



Submission to:

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

By:

**The Australasian Meat Industry
Employees' Union (Victorian Branch)**

July 2016

INTRODUCTION

The meat industry has been built over many years and has continued from generation to generation. Work in meatworks and associated workplaces has always been physically hard, dangerous and skilful. Without the strength of organized labour, the AMIEU, it would undoubtedly be more dangerous.

Slaughtering and processing beef, lamb, pork, and poultry for our food supply are inherently dangerous jobs. Turning a 1,250 pound steer or a five pound chicken into cuts sold in the marketplace is physically demanding work undertaken in a difficult and hazardous work environment. Workers use sharp hooks and knives while standing on floors made slippery from blood, fat, faecal matter, and other bodily fluids. Unpredictable and violent reactions from animals before slaughter pose constant physical threats to workers. Heavy suspended carcasses of beef travelling along a fast moving automated line can slam a worker to the floor. Down the line, processing workers stand for long periods of time working closely together while making thousands of repetitive cuts each shift. The noise is deafening and temperatures in the plants range from hot and humid on the killing floors to near freezing in the processing rooms. Pathogens can infect workers, and chemicals from decomposing animal waste, disinfectants, or gases such as ammonia used for refrigeration can prove deadly.¹

Workers' compensation is a dramatic understatement of the level of work related injuries and illnesses, but they are the main information that is available and statistics from WorkSafe 2014/2015 show that Claims per million hours worked in the meat industry are approximately 3 times the standardised claims reported in the scheme. The frequency and severity of the injuries is reflected in an industry premium rate of 6.25% when the scheme premium rate is 1.27%.² Adequate regulation and enforcement is essential to address this situation. For this reason the Australasian Meat Industry Employees' Union (AMIEU) welcomes the opportunity to make comment on OHS compliance and enforcement.

The AMIEU represents workers in the meat industry. The AMIEU represents a broad range of occupations including Butchers, Labourers, Drovers (at abattoirs), Slaughterers, Boners, Slicers, Knife Hands, Packers, Meat Lumpers, Casings Workers, Smallgoods Workers, Rendering Workers, Meat Wrappers and Meat Cabinet Attendants.

AMIEU COMMITMENT TO OCCUPATIONAL HEALTH AND SAFETY

Occupational health and safety (OH&S) is a fundamental and longstanding pursuit of the AMIEU on behalf of its members. For example:

- There has been a full time health and safety/compensation officer for more than 50 years.
- The Victorian Branch of the AMIEU established a medical centre in the 1960s because of the need for medical practitioners who were capable of recognising and providing proper treatment for zoonotic infections and other work related conditions suffered by workers in the meat industry.

¹ Lessons Learned Safe food from safe workplaces: protecting meat and poultry processing workers University of Massachusetts Lowell 2010

² WorkSafe presentation to the Australian Meat Industry Council April 2016

- The AMIEU was actively involved in debating and developing the legislation for health and safety, that is the 1983 Bill, the 1985 OHS Act and the 2004 OHS Act.
- The AMIEU was actively involved in developing/drafting the Accident Compensation Act in 1984/5.
- An AMIEU Official was a member of the Accident Compensation Commission from its inception until it was abolished.
- The AMIEU was actively involved in the development of the consolidated OHS regulations.
- The AMIEU has provided training on health and safety in our industry for representatives since 1986.
- Representatives of the AMIEU are regular participants in tripartite and government bodies associated with workers' compensation and health and safety.

The AMIEU has surveyed our members and Health and Safety Representatives from abattoirs, boning rooms, smallgoods manufacture, meat rooms and retail butchers to ascertain their experience of the compliance and enforcement practice of WorkSafe Victoria. The AMIEU comments are based, therefore, on decades of experience and the current experience of the health and safety representatives in the meat industry.

The AMIEU appreciates the opportunity to contribute to the Government's inquiry into OHS enforcement and compliance. Occupational health & safety has been a fundamental pursuit of the AMIEU for more than half a century. In the following pages we will propose a number of improvements to the way the Victorian Occupational Health and Safety Act 2004 is enforced.

OVERVIEW

We note that:

*WorkSafe has been the subject of several external reviews, inquiries and audits. The 2004 Maxwell review led to the making of a new OHS Act. Reforms were made to improve the performance and capacity of WorkSafe. The 2007 Stensholt review focused on the implementation of the Maxwell reforms. That review concluded the administrative reforms were operating; **its key recommendations included greater use of statutory guidance and increased resourcing to aid enforcement** (emphasis added).*

This review aims to build on the findings of past and current audits, reviews and inquiries. It will draw on a range of materials, including findings of previous reviews and reports, available statistical data, academic research, submissions and consultation with key stakeholders³

In preparing our submission the AMIEU has gone to the Maxwell review and Stensholt review and the submissions that we made to them in addition to the WorkSafe Compliance and Enforcement Policy.

As the regulator for OHS legislation, it is WorkSafe's responsibility to ensure the compliance of duty holders under the legislation. The WorkSafe Compliance and Enforcement Policy (the Policy) outlines the regulatory mechanisms WorkSafe will use to achieve this. The legislation and the Policy adopt a 'constructive compliance' approach to making sure OHS laws achieve their aim.

There have been periods when the inspectorate's activity has focused on almost entirely on advising/encouraging. These periods have not resulted in improvement of health and safety. The

³ Independent Review of Occupational Health and Safety Compliance and Enforcement in Victoria Discussion Paper 2016

ability of the inspector to provide advice about what constitutes “compliance” is limited by the nature of the mixture of prescriptive and performance based Regulations.

Where a regulation specifically details the control which should be implemented, then obviously duty holders are so informed – they are told the “what”.

When this prescription is not available, the inspector provides advice to the duty holder about the “how” – the employer has to obtain technical advice, to adopt a systematic approach to risk control, the importance of consultation etc. It is not up to the inspectors to provide that advice or information.

Over the past few years, the focus on the ‘encouragement’ side of WorkSafe policies has been too dominant. This has come at the expense of the ‘deterrence’ side of compliance and enforcement policy.

