

Agriculture and Environment Committee

Inquiry into the Hendra virus (HeV) EquiVacc® vaccine and its use by veterinary surgeons in Queensland

Office of Industrial Relations, Queensland Treasury submission
19 April 2016

Introduction

On 25 February 2016, the Legislative Assembly agreed to a motion that the Agriculture and Environment Committee (the Committee) inquire into and report on the Hendra virus (HeV) EquiVacc vaccine and its use by veterinary surgeons in Queensland.

The Committee is required to consider six matters, three of which are relevant to the Office of Industrial Relations, Queensland Treasury:

- who bears the risks of Hendra virus infection and who incurs the costs and receives the benefits from each risk mitigation option;
- whether the guidelines/procedures required for veterinarians attending horses that are not vaccinated against Hendra virus are proportionate to the consequences; and
- the impact of Workplace Health and Safety actions on the decision by veterinarians not to attend unvaccinated horses and results of previous Workplace Health and Safety investigations where there have been human infections.

Incidents involving Hendra virus infection in a horse or human are high profile events with the potential for human infection, serious illness and death. There are various state and Commonwealth regulatory agencies which have a role in managing and/or responding to Hendra virus incidents. This submission provides information about the role of the Office of Industrial Relations (OIR), Queensland Treasury. OIR incorporates Workplace Health and Safety Queensland (WHSQ) which is commonly recognised in the community as the regulatory body that administers work health and safety legislation in Queensland.

Background

Work-related exposure to Hendra virus

Hendra virus typically causes an acute illness in horses that is rapidly fatal. There are no specific clinical signs that define Hendra virus infection of horses. Clinical signs may be variable and sometimes vague. Infected horses may shed Hendra virus before showing signs of illness, become increasingly infectious as the disease progresses and are maximally infectious during the late stages of the disease and at death. Hendra virus infection can only be confirmed by laboratory testing.

Human infection with Hendra virus occurs from close contact with an infected horse and its blood, tissues and body fluids. Although uncommon, when human infection occurs it causes serious

illness with a high death rate (57%)¹. In Queensland, seven persons have acquired Hendra virus infection (three veterinarians, one veterinary nurse, one veterinary assistant, one horse trainer and one stable hand). Four of these seven people have died. All cases were attributed to close occupational contact with an infected horse involving a high level of exposure to blood and respiratory secretions.

Hendra virus has been detected in horse blood and oral and nasal secretions, and Hendra virus genetic material has been detected in urine, faeces and a wide range of body tissues of infected horses. Based on epidemiological evidence, Hendra virus infected horses are considered to present the most significant level of risk of infection to humans up to 72 hours before the onset of clinical signs and up to and including the horse's death and the safe disposal of its carcass.

Persons having regular close contact with horses and their blood and body fluids have the greatest potential for exposure to Hendra virus. Although Hendra virus infection of horses is uncommon, veterinarians and their staff are exposed to the risk of Hendra virus when attending to horses, especially when attending to sick horses where Hendra virus is a possible cause of the horse's illness and when performing veterinary procedures that involve a high level of contact with blood, tissues and body fluids and the use of veterinary sharps such as needles. Hendra virus creates serious health and safety risks for veterinary professionals and requires veterinarians to implement stringent risk management practices.

There is a Hendra virus vaccine for horses, however, there is currently no Hendra virus vaccine or effective treatment for Hendra virus infection of humans.

Work health and safety legislative framework and risk management

One of the objects of the *Work Health and Safety Act 2011* (WHS Act) includes:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant. Regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from particular types of substances or plant as is reasonably practicable;²

The WHS Act requires risks to a person's health and safety arising from the conduct of work to be eliminated or minimised so far as is reasonably practicable. Various persons have different health and safety duties which reflect the degree of influence or control they have in relation to eliminating or minimising exposure to the risk. The duty of care placed on a veterinarian or other person who carries out work to provide veterinary services to horses will depend on whether the person is:

- an employer or self-employed person (a person conducting the business or undertaking);
- a worker for a business or undertaking; or

¹ A mortality rate of 57% is based on records of confirmed Hendra virus infections in humans in Queensland.

² Sections 3(1)(a) and 3(2), WHS Act.

- possibly a horse owner who is assisting a veterinarian while a horse is being provided with a veterinary service.

The WHS legislation is focused on managing the risks associated with carrying out work and does not specifically prescribe standards in relation to veterinary practice or treatment of horses.

In the context of the WHS Act, deciding what is 'reasonably practicable' to protect people from harm requires taking into account and weighing up all relevant matters, including:

- the likelihood of the hazard or risk concerned occurring;
- the degree of harm that might result from the hazard or risk;
- knowledge about the hazard or risk, and ways of eliminating or minimising the risk;
- the availability and suitability of ways to eliminate or minimise the risk; and
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk³.

The *Work Health and Safety Regulation 2011* (WHS Regulation) requires duty holders to follow a hierarchy of control measures when managing WHS risks.⁴ The ways of controlling risks are ranked from the highest level of protection and reliability to the lowest. Elimination of the hazard is the highest level of protection and personal protective equipment (PPE) is the lowest. The Hendra virus vaccine is regarded a higher level control measure than PPE. Further guidance on the 'hierarchy of risk control' (see Figure 1) is also provided in the *How to Manage Work Health and Safety Risks Code of Practice 2011* (Risk Management Code).

The Risk Management Code provides practical guidance for persons who have duties under the WHS Act and Regulation to manage risks to health and safety. The Risk Management Code outlines the following four step risk management process:

- identifying hazards – finding out what could cause harm
- assessing risks if necessary – understanding the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it happening
- controlling risks – implementing the most effective control measure that is reasonably practicable in the circumstances
- reviewing control measures to ensure they are working as planned.

There are many ways to control risks with some control measures being more effective than others. Duty holders need to consider various control options and choose the control that most effectively eliminates the hazard or minimises the risk in the circumstances. This may involve a single control measure or a combination of different controls that together provide the highest level of protection that is reasonably practicable.

³ Section 18, WHS Act.

⁴ Section 36, WHS Regulation 2011.

When managing work health and safety risks, the cost of control measures in terms of time and effort as well as money, is just one factor to consider when determining the best control option. The cost of controlling a risk may be taken into account in determining what is reasonably practicable, but cannot be used as a reason for doing nothing.

The greater the likelihood of a hazard occurring and/or the greater the harm that would result if the hazard or risk did occur, the less weight should be given to the cost of controlling the hazard or risk.

