

# Best Practice Review of the model Work Health and Safety laws

Consultation summary

**MARCH 2026**

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**Report**

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## 1.1 Introduction

This summary identifies key themes and issues raised during the consultation process for the Best Practice Review of the model work health and safety (WHS) laws (Review).

Thank you to everyone who took the time to contribute to the Review. All the information provided over the course of the consultation period is being carefully considered.

## 1.2 Consultation process

On 1 September 2025, Safe Work Australia published a discussion paper, inviting stakeholders to submit written feedback to the Review, and received 118 responses. Except where requested by the author, these submissions are available on the [Safe Work Australia Consultation Hub](#).

We visited each capital city and 2 regional centres (Bunbury in Western Australia, and Geelong in Victoria) and held over 100 meetings (in-person and online). We spoke with workers, health and safety representatives (HSRs), employers, industry associations, unions, regulators, government agencies, WHS professionals, academics, community organisations, individuals, and families affected by workplace fatalities and serious injuries.

We also published 3 online surveys. One survey was released in September 2025 to accompany the discussion paper. The other surveys were released in October 2025 and were aimed specifically at workers and HSRs, and employers. In total we received over 900 survey responses.

## 1.3 Summary of relevant reviews

Feedback on relevant reviews has been incorporated into the specific themes/issues identified below.

## 1.4 The harmonisation objective

### Jurisdictional variations

The model WHS laws, and the harmonised approach to WHS remain well supported by everyone who participated in the public consultation process. However consultation has identified there are growing pressures, particularly in relation to national consistency that is making it more difficult to maintain the harmonisation objective. Unions are supportive of harmonisation as a way to lift standards across the country but emphasised it should not come at the expense of existing protections in any jurisdiction. Regulators likewise support harmonisation, though noted some local variations may still be needed. A recurring message from business and industry groups was the need for a renewed and sustained commitment to harmonisation by jurisdictions, including calls for Victoria to adopt the model WHS laws.

### The impact of jurisdictional variations on harmonisation

Concerns were raised by many who participated in the consultation process about jurisdictions introducing amendments into their local versions of the model WHS laws without national consideration. It was suggested that this increased the fragmentation and complexity of WHS laws nationally. Frustration was also expressed about policy positions being settled nationally through robust debate and then later being re-prosecuted within

individual jurisdictions. It was suggested this undermined the national, harmonised WHS framework. There was a suggestion from one WHS regulator that the implementation impacts of changes to the model WHS laws should be given more emphasis in national discussions.

Some regulators noted that the time required for national processes to consider emerging risks and potential amendments to the model WHS laws is a significant factor driving jurisdictions to adopt their own variations. While there was recognition of the value in Safe Work Australia serving as the starting point for nationally significant WHS issues, regulators stressed the need for a mechanism that enables a rapid response. They also emphasised the importance of creating confidence that agreed national solutions can be expedited, including progressing proposed amendments to the model WHS laws where required. An industry stakeholder also raised that tight timeframes are needed as an assurance to ensure swift action by Safe Work Australia when issues are brought forward for national consideration.

Concerns were also raised regarding the interaction between the model WHS framework and other safety and non-safety frameworks. It was suggested that applying and enforcing these different legal frameworks adds further complexity. For example, unions noted there are inconsistencies between the model WHS laws and other WHS regimes in the maritime, offshore oil, gas and electricity industries, and called for harmonisation of WHS laws and more consistent regulatory enforcement in these areas. WHS professionals also raised similar concerns in relation to the petroleum and gas sectors. The union representing flight attendants noted its concerns regarding the application of both the WHS and other safety frameworks in the aviation industry.

Compliance challenges were also identified where similar duties are fragmented across WHS laws, the *Fair Work Act 2009* (CTH) and anti-discrimination legislation, particularly in relation to sexual and gender-based harassment at work.

Stakeholders called for greater clarity on duty holder responsibilities where regulatory frameworks intersect, as well as clearer delineation of the scope of regulator responsibilities, including amending the National Compliance and Enforcement Policy (NCEP). WHS regulators raised the scope issue as it relates to 'other persons' at the workplace and the expectations that they will be in a position to investigate. It was suggested by regulators that 'triaging' approaches could be clarified in the NCEP.

