Authority’s website (www.workcover.vic.gov.au); and
- incorporated into the WorkSafe Compliance and Enforcement Policy. (The broader Policy document places the Guidelines in context, as part of the Authority’s overall compliance and enforcement functions.)

4. SUPPLEMENTARY ENFORCEMENT AND PROSECUTION POLICIES

From time-to-time the Authority will develop Supplementary Enforcement and Prosecution Policies, which provide details of the implementation of the principles set out in the General Prosecution Guidelines.

The purpose of Supplementary Enforcement and Prosecution Policies is to:

- increase the consistent and transparent application of the General Prosecution Guidelines; and
- clarify aspects of the Authority’s decision-making processes.

Whereas the Guidelines apply to all prosecution-related decisions made by the Authority, Supplementary Enforcement and Prosecution Policies provide details of particular aspects of the prosecution process (e.g. the Supplementary Enforcement and Prosecution Policy ‘Enforceable Undertakings’ indicates the nature of OHS offences which will be considered for such undertakings).

Supplementary Enforcement and Prosecution Policies:

- are consistent with, and support, the implementation of the General Prosecution Guidelines;
- in no way replace or add to any of the principles set out in the General Prosecution Guidelines;
- should be read in the context of, and subject to, the General Prosecution Guidelines; and
- will be kept under regular review in relation to their effectiveness and relevance and may be modified by the Authority at any time.

An up-to-date list of all Supplementary Enforcement and Prosecution Policies and copies of all Supplementary Enforcement and Prosecution Policies are available at www.workcover.vic.gov.au
5. NON-ADHERENCE TO GUIDELINES DOES NOT AFFECT PROSECUTIONS

Although the Authority is required by statute to publish these General Prosecution Guidelines in the Government Gazette, the Guidelines themselves do not have the force of statute. They guide the Authority in the exercise of its prosecutorial discretion.

Any failure by the Authority to act in accordance with these Guidelines (or the Supplementary Enforcement and Prosecution Policies which support them) in no way affects the validity of a prosecution by the Authority.

Non-adherence to the Guidelines by the Authority also in no way affects the prosecutorial rights of the Director of Public Prosecutions (see, for example, s 130(5) of the Occupational Health and Safety Act 2004).

6. KEY AIM OF PROSECUTIONS

6.1 Key Aim of OHS Prosecutions

The key aim of the Authority’s prosecution activities in relation to occupational health and safety is to deter non-compliance with Victoria’s OHS laws and thereby prevent workplace and work-related deaths, injuries, and disease. (For this reason, prosecution action may be taken whether or not a breach has resulted in death, injury, or disease.) Related aims include the promotion of good OHS values and practices and, where relevant, organisational rehabilitation.

6.1.1 Constructive Compliance

WorkSafe’s prosecution activities are part of the Authority’s strategy of ‘constructive compliance’, whereby a balanced combination of positive motivators and deterrents is applied to improve workplace health and safety – for details, see topic 5 of the WorkSafe Compliance and Enforcement Policy.

In accordance with this strategy, WorkSafe offers advice, information, and education to encourage compliance with Victoria’s OHS laws. Where compliance is not obtained through such motivators, enforcement measures (e.g. improvement notices and prohibition notices) are used to secure compliance. In some circumstances, prosecution will also be considered a necessary response to the offence and/or the most appropriate means of dealing with the offender and deterring other prospective offenders from contravening the legislation.

6.1.2 Objectives

The objectives of an OHS prosecution are to:

- prosecute dutyholders, in accordance with these General Prosecution Guidelines, for alleged breaches of Victoria’s OHS laws; and
- publish, in accordance with these Guidelines, information in relation to the nature and outcome of prosecutions, for deterrence (general and specific) and educative purposes.
6.1.3 Operational Context and Processes

The Authority recognises that when it files a charge or conducts a prosecution it is not enforcing the legislation it administers in isolation, but is functioning as a prosecution agency within the criminal justice system. As with all prosecution agencies, the Authority will take action when it is required in the public interest.

From time-to-time the Authority will enter into Memorandums of Understanding with other agencies in the criminal justice system to establish inter-agency protocols (e.g. to avoid procedural and technical duplication of tasks where cross-jurisdictional responsibilities exist). Memorandums of Understanding:

- will be consistent with, and support, the implementation of the General Prosecution Guidelines;
- in no way replace or add to any of the principles set out in the General Prosecution Guidelines;
- should be read in the context of, and subject to, the General Prosecution Guidelines; and
- will be kept under regular review in relation to their effectiveness and relevance and may be modified by the Authority at any time.

Memorandums of Understanding will be available from the Authority upon request and at www.workcover.vic.gov.au.

6.2 Accident Compensation Prosecutions

The key aim of the Authority’s prosecution activities in relation to Victoria’s accident compensation laws is to encourage compliance and to maintain the integrity of the Accident Compensation scheme.

The prosecution objectives parallel those for OHS prosecutions (i.e. prosecute in accordance with these Guidelines; publish information about prosecutions; and function as a prosecution agency in a multi-agency criminal justice system – for details see 6.1).

