

BUSINESS NSW

28 February 2023

SafeWork NSW Review
c/- Level 5,
60 Martin Place
SYDNEY NSW 2000

Attention: [REDACTED]

E: enquiries@safeworknswreview.com.au

Dear Sir/Madam,

INDEPENDENT REVIEW OF SAFEWORK NSW

As NSW's peak business organization, Business NSW has more than 40,000 member businesses across NSW. We work with businesses spanning all industry sectors including small, medium and large enterprises. Operating throughout a network in metropolitan and regional NSW, Business NSW represents the needs of business at a local, State and federal level.

Business NSW welcomes the opportunity to provide input to the New South Wales Government's Review of SafeWork NSW.

We note the scope of this review is to inquire into, report on and where thought desirable make recommendations as to:

1. The performance and effectiveness of SafeWork NSW's compliance and enforcement functions. This part of the Review will consider complaints, inspections, investigations, and prosecutions, and will include consideration of SafeWork's Triaging and Investigation Decision Making Panel processes.
2. The performance and effectiveness of SafeWork NSW's educational functions.
3. The governance and culture of SafeWork NSW, including complaints as to alleged unlawful or undesirable conduct in the workplace.
4. Appropriate measures to ensure that workers and their representatives (including Health & Safety Representatives), and the families of injured and deceased workers, have a genuine voice in the complaints, investigation, and enforcement processes.

#1. The performance and effectiveness of SafeWork NSW's compliance and enforcement functions. This part of the Review will consider complaints, inspections, investigations, and prosecutions, and will include consideration of SafeWork's Triaging and Investigation Decision Making Panel processes.

The *Work Health & Safety Act 2011* (NSW) adopts a risk-based (as opposed to an outcomes-based) regulatory approach.

In January of this year, SafeWork NSW published its regulatory priorities for 2023 which contained the following list of priority areas:

- the gig economy,
- safety around moving plant,
- seasonal work,
- psychological safety,
- respect at work,
- exposure to harmful substances, and
- falls from heights.

However, this two-page document does not contain any detail on the type of regulatory activity that SafeWork NSW intends to adopt to ensure that these risks are being appropriately managed in the workplace.

Given the nature of recent consultations, Business NSW is becoming increasingly concerned that the NSW Government's focus is being placed more on the outcome of an incident rather than on the behaviour which presents a risk to an individual's health and safety in the workplace.

Recommendation 1: That SafeWork NSW consult with industry to identify ways in which it could adopt a more proactive regulatory approach that focusses on effectively managing the risk of harm rather than the outcome of an incident.

#2. The performance and effectiveness of SafeWork NSW's educational functions.

Business NSW supports the focus that SafeWork NSW has placed on education in relation to managing the risks of harm from psychosocial hazards in the workplace.

However, it is concerned by SafeWork¹ NSW's reliance on digital channels to communicate with NSW businesses, especially small businesses.

Other marketing channels that are better suited to the needs of small business owners, who are typically time-poor and not necessarily reliant on surfing the internet to obtain information about their statutory obligations need to be examined and adopted.

¹ Previous submission had "Business NSW's reliance on digital channels" in error

An obvious example is the use of radio advertising for tradespeople who spend their working day on site working on the tools.

Recommendation 2: That SafeWork NSW consider utilising alternative marketing channels to better suit their intended target market.

#4. Appropriate measures to ensure that workers and their representatives (including Health & Safety Representatives), and the families of injured and deceased workers, have a genuine voice in the complaints, investigation, and enforcement processes.

Business NSW repeats its concerns that the NSW Government's focus is being placed more on the outcome of an incident rather than on the behaviour which presents a risk to an individual's health and safety in the workplace.

Recommendation 3: That any measures proposed to be adopted by SafeWork NSW to "*ensure that workers and their representatives and the families of injured and deceased workers have a genuine voice in the complaints, investigation and enforcement process*" include safeguards to ensure that the risk-based regulatory approach of WHS laws are not subsumed by an outcomes-based approach, which is more appropriate and relevant to NSW's common law criminal jurisdiction.

If you would like to discuss the contents of this submission in more detail, please contact [REDACTED] Policy Manager, Workers' Compensation, WHS and Business Regulation either by email [REDACTED]@businessnsw.com) or by telephone on [REDACTED]

Yours Sincerely,

[REDACTED]

General Manager, Policy