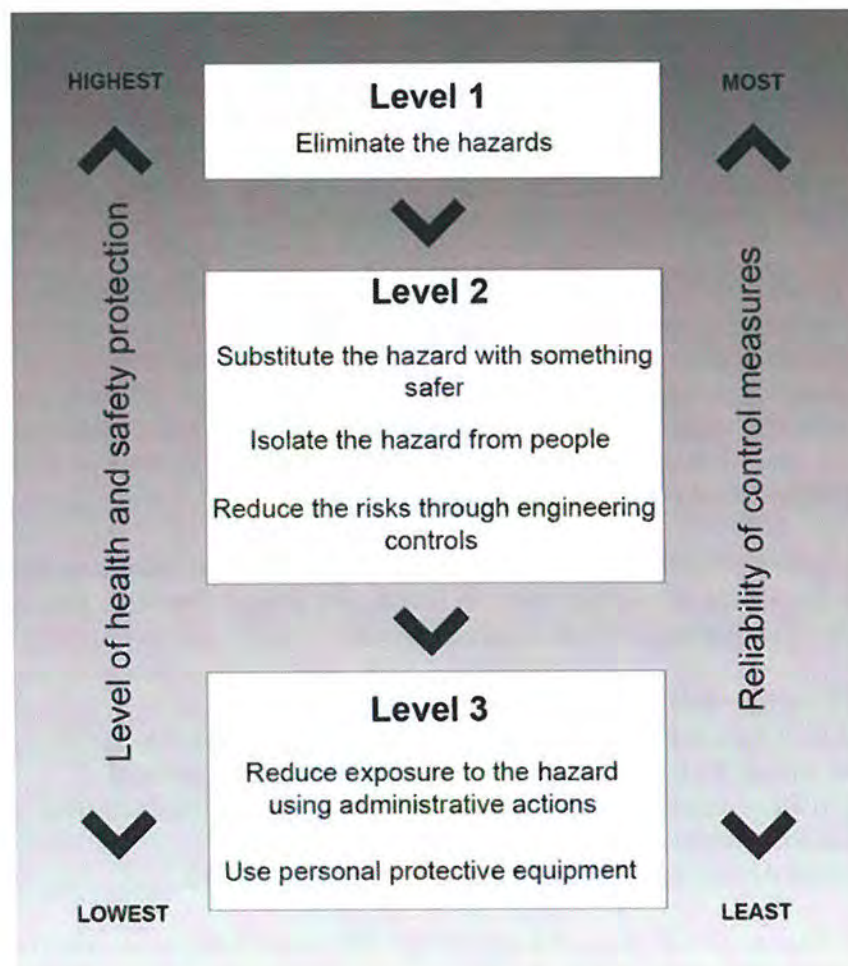


Figure 1: The hierarchy of risk control, *How to Manage Work Health and Safety Risks Code of Practice 2011*

The Hendra virus is regarded as a low likelihood-high consequence risk. While the likelihood of acquiring Hendra virus is low, this does not mean the risk is low. The consequence of Hendra virus infection in humans is catastrophic because the disease has a high case fatality rate.

At the Agriculture and Environment Committee's preliminary briefing on 22 March 2016, WHSQ agreed to provide additional information on WHS risks in different scenarios in the context of whether horses have current vaccination for Hendra virus. This information is provided at Appendix 1.

Offences under the WHS Act that relate to Hendra virus

There are general offence provisions relating to duties under the WHS Act (i.e. they apply broadly to all work-related risks and are not specific to Hendra virus). The primary duty of care under the WHS Act is placed on a person conducting a business or undertaking.⁵ Workers and other persons at a workplace also have a duty of care under the WHS Act.⁶

Categories of offences

There are three categories of offences for failing to comply with a health and safety duty under the WHS Act, depending on the degree of seriousness or liability involved. Prosecutions for these offences may occur based on the risk of a person's death or serious injury and do not necessarily require that a death or injury occur.

Category 1: the highest penalty under either the WHS Act is for a category 1 offence. These are the most serious breaches where a duty holder recklessly endangers a person to risk of death or serious injury. Offences involving reckless conduct are prosecuted in the District Court.

Maximum penalties are:

- for a corporation: up to \$3 million
- for an individual as a person conducting a business or undertaking or an officer: up to \$600,000 / 5 years imprisonment
- for an individual e.g. a worker: up to \$300,000/ 5 years imprisonment.

Category 2: failure to comply with a health and safety duty that exposes a person to risk of death, serious injury or illness. Offences are prosecuted in the Magistrates Court.

Maximum penalties are:

- for a corporation: up to \$1.5 million
- for an individual as a person conducting a business or undertaking or an officer: up to \$300,000
- for an individual e.g. a worker: up to \$150,000.

Category 3: failure to comply with a health and safety duty. Offences will be prosecuted in the Magistrates Court.

Maximum penalties are:

- for a corporation: up to \$500,000
- for an individual as a person conducting a business or undertaking or an officer: up to \$100,000
- for an individual e.g. a worker: up to \$50,000.

⁵ Section 19, WHS Act 2011

⁶ Sections 28 and 29, WHS Act 2011.

There are other provisions in the WHS Regulation which have lower penalties that are applicable. These include:

- section 39 (Provision of information, training and instruction). This has a maximum penalty of 60 penalty units.
- section 44 (Provision to workers and use of personal protective equipment). This has a maximum of 60 penalty units.
- section 46 (Duty of worker in relation to PPE that has been provided). This has a maximum penalty of 36 penalty units.
- section 47 (Duty of person other than worker to whom PPE has been provided). This has a maximum penalty of 36 penalty units.

The WHS legislation does not have prescriptive requirements for veterinarians regarding mandatory practice standards when providing veterinary services to horses that may be infected with Hendra virus.

Guidance about work health and safety and Hendra virus

WHSQ is represented on the Interagency Hendra Virus Technical Working Group, along with Biosecurity Queensland (BQ), Queensland Health (QH), the Australian Veterinary Association (AVA) and the Equine Veterinarians Australia (EVA).

The working group has published evidence-based Hendra Virus Infection Prevention Advice. This includes advice on the vaccination of horses, ways to minimise interaction between horses and flying foxes at properties, infection prevention and control practices, including the use of PPE, for general interactions with all horses as well as for contact with sick horses showing clinical signs where Hendra virus is a possible diagnosis, and biosecurity practices.

WHSQ has worked extensively with the veterinary and equine community to promote Hendra virus risk management, including the development of web-based guidance material, presentations at conferences and workshops, state-wide audits of equine veterinary businesses, articles in veterinary newsletters and journals, and regular high level stakeholder meetings.

WHSQ has three fact sheets providing advice about Hendra virus and measures that can be taken to minimise work health and safety risks for different occupational groups.

- *Hendra virus – information for veterinarians*⁷
This fact sheet summarises WHS precautions and refers to BQ's *Guidelines for veterinarians handling potential Hendra virus infection in horses*.
- *Hendra virus – information for horse properties and other horse businesses*⁸
- *Hendra virus – information for businesses that dispose of horse carcasses*⁹

⁷ https://www.worksafe.qld.gov.au/data/assets/pdf_file/0010/82981/alert-hendra-infoforvet.pdf. WHSQ provided its three fact sheets to the Agriculture and Environment Committee at the preliminary briefing on 22 March 2016.