7. PRINCIPLES OF PROSECUTION

The Authority will institute and conduct all prosecution-related activities to the highest standards of prosecutorial ethics and practice.

7.1 OHS Prosecutions

In accordance with the principles that underpin WorkSafe’s approach to all its activities, all OHS prosecution-related activities should be transparent, accountable, constructive, and effective. In addition, all OHS prosecution-related activities should be targeted, proportionate, consistent, and fair, and conducted in accordance with these General Prosecution Guidelines. (For details, see topic 9 of the WorkSafe Compliance and Enforcement Policy.)

7.2 ‘Accident Compensation’ Prosecutions

All ‘accident compensation’ prosecution-related activities should be transparent, accountable, consistent, and fair, and conducted in accordance with these General Prosecution Guidelines.
8. LIMITATION PERIODS FOR PROSECUTIONS
8.1 OHS Prosecutions

Under s 132 of the Occupational Health and Safety Act 2004, prosecution for an indictable offence must be brought within two years of:

- the offence being committed; or
- the Authority becoming aware that an offence has been committed

except that a prosecution may be brought after this time with the written authorisation of the Director of Public Prosecutions.

Prosecutions for summary offences under the Act must be brought within 12 months of the alleged offence, except where otherwise provided in the Act (see s 26(4) of the Magistrates Court Act 1989).

8.1.1 Other OHS Laws

Various limitation periods apply for the prosecution of indictable offences under other OHS laws. For summary offences, proceedings must be brought within 12 months of the alleged offence, except where otherwise provided in the relevant OHS law (see s 26(4) of the Magistrates Court Act 1989).

8.2 Accident Compensation Prosecutions

Various limitation periods apply for the prosecution of offences under Victoria’s accident compensation laws. For certain offences under the Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993 the limitation period is three years from the date of the alleged offence (e.g. s 252(4) of the Accident Compensation Act 1985). However, limitation periods may vary for individual offences.

Prosecutions may also be commenced for alleged offences under the Crimes Act 1958 which occur in connection with a claim for compensation. These offences are generally indictable offences and are not subject to statutory time limitations.

9. WHO MAY BE SUBJECT TO PROSECUTION?
9.1 OHS Prosecutions

All dutyholders have an on-going role to play in ensuring a safe and healthy working environment. Any dutyholder who breaches Victoria’s OHS laws may be subject to prosecution in accordance with these General Prosecution Guidelines – for example, dutyholders specified in the Occupational Health and Safety Act 2004, including:

- employers, including contractors with employees and labour hire companies (ss 21 to 24);
- employees (s 25) and other workers (ss 23-24);
- officers (ss 144-145);
- other persons who manage or control a workplace (s 26);
- designers of plant, buildings, and structures (ss 27-28);
- manufacturers of plant or substances (s 29);
- suppliers of plant or substances (s 30); and
- persons who install, erect or commission plant (s 31).

WorkSafe will consider the role of all dutyholders in assessing whether they have complied with their respective duties under Victoria’s OHS laws.

For details see the Supplementary Enforcement and Prosecution Policy Liability of organisations, officers, employees, and other dutyholders at www.workcover.vic.gov.au


Note 13: Careful consideration of the relevant legislation should be undertaken by any person who considers they may be affected.
9.2 Accident Compensation Prosecutions
All dutyholders have a role to play in the maintenance of an efficient and fair compensation and rehabilitation scheme. Any dutyholder who fails to comply with their legislative obligations may be subject to prosecution.

10. OHS INFRINGEMENT NOTICES
In certain circumstances, the Authority has the power to issue an infringement notice as an alternative to prosecution under OHS laws (see s 139 of the Occupational Health and Safety Act 2004; s 45B of the Dangerous Goods Act 1985; s 38 of the Commonwealth Road Transport Reform (Dangerous Goods) Act 1996; s 27 of the Equipment (Public Safety) Act 1994).
Infringement Notices can only be issued in the circumstances/manner prescribed in the relevant Act and/or regulations and are only available for non-indictable offences.
A person to whom an infringement notice is issued is entitled to reject the notice and to instead face prosecution proceedings in court.
For details see the Supplementary Enforcement and Prosecution Policy Infringement Notices at www.workcover.vic.gov.au

11. INVESTIGATION OF ALLEGED OFFENCES

11.1 OHS Comprehensive Investigations
Prior to determining whether to prosecute (or take alternative punitive action) against an alleged offender, WorkSafe will undertake a comprehensive investigation.

11.1.1 Purpose of Comprehensive Investigations
The purpose of a comprehensive investigation is to determine whether a breach of Victoria’s OHS laws has occurred that may warrant prosecution (or alternative punitive action).
A further aim of comprehensive investigations is to gather information that can be applied to assist in preventing future OHS breaches (i.e. gather information that can be used to improve future systems of hazard identification, risk assessment, and risk control).

