Enforcement Group Policy – Letters of Caution

Introduction
The Victorian WorkCover Authority’s (VWA) Enforcement Group is responsible for investigating and prosecuting offences under Victoria’s accident compensation and occupational health and safety laws.

The VWA makes prosecution decisions in accordance with its published General Prosecution Guidelines (‘the Guidelines’) and Compliance and Enforcement Policy (‘C&E Policy’), which set out the VWA’s criteria for all prosecutorial decisions.

This policy details the VWA’s approach to issuing letters of caution for offences against legislation administered by the VWA. It should be read in the context of, and subject to, the Guidelines and C&E Policy.

When the VWA may issue a letter of caution
Where the VWA has investigated an incident and established that a contravention of accident compensation or occupational health and safety law has occurred, the VWA may determine to issue a duty holder with a letter of caution instead of commencing a prosecution.

To issue a letter of caution, the VWA must be satisfied that:

- a contravention of a provision of the relevant accident compensation or occupational health and safety law has occurred;
- having regard to all the available evidence, there is a reasonable prospect of obtaining a conviction; and
- it is not in the public interest to commence a prosecution against the duty holder, having regard to the considerations set out in the Guidelines and C&E Policy.

The VWA is likely to issue a letter of caution for relatively minor breaches of the legislation, which will be determined by considering the factors set out in the Guidelines and C&E Policy. These include the nature and circumstances of the breach, the characteristics of the duty holder, and the impact of the breach on others and on the workers’ compensation scheme.

The purpose of a letter of caution is to bring to a duty holder’s attention that it has breached its legislative obligations, and that in the circumstances, the VWA considers a prosecution is not in the public interest and that a letter of caution is the appropriate enforcement action.

Content of a letter of caution
A letter of caution will briefly detail the findings of the VWA’s investigation, and identify the relevant legislative provisions that have been contravened for which the VWA could bring a prosecution.

The letter will state that the VWA is satisfied a relevant offence has been established, and that it has considered all the circumstances and decided not to prosecute the duty holder in this instance.

Use of a letter of caution
A letter of caution will be issued to the relevant duty holder. If the matter has been referred to the VWA by a complainant, the VWA may notify the complainant that the outcome of the investigation resulted in a letter of caution being issued to the duty holder.

The VWA will maintain a record of all letters of caution issued, and may consider past letters of caution when deciding whether or not to prosecute a duty holder for any subsequent breaches of its legislative obligations.

The VWA will not make use of letters of caution during the prosecution or sentencing for a subsequent offence, unless it is to refute a claim that the duty holder was unaware of its legislative obligations.
Victorian WorkCover Authority

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