

### **Government Response**

#### to the

# Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry

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#### THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

#### **GOVERNMENT RESPONSE**

#### TO THE

### INQUIRY INTO COMPLIANCE WITH WORK HEALTH AND SAFETY REQUIREMENTS IN THE ACT'S CONSTRUCTION INDUSTRY

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### Government Response to the Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry

#### **Introduction**

In September 2012, the Attorney-General, commissioned an inquiry into compliance with and application of Work Health and Safety laws in the ACT's construction industry. Mr Corbell released the Inquiry's report on 26 November 2012. The report contains 28 recommendations, each of which are addressed in this response.

The Government acknowledges the findings of the Inquiry and supports the view that urgent changes are required. To achieve this, a collaborative and genuine approach that includes industry, worker organisations, importantly every person working on a construction site and government is required.

The Inquiry highlights the importance of industry taking the lead to ensure these changes are realised, with government being supportive to facilitate those changes.

The inquiry found the ACT's construction industry has a distressing safety record, where the serious injury rate is almost one third higher than the national average, and the industry's long term injury performance is almost double the national average.

In general, the Inquiry found the ACT Construction Industry is characterised by a culture of complacency and acceptance of workplace injuries. It is vital this culture does not continue.

The Report also highlights five significant factors which underpin the recommendations made, namely, the ACT Construction Industry:

- appears not to recognise that the ACT's construction safety record is so bad;
- has a sense of inevitability about the occurrence of serious injuries;
- does not generally understand how to identify, address and mitigate risks;
- appreciates that workplaces must adopt a safety culture, but has very little knowledge about how to do that or what fundamentals must change in the current "can do" culture to make it happen, and
- disregards work health and safety in some parts of the residential construction sector.

The Government also notes the Inquiry's comment that generally the industry is concerned with the level of safety, particularly following the recent deaths, and that it is accepted that there is a need for change.

#### Response:

The Government is committed to working with industry, employers, unions and employees to do everything possible to ensure every worker returns home safely.

The ACT Work Health and Safety legislation introduced in January 2012 was the result of a national harmonisation process that involved extensive consultation at the national and local level. The Territory, New South Wales and the Commonwealth are now harmonised in terms of the safety duties and obligations of all persons at workplaces. This provides surety for construction companies operating in both the ACT and NSW.

The Government rejects any suggestion that safety on construction sites cannot be improved.

While acknowledging that the construction is a high risk industry, the Government believes there is an immediate need for the most senior representatives of industry, employee groups and government to jointly foster and promote improved leadership in workplace health and safety.

There is a need to change the culture of the construction industry from one that accepts accidents and injury as an inevitable consequence to one that strives to ensure all workers return home safely.

No amount of government action alone and no amount of additional regulation will produce the changes required. As the report points out, it is a matter of everyone recognising and valuing the benefits of a safe worksite and accepting their role in achieving this end.

The Government will lead by example. All of the recommendations in the Inquiry's report where the Government has direct control will be adopted. The Government will ensure that government contracts are awarded to companies that demonstrate a commitment and capacity to meet their workplace health and safety obligations.

The Government is encouraged by announcements from peak industry bodies supporting the recommendations in the report. Work has already commenced and work will continue to assist industry and employee organisations where they have the lead in implementing the recommendations to see those recommendations realised.

Key to the success of this collaborative approach and ensuring the changes required are implemented will be the work of the Construction Safety Advisory Committee established by the ACT Work Safety Council. The Committee consists of senior representatives from the Master Builders Association (MBA), the Housing Industry Association (HIA), the Construction Forestry, Mining and Energy Union (CFMEU), the Communications, Electrical and Plumbing Union (CEPU), and Worksafe ACT.

The Committee, through the membership of the organisations and companies they represent, has the capacity to directly influence a high percentage of the construction industry and coupled with increased pro-active educational work by WorkSafe will be instrumental in realising real change.

The Committee will lead the implementation of the industry focussed recommendations, and will provide advice as necessary on the remaining recommendations. The Government will provide ongoing support to the Committee and will coordinate the Committee's reporting.

The Government will also establish a senior executive level steering committee representing all directorates with capital works programs.