⁸ https://www.worksafe.qld.gov.au/data/assets/pdf_file/0009/82989/alert-hendra_virus_horse.pdf

⁹ https://www.worksafe.qld.gov.au/data/assets/pdf_file/0019/82504/hendra-virus-disposal.pdf

The fact sheet content is based on the advice of the Hendra Virus Interagency Technical Working Group and the best available scientific evidence. All the fact sheets advise that a Hendra virus vaccine for horses is available and it is the single most effective way of reducing the risk of Hendra virus infection in horses. The vaccine provides a work health and safety and public health benefit by its ability to not only protect horses from infection but also to break the cycle of virus transmission from horses to humans. Horse owners are encouraged to discuss the vaccine with their veterinarian. There are no statutory provisions to mandate Hendra virus vaccination of horses under the WHS Act.

Where a veterinarian considers that a horse has potential Hendra virus infection, the fact sheets advise to consider restricting high risk veterinary procedures to those necessary to obtain Hendra virus samples and/or to provide immediate treatment and attend to the horse's welfare. The guidance also advises veterinarians to avoid high risk procedures that have the potential to result in a high level of exposure to the horse's blood, respiratory fluids, tissues and other body fluids. However, where a high risk procedure is considered necessary, it should only be undertaken if health and safety can be ensured. The fact sheets also advise that if a veterinarian determines that a horse with potential Hendra virus infection requires ongoing treatment before the Hendra virus exclusion test results are received, a risk assessment should be undertaken to ensure the health and safety of the person administering the treatment, and that non-veterinarians should not undertake any invasive procedure on horses with potential Hendra virus infection, including injection, until Hendra virus has been excluded.

Wearing PPE is an important component of infection prevention and control. However, PPE alone is not sufficient to control Hendra virus risks and its use when working in close contact with a horse with potential Hendra virus infection should be supported by other infection prevention and control precautions including hygiene, decontamination of persons and equipment and sharps safety. This is consistent with following the hierarchy of control when managing exposure to work health and safety risks.

The level of PPE recommended for contact with a horse with potential Hendra virus infection poses challenges, particularly for persons working in hot and humid environments, in unpredictable field situations and when working with unpredictable horses. The challenges include:

- heat stress
- restricted movement
- restricted vision
- the horse becoming 'spooked' by PPE
- PPE failure (e.g. tears, fluid strikethrough)
- accidental personal contamination (e.g. when removing PPE)
- incorrect selection, use and fit of PPE (which could reduce its effectiveness)
- inadequate training in use of PPE
- worker compliance and management supervision
- extra time and cost involved

WHSQ is currently reviewing and updating its Hendra virus guidance material, with the active participation of the AVA and EVA. Some minor amendments of a non-contentious nature are proposed, for example, by providing more practical guidance on the selection and use of PPE.

Safe Work Australia, the Commonwealth statutory body which coordinates and develops national policy and strategies relating to WHS, has published the *Guide to Managing Risks When New and Inexperienced Persons Interact with Horses* (2014).¹⁰ This guide provides practical guidance for businesses where workers and others interact with horses, and includes guidance about Hendra virus. This includes a recommendation that consideration be given to vaccinating horses against Hendra virus.

WHSQ compliance and enforcement

WHSQ, BQ and QH have developed a co-ordinated and collaborative response to Hendra virus incidents. This process has been formalised by the development of a Memorandum of Understanding between the agencies and supporting interagency standard operating procedures.¹¹

WHSQ's response to Hendra virus incidents is to assess and monitor compliance with the WHS Act. This may be escalated to include a comprehensive investigation if a person contracts Hendra virus infection in the course of work, and /or other circumstances warrant an escalation in response, for example, where a person is assessed as having had a high level of exposure to Hendra virus even if they do not subsequently acquire the disease. This is because a high level of exposure presents a serious risk for subsequently acquiring Hendra virus infection.

Policy documents that direct WHSQ's response to Hendra virus incidents include the *National Compliance and Enforcement Policy* and the Hendra Virus Enforcement Note. These documents clarify the regulator's position on how the WHS Act should be applied to Hendra virus incidents to ensure compliance and enforcement outcomes that are consistent, constructive, transparent, accountable, proportionate, responsible and targeted.

Resources that support and guide WHSQ's operational approach to Hendra virus

National Compliance and Enforcement Policy

The *National Compliance and Enforcement Policy* sets out the principles underpinning the approach used by WHS regulators in Australian states and territories to monitor and enforce compliance with WHS legislation. The *National Compliance and Enforcement Policy* is provided at Appendix 2.¹²

¹⁰ <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/guide-managing-risks-interact-horses>

¹¹ WHSQ provided the Agriculture and Environment Committee with a copy of the *MOU: Incident management of threats to human or animal health*, January 2011; and interagency standard operating procedures at the preliminary public briefing on 22 March 2016.

¹² <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/national-compliance-enforcement-policy>. WHSQ provided a copy of the *National Compliance and Enforcement Policy* to the Agriculture and Environment Committee at the preliminary public briefing on 22 March 2016.

The enforcement pyramid in the policy shows, in a general sense, the relative volume or proportionate use of tools available to WHS regulators and the ability to escalate if an initial intervention does not achieve the desired outcome (Figure 2).

The lowest level of the pyramid (Information, guidance, education and advice) involves an approach which is used most frequently, often in combination with other tools, to assist duty holders to achieve compliance. Sanctions (such as criminal penalties resulting from prosecution) are at the top of the pyramid and are applied less frequently.

This does not mean that WHS regulators will always commence with provision of information and advice, and only use other tools in an escalated manner.

WHS regulators will commence their intervention using the tools that are most appropriate in the particular circumstances. Some tools, as indicated in the *National Compliance and Enforcement Policy*, are alternatives while others may be used in combination. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.



Figure 2: Compliance and enforcement pyramid, *National Compliance and Enforcement Policy*

Enforcement note: Enforcement action for Hendra virus (Procedure number: WHS/2012/Q/017)¹³

The Hendra virus enforcement note outlines WHSQ's enforcement approach when inspectors are visiting and/or auditing veterinary and horse businesses or participating in Hendra virus incident management where the WHS legislation is applicable.

2010 Audit: Hendra virus risk management in the veterinary industry

Between February and June 2010, WHSQ visited 32 veterinary clinics across Queensland that provided equine veterinary services to conduct an audit of how the veterinary profession was managing Hendra virus risks. WHSQ consulted with key stakeholders including the AVA, EVA, the Queensland Horse Council, BQ and QH.

The audit found, at that time, the Queensland veterinary profession had taken some steps to manage the WHS risks associated with Hendra virus, however more needed to be done, particularly in areas such as:

- ensuring safe systems of work;
- providing information, instruction and training; and
- adopting recommended infection control practices.¹⁴

Since then, WHSQ has continued to work with key government and veterinary stakeholders to develop the capacity of veterinarians to manage Hendra virus risks more effectively.