## Harmonisation in approach to compliance and enforcement

One of the most consistent messages from unions, industry, and WHS professionals was that the success of the harmonisation project relies on harmonisation of compliance and enforcement approaches across jurisdictional WHS regulators. It was emphasised that differences in WHS regulator independence from government resourcing, prosecution arrangements, and compliance priorities reduces clarity for business, unions and workers, and undermines consistency in the interpretation of the model WHS laws by inspectors. Some regulator and union stakeholders advocated for an independent regulator model as recommended by the Independent review of the ACT's work safety compliance infrastructure, policies, and procedure and the Independent Review of SafeWork NSW.

There were strong calls for nationally consistent and standardised inspector training, as well as greater industry-specific expertise. One anonymous submission supported the recommendation of the Independent Review of SafeWork NSW to train inspectors or employ more personnel to specifically deal with psychosocial hazards. Unions and industry also

reported that jurisdictions can sometimes swing between placing greater emphasis on their education or their enforcement functions, although each group differed on their preferred approach.

Another recurring theme from unions and industry was that enforcement activities lack transparency and are often perceived as selective. Small business representatives and some legal professionals suggested that regulators focus disproportionately on small business as they are easier to prosecute. Unions suggested WHS regulators have little appetite to pursue breaches by government entities and prosecute a limited range of offences, leading to low prosecution rates. One WHS regulator noted that risk-based prosecutions where no harm has occurred results in proactive deterrence and better safety outcomes; however, gathering evidence to prosecute such cases is challenging.

There was strong support for Safe Work Australia to review and strengthen the NCEP with clearer and more detailed guidance, and a defined decision-making framework. Industry groups noted this would help restore harmonisation and promote consistent enforcement practices.

Both employers and unions highlighted the need for WHS regulators to be adequately resourced, as recommended in the Independent Review of SafeWork SA. Some regulators acknowledged resourcing limitations contribute to delays in keeping pace with changes to the WHS framework and have the potential to hinder proactive compliance and enforcement.

## Strengthening and maintaining harmonisation

We heard many different ideas on how to strengthen and maintain harmonisation of WHS laws. Some involved major reforms, such as establishing a national regulator through mirror legislation, or referral of jurisdictional powers to the Commonwealth. Others involved elevating the profile of existing processes that exist under the Intergovernmental Agreement, and ensure their consistent application across all jurisdictions. There were also calls for national consultation requirements and reporting on jurisdictional variations (e.g. a 'national scorecard' or public variations register) with annual consideration of variations to identify best practice. Additionally, industry and regulators sought to strengthen Safe Work Australia processes to encourage jurisdictions to raise issues at a national level e.g. through a standing agenda item at Member meetings. There were also calls for a closer relationship between Safe Work Australia and regulators through either the Heads of Workplace Safety Authorities or by establishing an additional Safe Work Australia Strategic Issues Group.

Some industry representatives called for Safe Work Australia to strengthen and expand nationally consistent WHS data to better support evidence-based policy. Others advocated for harmonised regulator databases, and a dedicated audit function to monitor, review, and evaluate implementation of WHS laws.

WHS professionals also proposed Safe Work Australia enhance its technical expertise, including through engagement with a broader range of subject matter specialists. In parallel, some industry, WHS professionals, and affected family representatives highlighted the need for a national approach to learning from workplace fatalities and serious incidents, incorporating coronial findings, and supporting timely, no blame investigations.

## 1.5 Variations to the model WHS Act

We received substantial feedback about specific jurisdictional variations and whether these represent best practice. In some cases, the variations were suggested as potential options to address gaps or other issues with the model WHS laws rather than necessarily being considered best practice. In other cases, the variations were viewed as best practice.

### WHS duties framework

There were mixed views on WA's duty for WHS service providers and NSW's proposed new duty on PCBUs that use digital systems to allocate work. Some unions and WHS professionals support amending the duties framework to address risks associated with digital labour platforms and want stronger measures to ensure officers properly understand and fulfil their WHS due-diligence duties.