AMIEU is in favour of WorkSafe increasing its use of workplace inspections with a mind to penalising and prosecuting employers who break the law. For the reasons outlined within the submission, AMIEU recommends the following:

Inspections/Inspectors:

- WorkSafe must carry out more inspections and be more effective;
- There must be more WorkSafe inspectors to achieve this;
- Inspectors should be drawn from a wide range of backgrounds with more recruitment from HSR and union backgrounds;
- Inspectors should also come from a range of industries. The construction industry and the meat industry are two industries where on the ground experience is essential;
- Inspectors need to be more consistent in the findings they make. Both with the decisions individual inspectors make from one inspection to the other, and the decisions made from one inspector to another;
- Inspectors must consider HSR concerns equally with employer concerns and be prepared to assist HSRs to exercise their powers and rights to improve workplace safety, recognising the inherent power imbalance in workplaces;
- WorkSafe must better target employers who are injuring/harming workers;
- Inspectors must be empowered to issue infringement notices.

Enforcement:

- Punitive measures must be a significant part of WorkSafe’s compliance and enforcement policies;
- Penalties must act as a genuine deterrence;
- WorkSafe should prosecute more often and in a manner that deters non-compliance and targets repeat offenders;
- Enforcement policies need to be adjusted to change the practices of large companies where high level accountability is reduced;
- Criminal prosecution should be considered where there is a prima facie case - not only to be considered when there is a high likelihood of a successful prosecution;
- Infringement Notices and on the spot fines may produce better outcomes for minor breaches of the law;
- Non-punitive penalties such as enforceable undertakings should be examined to ascertain their effectiveness – do they enforce compliance or excuse non-compliance?

Process:

- Internal review processes must be more transparent and accessible to HSRs and workers to increase its usefulness;
- A culturally and linguistically diverse information unit needs to be developed within WorkSafe;
- An Occupational Health and Safety Tribunal could be created within VCAT and the Magistrates Court to ensure that the person hearing matters has sufficient experience of the OHS system. In Western Australia the OHS Tribunal is a specialised *tribunal* within the *Western Australian Industrial Relations Commission*.

Health and Safety Representatives:

- HSRs must receive better support from WorkSafe to ensure they can exercise their rights and powers under the Act without fear of discrimination;
- WorkSafe should promote the importance of HSRs and the necessity of genuine consultation in the workplace;
- WorkSafe Inspectors must comply with the WorkSafe Compliance and Enforcement Policy with regards their obligations to HSRs.

ENFORCEMENT, NOT JUST ENCOURAGEMENT

The Occupational Health and Safety Act 2004 (Victoria) underpins WorkSafe's compliance and enforcement policies and activities. Section 4 (1) of the Act gives Victorian workers the right to "the highest level of protection against risks to their health and safety that is reasonably practicable". The Act (section 4 (2)) also stipulates that "persons who control or manage matters that give rise or may give rise to risks to health and safety are responsible for eliminating or reducing those risks so far as reasonably practicable."

The Occupational Health and Safety Act (2004) section 7 (c) states that it is the role of WorkSafe to "monitor and enforce compliance with the Act and the regulations."

WorkSafe, as Victoria's OHS regulator, must have as its primary objective, ensuring that Victoria workers are in fact provided with 'the highest level of protection that is reasonably practicable'.

DISCUSSION PAPER QUESTIONS

Question 1: How appropriate and relevant is the C&E policy in guiding WorkSafe's approach to ensuring Victorian OHS laws are complied with, enforced and communicated?

Under section 5 of WorkSafe's Compliance and Enforcement Policies it is clearly stated that WorkSafe is committed to the strategy of "constructive compliance" that provides a "balanced combination of positive motivators and deterrents". The first issue to raise here is 'what is the appropriate balance'? WorkSafe is not fully implementing this policy. WorkSafe's focus of in recent years has been on the provision of the development of compliance measures with a focus on information, education and advertising. There has been an inappropriate balance – weighing too heavily on the side of 'positive motivators' and not enough on deterrence.

The AMIEU considers that a great deal more must be done on enforcement. The policy has too heavily prioritised 'voluntary compliance' at the expense of inspections and enforcement of the OHS Act side of the policy framework.

In addition, and perhaps more importantly, while the policy can and should be improved, a major problem with the policy, in our view, is the lack of implementation by WorkSafe of its own policy.

We urge you to read the comments made by the workers below. Their experiences indicate that there is significant opportunity for improvement in enforcement

WorkSafe Annual reports show a steady decline in the number of visits undertaken by WorkSafe over the last five years. Non-punitive remedies such as voluntary compliance and enforceable undertakings have increased in use whilst we have seen a reduction in visits. As demonstrated above enforcement is an important part of the regulatory framework, it cannot be ignored in favour of voluntary compliance measures.

Question 2: How can the C&E policy be improved?

There must be more emphasis on the enforcement side and a corresponding increase in enforcement activities. Two problems exist with the implementation of the policy. Firstly, some areas of the policy need to be improved or strengthened. Secondly, existing policies must be implemented. The AMIEU participated in VTHC discussions with other affiliates and *we endorse the material in Table 1 in the VTHC submission.*

Question 3: How consistent is Victoria's C&E policy with the NC&E policy?

Question 4: Does the Victorian policy need to be more consistent with the national policy?

The AMIEU endorses the VTHC response. In particular we support the proposal that WorkSafe's compliance and enforcement policy should include the statement "business and undertakings will be monitored and held accountable if they fail to comply with work health and safety laws and OHS Laws"

The AMIEU also endorses the proposal that the Victorian C&E should be made consistent with section 14 of the NC&E with regards:

- Within one year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against (this) Act
- Within six months of an contravention of an enforceable undertaking, or
- If an offence relates to reckless conduct that creates a risk of death or serious injury/illness, at any time if fresh evidence is discovered.

Question 5: How effectively is WorkSafe operating as a modern regulator?

Worksafe identifies that '*Being visible and setting the agenda*' is part of operating as a modern regulator. The comments from the workers and HSRs in the meat industry suggests that WorkSafe is not as effective as is necessary.