Since 2008, WHSQ has responded to 30 separate Hendra virus incidents. In relation to veterinarians, information and advice has been provided on 19 occasions, improvement notices have been issued on eight occasions, and court proceedings have been initiated on three occasions. Two matters are currently before the courts and relate to Hendra virus incidents that occurred between 2013 and 2014. Each matter concerns allegations that a veterinarian did not meet his/her duty under the WHS Act to ensure health and safety in relation to Hendra virus risks.

Prosecution

In March 2016, Dr Matthew Morahan pleaded guilty in the Southport Magistrates Court to breaching section 32 of the WHS Act, having failed to meet his work health and safety duties. In this case, the defendant was a qualified veterinarian employed by a veterinary practice on the Gold Coast. As a 'worker', the defendant held duties under section 28 of the WHS Act.

In July 2013, the defendant attended to a sick horse and took samples to test for Hendra virus. The defendant requested assistance from the horse owner to take the samples and did not follow published best practice infection control procedures for dealing with a suspected Hendra virus infected horse. This included recommendations for PPE to be worn by persons in close

¹³ WHSQ provided a copy of the *Enforcement note: Enforcement action for Hendra virus* to the Agriculture and Environment Committee at the preliminary public briefing on 22 March 2016.

¹⁴ https://www.worksafe.qld.gov.au/data/assets/pdf_file/0010/83098/outcome-audit-hendra-vet-industry.pdf
WHSQ provided a copy of Summary report: *Outcomes of an audit of Hendra virus risk management in the veterinary industry*, May 2011 to the Agriculture and Environment Committee at the preliminary public briefing on 22 March 2016.

contact with the suspected infected horse. The defendant did not provide the appropriate level of PPE to the horse owner. Entry/exit processes to enable adequate decontamination were not put in place and the horse owner was exposed to the risk of Hendra virus infection.

The horse tested positive to Hendra virus and was subsequently euthanised. Both the veterinarian and horse owner were tested and found to be negative for Hendra virus infection. The Magistrate made an order that the defendant be of good behaviour for a period of two years with a recognisance in the sum of \$3,000 to be forfeited if convicted of an offence within this period. No conviction was recorded. The Magistrate noted the defendant was a young and relatively inexperienced veterinarian and that he had taken the sample for Hendra virus exclusion testing to be cautious on learning of the horse's non-vaccination status against Hendra virus.

Collaboration

Memorandum of Understanding: Incident management of threats to human or animal health, January 2011 (between WHSQ, QH and BQ)

The MOU for incident management of threats to human or animal health provides for the establishment of a multi-agency threat assessment team, which has agency representatives with the specialist knowledge and experience to perform threat assessments, provide advice and coordinate the multi-agency response to zoonotic disease incidents.

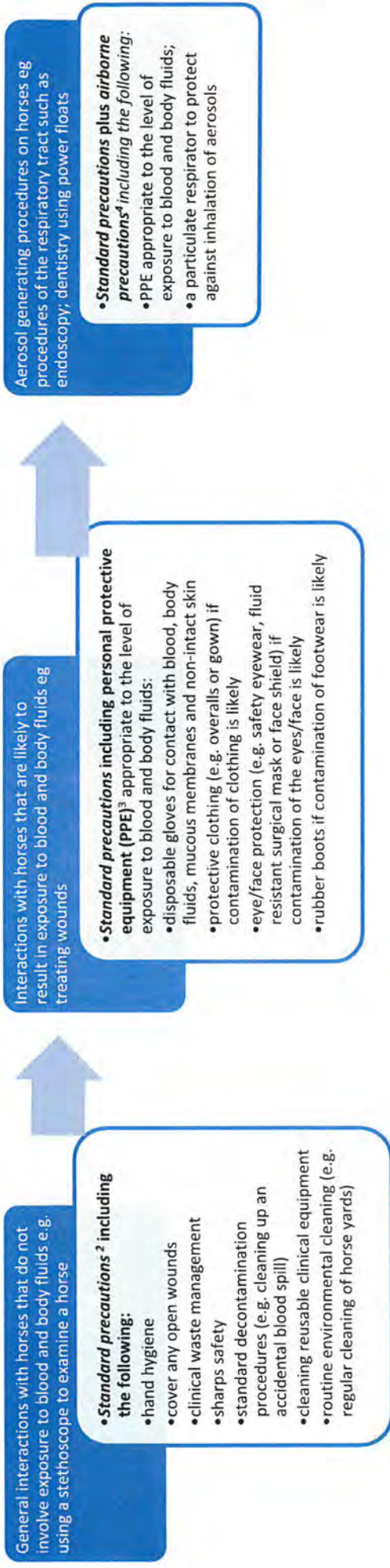
Hendra Virus Infection Prevention Advice, October 2014, Hendra Virus Interagency Technical Working Group

The *Hendra Virus Infection Prevention Advice* document collates the best available evidence-based advice on risk management regarding the prevention of Hendra virus infection. It was developed by the Hendra Virus Interagency Technical Group through a consortium of animal and health professionals from BQ, the Australian Veterinary Association, Equine Veterinarians Australia, QH and WHSQ. This document is used to inform publications and provide contemporary technical advice on measures to prevent human infection with Hendra virus. Advice is not targeted at unvaccinated horses but rather describes risk controls both for general contact with all horses and for contact with horses where Hendra virus is a possible cause of a horse's illness.