Industry groups and WHS professionals called for practical guidance on applying 'reasonably practicable' and sought further guidance on the application of WHS principles to increasingly complex contractual chains. Two regulators highlighted the need to clarify duties of volunteers. There were a range of views regarding incident notification. One union raised concerns about businesses failing to comply with incident notification requirements. Industry groups reported confusion about the purpose and process for incident notification and highlighted the potential burden this may place on duty holders. One stakeholder noted the ACT's inclusion of sexual assault as a notifiable incident as an example of best practice.

Unions and other WHS advocates suggested that WHS laws should more clearly address harmful workplace behaviours, including harassment and discrimination on the basis of sex, sexuality, gender identity, race, disability or age, and to recognise the intersectional nature of harassment. They emphasised that the primary duty can be leveraged to prevent the risk of harm arising from these behaviours, and advocated for WHS duties to explicitly require duty holders to address unlawful discrimination, harassment and victimisation as workplace hazards. Similarly other stakeholders have called for moral injury<sup>1</sup> and morally injurious events which cause moral injury to be designated as psychosocial hazards accompanied by system-level controls such as organisational culture, as consistent with WHS risk management frameworks. As the conversations about WHS psychosocial hazards mature, submissions are raising key issues about how far the primary duty extends to preventing physical and psychosocial harm arising from poor workplace culture and harmful behaviours.

Feedback through consultation and submissions also suggested that the scope of the WHS duties framework warrants closer consideration. Concerns were raised about the WHS framework being seen as the solution to a broad range of safety factors/issues that often had a tenuous link to the work being carried out at the workplace and/or worker safety.

### Consultation, representation and participation

Unions and HSRs raised issues around practical barriers to workplace representation, such as employers not providing clear explanations of organisational structures and relevant decision makers, poor communication systems and poor understanding of HSR roles and

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<sup>1</sup> Moral injury is a transgression on someone's moral values and the resulting significant distress or impact. Moral injury has similarities to PTSD but is a distinct affliction. It is characterised by significant psychological, emotional and spiritual distress, and major functional impairment.

responsibilities. It was suggested these barriers hinder the ability of HSRs to use their legislated functions effectively. To address these issues, unions consistently advocated for reforms to strengthen workplace consultation and representation, drawing on recommendations from the Review of the Work Health and Safety Act (QLD), the Independent Review of SafeWork SA and the Independent Review of SafeWork NSW. Unions also referred to approaches in the WA, VIC, SA and QLD WHS laws.

Unions made a number of other suggestions that draw on the above-mentioned NSW, QLD and SA reviews. This includes greater entitlements around HSR training including more paid training days and revised HSR functions and powers including the ability to take photos, videos and samples. Unions also want clearer processes for Provisional Improvement Notices, a requirement to notify HSRs when an inspector is on site, and access to inspector reports. Unions seek better interaction between workgroups and HSRs including HSR accessibility to work groups and clarifying work group negotiation processes, as recommended by the Review of the Work Health and Safety Act (QLD). Unions also called for HSRs to be able to exercise powers immediately on election and clearer requirements for PCBUs to demonstrate how they support HSRs.

Unions and HSRs suggested stronger protections for HSRs against discriminatory conduct, consistent with the Review of the Work Health and Safety Act (QLD) recommendation to align the definition of discriminatory conduct with the definition of adverse action in workplace relation laws. Unions also advocated for improvements to the process for determining workgroups including enabling inspectors to make binding determinations in relation to multi-business work groups.

Regulators agreed on the importance of HSRs and strong relationships between HSRs, regulators and PCBUs, noting they had witnessed barriers to cooperation in some workplaces and industries. Industry feedback was more mixed. Some industry representatives supported greater cooperation and representation in the workplace, while others (particularly in the construction industry) expressed concern about the use of HSR and union right of entry powers for 'industrial' purposes.

Industry, unions and regulators agreed that PCBUs, officers and middle management need improved WHS knowledge and capability. They emphasised the need for employers to have a clear understanding of their own WHS duties and responsibilities, including the requirement to consult with workers, as well as the importance of understanding the role and responsibilities of HSRs. There was general agreement across all of those consulted that long-term safety improvements depend on lifting WHS competency across all industries, as supported by the Independent Review of SafeWork SA and the Review of the Work Health and Safety Act (QLD).