Look at the responses to the question about what WorkSafe's intervention achieved in the workplace?

- Not much where I work before;
- The only thing WorkSafe achieved, is that I now know how completely useless WorkSafe truly is;
- It re-established in everyone's mind the due process that complainants should be willing and able to take;
- There should be an inspector at the work place to make sure the health and safety of the workers were followed and implemented;

- It stirred and shook management there and then; but long term eventually ended right back to square one, the follow up and implementation of the law is just as important as the first day of action;
- Don't know;
- Not much as not all positions "required" PPE and they never came back to check anyway;
- Nothing;
- Have never seen anyone from WorkSafe;
- Never saw anybody I don't believe they care;
- Nothing;
- A safer environment in a more timely manner;
- Nothing;
- The solution was to reduce force whilst pushing boxes. As the rollers that were installed did do that, it created another issue. If the worker needs to pull the boxes back it makes it a fair bit more difficult to do so;
- They said the ammonia was a safe level 3 hours after I called cease work so they undermined HSR right;
- I have been in workplaces that have had serious accidents and they did not show up.

As the majority of respondents have never seen the inspectors or have had a negative experience, WorkSafe has not achieved their goal as a modern regulator.

QUESTION 6: Are there areas in which WorkSafe could improve its approach as a modern regulator?

WorkSafe needs to take into account changing work patterns, increasing numbers of vulnerable workers, casual workers, short term visa holders such as student visas, backpackers, and so on. The other emerging area is the workers who are brought in under the Free Trade Agreements.

Take into account and plan for emerging issues.

WorkSafe must have a greater focus on properly planned, consulted on and agreed strategic approaches to prevention, compliance and enforcement. WorkSafe could start by:

1. Better targeting workplaces that have already injured workers for enforcement activity;
2. Adopting an infringement notice regime to deter offending discovered during an inspection; this approach would provide a better balance to WorkSafe's use of the constructive compliance model.

Clearly the responses from meatworkers to the survey WorkSafe is not doing enough to communicate with HSRs and employees. Worryingly, 42.3% of HSRs report that the inspector failed to speak with employees and 48% of HSRs did not consider solutions proposed by the employees. 64% of HSRs state that they did not receive an outcome report from the inspection. These statistics are a damning indication of WorkSafe's current handling of HSRs. WorkSafe must increase its compliance with the bare minimum of its obligations to HSRs as well as improving how it supports HSRs.

Question 7: Are there other regulatory approaches that the review should consider?

The AMIEU considers that risk based regulation must be supported by an approach to constructive compliance with sufficient emphasis on enforcement. This means that WorkSafe must provide full and real support to elected health and safety representatives in workplaces. It is consistent with public policy mechanisms throughout the developed world. Having a multi-faceted approach that encourages stakeholders to take ownership of health and safety important.

However, the implementation of the constructive compliance model has been lopsided and unbalanced, favouring education over compliance and enforcement.

Question 8: How effective is WorkSafe in applying the levers to ensure OHS laws are complied with, enforced and communicated?

The use of strategies to motivate and educate to encourage compliance are acceptable and can bring about positive OHS outcomes. However, if WorkSafe is to properly implement a constructive compliance approach it must be willing to enforce compliance where necessary.

The voluntary compliance regime fails to adequately deter employers from re-offending. WorkSafe is not feared as the tough cop on the beat. Employers know that it is highly unlikely that they will even get a slap on the wrist when WorkSafe inspects their site. Unions have reported that the same employer can get away with the same voluntary compliance on the same breaches of the Act/regulations on multiple occasions. This has to be stamped out. This lever is entirely ineffective for ensuring long term compliance with the OHS Laws.

The AMIEU considers that WorkSafe has been ineffective in using enforceable undertakings. For example:

In 2011 a slaughterer who had worked at Wagstaff Cranbourne for 30 years has a serious injury to his left hand which was caught in a hide puller. It was alleged that Wagstaff Cranbourne failed to provide and maintain plant or systems of work that was safe and without to risk to health.

Enforceable undertakings were given by Wagstaff Cranbourne in March 2014. They undertook to:

- Pay an RTO (MISS) to provide pre-vocational training, traineeship training, bandsaw training and supervisor training;
- Employ an OHS Compliance and Training Co-ordinator;
- Review their OHS Policies;
- Perform risk assessments;
- Provide induction for new staff;
- Training Certification II
- Training in safe work practices;
- Engage an External OHS Consultant to perform the risk assessment;
- Review Work Instruction;
- Review OHS practice and policies;
- Provide copy of OHS training material to WorkSafe for comment;
- Join AMIC (the meat industry employer body) OHS Committee.

From the viewpoint of the AMIEU this looks like an undertaking to comply with the OHS Act. We consider that that Enforceable Undertakings must address the issue or breach of the Act so that further incidents do not take place. Secondly, the actions prescribed by the undertaking must act as a genuine punishment and act as a deterrence to other employers. Furthermore, the AMIEU wants to see WorkSafe consult with HSRs and relevant unions to determine the appropriateness to the specific undertakings to the workplace and employer that they are being applied to.

Question 9: Are there other approaches and/or levers that the review should consider?

In order to enforce compliance WorkSafe could consider a wider range of enforcement methods. Since the Maxwell review there has been much debate about the use of Infringement Notices. This should be reviewed again. Infringement Notices could be considered for less significant breaches of the Act.

The AMIEU would support the use of 'on the spot fines' or 'penalty notices' as used by SafeWork NSW and Workplace Health and Safety Queensland as long as this did not replace prosecutions.

Question 10: How effective is WorkSafe at using data and information to target its compliance and enforcement activities to the areas of most need and effect?

Question 11: Are there other sources of data and information WorkSafe could use to inform its activities?

WorkSafe could be much better at using data other than compensation data to identify and target areas where compliance is lacking. It is necessary to go beyond claims data in order to identify workplaces with high rates of injury, disease and non-compliance.

The claims data should only be one of several sources used to determine strategies and priorities. It may also assist in helping to identify particular hazards that need to be addressed in particular industries. But it is not the only source – Other sources include anecdotal information from industry partners, research (including international research), other government departments (particularly Health), health associations eg Asthma Foundation etc Coroners information, GPs, BEACH information⁴, surveys, other jurisdictions.