Appendix 1

Managing Hendra Virus Work Health and Safety Risks¹

Scenario 1: Healthy horse that is not vaccinated against Hendra virus

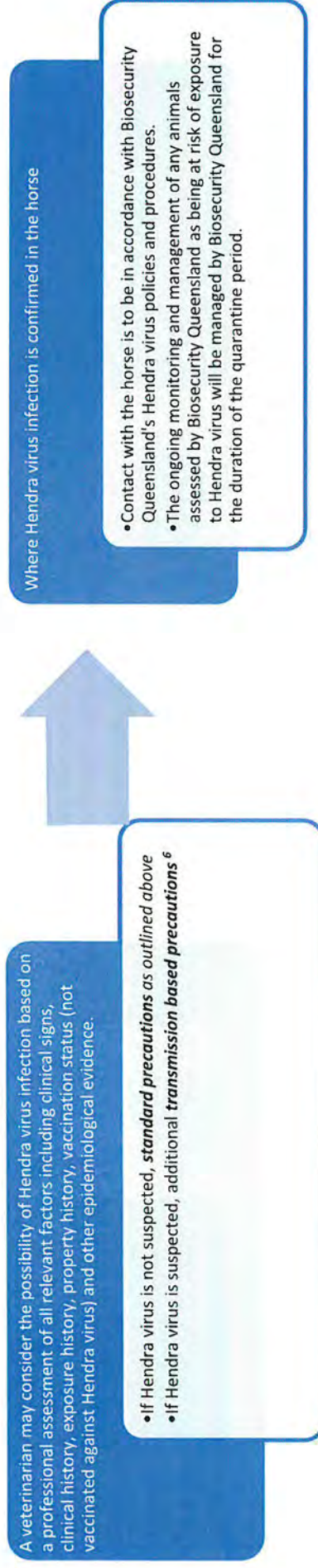


Scenario 2: Healthy horse that is vaccinated against Hendra virus⁵

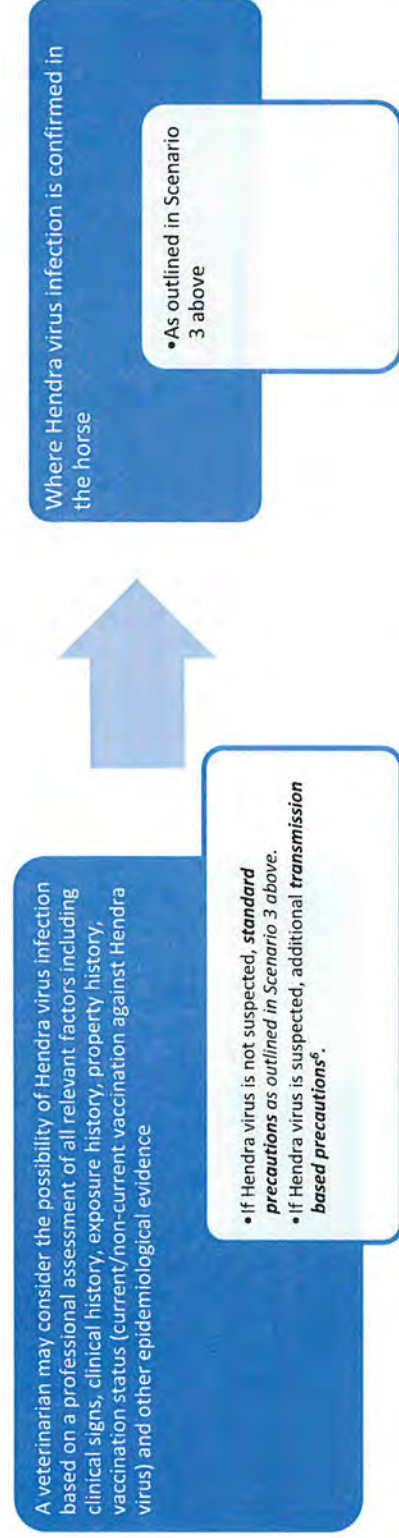


NOTE: This diagram is a general overview and has been produced solely for providing information to the Agriculture and Environment Committee Hendra Virus Inquiry. It is not intended for other purposes and duty holders seeking information on managing WHS risks should refer to the WHSQ website and other relevant government publications on the Hendra virus.

Scenario 3: Sick horse that is not vaccinated against Hendra virus



Scenario 4: Sick horse that is vaccinated against Hendra virus



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¹ For more detailed information on managing Hendra virus risks, refer to the Hendra Virus Interagency Technical Working Group (2014) *Hendra Virus Infection Prevention Advice* <http://www.health.qld.gov.au/ph/documents/cdb/hev-inf-prev-adv.pdf>

² **Standard precautions** are work practices that are applied to all patients (human or animal) regardless of their perceived or confirmed infectious status, and which provide a basic level of infection prevention and control to reduce the risk of transmission of infectious agents during the provision of healthcare or veterinary services.

³ PPE for standard precautions is worn to protect exposed skin, the mucous membranes of the eyes, nose and mouth, clothing and footwear from contamination with blood and body fluids. PPE may also be required for biosecurity (animal health) purposes. Selection of PPE should be based on a risk assessment that includes a consideration of all relevant factors such as the nature of the work (eg the procedure to be performed), any hazard associated with the work (eg the anticipated level of exposure to blood and body fluids, known or possible infectious agents and likely modes of transmission), functional needs of the task (eg dexterity) and the work environment (eg heat and humidity). For example, a procedure that involves a high level of exposure to blood and body fluids may require PPE that provides a higher level of barrier protection (eg impervious overalls, safety goggles). Workers must be provided with information, training and instruction on the proper use and wearing of PPE.

⁴ **Airborne precautions** are a set of work practices used for patients (human or animal) suspected or confirmed to be infected with a pathogen that can be transmitted by the airborne route and/or for aerosol generating procedures that may expose persons to airborne infection risks. PPE for airborne precautions includes a particulate respirator; the minimum level of respiratory protection is a disposable P2 respirator.

⁵ To date, all cases of Hendra virus infection of horses have involved horses not vaccinated against Hendra virus. Similar to all vaccines, no one vaccine can be considered 100% effective in all animals on all occasions. In addition, people may be exposed to infection risks other than Hendra virus from contact with horses. Given the serious human health risks arising from exposure to Hendra virus and the potential for exposure to other zoonotic pathogens, it is critical that people in contact with horses continue to practice good infection prevention and control even if a horse is vaccinated against Hendra virus.

⁶ **Transmission-based precautions** are infection prevention and control practices that are applied in addition to standard precautions for patients (human or animal) known or suspected to be infected with highly transmissible or epidemiologically important pathogens that require additional control measures to prevent disease transmission. They include the following:

- isolate the horse from persons, other horses and domestic animals
- restrict non-essential contact with the horse until Hendra virus infection is excluded
- where contact with the horse is unavoidable, Hendra virus risks are to be properly managed and all in-contact persons to follow safe work practices
- consider restricting invasive or high risk procedures that have the potential to result in a high level of exposure to blood and body fluids to those necessary to obtain samples and/or provide immediate treatment and attend to the horse's welfare, until Hendra virus infection has been excluded
- consider using safety engineered sharps (eg retractable needles)
- provide safety advice to the client
- PPE appropriate to the level of exposure to blood and body fluids including: disposable gloves, protective clothing (eg overalls with hood), safety eyewear or face shield, particulate respirator and rubber boots
- non-veterinarians should not undertake any invasive procedure until Hendra virus infection has been excluded
- designated entry-exit points

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Appendix 2

NATIONAL COMPLIANCE AND ENFORCEMENT POLICY

1. Introduction

The Commonwealth, state and territory governments have agreed to harmonised work health and safety laws to improve work health and safety, provide consistent protection for Australian workers and reduce the regulatory burden.

To fully realise the benefits of harmonised work health and safety laws, the governments have recognised the need for harmonised work health and safety laws to be complemented by a nationally consistent approach to compliance and enforcement¹.

This policy sets out the principles endorsed by the Workplace Relations Ministers' Council that underpin the approach work health and safety regulators (the regulators) will take to monitoring and enforcing compliance with the Work Health and Safety Act and Regulations. It operates alongside other nationally agreed policies and procedures governing the use of specific regulatory tools, or policies that may be specific to each regulator where they relate to the regulator's interface with the criminal justice system in their jurisdiction. This policy is available on the website of each work health and safety regulator and Safe Work Australia.