There was support from unions and regulators for dispute resolution processes similar to the QLD approach and as recommended by the Review of the Work Health and Safety Act (QLD) and the 2018 Review. This included a call for national adoption of QLD variations which clarify that unions and other worker representatives can be party to a WHS dispute. Unions also called for standing for both internal and external reviews of regulator decisions, as provided in NSW and SA.

## Right of entry

There were mixed views on expanding WHS entry permit holders' powers. Unions supported the approach in NSW, SA, QLD, ACT and Victoria that empowers WHS permit holders to take videos, photos, measurements and perform tests. These approaches arose from

recommendations of the Independent Review of SafeWork SA and the Review of the Work Health and Safety Act (QLD). Unions also support harmonised rules for entry permit holders, and the ability for them to issue Provisional Improvement Notices. Some industry groups expressed concern about the potential misuse of collected information and supported restrictions like a ban on live streaming. A WHS Regulator expressed concern with the samples being taken by permit holders, noting a level of expertise is required to undertake such work safely. There were also mixed views on additional entry requirements in place in QLD and SA.

## Compliance and enforcement

Submissions identified a range of additional considerations relating to compliance and enforcement in addition to issues outlined above. Some regulators specifically drew attention to variations made to their s155 information gathering powers. There were also mixed views from regulators and industry on WA's variation that requires businesses to obtain an independent specialist WHS report following workplace incidents.

Regulators suggested improvements to external review of decision provisions in the model WHS Act (Part 12). Unions also supported amendments to provide them with legal standing to commence and pursue reviews under Part 12. Regulators also raised discrete issues relating to their powers and functions, including WA's approach to enable automated electronic systems for functions relating to authorisation.

Unions and representatives for affected families and injured workers supported the recommendations of the Independent Reviews of SafeWork SA and Independent Review of SafeWork NSW which resulted in changes to confidentiality rules (s271), believing they improve transparency in information sharing. Some industry representatives are concerned that such changes may result in the misuse of the shared information.

Concerns were also raised by industry, unions and family representatives about poor coordination between regulators on multi-jurisdictional worksites. Families argued that a national investigative body for work-related fatalities may improve the effectiveness and quality of investigations into workplace fatalities and serious injuries. One WHS professional endorsed the 2018 Review recommendation to enable cross-border information sharing between regulators.

Workers and family representatives shared their experiences of WHS investigations and enforcement and identified various actions to best support other affected individuals through investigative and legal proceedings such as a harmonised system to access timely financial aid and grief counselling.

## Inspector powers

Some regulators suggested improvements to modernise inspector power provisions including better incorporating electronic means of gathering information. However, one stakeholder cautioned against an overreliance on gathering information electronically, believing it could lead to less thorough investigations. Regulators also sought to clarify the use of inspector powers in relation to deciding a dispute under s82. There were also a number of discrete issues raised including in relation to an inspectors' seizure powers and the use of body worn cameras and search warrants.

## Legal proceedings

Unions advocated for a right to prosecute, similar to the NSW approach, and to have information gathering powers similar to regulators. Unions consider these changes would provide a stronger deterrent for breaches of the WHS laws. Some unions also specifically supported the recommendation of the Independent Review of SafeWork SA to enable workers, families of injured workers, and employee associations to bring civil penalty proceedings for breaches of WHS duties. However, some industry representatives have expressed strong concerns about giving unions the ability to prosecute WHS criminal offences.

Submissions also placed significant emphasis on the limitation period for bringing a prosecution. Some regulators, unions, and affected family and injured worker representatives identified the current 2-year limitation period as a major barrier to effective enforcement of WHS laws. However, there were differing views on alternative approaches, including variations made in NSW and QLD. One regulator suggested clarifying when the 2-year limitation commences.

Some unions supported QLD's variation to enable the prosecution to put forward alternative causes of action which allow for alternative charges to be put forward if an individual manslaughter offence or a category 1 offence fails.

Submissions from regulators and unions discussed infringement notice schemes, including inconsistencies between jurisdictions and the scope and design of the scheme. An industry representative stated that a review of the scheme is required to ensure that they are only applied to strict liability provisions that are objectively assessable.