A number of Zoonotic diseases are notifiable diseases. Most Zoonotic diseases will result from occupational exposures and the occupation of the sufferer is recorded by the health department. One clear example of the level of underestimation that occurs if WorkCover claims data is all that is relied on occurred in 2002/3 when 28 meatworkers suffered from Q Fever, a notifiable Zoonotic disease, but only 7 claims for WorkCover were lodged. Clearly claims data was totally insufficient.

There is very strong evidence that claims data is not accurate due to under-reporting, non-reporting of physical injuries, long latency illnesses/ conditions and there is little/no recognition of "psychosocial" injuries or illnesses.

The reliance on claims data also creates a Catch 22 for emerging issues. Claims will not be accepted until the work relationship is established and the risks will not be looked for in the workplace until the claims have been accepted.

It must also be recognised that in the real world some employers put pressure on workers not to claim compensation. This could happen by the employer paying for treatment (beyond their excess) or by threats and intimidation if the worker lodges a claim. Further, it has been our experience that the increased use of casual and labour hire workers (so-called "contingent employment") has exacerbated the under/non-reporting of injuries.

The rise of temporary migration to unprecedented levels means that workers on temporary visas are totally vulnerable to intimidation. The unfortunate reality is that unscrupulous employers can treat workers on temporary visas as a flexible, subservient and disposable workforce. The vulnerable workers believe that if they claim WorkCover they will lose their jobs and often be sent back to their country of origin. One of the ways in which claims data could be used which is contrary to the current practice by WorkSafe. In an industry such as the meat industry which has a significant inherent level of risk that needs to be controlled WorkSafe should inspect the workplaces with no claims. If they have controlled the risks there is a lot to be learned from them, or alternatively, there could be threats and intimidation of injured workers, in which case enforcement would be needed and possible prosecution could be considered.

⁴ BEACH Bettering the Evaluation and Care of Health

Reliance on claims data to identify priorities for enforcement will never provide protection for these vulnerable workers.

The regulatory theory underpinning constructive compliance is one of risk management. By identifying workplaces that have a track record of breaching the Act or have had numerous claims made against it, WorkSafe could more efficiently target high risk employers.

Question 12: How effectively does WorkSafe engage and involve stakeholders such as OHSAC?

The AMIEU has been extremely concerned and disappointed in WorkSafe’s engagement with forums such as OHSAC and WAC, for too long they have been forums where stakeholders were in effect informed rather than consulted.

In fact when we reviewed our submission to the Stensholt Review we believe that our comments are still relevant so we quote our 2007 submission:

Maxwell recommended that a statutory advisory committee be established for OHS.

The committee referred to as OHSAC is covered by s 19 of the OHS Act 2004. We consider that OHSAC that was established under the 2004 Act displays serious shortcomings.

The role that has been given to the OHSAC of advising the Board according to rules established by the Board is problematic. Decisions of the Board on OHS are not transparent. The Board operates without the involvement of key stakeholders and relies on the “good will” of the Chair and CEO to relay information to the Board and back to the OHSAC.

It is unacceptable for decisions which relate to the VWA as a regulator of OHS to be inaccessible to scrutiny. For example, the recent development of the Strategy 2012 included no role for the OHSAC. Given the significance that the VWA places on the new Strategy this is a serious shortcoming. The AMIEU and other Unions do not support a number of the initiatives but will have no opportunity to have our views considered as the Strategy is provided to OHSAC fait accompli.

Maxwell indicated that:

- The Board must be accountable to the committee in relation to the action it takes, or does not take, in response to the advice or recommendations it receives from the committee. (para 244).

However the VWA tends to treat OHSAC as a body to “sell” the decisions that have been made by the Board. This is not appropriate.

The AMIEU believes that OHSAC must be the principal tripartite source of advice to the Minister and the Board on the Authority’s functions regarding occupational health safety and welfare as detailed in Section 7 of the OHS Act.

OHSAC should give advice and make recommendations to the Minister and the Authority about policy, strategy and regulatory arrangements for workplace health and safety in Victoria.

We believe that Maxwell’s recommendation on the inter-relationship between WorkSafe and OHSAC should stand.

Question 13: How can WorkSafe improve engagement with and involvement of stakeholders to drive compliance and enforcement activities?

It is the AMIEU's experience that better communication with WorkSafe could improve compliance and enforcement activities. For example, WorkSafe used to provide a regular Newsletter with Reported Incidents fortnightly for manufacturing, logistics, meat, food, agriculture and retail/trade industries. When HSRs saw that Notifiable Incidents in their workplaces had not been reported they could ensure that their employers did meet their obligations; or if they had not been spoken to by the inspector who had investigated, could provide the information that they had.

The AMIEU regularly knows from our members that serious incidents have occurred. If these incidents have not been reported to WorkSafe, we can inform WorkSafe of the need to investigate. For some reason the regular provision of information to the stakeholders ceased. This means that WorkSafe no longer has these potential sources of information.

The experience of the AMIEU is that communication with WorkSafe is extremely one sided. We provide information to WorkSafe about potential breaches of the Act and there is no further communication. For example, when assisting a member with an injury that occurred in 2003 we identify a potential breach of the Accident Compensation Act and we provided the VWA with the information; we receive no feedback; in 2005 this is prosecuted by WorkSafe, but we are not informed. In 2012 we inform WorkSafe again of a similar potential breach in the same workplace, we hear no more. In 2014 the AMIEU is assisting another injured worker of a similar potential breach in the same workplace as had taken place earlier, again we report this issue. Again we hear no more from WorkSafe. Our member is interviewed by WorkSafe but he hears no more. In June 2016 we read the outcome of a WorkSafe prosecution in the Echuca Times. The injured worker whose employer was found guilty would have appreciated being able to attend the hearing, but could not because he did not know that the prosecution was taking place.

There needs to be more consultation with HSRs and unions and feedback on issues taken to WorkSafe. The AMIEU believes that two way communication could improve compliance and enforcement.