11.1.2 Referrals for Consideration
WorkSafe receives referrals for consideration of whether to conduct a comprehensive investigation from a range of sources, including:
- WorkSafe inspectors (for details see topic 17 of the WorkSafe Compliance and Enforcement Policy);
- fire brigades (e.g. the Melbourne Fire and Emergency Services Board or the Country Fire Authority);
- the Environment Protection Authority
- the Victoria Police and the Australia Federal Police;
- a notification by the coroner;
- a complaint by a member of the public (including unions, employees, and health and safety representatives).

11.1.3 Criteria for Commencing Comprehensive Investigations
WorkSafe has clear strategic priorities (i.e. target areas) for its comprehensive investigations. Comprehensive investigations will usually occur in relation to the following target areas, with the decision in individual cases taking into account the need to balance the necessity to maintain public confidence in the administration of the law with consideration of whether a comprehensive investigation would place a disproportionate burden on WorkSafe’s enforcement capabilities (and any other relevant considerations).
Strategic priorities for commencing comprehensive investigations in relation to OHS offences include:

a) Work-related Fatalities

b) Other ‘Notifiable Incidents’

Other notifiable incidents (i.e. serious injury or an immediate risk to health or safety, as described in s 37) where there is a high degree of culpability such as:

- Reckless conduct: conduct that recklessly endangers, or may recklessly endanger, persons at work (s 32);
- Recalcitrance: failure to control risks despite previous notices, directions, warnings, incidents, advice or information (whether from the Authority or any other source – in particular, employees of the dutyholder or health and safety representatives);
- Recidivism: relevant repeat offences or breaches by dutyholders or prior findings of guilt and/or convictions under OHS laws and/or under any other relevant legislation;
- Duration of Breach: failure to identify and/or control the risk over a sustained period of time;
- Systems of Work: significant departure from widely-known/accepted safe systems of work resulting in:
  (i) an increase in risk (e.g. the introduction of a system of work or risk control measure that does not meet accepted safety standards); or
  (ii) failure to control risks arising from known hazards.

The degree to which the dutyholder has taken suitable measures to comply with OHS laws will be taken into account in assessing the level of culpability for the breach.

c) Focus Areas for Prevention

Alleged offences in focus areas of prevention, 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) offences relating to 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 – for details, see topic 10 of the WorkSafe Compliance and Enforcement Policy.

d) Non-compliance with a Notice or Direction

Failure to comply with a notice or direction issued by a WorkSafe inspector (e.g. an improvement or prohibition notice) or a health and safety representative (e.g. a provisional improvement notice), in particular, where the risk that was the subject of the notice/direction:

(i) still exists at the workplace; or
(ii) was ‘passed on’ without adequate warning (for example, sold or otherwise supplied for potential use at another worksite without adequate warning – e.g. see ss 23, 24 and 30); or
(iii) was remedied substantially after the date specified in the notice/direction.

Whilst failure to comply with a notice or direction is a strategic priority, the comprehensive investigation may also examine the original breach to which the notice/direction related – in particular, in circumstances (i) to (iii).
e) **Offence against a WorkSafe Inspector**

- hindering, obstructing, concealing evidence from, etc. a WorkSafe inspector or preventing a person from assisting a WorkSafe inspector (s 125);
- assaulting, intimidating, threatening, etc. a WorkSafe inspector or a person assisting a WorkSafe inspector (s 125);
- impersonating a WorkSafe inspector (s 126).

f) **Offence against a Health and Safety Representative (or Committee)**

Refusal by an employer to:

- allow OHS training as specified in a determination of the Authority (s 67);
- meet the obligations to health and safety representatives (e.g. access to information, interviews, time, and facilities) as specified in the Act (s 69);
- establish a health and safety committee (s 72).

g) **Offence against or by an Authorised Representative**

- offences by Authorised Representatives of Registered Employee Organisations (ss 91-92);
- hindering, obstructing, intimidating, etc. an Authorised Representative (s 93);
- impersonating an Authorised Representative (s 94).

h) **Discrimination**

Discrimination, or threats of discrimination, against an employee or prospective employee for any action in relation to occupational health and safety – for example, for being a health and safety representative (s 76).

i) **Coercion**

Coercion relating to the establishment of, or negotiations concerning, Designated Work Groups (s 53).

j) **Incident Notification and Site Preservation**

- failure to notify WorkSafe of a “notifiable incident” (s 37);
- failure to preserve an incident site (s 39).

k) **Dangerous Goods Offences**

- offences involving a failure to comply with the Dangerous Goods Act 1985 that result in substantial damage to property;
- breaches involving high consequence dangerous goods; and

l) **Equipment (Public Safety) Offences**

- breaches of Governor-in-Council Orders under s 37 of the Equipment (Public Safety) Act 1994 that impose an absolute prohibition in relation to prescribed equipment.

m) **Other Target Areas**

(i) where appropriate, failure to pay the penalty imposed in an infringement notice within the specified time or prosecution upon withdrawal of an infringement notice (s 142);

(ii) a comprehensive investigation will be conducted where, in accordance with s 131 of the Occupational Health and Safety Act 2004, a person requests that a prosecution be brought (and where subsequently the matter may be referred to the Director of Public Prosecutions for advice).
11.2 ‘Accident Compensation’ Investigations

Areas of investigation in relation to Accident Compensation offences include:

- theft or fraud-related offences by a service provider, employer or worker;
- offences by an employer that may prejudice the WorkCover rights of an injured worker or compromise the efficient and effective operation and management of the accident compensation scheme;
- offences against persons exercising powers under the legislation.