Safe Work Australia is an Australian Government statutory agency with responsibility for improving work health and safety and workers' compensation arrangements across Australia. The Agency is jointly funded by the Commonwealth, state and territory governments facilitated through an Intergovernmental Agreement signed in July 2008. The Agency is not a regulator and does not administer the work health and safety laws for any Australian jurisdiction.

Safe Work Australia's role includes developing policy dealing with compliance and enforcement of the model work health and safety laws and to ensure that a nationally consistent approach is taken by work health and safety regulators in each jurisdiction.

2. Aims of Compliance and Enforcement

All Australian jurisdictions are committed to the prevention of workplace deaths, injuries and illness.

In realising this objective, work health and safety laws provide regulators with a range of functions including:

- providing advice and information to duty holders and the community
- monitoring and enforcing compliance with work health and safety laws
- fostering co-operative, consultative relationships between duty holders and the persons to whom they owe duties and their representatives
- sharing information with other regulators, and
- conducting and defending proceedings under work health and safety laws.

¹ Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety made on 3 July 2008.

The regulators seek to use an effective mix of positive motivators, compliance monitoring and deterrents to encourage and secure the highest possible levels of compliance with work health and safety laws. In doing so, there is a need to balance a number of considerations, including:

- the community's expectation that businesses and undertakings will be monitored and held accountable if they fail to comply with work health and safety laws
- the need to support workplace parties and stakeholder bodies to build capability to achieve compliance with work health and safety laws, and
- the need to work with industry, workplace parties and stakeholders to continue to promote innovation and continuous improvements in health and safety standards.

The positive motivators employed by the regulators include:

- communicating with, engaging and supporting stakeholders
- providing practical and constructive advice, information, and education about rights, duties and responsibilities
- fostering cooperative and consultative relationships between persons conducting businesses or undertakings, their workers, health and safety representatives, unions and employer organisations
- supporting and involving workplace parties in the provision and promotion of education and training, and
- providing support to health and safety representatives and entry permit holders to assist them in performing their functions and exercise their legislative powers.

Compliance monitoring activities may include inspections, audits and other verification activities with the aim of enhancing work health and safety management practices and achieving sustainable compliance with work health and safety laws. The regulators will address any identified deficiencies by using compliance and enforcement tools outlined in this policy, as considered appropriate to the circumstances.

There are a number of ways in which non-compliance is deterred by the regulators. These include:

- detecting and dealing with alleged breaches of the work health and safety laws
- undertaking inspections, audits and investigations of alleged breaches of work health and safety laws
- taking appropriate enforcement action in response to breaches
- seeking appropriate sentencing outcomes in prosecutions, and
- publishing information regarding the nature and outcome of compliance and enforcement activities.

3. Key Principles

The following principles underpin all work health and safety compliance and enforcement activities:

<i>Consistency</i>	Regulators endeavour to ensure that similar circumstances at workplaces lead to similar approaches being taken, providing greater protection and certainty in workplace and industry.
<i>Constructiveness</i>	Regulators provide support, advice and guidance to assist compliance with work health and safety laws and build capability.
<i>Transparency</i>	Regulators demonstrate impartiality, balance and integrity.
<i>Accountability</i>	Regulators are willing to explain their decisions and make available avenues of complaint or appeal.
<i>Proportionality</i>	Compliance and enforcement responses are proportionate to the seriousness of the conduct.
<i>Responsiveness</i>	Compliance and enforcement measures are responsive to the particular circumstances of the duty holder or workplace.
<i>Targeted</i>	Activities are focussed on the areas of assessed highest risk or the work health and safety regulators' strategic enforcement priorities.

4. Strategic enforcement priorities

The regulators set strategic priorities for their compliance and enforcement activities which are determined both nationally and locally.

To ensure consistency, responsiveness and the efficient use of resources, the regulators work collaboratively. This includes the sharing of information and intelligence, sharing tools and strategic initiatives and working together to develop and implement national campaigns. Campaigns may be implemented by collaborative efforts, for example through a coordinated national effort, or may be implemented by each jurisdiction locally.

Through sharing intelligence and participation in national campaigns, the regulators seek to:

- ensure that regulators maintain a nationally consistent approach to compliance and enforcement
- ensure that emerging national issues are dealt with appropriately, and
- address the compliance and regulatory burdens for persons conducting businesses or undertakings across more than one jurisdiction.

5. Monitoring and compliance

The regulators monitor compliance with work health and safety laws in a number of ways, such as through the use of inspection powers and carrying out of audits.

The regulators also receive incident notifications and requests to respond to work health and safety issues. These notifications and requests are triaged to determine an appropriate regulatory response.

The regulators also share information with each other and gather/use data and other information to target particular industries, workplaces or workplace parties for proactive compliance reviews. These proactive activities are conducted in line with the activities of assessed highest risk and the strategic enforcement priorities (see above).

Prior to determining whether to take any action in relation to a possible breach, regulators undertake inquiries to determine whether a breach has occurred and gather information that may assist in preventing future breaches.

Inspectors appointed by the regulators attend workplaces and other sites to conduct inspections and audits.

The aim of inspections and audits is to assess the extent of compliance by duty holders with work health and safety laws, and to support compliance. Inspections and audits are a feature of both planned (targeted) and response work.

Inspectors have significant powers under work health and safety laws including:

- requiring answers to questions
- requiring production of documents
- seizing items for use as evidence of an offence
- issuing of improvement and prohibition notices

Investigations are undertaken for a range of reasons, such as to determine the causes of an incident, to assess compliance with work health and safety laws, to determine what action may be needed to prevent a further occurrence, and to determine what action may be appropriate to enforce compliance with work health and safety laws. Lessons learnt from investigations also inform development of work health and safety guidance and policy, and may inform future changes to work health and safety laws.

Consistent with the principles of proportionality and responsiveness, resources available for investigation of incidents are devoted to the most serious cases. It is not possible for work health and safety regulators to investigate all issues of non-compliance with the law which are uncovered in the course of an inspection, or in response to a complaint.

The regulators will generally carry out a full investigation of a work-related death, unless there are compelling reasons for not doing so.

In determining which complaints or reports of incidents, injury or disease to investigate and in deciding the level of resources to be deployed, the regulators take account of the following factors:

- the severity and scale of potential or actual harm
- the seriousness of any potential breach of the law

- the duty holder's compliance history, including such matters as prior convictions and notices issued
- whether the duty holder was licensed or authorised to undertake certain types work
- strategic enforcement priorities
- the practicality of achieving results, and
- the wider relevance of the event, including matters of significant community concern.

The following circumstances or allegations are priority areas for investigations:

- work-related fatalities and serious injuries or where there is a risk of such outcomes
- non-compliance with inspectors' notices or directions
- offences against inspectors
- offences against health and safety representatives and matters relating to entry permit holders
- discrimination against workers on the basis of their work health and safety activities, and
- failure to notify incidents.