Question 14: How effectively does WorkSafe provide advice and information to duty holders, consistent with the C&E policy?

The AMIEU considers that the inspectorate should focus on enforcement. This certainly does mean informing employers of the regulations and compliance codes and the need to comply, but the focus of the inspectorate should be on enforcement.

The role of providing information to encourage voluntary compliance could be provided by Information Officers. They could be employed in addition to the inspectorate. Information officers whose role was to visit workplaces to provide advice and facilitate training existed in the Department of Labour in the past. The policy was to employ people from a range of backgrounds so that multi-lingual information could be provided.

Information Officers could be reintroduced. They did exist previously and it would be hard to overstate the value of culturally and linguistically diverse WorkSafe Officers.

WorkSafe should also support the development and implementation of advice provided by unions and industry associations.

Question 15: How can WorkSafe improve the way it conveys advice and information to duty holders?

The AMIEU would like to see better early consultation with stakeholders. Early stakeholder consultation at concept development rather than bringing us a completed concept to sign off on would benefit the development of informational material. Advice/information provided to employers regarding their duties under the Act and Regulations must be clear, concise and unambiguous and consistent.

There also needs to be consideration given to the medium of communication. Whilst we recognise that computers, smart phones and apps are more modern forms of information than booklets, it must be recognised that all workers do not have access to; or skills to use these media. In many 'white collar' industries computer skills are prerequisites for employment, but they are not necessary in many 'blue collar' workplaces they are not.

There must be more of an adherence by the inspectorate to the WorkSafe documents such as position statements, regulations, "Hazard and Risks Guidelines" and "Reasonably Practicable Guidelines". These guidelines exist not only to ensure HSRs and employers know where they stand. These documents should also be an important reference for WorkSafe inspectors. Section 12 of the Occupational Health and Safety Act covers the power of WorkSafe to make guidelines. These guidelines should be more readily referred to by inspectors to ensure consistent and proper advice.

Question 16: How effectively does WorkSafe promote OHS awareness?

There is an over-reliance on expensive and untargeted television advertising. Once again, before any advertising campaign gets beyond the concept stage, WorkSafe must ensure it has been consulted on with the social partners and received a 'sign off' prior to further development.

It should be noted that WorkSafe has not had the same approach to media releases. It can be argued that the media release is an outdated form of communication given the rise of social media but Naismith's data remains of interest. Between 2002 and 2010, VWA issued between 118 and 198 media release each year, an average of 160. Since 2011, the average has been 52.

The results of targeted inspection programs, prosecutions, campaign messages need to be more widely promoted – both generally, using all media and with relevant industry groups/associations/unions.

Question 17: Are there more effective approaches that should be considered?

One of the ways that should be considered is the concept of the Information Officers referred to above.

Question 18: How effectively does WorkSafe provide support to workplace parties?

The responses of the HSRs is available in the survey. Obviously there is significant room for improvement.

Do you feel supported by WorkSafe? Why?

Not supported at all	51.61%
'Somewhat' to 'very supported'	48.39%

- Because the WorkSafe team need to get more information from the employees than the supervisor.
- Allow massive rich companies to manipulate & exploit poor political systems. People where I work are too scared to be honest about their health and safety due to mismanagement and mistreatment. Is this culture acceptable?

- I don't know if they are attending at work.
- They don't turn up while work is going on.
- I've never seen WorkSafe in the 2 years I have been there. If they have been there they have turned a blind eye on lots of little things!
- Depends on the inspector - some arrive at a smelly abattoir and don't even go on to the kill floor.
- Invisible entity.
- I have not seen one in 5 years.
- Never met anybody.
- Somethings are better.
- Because they were not quick enough to arrive and they seemed to be easily swayed by the employer.
- They didn't speak to workers at all.
- Because all of you lot are actually in bed together with companies and roll over like dogs when the going gets tough!
- That would depend on who the inspector is.
- I never ever have seen a WorkSafe inspector in any place I have worked.

Question 19: How can WorkSafe improve the way it provides support to workplace parties?

The establishment of a culturally and linguistically diverse information unit to provide information on entitlements, obligations and rights could provide support to workplace workplace parties.

- I want to let WorkSafe know that, there are lots of African-Australians working in the workforce of Australia and they can't speak the English very well, so we need some Australian-Africans to work in the WorkSafe department to be able to protect rights as Employees. I have completed my certificate in WorkSafe and try to work with safety department and there is not help for me. There are lot of supervisor out there taking lot advantage on new employees and WorkSafe need strong team let African-Australian health and safety reps to work with them and make sure that all employees' rights are protected. L am not saying this because I need a job with WorkSafe, I'm saying this because I have seen supervisors take advantage with my own eye.
- Make sure inspectors get OHS reps off the line and talk to the Reps.
- If I have the power, I will create strong relationship b/w the employees to know what do and what not to do. Not one day relationship.
- Internal undercover operators
- Make self-insurers, the WorkSafe person who over sees self-insurers, and inspectors more accountable.
- More safety checks in supermarkets
- I'd probably improve their staffing levels. In a regional centre such as this they are stretched beyond reasonable boundaries. No I am not connected in any way to any member of WorkSafe.
- There's so much to do to improve WorkSafe at work
- Give it greater powers and reach and to make sure all avenues and aspects of its powers are felt by those (employers, and businesses that don't abide by its statutes and regulations).
- Implement fire drills and evacuation procedures
- Make mandatory contact to employees where an injury ended in hospital visit or multiple days off work. At very minimum by phone.
- Visits not to be announced.

- Try to explain to the employer that there can be a better way and they can still get the same production. Each individual Place needs to be looked at.
- Reduce manager power and more negotiations within the work place.
- Need them in the workplace on a fortnightly basis.
- More inspectors, more readily available.
- Make them act independent.
- Make it truly independent!!!
- Increase the number of inspectors, and push them to make more timely prosecutions. Demand that they give Reps support they need to make safer work places.
- Send the inspectors back to school.
- Scrap & start again.