The steering Committee, chaired by the Deputy Director-General, Chief Minister and Treasury Directorate will report to Cabinet and the ACT Work Safety Council on the implementation of the recommendations in the Report.

The Government response to each of the recommendations is addressed below with an indicative timetable for implementing the recommendations. The response groups the recommendations into four broad groupings:

- 1. national initiatives to improve safety;
- 2. culture, consultation and collaboration;
- 3. work health and safety education;
- 4. government leading the way procurement processes and capital works programs to improve safety.

#### 1. National initiatives to improve safety

The recommendations relating to national initiatives the Government can pursue are grouped below.

The recommendations highlight the practical measures the Government can take at a national level to influence issues which have a direct impact on safety matters in the ACT.

#### **Recommendation 1:**

The ACT Government should work closely with the Australian Taxation Office, Fair Work Australia and other Government agencies to do all it reasonably can, including through its powers and responsibilities under ACT workers' compensation legislation, to eradicate sham contracting practices in the construction industry.

Government response: Agreed

The Government commits to working closely with Government agencies including the Australian Tax Office and the Fair Work Ombudsman and the Insurance Industry to develop formal arrangements and explore policies to further eradicate this practice.

The ACT Government has taken a leading role to address sham contracting practices by which employees are represented as contractors on a national basis. In 2009 the Government legislated to stamp down on sham contracting. The ACT now has the most diverse suite of workers' compensation compliance powers and amongst the highest maximum penalties for premium non-compliance in Australia. An additional twelve WorkSafety staff as recommended and agreed later in this response will also increase the Government's capacity to address sham contracting issues.

Workers' compensation insurers play an important compliance role, raising awareness about employers' obligations and verifying employers have proper workers' compensation cover. The Government will continue to work closely with the insurance industry to ensure compliance activities are thoroughly integrated and coordinated.

Notwithstanding this work, the ACT can further strengthen its role through development of agreements with national regulators.

#### *Implementation*

Work has already commenced with relevant ACT Government agencies identifying opportunities for collaboration with Commonwealth agencies.

The Government will seek formal agreements with Federal Agencies including the Australian Taxation Office, Fair Work Australia and the Fair Work Ombudsman to strengthen and coordinate regulatory activity by September 2013.

Through its procurement activities the ACT Government will continue to insist companies tendering for ACT Capital Works projects comply with Industrial Law requirements.

#### **Recommendation 2:**

The ACT Government should urge Safe Work Australia to work with the Australian work health and safety jurisdictions and the national industry partners to ensure appropriate levels of information and training are made available to transient workers in the construction industry.

#### **Recommendation 13:**

The ACT Government should urge the other Australian work health and safety jurisdictions, through Safe Work Australia, to include provisions for training for health and safety committee members in the harmonised work health and safety legislation.

Government response: Supported

The ACT has actively participated in the harmonisation of work health and safety legislation across Australia. The Government supports this recommendation and acknowledges the importance of ensuring that all persons working on construction sites are appropriately trained in the risks associated with construction work.

The Government has already written to the Federal Minister for Workplace Relations highlighting the recommendations in the Report. Contact at Officer level has already been made, and through its membership on Safe Work Australia, the ACT will raise the findings and recommendations of the report and actively seek a renewed emphasis on the specific needs of transient workers or workers who are vulnerable due to language, cultural or educational backgrounds, and also the important role work health and safety committees play in addressing work health and safety issues at workplaces.

#### *Implementation*

Formal correspondence will be prepared to Safe Work Australia requesting this item be included on the next meeting agenda scheduled for March 2013.

#### **Recommendation 3:**

The ACT Government should endorse the targets and priority action areas identified in the Australian Work Health and Safety Strategy 2012-2022 and work with relevant sectors, including the construction industry, to achieve the strategy's goals.

Government response: Agreed.

The ACT Government has endorsed the Australian national strategy through the COAG Select Council on Workplace Relations.

#### *Implementation*

The Government will work with relevant national bodies including Safe Work Australia, the Heads of Work Safety Authorities (HWSA) and local bodies including the Work Safety Council and other construction industry reference groups in developing an implementation plan for the national strategy and to target the reduction of injuries in the industry.