The Authority will assess and, where appropriate, investigate allegations of non-compliance by dutyholders. In addition, from time-to-time the Authority may determine additional areas of strategic importance that require focused investigation due to the risk they present to the integrity of the accident compensation scheme (e.g. because of their prevalence) and/or for reasons of general deterrence.

12. PROSECUTION CRITERIA

Where an OHS comprehensive investigation or an Accident Compensation investigation reveals evidence of a breach, the Authority will consider whether a prosecution (or alternative punitive action) should commence.

In determining the most appropriate prosecution-related action to take following an OHS comprehensive investigation (i.e. prosecution, enforceable undertaking, letter of caution, no further action) or an Accident Compensation investigation (i.e. prosecution, letter of caution, letter of advice, administrative penalties, or no further action), the Authority assesses the information obtained during the investigation by considering and applying the following prosecution criteria:

- Sufficient Evidence: whether there is sufficient evidence to support a reasonable prospect of conviction; and
- Public Interest: the Authority’s Public Interest Criteria.

13. SUFFICIENT EVIDENCE

As the initial step in determining whether to undertake prosecution proceedings (or an alternative form of punitive action) against an alleged offender, the Authority endorses and adopts the considerations, as set out from time-to-time, in the Australian Prosecutorial Guidelines (‘APG’), in particular:

13.1 Reasonable Prospect of Conviction

(i) “The initial consideration… is whether the evidence is sufficient to justify the institution or continuation of a prosecution.” (APG 2).

(ii) “A prosecution should not be instituted or continued unless there is admissible, substantial, and reliable evidence that a criminal offence known to law has been committed by the alleged offender…..a bare prima facie case is not enough.” (APG 2-3).

(iii) “Once it is established that there is a prima facie case, it is then necessary to give consideration to the prospects of conviction. A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.” (APG 3)

13.2 Matters to be taken into Account

“The decision whether there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as:

- the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact…;
- the admissibility of any alleged confession or other evidence…;

Note 14: The full text of the Australian Prosecutorial Guidelines is available at www.workcover.vic.gov.au
• any lines of defence which are plainly open to, or have been indicated by, the alleged offender; and
• any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction.” (APG 4)

13.3 Evaluation of the Evidence

When evaluating the evidence regard should be given to the following matters (APG 6):

13.3.1 Grounds for Exclusion of Evidence

“(a) Are there grounds for believing the evidence may be excluded, bearing in mind the principles of admissibility at common law and under statute? For example, prosecutors will wish to satisfy themselves that confessional evidence has been properly obtained. The possibility that any evidence might be excluded should be taken into account and, if it is crucial to the case, may substantially affect the decision whether or not to institute or proceed with a prosecution.”

13.3.2 Admissions

“(b) If the case depends in part on admissions by the alleged offender, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the alleged offender?”

13.3.3 Reliability and Credibility of Witnesses

“(c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the defendant, or may be otherwise unreliable?”

“(d) Has a witness a motive for telling less than the whole truth?”

“(e) Are there matters that might properly be put to a witness by the defence to attack his or her credibility?”

“(f) What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability that is likely to affect his or her credibility?”

“(g) If there is conflict between eyewitnesses, does it go beyond what one would expect and hence materially weaken the case?”

“(h) If there is a lack of conflict between eyewitnesses, is there anything that causes suspicion that a false story may have been concocted?”

13.3.4 Availability of Witnesses

“(i) Are all the necessary witnesses available and competent to give evidence, including any who may be abroad? Is any witness likely to obtain an exemption from giving evidence pursuant to s 400 Crimes Act 1958?”

13.3.5 Child Witnesses

“(j) Where child witnesses are involved, are they likely to be able to give sworn evidence or, if not, is there corroboration in some material particular by some other evidence implicating the alleged offender?”

13.3.6 Identification Issues

“(k) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the alleged offender?”

13.3.7 Multiple Defendants

“(l) Where two or more alleged offenders are charged together, is there a realistic prospect of the proceedings being severed? If so, is the admissible evidence sufficient to prove the case against each alleged offender should separate trials be ordered.”
14. PUBLIC INTEREST

Where it is determined that sufficient evidence exists to support a prosecution (or alternative punitive action) against the alleged offender, consideration will then be given as to whether it is, in fact, appropriate for the Authority to undertake such action.