Question 20: Is WorkSafe’s inspectorate effective in detecting breaches of OHS laws and ensuring compliance with those laws?

In order to detect breaches of OHS laws there needs to be a significant process of inspecting the workplace and listening to the workers through their representatives. First of all this means that there need to be sufficient Inspectors.

One of the major issues that occurs in the meat industry is that many people cannot stand to go on to a kill floor. Dealing with death, rivers of blood, urine and faeces can be a barrier to many people looking beyond these aspects of the work to identify risks and assess compliance. The AMIEU therefore considers that it is necessary to have inspectors who have worked in the industry, and worked on the floor.

Question 21: How can WorkSafe’s approach to inspections be improved?

The first would to make sure that the inspectorate is operating in line with the Compliance and enforcement policy. Clearly the HSR’s response to the survey indicates that this is not occurring sufficiently.

HSR issued a PIN that employer did not want to comply with	22.22%
Through a dispute resolution process	22.22%
There was a reportable incident or injury	55.56%

Did the Inspector talk to the HSR when they visited the workplace?

Yes	57.69%
No	42.31%

Did the inspector explore the options proposed by the HSR/workers?

Yes	52.00%
No	48.00%

Did the inspector give you an outcome report?

Yes	36.00%
No	64.00%

The AMIEU recognises that inspectors may not be deliberately ignoring the HSRs.

There are some employers who contribute to the situation. For example: if the inspector tells management that they wish to speak to the HSR; and the manager informs them that the HSR is not present at work. Unfortunately the employer's information may not be accurate.

Often there is pressure in the workplace for the HSR not to leave the line and attend with the inspectorate.

The inspectorate should always ask the workers whether the HSR is present, not just management.

The inspectorate should always speak to the HSR without management being present.

They should also encourage the HSR to accompany them and should inform the management that the HSR must be given the opportunity to do so.

The outcome reports should also be handed directly to the HSRs not handed to management to pass on.

Question 22: Are there other approaches to enforcement that the review should consider?

As mentioned above more inspections of workplaces that are 'repeat offenders' would be an effective way of significantly reducing workplace injuries.

Through gathering data from insurance claims and infringement notices lodged WorkSafe could identify and target problem workplaces enforcing compliance and reducing health and safety risks.

As stated the question of Infringement Notices could be considered.. These would be something along the line of 'on the spot' fines issued by the NSW and Queensland authorities. The rationale behind the use of infringement notices are that they are proportional, more likely to be used by inspectors than prosecution and, if handed out more often, provide a limited deterrence to employers.

Question 23: How effective is WorkSafe in applying enforcement measures to deter non-compliance with Victoria's OHS laws?

WorkSafe must pursue more prosecutions. As is stated in the compliance and enforcement policy prosecution is a "key" to preventing breaches of the OHS and by extension injuries and fatalities. More prosecutions would be an important step in deterring future non-compliance. Furthermore, WorkSafe could take more measures that are punitive if they had measures that did not involve formal prosecutions such as penalty notices or on the spot fines.

HSRs and workers wrongly believe that if an employer is caught breaching the Act or regulations, this is a crime and there will be punishment – what they expect if, for example, someone is caught stealing, or speeding. This is not the case and too often they see employers getting off without sanction – despite requests from HSRs, PINs and notices. This is not acceptable. There is not enough deterrence.

Question 24: How effective is WorkSafe at promoting its enforcement outcomes for prevention purposes?

Currently the mix of encouragement and enforcement is too focused on compliance and education. This of course comes at the expense of enforcement measures. The AMIEU believes that there should be prosecutions or other enforcement methods to follow on from inspections. An increase in inspection numbers would serve as its own promotion to a large extent.

Further to the above it is noted that outcomes of WorkSafe prosecutions are not adequately publicised. Media releases are often too late and not well publicised. Prosecution outcomes are

often poorly and inconsistently written. Sometimes there are long delays before they go on website. The AMIEU would like to see opportunities to publicise these through industry bodies and unions be investigated and maximised.

The main objectives of publishing prosecutions is the function of 'naming and shaming' of employers who break the law. To bury lists of prosecutions on the website defeats the purpose of publishing them. VTHC would like to see prosecutions more prominently displayed on the WorkSafe website as well as them being circulated to employers and unions. Media releases with prosecution outcomes would also be an effective way to increase awareness of breaches of the Occupational Health and Safety Act and irresponsible employers.

Question 25: How can WorkSafe's strategic approach to enforcement measures be improved?

Much more needs to be done in terms of improving WorkSafe's approach to enforcement. In order to maintain a balanced system of constructive compliance, the enforcement component of WorkSafe's compliance and enforcement policy needs to match its encouragement component. First of all WorkSafe needs to have more, better trained inspectors. Training of inspectors needs to ensure a consistent approach when making decisions to insure that outcomes made by WorkSafe are uniform.

More inspectors are needed because WorkSafe needs to carry out a greater number of inspections. As mentioned above the number of inspections carried out has been steadily decreasing. More inspections are needed to ensure the OHS Act is being complied with and that non-compliance is being detected and remedied and that offenders are being prosecuted.

Inspections need to be targeted to maximise their impact and to efficiently use resources. There are a number of ways that inspections can be targeted. Inspections should be targeted at industries that have high rates of injuries or bad outcomes in terms of worker's health. Given the inherent dangers in an industry which is designed to kill and dismember animals (the meat industry) there should also be inspections of workplaces where there are no WorkCover claims.

Inspections can also be targeted at employers and workplaces with repeating patterns of non-compliance.

When inspections detect breaches of the Act WorkSafe must be enforce compliance and penalise non-compliance in order to provide genuine deterrence for not complying with the Act. WorkSafe need to be issuing more improvement and prohibition notices.

Question 26: Are there any impediments to WorkSafe applying its enforcement measures?

Other than its own willingness to apply enforcement measures, the AMIEU sees a number of barriers such as the decreasing number of inspections. Inspections are WorkSafe's opportunity to uncover or investigate breaches of OHS laws and identify remedies and penalties. In order to apply enforcement measures more inspections need to be undertaken. This needs a significant number of inspectors with the appropriate experience.