Sentencing guidelines to ensure consistency in the application of WHS penalties were raised in some submissions, including support from one WHS professional for the recommendations of the Review of Sentencing for Occupational Health and Safety Offences (OHS) in Victoria.

## Offences and penalties

Many submissions raised concerns about penalties not being harmonised across jurisdictions and inconsistency between sentencing frameworks across jurisdictions. One regulator noted nationally uniform penalties would be beneficial in creating a harmonised deterrent effect. There were also concerns about the adequacy of penalties handed down and the negative effect this has on deterrence. Suggested improvements included higher penalties and adapting judicial mechanisms to encourage restorative and reparative orders over fines alone, as suggested in the Review of Sentencing OHS Offences in Victoria.

It was noted that courts that hear WHS matters are not harmonised, with some regulators querying if the generalist nature of the courts, especially the Magistrates' Court, affected sentencing consistency. One regulator supports WHS prosecutions by a small group of judges and magistrates to improve sentencing consistency. It was highlighted that in Victoria, it is possible for judges to be trained and gain experience in WHS subject matter, despite neither magistrates nor the courts being specifically geared towards industrial issues.

There were mixed views on whether enforceable undertakings should be available for Category 1, 2 and industrial manslaughter offences. Industry also highlighted inconsistencies in industrial manslaughter provisions across jurisdictions.

Concerns were raised about insurance being used to cover legal costs for WHS court proceedings; and the growing use of non-disclosure agreements which may hinder the gathering of evidence to support some prosecutions of potential breaches of the laws. These were viewed by some regulators and unions as undermining reforms made following the 2018 Review to ban insurance for monetary penalties for WHS offences. One industry representative opposed the 2018 Review reform.

## Codes of practice

Both unions and industry supported industry specific Codes of Practice as practical tools for clarifying obligations and setting minimum standards. Employers see them as offering a single source of guidance which would otherwise have to be found across many documents. Unions value their practical use in the workplace and as an enforcement tool to ensure workers are aware of their rights and their employers' obligations. Unions, industry and WHS professionals all noted confusion regarding the current model Codes of Practice in relation to their interaction with the WHS Regulations, and the way their status varies across jurisdictions.

There were mixed views on whether to mandate Codes of Practice. Unions supported making them mandatory, as is the case in QLD and NSW. Industry views were mixed, with most employer bodies opposing mandatory codes, suggesting this may reduce innovation and undermine the 'reasonably practicable' concept.

## 1.6 Variations to the model WHS Regulations

We received feedback on a wide range of model WHS regulations, and on jurisdictional variations to them, including diving, hazardous chemicals including safety data sheets, construction hazards, maritime work, SWMS; excavation work, health monitoring, biological hazards, major hazard facilities, welding fumes, asbestos, and lead. Unions advocated for improved worker amenities and facilities, including sufficient time for access and use and noted QLD's requirement for designated female toilets and hygiene facilities on construction sites. We also heard feedback on strengthening and aligning training and licencing requirements, including white card induction.

Some stakeholders highlighted the ongoing need for the WHS regulations to protect workers from risks that can result in diseases with long latency periods, such as cancers, in addition to risks that can result in immediate harm.

Unions, industry and members of the public also raised specific concerns regarding hazards not explicitly addressed in the model WHS regulations, including cytotoxic drugs, chemical fragrances and management of risks relating to underground and overhead utilities (e.g. electricity, water, gas).

In relation to the issues specifically raised in the discussion paper, there was mixed support for WA's tobacco and vaping regulation and NSW's delivery rider provisions. There were also differing views on the definition of construction work. Some regulators and industry representatives supported a harmonised approach to high-risk work licences including mutual recognition of licences. One union also called for the expansion of the regime to offshore demolition activities.

Regulators and industry raised a number of issues regarding the practical application of recent crystalline silica amendments. There was also support from regulators, unions and

some industry representatives to explore further regulation for quad bike safety, including support for QLD and Tas approaches.

There was limited feedback on demolition work, although one regulator suggested the inclusion of a demolition licensing framework in the model WHS laws. Industry commented on the complexity caused by variations in mining regulations across Australia such as QLD's standalone mining safety legislation although one academic noted this regime represents best practice in terms of the approach taken to air and health monitoring. Regulators supported harmonising the mining WHS regulations to better support their enforcement activities.