The Public Interest Criteria which WorkSafe takes into consideration when deciding whether prosecution or other punitive action (i.e. enforceable undertaking or letter of caution) is appropriate, and if so which, include the following:

14.1 Effect on Decision to Prosecute (or take Alternative Punitive Action)

WorkSafe endorses and adopts the comments, as set out from time-to-time, in the *Australian Prosecutorial Guidelines* (‘APG’) and the importance of public interest considerations, in particular:

(i) “It has never been the rule….that suspected criminal offences must automatically be subject to prosecution……(Prosecution should occur) ‘whenever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest’. That is still the dominant consideration.” (APG 1)

(ii) “The decision whether or not to prosecute is the most important step in the prosecution process. In every case, great care must be taken in the interests of the victim, the suspected offender, and the community at large to ensure that the right decision is made. A wrong decision to prosecute, or conversely, wrong decisions not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.” (APG 2)

(iii) “Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.” (APG 7)

(iv) “…Generally speaking the more serious the offence, the less likely it will be that the public interest will not require that a prosecution be pursued.” (APG 8)

(v) “Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the court in mitigation at sentence. Nevertheless, where the offence is not so serious as plainly to require prosecution the prosecutor should also apply his or her mind to whether the public interest requires a prosecution to be pursued.” (APG 10)

14.2 Public Interest Considerations: Alleged OHS Offences

The Public Interest Criteria which WorkSafe takes into consideration when deciding whether prosecution or other punitive action is appropriate, and if so, of what kind include the following:

14.2.1 Nature and Circumstances of the Alleged Offence

- the seriousness of the alleged offence;
- the extent of the risk;
- the actual or potential consequence of the alleged offence (e.g. extent of injury caused to a person);
- the prevalence of the alleged offence;
- mitigating or aggravating circumstances; and
- any other relevant circumstances.
14.2.2 Characteristics of the Duty Holder
- the degree of culpability of the alleged offender in connection with the offence, for example:
  - the degree to which the dutyholder acted in accordance with any advice given by the Authority pursuant to s 18 of the *Occupational Health and Safety Act 2004* in relation to complying with a duty or obligation under that Act;
  - the relevant compliance history of the alleged offender (including the alleged offender’s response to WorkSafe’s previous enforcement and prevention activities); and
  - the attitude of the alleged offender (including any relevant proactive measures taken to comply with Victoria’s OHS laws).
- relevant history and other relevant characteristics of the alleged offender (e.g. age, intelligence, physical health, mental health, special infirmity, etc.);
- subject to any rights or privileges (such as the privilege against self incrimination), whether the alleged offender is willing to co-operate in the investigation or prosecution of the matter, including the investigation and prosecution of others, or the extent to which the alleged offender has done so.

14.2.3 Level of Public Concern
- whether the nature of the alleged offence is of considerable public concern.

14.2.4 Impact of Offence
- the attitude to prosecution proceedings which is held by:
  - the person who was injured or exposed to an immediate risk;
  - the family of a person who died as a result of the alleged offence;
- the impact of the alleged offence on such persons;
- the impact of the alleged offence on any other relevant persons (e.g. witnesses); and
- any other relevant impact of the offence.

14.2.5 Deterrence
- the impact of prosecution-related action on:
  - general deterrence (i.e. reducing the likelihood that other dutyholders will commit similar offences or otherwise breach OHS laws); and
  - specific deterrence (i.e. reducing the likelihood that the offender will commit a further breach of OHS laws).

14.2.6 Effect of Prosecution
- the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;
- the availability and efficacy of any alternatives to prosecution;
- whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- any entitlement of the State, the victim or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken.

14.2.7 Administrative Considerations
- the necessity to maintain public confidence in the administration of the law;
- the likely length and expense of prosecution proceedings and/or a trial;
- whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute; and
- the staleness of the alleged offence.
14.3 Public Interest Considerations: Alleged Accident Compensation Offences

The public interest considerations which will be taken into account when determining whether to commence/continue prosecution proceedings for an alleged offence against Victoria’s accident compensation laws are parallel to those taken into account for alleged OHS offences (except for those factors which are specific OHS considerations).

15. DETERMINATION OF APPROPRIATE PROSECUTION-RELATED OPTION

15.1 Alleged OHS Offences

After consideration of all the relevant prosecution criteria (i.e. sufficient evidence and public interest), an OHS comprehensive investigation will result in either:

- commencement of prosecution proceedings;
- Enforceable Undertaking;
- Letter of Caution; or
- no further action.

15.1.1 Prosecution Proceedings

Where sufficient admissible evidence exists of a breach of OHS laws and prosecution would be in the public interest the Authority will commence proceedings under the relevant OHS Act/regulations and conduct the prosecution in accordance with the VWA General Prosecution Guidelines.

15.1.2 Enforceable Undertaking

Where it is in the public interest, a written undertaking may be accepted by the Authority in lieu of proceedings for an offence against the Act or regulations (s 16).

As part of the undertaking, the dutyholder must remedy the alleged contravention in the manner specified, and take any other actions agreed to in the undertaking.

An enforceable undertaking is an alternative to prosecution. (Its purpose is to focus the dutyholder on the tasks to be carried out to remedy the alleged breach and/or prevent a similar contravention of OHS laws in the future.) However, if the undertaking is not complied with, the Authority may apply to the Magistrates’ Court for an order enforcing the undertaking (s 17).