A greater range of penalties including fines and other measures that do not require prosecution could also be made available to inspectors.

By the use of sanctions for less serious breaches of the Act it would be expected that basic provisions of the Act could be better enforced. Issues such as the duty to consult and the right of entry for ARREO's if properly enforced would lead to better outcomes in OHS by allowing HSRs and workers more input into identifying and eliminating workplace hazards.

The AMIEU would also like to see WorkSafe given sufficient resources to prosecute more cases.

Question 27: How can WorkSafe’s approach to working with other agencies be improved?

As identified earlier there could be greater communication and co-operation with the Health Department Notifiable Infections to identify workplaces where the risks of biological hazards are not being controlled. Working together with hospitals and ambulance services could also identify Notifiable Injuries.

Question 28: Are there other future challenges that will affect WorkSafe’s ability to ensure that OHS laws are complied with, enforced and communicated?

A major challenge for WorkSafe in the future will be the ongoing casualisation and precariousness of employment. Precarious work is an increasingly significant feature of today’s industrial landscape. The development of Free Trade Agreements could also potentially undermine workers' health and safety and WorkSafe.

Over the past four or five decades there has been an increase in the number of permanent casuals, fixed term contracts, and sham contracts. We reject the use of precarious employment practices. These workers must enjoy the same protections as regular employees.

Australia as a nation used to be built on settler migration. This has resulted in a culturally diverse society. The current migration program has transformed it into a temporary migrant nation. The vulnerability of temporary migrants in the workplace poses further challenges.

Other challenges that might impact WorkSafe’s ability to ensure OHS legislation is complied with are cuts to funding or watering down of OHS legislation. The Union movement will always stand against government interventions that diminish worker OHS standards.

APPENDIX ONE

Meat Workers Survey

The workers in the meat industry, including current and previous health and safety representatives, have responded to our request for their experience with the WorkSafe compliance and enforcement policy and practice. Written comments and numerical responses are reproduced below. There were 67 responses received from meatworkers within two weeks.

Nature of workplace

Abattoirs & Boning Rooms	38.95%
Smallgoods Manufacture	15.63%
Meat rooms in Supermarkets	45.42%

Gender of Respondents

Male	54.9%
Female	45.1%

Issues that meatworkers wanted to talk about

HSR Training and Resources	42.31%
PINs	15.38%
WorkSafe support for PIN	11.54%
Improvement Notice (Compliance Notice)	23.08%
Prosecutions	7.69%
WorkSafe support for ARREOs	15.38%
Inspectors	34.62%
WorkSafe and self-insurers	3.34%
Fire drills and evacuation procedures	3.34%
Never see them	3.34%
heights of pallets & lowering box weights	7.69%
ads on tv	3.34%

Workers' experience on these issues in their own words

- I want to let WorkSafe know that, there are lots of African-Australians working in the workforce of Australia and they can't speak the English very well, so we need some Australian-Africans to work in the WorkSafe department to be able to protect rights as Employees. I have completed my certificate in WorkSafe and try to work with safety department and there is not help for me. There are lot of supervisor out there taking lot advantage on new employees and WorkSafe need strong team let African-Australian health and safety reps to work with them and make sure that all employees' rights are protected. L am not saying this because I need a job with WorkSafe, I'm saying this because I have seen supervisors take advantage with my own eye.
- I have seen lot of WorkSafe inspector coming in to the company and asking the supervisor rather than the employees. In order to know that employees' right is protected, they need to create strong relationship between the WorkSafe inspectors and the employees' representatives. Based on their practice, they will get to know the story of these supervisor not employees.
- WorkSafe prosecutions are a disgrace, \$200,000 fines mean nothing to billion dollar corporations. Inspectors are reluctant to attend and seem over friendly with management, leaving management way too much time to get things done. The inspectors do not focus on

preventative equipment, but seem rather to let companies get away with not getting appropriate equipment which could actually PREVENT an injury. Self-insurers seem to get away with everything, and WorkSafe let them - even when issues regarding self-insurers are reported to WorkSafe as the authority. When the WorkSafe authority does nothing, self-insurers continue to harass and bully injured employees. Unlike other insurers, self-insurers cannot be reported to the ombudsman (WTF!). Worksafe has made it clear that billion dollar corporations who are self-insured can and do get away with anything without consequence because even the self-insurer companies know the ombudsman will do nothing!

- Entirely positive. Phone calls for information have always been politely and positively responded to.
- None at all.
- I am thankful and grateful for the ongoing programmes and training being presently implemented but greater resources and reinforcing of HSR roles and rights needs to be ratified endorsed and supported by all, employers employees and powerbrokers.
- Nothing gets fixed properly until someone near gets hurt or it starts to affect the quality of the lamb.
- WorkSafe inspectors usually always go to quickly patch up things e.g. when a person is cut or injured they often just use PPE as a quick patch up easy fix rather than taking information from OHS reps seriously and working out what may have caused the injury to begin with and what could've been done to prevent it.
- No experience, I have never seen them even though accidents have happened ending in hospital/Doctor involvement.
- WorkSafe it's a joke!
- Pallets from DC are stacked well above shoulder height unless we have giants working at DC.
- In my experience. No follow up.
- They didn't talk enough to the workers, just do what we want you to do!
- When I did my HSR training it made me understand the power of Worksafe and how they can make the employers accountable. I only wish there were more Worksafe inspectors and ones that can come immediately when you make a call.
- The company I work for seemed to have prior notice that WorkSafe were coming and put on a nice show that day.
- I think that OH&S Rep training should be more industry specific. It should be easier for Trade Unions and alike Unions to be able to train their reps, even if that means on site or in a Trade Union office.
- Had none yet.
- No support.
- I think WorkSafe does not take its responsibilities seriously.

Why did WorkSafe get involved?

HSR issued a PIN that employer did not want to comply with	22.22%
Through a dispute resolution process	22.22%
There was a reportable incident or injury	55.56%

Further comments on WorkSafe's involvement included:

- Woolworths' self-insurer Employers Mutual are bullies.
Anonymous misinformation poorly handled by the complainant.