The Government will also develop an ongoing campaign of targeted information sessions focussing in the main on high risk industries, such as construction with sessions commencing in March 2013.

The national strategy will be a standing agenda item for the ACT Work Safety Council to ensure appropriate implementation.

#### **Recommendation 4:**

The ACT should set an initial goal of a 35% improvement in its serious injury claim rate, to bring it below the national average for this measure, by 30 June 2016. Further targets should then be set to align the ACT's performance with the best in the country.

Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations agreed to adopt the target of a 35 per cent reduction in the serious injury claim rate. Notwithstanding the importance of achieving this, it will prove a significant challenge that will only be achieved through a determined effort by employers, workers and unions, and the government. The target exceeds the new Australian *Work Health and Safety Strategy 2012 -2022* target of a 30 per cent injury reduction by 2022.

National data shows ACT construction workers are around 90 per cent more likely to be seriously injured at work than a construction worker employed in the Northern Territory. SafeWork Australia data shows the ACT construction industry experiences more than 300 serious workplace injuries and diseases each year. Around one third of these injured workers are unfit for duty for more than 12 weeks as a result.

Of significance to this recommendation is ensuring that data is collected and reported consistently across Australia. It will be crucial that the basis of statistics and any other measure of performance used to measure progress must be accurate, and have a sound basis that is clearly understood.

#### *Implementation*

Initially, solid base-line data will be obtained and targets aligned with recommendation 3. Interim targets and measure dates will be set for ongoing consultation, review and reporting.

#### 2. Culture, Consultation and Collaboration

The recommendations relating to culture, consultation and collaboration are grouped below.

These recommendations emphasise the importance of a collaborative approach to resolving safety issues on construction sites, highlighting that everyone has a role to play in ensuring safety outcomes are improved.

The recommendations highlight the importance of industry and employee organisations taking responsibility for and leading change at the workplace.

Industry and employee organisations must drive the change in attitude towards safety and must drive a new culture, one that strives to see a culture that accepts that every worker has the right to expect a safe workplace. Critically, these changes will only be successful if the most senior levels of management accept responsibility for making those changes.

The Construction Safety Advisory Committee working with its various memberships will lead the implementation of these recommendations.

#### **Recommendation 5:**

The ACT construction industry partners should endorse the need to build positive, inclusive safety cultures on local worksites. The Master Builders Association and the Housing Industry Association should take the lead in moving the industry forward, from an approach to safety which is focusing on systems, compliance and reaction to one that focuses genuinely on people and attempts to create healthy safety cultures on construction sites.

#### **Recommendation 6:**

The Master Builders Association and the Housing Industry Association should work closely with the Office of the Federal Safety Commissioner to ensure that specific concerns of ACT employers regarding what they see as an undue focus on paperwork and systems are heard and that such a focus does not operate to the detriment of work health and safety outcomes but allows construction companies to focus their work health and safety priorities on practical initiatives which have meaning and value to employees.

#### **Recommendation 8:**

The ACT construction industry should place greater emphasis on the importance of effective task induction. This emphasis should be supported through education and enforcement activities by the regulator as well as education and other support from employer and worker representative bodies, including guidance on what makes a good pre-start or toolbox talk. This guidance and support should be in place by 30 June 2013.

#### **Recommendation 9:**

Principal contractors must recognise and accept the responsibility they have for the conduct of sub-contractors operating on their sites and should include them in any initiatives to improve approaches to safety within their business. Principal contractors should consider what can be done to impose safety requirements on sub-contractors which are commensurate with the size and sophistication of the sub-contractor involved. WorkSafe ACT, through its educational and enforcement activities, should reinforce this emphasis.

#### **Recommendation 10:**

The Master Builders Association and the Housing Industry Association should lead the development of clear frameworks for the management of safety on ACT construction sites, recognising the practical needs of varying sized businesses and the differing sectors, such as civil, commercial and residential, and recognising the importance of good planning in achieving safer worksites. WorkSafe ACT and ACTPLA should provide input to this process to ensure that legislative requirements are addressed. These frameworks should be available to businesses by 31 March 2013.