For details see the Supplementary Enforcement and Prosecution Policy ‘Enforceable Undertakings’ at www.workcover.vic.gov.au

15.1.3 Letter of Caution

Where it is in the public interest, then, in limited circumstances for relatively minor offences, a Letter of Caution may be issued as an alternative to prosecution.

For details see the Supplementary Enforcement and Prosecution Policy Letters of Caution at www.workcover.vic.gov.au

15.1.4 No Further Action

No further action will be taken, where:

- no breach of OHS laws is established by the comprehensive investigation; or
- taking into account the prosecution criteria of these General Prosecution Guidelines:
  - there is insufficient admissible evidence of the breach; or
  - it is not in the public interest to prosecute the breach, accept an enforceable undertaking, or issue a Letter of Caution.

Note 15: In this context, having regard to all the relevant circumstances, whether a matter is a ‘relatively minor’ or ‘more serious’ offence will be determined by application of these General Prosecution Guidelines, in particular, the criteria for comprehensive investigation and the prosecution criteria – e.g. factors such as the actual or potential consequences of the breach are taken into consideration. It reflects the culpability involved in the offence.
15.1.5 Notification of Decision to Interested Persons

When a decision is made by the Authority as to what, if any, action will be taken by the Authority following a comprehensive investigation (i.e. prosecution proceedings, enforceable undertaking, letter of caution, no further action) the following persons will be notified forthwith in writing of the decision:

• the alleged offender;
• the person who was injured or exposed to an immediate risk;
• the family of a person who died as a result of the alleged breach;
• witnesses who have provided formal statements to a comprehensive investigation; and
• any other interested parties whom it is appropriate to notify.

15.2 Alleged ‘Accident Compensation’ Offence

After consideration of all the relevant prosecution criteria (i.e. sufficient evidence and public interest), an ‘accident compensation’ investigation will result in either:

a) prosecution proceedings being commenced under the appropriate Act and/or regulations in accordance with these General Prosecution Guidelines;

b) letter of caution, in limited circumstances for relatively minor offences, as an alternative to prosecution;

c) letter of advice, in limited circumstances, where there is prima facie evidence of a relatively minor or technical breach, as an alternative to prosecution;

d) administrative penalties, in limited circumstances, for offences under s 108(4A) of the Accident Compensation Act 1985 in relation to the late lodgement of claims by employers; or

e) no further action where no breach is established or there is insufficient admissible evidence of a breach or it is not in the public interest to commence prosecution proceedings.

16. CONDUCT OF INVESTIGATIONS AND PROSECUTIONS

Details of the processes by which the Authority conducts its investigations and its other prosecution-related activities in accordance with these General Prosecution Guidelines are set out, from time-to-time, in Supplementary Enforcement and Prosecution Policies. Examples include:

• Mode of Trial: in relation to when the Authority will seek to have an indictable offence which is triable summarily heard in the Magistrates’ Court;

• Liability of organisations, officers, employees, and other dutyholders: in relation to when it may be appropriate to prosecute various types of dutyholders (e.g. employees, companies, officers etc);

• Prosecution of an Offence under an Act and/or a Regulation; and

• Search Warrants.

An up-to-date list of all Supplementary Enforcement and Prosecution Policies and copies of all Supplementary Enforcement and Prosecution Policies are available at www.workcover.vic.gov.au

Note 16: i.e. ‘OHS comprehensive’ investigations and ‘accident compensation’ investigations.
17. REVIEW BY DPP OF DECISION NOT TO PROSECUTE (OHS)

17.1 Request to Commence Prosecution

Under s 131 of the Occupational Health and Safety Act 2004, if the Authority has not brought prosecution proceedings within six months of an alleged offence, any person may request that WorkSafe commence prosecution.

Upon receipt of such a request, WorkSafe will conduct a comprehensive investigation of the alleged offence and, within three months of the request being made, must advise the person in writing whether prosecution proceedings will be brought. If WorkSafe does not intend to prosecute, it must provide written reasons for its decision.

17.2 Referral for Advice by DPP

If requested to do so by a person to whom it has provided written reasons why prosecution proceedings will not be brought, the Authority must refer the matter to the Director of Public Prosecutions for advice as to whether the DPP considers that a prosecution should be brought.

17.3 Final Determination by Authority

After consideration of the DPP’s advice, the Authority will make its final determination whether or not to commence prosecution proceedings, and will advise the person who made the original request for prosecution forthwith in writing. A copy of the DPP’s advice must be sent to the person. If the Authority declines to follow the advice given by the DPP, it must also provide written reasons to the person.

17.4 Review Statistics

The Authority must provide statistics relating to reviews by the DPP in its annual report and on the WorkCover website (www.workcover.vic.gov.au).

18. SENTENCING OPTIONS

Where prosecution results in a finding of guilt, a range of sentencing options are available to the court. Depending on the nature of the offence, these may include, for example: monetary fines, imprisonment, and/or the OHS-specific dispositions set out in the Occupational Health and Safety Act 2004, such as adverse publicity orders (s 135); orders to undertake improvement projects (s 136), and health and safety undertakings (s 137).

