



Victorian
Chamber of Commerce
and Industry



Independent Review of OHS Compliance and Enforcement in Victoria

Victorian Chamber of Commerce and
Industry Submission
August 2016

Introduction

The Victorian Chamber of Commerce and Industry welcomes the opportunity to make a submission to the Independent Review of Occupational Health and Safety (OHS) Compliance and Enforcement in Victoria.

The Victorian Chamber has a strong track record of working closely with Government on OHS and workers' compensation matters.

The Victorian Chamber is actively engaged in the statutory OHS and WorkSafe Advisory Committees. We have strong technical capabilities built on the provision of OHS training, advice and consulting services to Victorian business. Our large and diverse membership base means that we can speak authoritatively on behalf of business and provide input on priority areas for reform.

OHS is a reform priority for Victorian Chamber members. It is also a high cost area of state regulation. As such, this review and the concurrent review of the OHS regulations provide an important and timely opportunity to improve the current system and provide meaningful savings for business without compromising workplace safety outcomes.

We consider that through these two processes, Government should seek to achieve a significant reduction in the regulatory burden associated with the OHS scheme. Doing so would consolidate Victoria's position as having the safest workplaces in Australia at the lowest regulatory cost to business. This would also provide broader economic benefits and contribute to the Government's 25 per cent red tape reduction target.

The Victorian Chamber supports the review's focus on improving the administration of OHS laws. Improving the administration of regulation was a focus of the 2013 report by the Productivity Commission *Regulator Engagement with Small Business* which found that how businesses 'experience' regulation has as much to do with how regulators engage with businesses as it does with the regulations themselves.

The importance of improving the administration of regulation was also recognised through the regulatory improvement projects undertaken by the former Victorian Competition and Efficiency Commission. A focus on improving business experience with OHS regulation therefore has the potential to deliver real savings and benefits to Victorian business.

Information Provision

The WorkSafe website is a vital source of information for business on their rights and obligations under OHS laws.

Victorian Chamber members have reported that while experienced or 'tech savvy' users are generally able to find relevant information on the WorkSafe website, its layout and organisation falls short of best practice website design.

We have received particular comments on:

- The lack of an effective search function.
- The complicated layout and organisation of information.
- Poor accessibility for people from diverse cultural backgrounds.
- Poor accessibility for people with limited levels of education.
- The currency of guidance material (some of which lists publication dates more than 10 years old).

Members also reported that advice and guidance provided by the WorkSafe telephone advisory service is not always accurate and that often advisory service operators do not have the knowledge or expertise to answer questions and need to refer to supervisors for assistance.

The Victorian Chamber recommends that information provision to businesses be improved by:

- **Updating and streamlining the WorkSafe website.**

- **Updating the currency of written guidance material.**
- **Providing ongoing training to advisory service officers to ensure that they are able provide accurate advice.**

Compliance and Enforcement Policy

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

The Compliance and Enforcement policy would also benefit from increased consistency with the National Compliance and Enforcement policy. This would reduce the compliance burden for businesses operating across more than one jurisdiction.

The Victorian Chamber recommends WorkSafe's Compliance and Enforcement Policy be updated and made more consistent with the National Compliance and Enforcement policy.

Modern Regulator

The Victorian Chamber supports WorkSafe's efforts to consolidate its position as a modern regulator. However, more can be done to ensure that WorkSafe is achieving the best safety outcomes at the lowest cost to business.

WorkSafe Victoria can consolidate its position as a modern, risk-based regulator by:

- **Being more visible in the areas of inspection, advertising, education and communication.**
- **Applying the principles of constructiveness, accountability, transparency, consistency, impartiality, fairness and proportionality.**
- **Striking an appropriate balance between the provision of advice and enforcement.**
- **Using a broader range of evidence and data to target its activities instead of just relying on claims information.**

Assistance to Business

As described in the discussion paper, WorkSafe applies a strategy of 'constructive compliance' – a balanced combination of positive motivators and deterrents – to improve workplace health and safety.

Over time, the Victorian Chamber has observed a changing balance between WorkSafe's use of positive motivators, such as proactive programs to assist businesses to improve safety, and deterrents, such as inspections and prosecutions.

While we acknowledge the benefits of programs such as the OHS Essentials Program, the WorkHealth Improvement Network and the Prevention Fund, in the Chamber's view there is currently a comparatively limited use of proactive programs or financial incentives to help businesses improve safety, either delivered directly by WorkSafe or by third parties.

The Victorian Chamber recommends that a greater focus be placed on providing proactive assistance to businesses to help them improve workplace safety. A particular focus should be on start-ups and small businesses as these businesses are less likely to have the resources and expertise to establish robust systems to manage workplace health and safety.

While risk rated premiums are an important driver of safety performance, we encourage the review panel to consider exploring avenues to further incentivise and recognise good workplace safety performance.

Consultation with Stakeholders

While WorkSafe provides a range of avenues for consultation with stakeholders, in many instances information on WorkSafe programs, activities and policies is provided after decisions have been made. Meaningful engagement needs to capture stakeholder input prior to decisions being finalised.

Especially where industry associations have been involved in the development of new initiatives, WorkSafe should also make greater use of these stakeholders to disseminate information to their members.

The Victorian Chamber recommends that existing stakeholder forums be used more effectively by providing stakeholders with a greater opportunity to input into policy and program issues before decisions are finalised.

Inspectorate

Feedback from Victorian Chamber members on their interactions with the WorkSafe inspectorate is generally positive, both in relation to periodic inspections and responses to safety incidents.

However, some members indicate that from time to time they encounter inspectors who are not constructive in providing information to help them address problems that have been identified.

As outlined in the *WorkSafe Compliance and Enforcement Policy*, one of the key roles of inspectors is to 'provide practical, constructive advice and information to dutyholders about how to comply with their OHS duties and obligations'.

The Victorian Chamber recommends that training and guidance for WorkSafe inspectors be revised to ensure they are actively providing practical advice to businesses on solutions to workplace safety issues, and not just identifying problems.

Enforcement

The discussion paper asks how effective WorkSafe is at promoting its enforcement outcomes for prevention purposes.

While acknowledging the merits of publicising enforcement outcomes as a mechanism to raise public awareness of workplace safety issues, the Victorian Chamber highlights the need to ensure that communications are balanced.

The Victorian Chamber urges WorkSafe to ensure that all WorkSafe communications campaigns are balanced, factual and do not 'demonize' employers. It is important that communications highlight both employer and employee OHS responsibilities.

Continued engagement

The Victorian Chamber looks forward to continuing to engage with the Review Panel, WorkSafe and the Government on the finalisation of this review and the implementation of its findings.