## Amusement devices

Unions, WHS professionals and regulators support the QLD variations to the model WHS framework as they relate to the regulation of amusement devices. However amusement industry peak bodies and safety professionals expressed the need for greater information sharing, addressing the shortages of experts required for safety inspections and harmonised regulatory practices to improve safety whilst also reducing regulatory burden on operators.

## Psychosocial risks

In addition to the issues identified above relating to harmful behaviours, there was broad agreement that psychosocial hazards require greater attention. Unions have called for further regulations to address the range of psychosocial hazards experienced in the workplace, including work-related violence and harassment which were frequently raised by many stakeholders as growing concerns. Industry has called for more support for businesses in managing psychosocial risks, including information on how the hierarchy of controls can apply. We also heard mixed views for and against the use of the hierarchy of controls for psychosocial hazards.

## 1.7 Broader consideration of the model WHS Regulations

There was a general view expressed that the model WHS Regulations are outdated and focus too much on specific physical hazards and a subset of male-dominated industries. The model WHS Regulations were consistently called out for not addressing female-dominated industries such as retail or healthcare and social assistance; and the workplace risks disproportionately faced by women such as gendered violence.

Industry consistently asked for clearer, simplified and streamlined requirements to help businesses meet their obligations, including accessible plain-English regulatory materials, digital tools and scalable obligations tailored to business size. Industry stakeholders, especially those representing small business, noted the complexity of WHS laws and proposed these be simplified rather than expanded.

There was strong support for maintaining enforceable standards for high-risk hazards but taking principles-based approaches to emerging risks such as artificial intelligence.

Some industry stakeholders explicitly supported the 2018 Review recommendation of reassessing the model WHS Regulations and Codes against agreed criteria, while others sought clearer criteria for determining how hazards should be regulated.

There was also support from unions, some regulators, industry stakeholders and academics to elevate the hierarchy of controls from Part 3.1 of the model WHS regulations into the model WHS Act, as recommended by the Review of the Work Health and Safety Act (QLD) and the 2018 Review.

## Australian Standards

The use of Australian Standards within the model WHS regulations was highlighted in the 2018 Review and again attracted significant feedback. The use of Australian Standards in the model WHS regulations was frequently identified as a significant barrier to WHS by industry, unions, and regulators due to cost, complexity, and frequent updates. There was strong consensus that any referenced standards should be freely accessible or supported by plain-English summaries or practical guidance.

## 1.8 Environmental scan

Stakeholder feedback addressed all aspects of the environmental scan and highlighted the need to remain responsive to identifying and addressing emerging issues. A number of submissions referred to the recommendations of relevant safety reviews to support these views including the House Standing Committee on Employment, Education and Training's Inquiry into the Digital Transformation of Workplaces and the Senate Select Committee on Adopting AI.

Digital workplace transformation was a major focus of feedback. Unions and industry differed on the need for additional safeguards for artificial intelligence and automation. There were also varying opinions within industry regarding whether additional Regulations and Codes should be developed to address risks arising from emerging technologies, but there was acknowledgement of the need to keep examining the impact of digital technology on safety.

Industry, regulators and government called for Safe Work Australia to be more agile and future focused and for the model WHS laws to remain responsive to emerging and expanding technologies and industries. This includes calls for updated definitions in the Regulations to ensure they remain relevant and reflect technological advancements. Others emphasised the need to clarify requirements for lithium-ion batteries, products producing hazardous chemicals and hydrogen.

Industry and unions also sought more guidance and action to address the WHS risks associated with climate change and working in heat. Unions recommended a range of reforms, including in relation to extreme heat, indoor air quality, inclement weather and emergencies and vector-borne illnesses.

Some advocates noted the International Labour Organization's recognition of a safe and healthy working environment as a fundamental right and recommended incorporating this into Australia's approach to WHS. Unions called for a review to identify gaps between Australia's model WHS laws and international obligations, and guidance on amendments needed for full alignment with ILO standards.

## 1.9 Next steps

All contributions continue to inform the development of the Final Report of the Review, which will be delivered to Safe Work Australia Members in mid-2026 and to WHS Ministers in August 2026.