#### **Recommendation 11:**

The Master Builders Association and the Housing Industry Association should include in any guidance on safety frameworks for their members the allocation of responsibility for oversighting safety on projects, the recommended minimum training and competencies for such roles and the appropriate safety governance processes which should be in place, recognising the varying types and sizes of employers in the industry.

#### **Recommendation 15:**

The Master Builders Association and the Housing Industry Association should undertake further work to investigate the viability of developing a 'cadetship' style program for construction industry project managers including, should the program prove viable, a proposal for a significant level of funding from the ACT Building and Construction Industry Training Fund Authority. A cadetship program should be implemented by the beginning of 2014.

Government response: Agreed.

The Government agrees with the commentary in the Report that safety must be considered an integral part of doing business and not simply an 'added cost'.

Responsibility for changing workplace culture lies primarily with the participants in the industry. Industry and employee groups must commit to developing strategies to ensure the culture on construction worksites places the emphasis on safety. The government is committed to assisting and supporting industry players to identify ways to deliver immediate tangible safety improvements and improvements with the overall compliance with work health and safety duties while also focusing on sustainable long term goals.

#### *Implementation*

The first meeting of the Construction Safety Advisory Committee was held on 17 January 2013. The Committee agreed to the terms of reference and agreed to work collaboratively to develop a workplan and timetable to implement these recommendations. The Committee agreed to provide ongoing advice and oversight on the implementation of all recommendations in the Report, and will provide advice to Directorates as appropriate.

The Committee will provide ongoing reports to Government, and the Work Safety Council, on the progress of the implementation of the recommendations with the first due on 1 September 2013.

#### 3. Work, Health and Safety Education

The recommendations relating to work, health and safety education are grouped below.

The Government agrees that it is vital workers are trained to have the skills and confidence to identify safety concerns and to bring those matters to attention, rather than accept unnecessary risks, and these recommendations provide the opportunity for Industry to ensure ongoing training is coordinated and relevant.

The Government acknowledges the work of the ACT Building and Construction Training Fund and supports the recommendations that will ensure training is available to all construction workers and that training meets the needs of Industry.

The ACT Building and Construction Training Fund is managed by a Board made up of representatives of industry and employee organisations. In this context, it is vital that industry and employee groups identify the training that is most relevant and that they work collaboratively to ensure the availability of appropriate health and safety training across all levels within the construction industry. The Government is committed to working with the Board to achieve these goals.

#### **Recommendation 7:**

WorkSafe ACT should work with the industry partners to develop training and guidance that will promote a greater understanding at all levels within the industry of how to manage work health and safety risks. WorkSafe ACT should seek to have this in place by 30 June 2013.

#### **Recommendation 14:**

The ACT Government should provide input to the Australian Skills Quality Authority review of White Card Training to ensure that local industry concerns are heard and that there is proper assessment of the method and quality of delivery as well as the competencies gained from this training.

#### **Recommendation 16:**

The ACT Government should work with the construction industry to review all current training arrangements with a view to providing a more strategic oversight of construction industry training, higher quality courses and more effective training outcomes. As part of this review, the Government should consider reducing the influence of organisations with the potential for a financial conflict of interest arising from chosen strategic directions.

#### **Recommendation 17:**

The ACT Building and Construction Industry Training Fund Authority should review its approach to subsidisation of training costs to focus on high priority areas which align to the industry's strategic medium to longer term goals.

#### **Recommendation 18:**

The body responsible for strategic oversight of construction industry training should commission appropriately qualified independent evaluation of key training programs to determine whether anticipated outcomes are being achieved—that is, whether the industry is getting value for money from its investment in training. This information should inform future strategic planning. A proportion of the ACT Building and Construction Industry Training Fund Authority's resources should be set aside for this activity.

#### Government response: Agreed

The Government supports these recommendations and will support Industry and employee groups, to develop a process whereby sufficient training is available to all persons in the Construction

industry; to ensure the training is relevant; is specific to the tasks required of workers; and, is delivered in a way that is meaningful and importantly understood.

#### *Implementation*

WorkSafe ACT has established a tripartite working group to review and refresh the 'Construction Safety Handbook' with the view of having this released by March 2013. A review of all other WorkSafe publications will be undertaken by September 2013, including the increased use of social media and the development of mobile phone "Apps" for use by industry.