The regulators may conduct investigations in conjunction with other relevant agencies (e.g. police, environmental protection agencies and electrical safety agencies). In such cases, a regulator may be a lead or support agency.

6. Compliance and enforcement tools

Where an inspection or investigation reveals evidence of an alleged breach, the regulators will consider what enforcement action, if any, should be taken. Health and safety risks can emerge over time and the regulators may develop new tools to respond to those risks.

A number of measures are available to regulators to compel a duty holder to remedy any identified contravention and to sanction a contravening duty holder. These measures may be used alone or in combination.

The regulators determine the most appropriate tool to be used depending on all the circumstances of a breach.

The tools that are available to the work health and safety regulators include:

- giving advice on compliance and seeking voluntary compliance
- resolving or assisting parties resolve certain work health and safety disputes
- issuing a prohibition notice
- issuing an improvement notice
- seeking an injunction

- issuing an infringement notice
- accepting an enforceable undertaking
- commencing a civil or criminal prosecution
- revoking, suspending or cancelling authorisations, and
- publishing enforcement actions and outcomes.

The following diagram represents, in the general sense, the relative volume or proportionate use of these tools and the ability to escalate if an initial intervention does not achieve the desired outcome.

The lowest level of the pyramid involves an approach which is employed most frequently, often in combination with other tools, to assist duty holders achieve compliance. Sanctions (such as criminal penalties) are at the top of the pyramid and are applied less frequently.

This does not mean that regulators will always commence with provision of information and advice, and only use other tools in an escalated manner.

Regulators will commence their intervention using the tools that are most appropriate in the particular circumstances. Some tools, as indicated in this policy, are alternatives while others may be used in combination. Using a range of tools in the lower levels of the pyramid may often achieve compliance without needing to escalate to the more serious levels of sanctions.



7. Criteria which guide enforcement decision-making

In deciding on the most appropriate action to take, the regulators are guided by the following considerations:

- the adverse effect, that is the extent of the risk, the seriousness of the breach and the actual or potential consequences
- the culpability of the duty holder, that is, how far below acceptable standards the conduct falls and the extent to which the duty holder contributed to the risk
- the compliance history and attitude of the duty holder
- if it is a repeat offence or there is a likelihood of the offence being repeated
- whether the duty holder was authorised to undertake certain types of work;
- impact of enforcement on encouragement or deterrence
- any mitigating or aggravating circumstances, including efforts undertaken by the duty holder to control risks
- whether the risk to health and safety is imminent or immediate, and
- whether the safety issue can be rectified in the presence of an inspector or the inspector is satisfied with a plan to remedy the breach.

Work health and safety laws impose duties on all workplace parties and these responsibilities co-exist and overlap. When determining whether to take action and against whom to take such action, the regulators consider all relevant duty holders and whether they have discharged their obligations.

In addition to these general criteria which guide decision-making, the remainder of this policy elaborates on the specific criteria which guide regulators in the use of each compliance tool.

8. Advice or guidance

Advice and guidance aims to raise workplace parties' awareness of their rights and obligations and help duty holders know how to comply with work health and safety laws and build their capability to address work health and safety issues and achieve compliance.

Having provided the duty holder with advice or guidance as to how compliance may be achieved, if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, the regulator may decide to take no further action.

Advice and guidance can also be provided to support the use of other compliance and enforcement tools, such as improvement and prohibition notices.

9. Improvement or prohibition notices

Inspectors have the power to issue improvement and prohibition notices. The aim of issuing improvement and prohibition notices is to ensure that non-compliance with work health and safety laws and serious risks is remedied.

Inspectors may issue an improvement notice in any circumstance where they form a reasonable belief regarding a contravention unless some other appropriate action is considered by the inspector to achieve the desired outcome.

Where there is a serious risk which emanates from an immediate or imminent exposure to a hazard, an inspector will issue a prohibition notice, which is a direction to prohibit an activity until the inspector is satisfied that the risk has been remedied. The direction may be given orally, but must be confirmed by written notice.

Where there is a failure to comply with an inspector's notice, the regulator may prosecute or, if there is a serious risk to health and safety, may also seek an injunction against the person to whom the notice was directed.

Improvement and prohibition notices are 'remedial' enforcement measures, not 'punitive' measures (i.e. they are not punishment). This means that in cases where punishment is warranted, other measures such as an infringement notice or prosecution may also be taken in addition to notices issued by an inspector.

10. Injunctions

Injunctions may be sought by regulators to compel a person to comply with an inspector's improvement, prohibition or non disturbance notice. Injunctions are used when there is a serious risk to health and safety which has not been remedied by the person to whom the notice has been issued and other mechanisms available to the regulator have not resulted in compliance being secured.

Injunctions are likely to be sought when there are exceptional, pressing or urgent circumstances (for example, where the breach involves a significant risk to public safety).

11. Infringement notices

Infringement notices are a mechanism for regulators and inspectors to impose an immediate form of punishment for certain types of breaches, sending a clear and timely message that there are consequences for non-compliance.

Infringement notices will generally be issued where there is some punishment warranted for the breach but the nature of the breach is not serious enough to warrant prosecution.

Infringement notices are only available for certain types of offences where:

- the offence involves a contravention of a more minor nature
- a prosecution of the offence would not give rise to a right to trial by jury, and
- there is prima facie evidence that an offence has been committed.

Factors which are considered relevant to the exercise of discretion to issue an infringement notice are:

- the seriousness of the risk
- the extent of any injury
- the frequency of similar conduct by the duty holder
- the prevalence of the offence in the jurisdiction and industry impact
- the duty holder's safety and compliance history

- the duty holder's co-operation and willingness to address the issue
- whether the subject matter of the offence is part of a priority intervention or campaign
- the attempts by the person to control the risk associated with the alleged contravention
- prior notice of the risk (e.g. direct to the duty holder or through educational material, safety alerts, guidance sheets etc)
- whether the circumstances warrant the application of a sanction at a lesser scale than an enforceable undertaking or prosecution (possibly in addition to remedial action in the form of an improvement or prohibition notice), and
- any mitigating or aggravating circumstances.

When exercising discretion to issue an infringement notice to a worker, the regulator or inspector will always consider whether the person conducting the business or undertaking's obligations to the worker and others have been met.

A failure to make a payment that is required under an infringement notice may result in proceedings being brought.

12. Civil proceedings – breaches of right of entry powers

Civil proceedings may be brought by a regulator in relation to conduct breaching provisions relating to work health and safety entry permit holders – whether by entry permit holders or by those who owe duties to them. Although not constituting a criminal offence, a regulator may seek a monetary penalty against a permit holder or other person who fails to act in accordance with the law.

13. Enforceable undertakings

An enforceable undertaking is a legally binding agreement entered into as an alternative to having the matter decided through legal proceedings for a contravention of the Act. An enforceable undertaking provides an opportunity for significant work health and safety reform to be undertaken.

