

**Attachment Two: Commonwealth Senate Education and Employment Committee
 Inquiry into the framework surrounding the prevention, investigation, and prosecution
 of industrial deaths in Australia**

Page	Speaker	Transcript	Clarification
47	Paul Fowler	Deaths in Victoria... Twenty-seven in the last calendar year and <u>13</u> so far this year.	As at 28 August 2018, there were 16 confirmed work related fatalities in Victoria.
47	Paul Fowler	The employer who is conducting the trenching <u>is obliged</u> to notify the regulator.	Employers are required to notify WorkSafe Victoria (WorkSafe) of trenching in certain circumstances, for example, if the excavated depth is more than 1.5 metres.
47	Paul Fowler	Secondly, whether the employer would have notified us under <u>section 37</u> of the Act, which, in those circumstances, they would be required to do. Again, I can't comment further than that.	The duty to notify of incidents exists in section 38 of the <i>Occupational Health and Safety Act 2004</i> (Vic)(OHS Act). Section 37 of the OHS Act defines the incidents which require notification to WorkSafe.
48	Paul Fowler	We have a family liaison officer, who is bound by the Victims' Charter Act... <i>Have you reduced that to a policy document?</i> We certainly have... and I believe that's <u>available on our website</u> as well.	The Family Liaison Officer's - Fatalities Services Model Policy is not available on WorkSafe's website. A copy of this policy was provided to the Senate Education and Employment Committee on 18 September 2018. WorkSafe also has a "Victims and Persons Adversely Affected by Crime Policy". This policy is available on WorkSafe's website.

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49	Paul Fowler	Also, from what I understand, the suggestion at this stage is that the term of <u>imprisonment would be raised from five years to 20 years under section 32, to be under industrial manslaughter provisions as well</u> , so it's a significant increase. But that's in line with manslaughter under the Crimes Act at present. And the fines will be increased from \$3.2 million to \$16 million under the Victorian government's proposal as well.	<p>The Victorian Government has announced that should it be re-elected, it will legislate a new criminal offence of 'workplace manslaughter' in the OHS Act.</p> <p>Employers that are convicted of the offence would face maximum fines of almost \$16 million (100,000 penalty units) and individuals who are responsible for negligently causing death will face a maximum penalty of 20 years imprisonment.</p> <p>The proposed fine of \$16 million is more than five times the current penalty for an employer who recklessly engages in conduct that places another person at a workplace in danger of serious injury under section 32 of the OHS Act.</p> <p>The proposed fine of \$16 million and maximum penalty of 20 years' imprisonment are proposed to apply to the new offence of workplace manslaughter only. There is no current proposal to increase penalties under section 32 of the OHS Act.</p>																		
50	Senator Gichuhi	I understand that about 60 per cent of the visits to workplaces are by WorkSafe Victoria responding to complaints or concerns raised.	<p>In 2017-2018, WorkSafe conducted in excess of 48,000 visits to workplaces.</p> <p>In 2017-2018, WorkSafe received 10,705 service requests. Of these service requests, 6,463 resulted in a workplace visit.</p> <p>Therefore, while it is accurate that approximately 60% of service requests in 2017-2018 resulted in a workplace visit, it is not the case that that 60% of workplace visits are the result of service requests.</p>																		
51	Paul Fowler	For the last five financial years, we have prosecuted <u>10, seven, four, 13 and two fatalities</u> .	<p>The number of prosecutions referred to in the transcript are for <u>successful</u> prosecutions only, not total prosecutions. Below is a breakdown of the total prosecutions for the last five financial years.</p> <table><tr><th>Year</th><th>Total prosecutions</th><th>Successful prosecutions</th></tr><tr><td>2014/2015</td><td>13</td><td>10</td></tr><tr><td>2015/2016</td><td>8</td><td>7</td></tr><tr><td>2016/2017</td><td>4</td><td>4</td></tr><tr><td>2017/2018</td><td>13</td><td>13</td></tr><tr><td>2018/2019</td><td>2</td><td>2</td></tr></table>	Year	Total prosecutions	Successful prosecutions	2014/2015	13	10	2015/2016	8	7	2016/2017	4	4	2017/2018	13	13	2018/2019	2	2
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51	Paul Fowler	I can give you an idea of the size of the enforcement group. They do both health and safety and compensation matters, but, if we focus on health and safety that are involved with fatalities, there are just over 30 investigators—I think we probably are the most well resourced jurisdiction—and there are approximately 10 lawyers in that section.	<p>WorkSafe's Enforcement Group has a total of 52 investigators (including state manager of investigations) and 18 lawyers (including principal lawyer).</p> <p>Of those investigators and lawyers, 14 lawyers and 33 investigators are dedicated to occupational health and safety matters.</p>
51	Paul Fowler	Just to give you an idea: in the last three financial years, that group have completed 110, 103 and 127 prosecutions respectively, <u>and that's with respect to seven, four and 13 fatalities over those three financial years.</u>	<p>The number of prosecutions in respect of workplace fatalities referred to in the transcript are for <u>successful</u> prosecutions only, not total prosecutions.</p> <p>The financial years referred to by Mr Fowler are 2015/2016, 2016/2017 and 2017/2018. The data on the number of total prosecutions for those years is itemised above.</p>
52	Senator O'Neill	You indicated you'd been into 500 workplaces. Was that when you were referring particularly to farmers and agriculture?	This figure refers to the number of farms visited by WorkSafe from March 2018. In the 2017/2018 year, WorkSafe attended 2,855 farms.
53	Chair	I thank you for the evidence, before, about the 20 people you have in other jurisdictions	Mr Fowler's evidence was that there were 30 investigators and 10 lawyers within the Enforcement Group. This evidence has been clarified on the previous page of this letter.