Initial contact has been made with the Australian Skills Quality Authority (ASQA) in respect of the review of the White Card Training. The Territory will provide input to this Review.

The ACT Building and Construction Industry Training Fund is responsible for the funding of courses approved by the Authority's Board after application by a Registered Training Organisation. The Authority does not, on its own, determine the industry's strategic short or long term goals.

The Construction Safety Advisory Committee will be asked to coordinate with industry partners and the Authority's Board to address the recommendations in the Review with the aim of providing input to the Training Fund's Training Plan by September 2013.

The Construction Safety Advisory Committee will also commission the independent evaluation of the key training outcomes suggested by the Inquiry, with a report to be prepared by September 2013.

The Advisory Committee will also consider the Parliamentary Agreement for the Legislative Assembly in terms of a Review of the operation of the Building and Construction Training Fund and the proposed increase of the training levy to 0.3 per cent.

## 4. Government leading the way - procurement processes and capital works programs to improve safety.

The recommendations relating to how Government will lead the way in improving safety on construction sites are grouped below:

#### **Recommendation 12:**

The ACT Government should work with other jurisdictions to encourage a national approach to the registration of engineers as soon as is practicable. If a national scheme is likely to be delayed, the Government should 'go it alone' and implement its own scheme for the registration of engineers practising in the ACT by 30 June 2014. In the meantime, all construction companies operating in the ACT should be encouraged to use engineers who can demonstrate their current registration on the National Professional Engineers' Register. The ACT Government should mandate this for any work it procures.

#### Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted this recommendation.

Work has commenced on a review of the *Building Act 2004* and the possible regulation of engineers and associated construction professionals. The Review has a Reference Group that is due to provide its recommendations to Government in the first half of 2013.

#### *Implementation*

Until the outcome of the Building Act review is known, Environment and Sustainable Development Directorate working with the ACT Work Safety Commissioner will provide advice to the industry reminding it of the responsibility to ensure the engineers they engage are suitably qualified.

Where the work requires specialist and professional expertise, Commerce and Works Directorate, as part of their procurement processes, will move to require companies tendering for Government contracts to only employ engineers who are registered on the National Professional Engineers Register and who are appropriately qualified to undertake their contractual responsibilities. This requirement will be implemented progressively as new projects are established and tenders sought.

#### **Recommendation 19:**

The ACT Government should fund twelve additional inspector positions for WorkSafe ACT in the 2013-14 budget on an ongoing basis. WorkSafe ACT should utilise the majority of these additional positions for proactive field work, including establishing a regular field presence in all three sectors – residential, commercial and civil construction.

#### Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted this recommendation.

#### *Implementation*

Subject to the finalisation of the 2013 -2014 Budget recruitment processes for additional resources within WorkSafe ACT will commence. The additional staff would enable WorkSafe to maintain its regulatory function whilst providing additional resources to work with industry and employee groups in awareness raising, dispute resolution and targeted education programs.

#### **Recommendation 20:**

The ACT Government should increase the number of work health and safety matters for which Infringement Notices can be issued on both employees and employers, including sub-contractors. This work should be completed by 30 June 2013. Infringement Notices should be published to ensure that the public is aware of malfeasance and has the opportunity to take their future business elsewhere to safer companies.

Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted this recommendation. The recommendation will require amendments to the Magistrates Court (Work Health and Safety) (Infringement Notices) Regulation.

#### *Implementation*

Work has commenced to identify potential offences for which infringement notices may apply with the intention of implementing the new infringement regime commencing on 1 July 2013.

Guidelines for Inspectors on the appropriate use of infringement notices will be finalised in April 2013.

During April and May 2013 targeted awareness raising sessions with industry will be held.

In publishing Infringement notices, the Government will put into place processes to assess the effectiveness of that information in terms of use by the public and changes in behaviour by corporations.

#### **Recommendation 21:**

The ACT Government should consider whether provision of one or two appropriately qualified legal staff dedicated to WorkSafe would improve the quality and timeliness of prosecutions while freeing inspectors up for more field work. This could be achieved within the twelve positions referred to in Recommendation 19.

Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted this recommendation.

#### *Implementation*

The recruitment of 12 additional WorkSafe staff will focus on attracting applicants with the necessary skills and experience to improve the quality of briefs of evidence and the training of staff to be required to prepare such documents.

#### **Recommendation 22:**

The ACT Government should appoint an Industrial Magistrate who could develop knowledge and experience of work health and safety matters and the impact of deterrents on the behaviour of duty holders.

Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted this recommendation.

#### Implementation:

Work has commenced to establish an Industrial Magistrates Court and to scope the function and jurisdiction of the proposed Industrial Magistrate in the ACT. The detail of the functions and jurisdiction of the court will be subject to extensive stakeholder consultation. A proposed draft Bill, introducing the Industrial Magistrates Court, is anticipated to be circulated for comment in April 2013, and it is anticipated the Bill will be introduced into the Assembly in the Autumn sittings.

#### **Recommendation 23:**

The ACT Government should consider whether there are structural or other opportunities which would enable ACTPLA's and WorkSafe's inspectors in the field to collaborate and co-ordinate targeting of specific concerns on worksites and to link their enforcement and demerit points systems.

Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted this recommendation.

*Implementation* 

Work has commenced to strengthen the current arrangements for workplace inspections between WorkSafe, and the ESDD Construction Services Branch, including the exploration of options for greater collaboration and maximisation of existing resources.

Detailed work-plans and arrangements will be finalised by 30 June 2013.

#### **Recommendation 24:**

The ACT Government should allocate funds to allow the expansion of the current IT solution under development for workers' compensation data to include a single end-to-end solution for the identification, inspection and management of workplace incidents and the associated work safety compliance activity.

Government response: Agreed

The Government has already provided funding for an IT solution to support the management of the ACT public and private sector workers' compensation arrangements. The Government is currently considering how this project can be expanded to provide a single end-to-end solution for the identification, inspection and management of workplace incidents and the associated compliance activity. This recommendation will enable real time access to management information which in turn, will enable targeted interventions and timely reporting of non-compliance and industry trends.

#### *Implementation*

During February and March, a scoping exercise will be undertaken to ensure the information required is included in the upgraded IT system.

#### **Recommendation 25:**

The ACT Government should proceed with development and implementation of Shared Services Procurements' proposed 'active certification' approach following consultation with stakeholders. This should happen by 30 June 2013.

#### **Recommendation 26:**

The ACT Government should encourage excellence in health and safety performance by introducing comparative assessment of contractors' safety record and capacity as part of the tender selection process for Government construction projects.

Government response: Agreed

In releasing the report, the Minister for Workplace Safety and Industrial Relations accepted both these recommendations.

#### *Implementation*

Commerce and Works Directorate has commenced consultation with Industry on its model of proactive assurance for the management and delivery of capital works projects.

This model of management is part of a wider comprehensive initiative to bring further rigor to ensuring improved health and safety outcomes for ACT Government capital works. The initiative includes regular and ad-hoc safety audits on construction sites the results of which will be central to maintaining of construction firms pre-qualification status.

#### **Recommendation 27:**

With the exception of the Committee's Recommendation 12, which is replaced by Recommendation 15 in this report, the ACT Government should implement all of the recommendations of the Civil Construction Safety Issues Advisory Committee.

Government response: Agreed

The recommendations from the Civil Construction Safety Issues Advisory Committee impact on a range of Directorates and processes, from the forward civil works planning stage; to the establishment of a single capital works infrastructure co-ordinator position; and to the government tendering and procurement process.

#### *Implementation*

An initial meeting of Directorate nominees will be held during February to develop a workplan, in conjunction with Commerce and Works Directorate, to implement the recommendations of the Civil Construction Safety Committee. It is proposed all recommendations will be implemented by 1 September 2013.

#### **Recommendation 28:**

The ACT Government should conduct a stocktake of the construction industry's work health and safety performance as at 30 June 2016 to identify what has been achieved, what is yet to be achieved, and what new targets or strategies should be put in place.

Government response: Agreed

The Government will ensure appropriate systems are in place to undertake this stocktake.