- They didn't get involved.
- No. I have never seen anyone from WorkSafe!
- Didn't want to know.
- Called by management.

Did the Inspector talk to the HSR when they visited the workplace?

Yes 57.69%
No 42.31%

Did the inspector explore the options proposed by the HSR/workers?

Yes 52.00%
No 48.00%

Did the inspector give you an outcome report?

Yes 36.00%
No 64.00%

Do you feel supported by WorkSafe?

Not supported at all 51.61%
'Somewhat' to 'very supported' 48.39%

Why?

- Because the WorkSafe team need to get more information from the employees than the supervisor.
- Allow massive rich companies to manipulate & exploit poor political systems. People where I work are too scared to be honest about their health and safety due to mismanagement and mistreatment. Is this culture acceptable?
- I don't know if they are attending at work.
- They don't turn up while work is going on.
- Not often do I need to talk to a health and safety rep.
- I've never seen WorkSafe in the 2 years I have been there. If they have been there they have turned a blind eye on lots of little things!
- Depends on the inspector - some arrive at a smelly abattoir and don't even go on to the kill floor.
- Invisible entity.
- I have not seen one in 5 years.
- Never met anybody.
- Somethings are better.
- I could have had my stay in hospital shortened if WorkSafe had agreed to have me operated in a private hospital, it took three days to get my arm stitched up.
- Because they were not quick enough to arrive and they seemed to be easily swayed by the employer.
- They didn't speak to workers at all.
- Because all of you lot are actually in bed together with companies and roll over like dogs when the going gets tough!
- That would depend on who the inspector is.

- I never ever have seen a WorkSafe inspector in any place I have worked.

Did WorkSafe's intervention help to fix the issue?

Yes 42.86%

No 57.14%

How appropriate was WorkSafe's solution to the problem?

Not appropriate 55.55%

'Somewhat' to 'very appropriate' 44.45%

Did their solution work?

Did not work 42.31%

Worked a bit 26.92%

Worked well 30.76

In your own words, can you explain what WorkSafe's intervention achieved in your workplace?

- Not much where I work before.
- The only thing WorkSafe achieved, is that I now know how completely useless WorkSafe truly is.
- It re-established in everyone's mind the due process that complainants should be willing and able to take.
- There should be an inspector at the work place to make sure the health and safety of the workers were followed and implemented.
- It stirred and shook management there and then; but long term eventually ended right back to square one, the follow up and implementation of the law is just as important as the first day of action.
- Don't know.
- Not much as not all positions "required" PPE and they never came back to check anyway.
- Nothing.
- Have never seen anyone from WorkSafe.
- Never saw anybody I don't believe they care.
- Nothing.
- A safer environment in a more timely manner.
- Nothing.
- The solution was to reduce force whilst pushing boxes. As the rollers that were installed did do that, it created another issue. If the worker needs to pull the boxes back it makes it a fair bit more difficult to do so.
- They said the ammonia was a safe level 3 hours after I called cease work so they undermined HSR right.
- I have been in workplaces that have had serious accidents and they did not show up.

Do you have any further comments to make, or problems to report, regarding WorkSafe?

- Worksafe need to create strong relationship b/w they and the employees to really know what going on in the various company in Australia.
- Do a better job!
- They are toothless tigers like the ACCC.
- None.

- Good ads on telly that's about all.
- In larger companies they should not give notice of their arrival, they should just turn up and not give companies time to hide problems.
- Maybe they should try talking to the workers instead of employer.
- It would be good if they talked to more workers
- I think they're scared of the companies, from what I've seen it's like they're in the same bed with them.
- Not helpful with advice and assistance.
- Mostly I feel WorkSafe can be a little soft when companies have not met deadlines for PIN's or resolutions.
- They don't talk to us only listen to management.
- I think it's a lot of taxpayer \$\$\$ for very little result.

If you had the power, what would you do to improve WorkSafe?

- Make sure inspectors get OHS reps off the line and talk to the Reps.
- If I have the power, I will create strong relationship b/w the employees to know what do and what not to do. Not one day relationship.
- Internal undercover operators
- Make self-insurers, the WorkSafe person who over sees self-insurers, and inspectors more accountable.
- More safety checks in supermarkets
- I'd probably improve their staffing levels. In a regional centre such as this they are stretched beyond reasonable boundaries. No I am not connected in any way to any member of WorkSafe.
- There's so much to do to improve WorkSafe at work
- Give it greater powers and reach and to make sure all avenues and aspects of its powers are felt by those (employers, and businesses that don't abide by its statutes and regulations).
- Implement fire drills and evacuation procedures
- Make mandatory contact to employees where an injury ended in hospital visit or multiple days off work. At very minimum by phone.
- Visits not to be announced.
- Try to explain to the employer that there can be a better way and they can still get the same production. Each individual Place needs to be looked at.
- Reduce manager power and more negotiations within the work place.
- Need them in the workplace on a fortnightly basis.
- More inspectors, more readily available.
- Make them act independent.
- Make it truly independent!!!
- Increase the number of inspectors, and push them to make more timely prosecutions. Demand that they give Reps support they need to make safer work places.
- Send the inspectors back to school.
- Scrap & start again.

Where do you go to get information about OHS?

Your union	71.43%
OHS Reps Website	14.29%

WorkSafe	14.29%
Google	42.86%

How often do you use WorkSafe’s website?

Daily	3.13%
Hardly ever	28.13%
Weekly	6.25%
Never	56.25%
Monthly	6.25%

Have you ever called WorkSafe’s Advisory service (phone line)?

Yes	37.50%
No	62.50%

How helpful was the WorkSafe advisory phone line?

Not helpful	58.82%
OK	35.29%
Very helpful	5.88%

How often has an inspector randomly visited your workplace?

Monthly	3.23%
Don’t know	54.84%
Quarterly	0.00%
Never	32.26%
Annually	9.68%

When they occur, how thorough are random visits?

Not thorough	77.77%
'Somewhat' to 'very thorough'	22.23%

How would you rate your experience of the WorkSafe website?

No good	50%
OK	36.36%
Good	13.64%