Where appropriate, the Authority will seek sentencing dispositions that balance its aims of general and specific deterrence with those circumstances which, in individual cases, constitute relevant sentencing considerations.

For details see the Supplementary Enforcement and Prosecution Policy Sentencing Submissions at www.workcover.vic.gov.au

19. ANCILLARY ORDERS AND SUBMISSIONS

Where appropriate, in the course of its role as a prosecutorial agency, the Authority will:

- apply for ancillary orders (e.g. restraining orders);
- make ancillary submissions;
- in accordance with s 95F of the Sentencing Act 1991, upon request by or on behalf of a ‘victim’, read aloud in open court during the sentencing hearing any admissible parts of a victim impact statement that are appropriate and relevant to sentencing; or
- refer the initiation of such applications and submissions to the Director of Public Prosecutions and other relevant prosecutorial agencies.
19.1 Provision of Information to Persons Affected by OHS Offences
Where appropriate, the Authority will provide information in relation to ancillary orders (e.g. compensation orders) and submissions (e.g. Victim Impact Statements) to relevant persons.\textsuperscript{17}

For details see the Supplementary Enforcement and Prosecution Policy Ancillary Orders and Submissions at www.workcover.vic.gov.au

20. NOTIFICATION OF OUTCOME OF PROSECUTION
The following persons will be notified in writing by the Authority of the outcome of prosecution proceedings commenced by the Authority:

- the alleged offender;
- the person who was injured or exposed to an immediate risk;
- the family of a person who died as a result of the alleged breach;
- witnesses who have provided formal statements to a comprehensive investigation; and
- any other interested parties whom it is appropriate to notify.

21. PUBLISHING PROSECUTION OUTCOMES AND OTHER ENFORCEMENT DATA AND INFORMATION

21.1 Publishing and Utilising the Outcome of OHS Prosecutions
Publishing the nature and outcome of prosecution-related activity draws attention to the consequences of health and safety violations and the need for real and sustainable improvement in workplaces. It is a valuable tool both for educating dutyholders and deterring non-compliance.

The Authority will publish and/or utilise enforcement data and information to leverage the outcome of inspection and enforcement activity, including prosecution-related activity.

For example, the Authority will:

- publish enforcement data/information in relation to the nature and outcome of prosecutions (and, where appropriate, the imposition of alternative penalties such as infringement notices, enforceable undertakings, and letters of caution) to enhance specific and general deterrence;
- inform dutyholders in the same and similar industries of the nature and outcome of prosecutions (and, where appropriate, the imposition of alternative penalties) and provide advice in relation to how to prevent similar breaches; and
- utilise enforcement data/information resulting from inspection activity, comprehensive investigations, the imposition of alternative penalties, and the outcome of prosecutions to inform future inspection activity on:
  - a systemic level; and
  - where appropriate, in relation to individual dutyholders.

For details see the Supplementary Enforcement and Prosecution Policy Publishing Prosecution Outcomes and other Enforcement Information & Data at www.worksafe.vic.gov.au

21.2 Publishing the Outcome of Accident Compensation Prosecutions
In the case of accident compensation prosecutions, publishing the nature and outcome of prosecutions may also be undertaken as a deterrent and educative tool.

