

14 February 2023

Our reference: ADM/2022/98

Contact: Sanya Silver

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The Hon. Robert McDougall KC
Independent Review of SafeWork NSW
c/- Level 5, 60 Martin Place, Sydney NSW 2000

By email: enquiries@safeworknswreview.com.au

Dear Mr McDougall

Submission to the Independent Review of SafeWork NSW

I am writing to provide information that may be relevant to the terms of reference of the Independent Review of SafeWork NSW you are currently conducting.

Since 2020, my office has finalised two investigations under s 13 of the *Ombudsman Act 1974* concerning the performance and effectiveness of SafeWork's compliance and enforcement functions.

The first investigation considered a number of compliance related issues, including the lawfulness of improvement and prohibition notices issued by SafeWork inspectors to Blue Mountains City Council during SafeWork's investigation of Council's management of asbestos. The former Ombudsman, Michael Barnes tabled a special report under s 31 of the Ombudsman Act in Parliament about this investigation on 21 August 2020. The report '[Investigation into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces](#)', which is accessible in full on our website, made findings and recommendations that may be of interest to the independent review. I also enclose an excerpt from our 2020-21 Annual Report summarising the investigation. Our monitoring of SafeWork's implementation of the recommendations has now concluded as SafeWork has provided information indicating all the accepted recommendations have been complied with.

The second investigation examined SafeWork's conduct in deciding to impose conditions on a Class B Asbestos Removal Licence held by Blue Mountains City Council and a decision to prosecute Council for alleged breaches of the *Work Health and Safety Regulation 2017*. A summary of the investigation, which was included in our [Formal Investigations Summary Report 2021-22](#) tabled in Parliament in October this year, is attached. A more comprehensive decision was provided to SafeWork during the investigation

and, if relevant, your inquiry may wish to consider requesting a copy of that decision directly from SafeWork.

As well as those two investigations, your inquiry may also be interested in an issue raised by another complaint we received in 2019, which concerned the operation of SafeWork's Triaging and Investigation Decision Making Panel (TIDMP). It appeared that the TIDMP did not have visibility of all recommendations made by inspectors to investigate specific matters, because in some cases SafeWork directors (to whom such recommendations were reported) had unilaterally decided that an investigation was not warranted and therefore decided not to refer the recommendation on to the TIDMP.

In response to our preliminary inquiries about this complaint, SafeWork advised us that it would revise the TIDMP's Terms of Reference to make clear that directors were expected to *inform* the TIDMP of all matters where an inspector had recommended an investigation, including those matters where the director had decided *not to refer* the recommendation to the TIDMP. On 10 June 2020, SafeWork confirmed to us that its directors 'had briefed their respective management teams on amendments to the Panel's Terms of Reference'.

If you would like any further information about our investigations into SafeWork or work generally in this area, please contact Sanya Silver, Deputy Ombudsman (Investigations and Major Projects) at [REDACTED] or on [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Miller', written in a cursive style.

Paul Miller
NSW Ombudsman

Encl. NSW Ombudsman Formal Investigations summary report – Safework NSW
NSW Ombudsman Annual Report 2020-2021 – Safework NSW