Typically, the activities associated with an undertaking are substantial and must aim to deliver tangible benefits to the workplace, industry or the broader community.

The availability of an enforceable undertaking in connection with a contravention will involve consideration of a number of factors, including:

- the nature and extent of the contravention
- the quality of the remedial action proposed and the extent to which it achieves measurable improvements in workplace safety
- the likelihood that the enforceable undertaking will deliver real benefits to the workplace, industry or community beyond that which would normally be expected of a duty holder.

An enforceable undertaking will generally not be accepted where the offence relates to reckless conduct or where an infringement notice has been issued for the contravention.

14. Prosecutions

Prosecutions may be brought in relation to alleged breaches of offence provisions in work health and safety laws.

The question of whether to bring a prosecution for a breach of work health and safety laws is a significant one as the effect on those impacted by the decision (the defendant, worker or family of a deceased worker for instance) will be considerable. The regulators operate within a broader prosecutorial framework as part of the criminal justice system that requires the highest standard of integrity to be applied to prosecutorial decision making.

Each regulator applies the Director of Public Prosecution (DPP) guidelines specific to its jurisdiction. However the Australian DPPs have agreed upon a common set of principles to be used in determining the question as to whether or not a prosecution should be commenced or, if commenced, should be permitted to proceed. Although in some jurisdictions these criteria are expressed in different language, they do not differ in substance.

In determining whether or not to prosecute, three criteria common to all jurisdictions in the DPP guidelines need to be met. They are as follows:

- the existence of a prima facie case, that is, whether the evidence is sufficient to justify the institution of proceedings
- a reasonable prospect of conviction, that is, an evaluation of the likely strength of the case when it is presented in court (taking into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court or tribunal that will determine the matter, the admissibility of any confession or other evidence, and any lines of defence available to the defendant)
- a public interest test which may include the following considerations:
 - a) the seriousness or, conversely, the triviality of the alleged offence or whether it is only of a technical nature
 - b) any mitigating or aggravating circumstances
 - c) the characteristics of the duty holder—any special infirmities, prior compliance history and background
 - d) the age of the alleged offence
 - e) the degree of culpability of the alleged offender
 - f) whether the prosecution would be perceived as counter-productive, that is, by bringing the law into disrepute
 - g) the efficacy of any alternatives to prosecution
 - h) the prevalence of the alleged offence and the need for deterrence, both specific and general, and
 - i) whether the alleged offence is of considerable public concern.

In relation to work health and safety offences, the time for the regulator to bring charges against a person is limited. Proceedings for a criminal offence under work health and safety laws may be brought within the latest of the following:

- within two years after the offence first comes to the regulator's attention

- 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 a 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 thereafter if fresh evidence is discovered.

Proceedings for a contravention of a civil penalty provision² may be brought within two years after the regulator first becomes aware of the contravention.

15. Revoking, suspending or cancelling authorisations

The regulators authorise certain people to undertake certain types of work and organisations to conduct certain types of undertakings. For example, work involving the removal of dangerous substances such as asbestos and to operate major hazard facilities.

Regulators may decide to revoke, suspend or cancel a person's authorisation given in order to deal with inappropriate conduct or practices identified during inspection work or as a result of information received. Such action is a protective measure and may be undertaken even where steps have been taken to remedy a contravention or where an offender has otherwise been punished (ie. fined).

The regulators recognise that the revocation, suspension or cancellation of authorisations may have serious consequences for a person. When making decisions about authorisations, the regulators balance these considerations with the paramount need to protect the health and safety of workers and other persons. In making a decision whether or not to issue or renew an authorisation, the regulators will consider the person's history of compliance.

16. Publishing enforcement actions and outcomes

Regulators publicise information about their enforcement actions in order to raise awareness of work health and safety laws and the consequences of non-compliance, thereby deterring people from engaging in similar conduct and promoting better practices.

Examples of the ways regulators may publicise information about enforcement actions are:

- summarising cases on their websites
- speaking to the media and sending press releases about a case
- using a case as a teaching tool at seminars, conferences and in materials distributed to various groups
- using information about a case in the regulators' publications, and
- using information from a case to gather and publish data and statistics.

At any stage of an inspection, audit, investigation or prosecution, regulators may disclose information about a case for the purposes of preventing similar offences from occurring.

² Under work health and safety laws, civil penalties only apply to a failure to comply with obligations towards and of work health and safety entry permit holders.

The regulators may also disclose information about a case to the public at any time where they consider that it is necessary to quell speculation or to correct or forestall inaccurate media reports.

In the case of enforceable undertakings, regulators are required to publish a notice of a decision to accept an undertaking and the reasons for that decision.

At all times, regulators aim to be accurate, impartial, balanced and fair in the way in which they communicate about investigations, inspections, audits and enforcement actions.

17. Notification of enforcement decisions

When a regulator makes a decision regarding whether to initiate a prosecution or enforceable undertaking following an investigation, the regulator may notify the following parties of the decision:

- the alleged offender
- the person who raised the matter with the regulator or their representative
- the person who was injured or exposed to risk, and
- the family members of a person who has died as a result of an alleged breach.

Inspectors may also provide information about their workplace inspections and any actions taken to relevant workplace parties.

18. Challenging decisions

Work health and safety laws provide that certain persons can seek internal and/or external review of certain types of decisions that are made by inspectors and the regulators. The range of decisions for which a review can be sought are listed in the model WHS Act and regulations.

In relation to prosecutions, if a regulator has not brought a prosecution within six months of the date of an alleged Category 1 or 2 offence (but not later than 12 months after the date of the alleged offence), a person can request that the regulator bring a prosecution. Following a request to bring a prosecution the regulator must (within three months) advise whether the investigation has been completed, and if so, whether or not a prosecution will be brought or give reasons why a prosecution will not be brought.

19. Other persons who can exercise work health and safety powers

It is also important to note that elected health and safety representatives have functions and powers under work health and safety laws, including powers to take certain actions.

Union officials who hold work health and safety entry permits have powers of entry into workplaces and other powers in relation to suspected work health and safety breaches. The authorising authority that issues the work health and safety entry permits also has certain powers to resolve a dispute about right of entry and to revoke entry permits.

20. More information about compliance and enforcement

In addition to this policy, regulators each publish further details about their compliance and enforcement programs, which can be found at each regulator's website.

21. Periodic review



The implementation of this policy will be reviewed by Safe Work Australia following the first anniversary of the commencement of model work health and safety laws.

This policy will also be reviewed together with the five year review of the content and operation of the work health and safety legislation.

Australian work health and safety regulators:

Comcare	Safework SA
WorkCover NSW	Workplace Health and Safety Queensland
WorkSafe ACT	WorkSafe Victoria
NT WorkSafe	WorkSafe Western Australia
Workplace Standards Tasmania	