\textit{Note 17: Relevant persons to whom it may be appropriate to provide information include:
(i) the person who was injured or exposed to an immediate risk; (ii) the family of a person who died as a result of the alleged breach; (iii) other relevant persons (e.g. other persons who have suffered injury and/or property loss as a direct result of the alleged offence).}
This Explanation of Terms applies to terms used in the VWA General Prosecution Guidelines and the WorkSafe Compliance and Enforcement Policy. It is provided to facilitate understanding and in no way qualifies or defines the meaning of the terms used in those documents.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Accident Compensation laws</td>
<td>Accident Compensation Act 1985, Accident Compensation (WorkCover Insurance) Act 1993 (and, where applicable, the Crimes Act 1958).</td>
</tr>
<tr>
<td>Breach</td>
<td>A contravention of (i.e. non-compliance with) Victoria’s OHS laws.</td>
</tr>
<tr>
<td>Compliance</td>
<td>The continuous process of fulfilling obligations and duties imposed by legislation (e.g. by Victoria’s OHS laws). See topic 7 of the WorkSafe Compliance and Enforcement Policy.</td>
</tr>
<tr>
<td>Comprehensive Investigation (OHS)</td>
<td>A detailed investigation carried out to determine whether a breach of Victoria’s OHS laws has occurred that may warrant prosecution (or alternative punitive action) and to gather information that can be applied to assist in preventing future OHS breaches.</td>
</tr>
<tr>
<td>Constructive Compliance</td>
<td>The strategy applied by WorkSafe to all its enforcement and prosecution activities – a balance of positive motivators and deterrents to improve workplace health and safety.</td>
</tr>
<tr>
<td>Dutyholder</td>
<td>A person upon whom a duty is imposed by Victoria’s OHS laws, e.g. employers (including contractors with employees and labour hire companies); employees and other workers; officers; other persons who manage or control a workplace; designers of plant, buildings, and structures; manufacturers of plant or substances; suppliers of plant or substances; and persons who install, erect or commission plant.</td>
</tr>
<tr>
<td>Enforcement activities</td>
<td>WorkSafe activities that aim to reduce work-related and workplace death, injuries and disease by deterring non-compliance with Victoria’s OHS laws – including inspection activities and the use of remedial measures (such as improvement notices and prohibition notices) and punitive measures (such as infringement notices).</td>
</tr>
<tr>
<td>Focus area of prevention</td>
<td>Some of the areas identified by WorkSafe as strategic priorities for its enforcement and prosecution activities. See topic 10 of the WorkSafe Compliance and Enforcement Policy.</td>
</tr>
<tr>
<td><strong>Government Gazette</strong></td>
<td>An official publication of the government that contains proclamations bringing legislation into operation, notifications of government decisions and subordinate legislation, etc.</td>
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<td>------------------------</td>
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</tr>
<tr>
<td><strong>Memorandum of Understanding</strong></td>
<td>Agreement entered into by the Authority with other prosecutorial agencies to avoid procedural and technical duplication of tasks.</td>
</tr>
<tr>
<td><strong>More serious breach</strong></td>
<td>Having regard to all the relevant circumstances, whether an offence is a relatively minor or more serious offence is determined by application of the <em>VWA General Prosecution Guidelines</em>, in particular, the criteria for commencing comprehensive investigation and the prosecution criteria – e.g. factors such as the actual or potential consequences of the breach are taken into consideration. It reflects the culpability involved in the offence.</td>
</tr>
<tr>
<td><strong>Non-compliance</strong></td>
<td>Contravention (i.e. breach) of Victoria’s OHS laws.</td>
</tr>
<tr>
<td><strong>OHS</strong></td>
<td>Occupational health and safety</td>
</tr>
</tbody>
</table>
| **Prosecution-related activities** | The Authority’s decision-making processes and other activities when:  
  – it is considering whether to commence prosecution proceedings, accept an enforceable undertaking, issue a letter of caution or take no further action in relation to an alleged breach of Victoria’s OHS laws; and  
  – when undertaking the conduct such matters. |
| **Punitive measure** | A recommendation that:  
  – an infringement notice be issued or  
  – a comprehensive investigation occur in accordance with the *VWA General Prosecution Guidelines*.  
  See topic 17 of the *WorkSafe Compliance and Enforcement Policy*. |
| **RCBU** | Rehabilitation and Compensation Business Unit, which manages the Authority’s functions in relation to assisting and compensating injured workers and providing Victoria’s workplace insurance scheme. |
| **Relatively minor breach** | See definition of ‘More serious breach’. |
| **Remedial measure** | A measure taken by WorkSafe to enforce compliance with Victoria’s OHS laws (e.g. the issuing of an improvement notice or prohibition notice).  
  See topic 15 of the *WorkSafe Compliance and Enforcement Policy*. |
| **Serious injury** | As described by s 37 of the *Occupational Health and Safety Act 2004*. |
| **Statute** | An Act of parliament. |
| **Supplementary Enforcement and Prosecution Policy** | Policies that support the practical implementation of the *General Prosecution Guidelines*. See part 4 of the *VWA General Prosecution Guidelines*. |
### EXPLANATION OF TERMS (OHS)

<table>
<thead>
<tr>
<th><strong>Victoria’s OHS laws</strong></th>
<th>The following Acts and their associated regulations:</th>
</tr>
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<tbody>
<tr>
<td>“the Act”</td>
<td>- Occupational Health and Safety Act 2004 (“the Act”)</td>
</tr>
</tbody>
</table>

| **Victoria’s Other OHS laws** | See Victoria’s OHS laws. |

| **VWA ("the Authority")** | Victorian WorkCover Authority, the manager and regulator of Victoria’s workplace safety system. |

| **VWA General Prosecution Guidelines** | The guidelines which apply to all VWA prosecutions and which are gazetted in accordance with legislative requirements. |

| **Workplace parties** | Employers, employees and other workers, health and safety representatives, and other dutyholders. |

| **WorkSafe** | VWA’s occupational health and safety arm, which manages its regulatory functions in relation to preventing workplace and work-related deaths, injuries, and disease and in enforcing Victoria’s OHS laws. |

| **WorkSafe Compliance and Enforcement Policy** | The policy which 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. |

### DETAILS OF POLICY DEVELOPMENT: LAST UPDATE

- The *WorkSafe Compliance and Enforcement Policy* was last updated on: 1 June 2005.
- The *VWA General Prosecution Guidelines* was gazetted on: 1 July 2005.
WORKSAFE VICTORIA

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Mulgrave ............... 03 9565 9444
Preston ............... 03 9485 4555
Shepparton ............ 03 5831 8260
Traralgon ............. 03 5174 8900
Wangaratta ............ 03 5721 8588
Warrnambool ......... 03 5564 3200