



2026
**Best Practice Review
of the model Work Health
and Safety laws**
Final report

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Final Report

Best Practice Review of the model WHS laws

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Executive summary

Safe Work Australia is pleased to present its best practice review of the model work health and safety (WHS) laws (this Review). In line with its Terms of Reference, this Review has considered the model laws in the context of seeking to strengthen and maintain a harmonised approach. It also examined jurisdictional variations that could be considered for adoption nationally.

On 1 February 2008, Ministers of the Workplace Relations Ministers' Council (WRMC) agreed that model legislation would be the most effective way to harmonise health and safety laws for all of Australia.

In July 2008, the Council of Australian Governments (COAG) signed an intergovernmental agreement setting out how the Commonwealth, states and territories would achieve this goal.

The agreement created and implemented:

- a model Act and model Regulations
- model Codes of Practice
- a National Compliance and Enforcement Policy (NCEP)
- an independent body to drive the model laws' development and implementation (Safe Work Australia).

These are the pillars of harmonisation.

This Review makes recommendations to strengthen the role of each of them in maintaining harmonisation.

Over the last 12 months, we've consulted widely in line with our Terms of Reference, hearing directly from workers, families affected by workplace fatalities, businesses, unions, peak bodies, community groups, inspectors, experts, prosecutors and judges across Australia; and learned a tremendous amount about how the model WHS laws are working (and how they can be improved). We're incredibly grateful to all those who gave generously of their time to meet with us and help explain how things look from their corner of the WHS system.

A clear message from consultation is that harmonisation continues to be strongly supported by industry, unions, regulators and the broader WHS community. Since the enactment of the principles-based approach contained in the model WHS Act (2012), there have been significant declines in work-related fatalities, which a stakeholder described as 'one of the greatest public policy successes in Australia in the last 20 years'.

The harmonisation project was one of 27 areas of regulatory reform that COAG agreed to in 2008 with the objective of reducing compliance and regulatory costs for employers.

Businesses remain strongly supportive of maintaining and strengthening harmonisation within that context.

The last major review of the model WHS laws in 2018 (*2018 National Review*) found that they were operating as intended but warned ‘if the harmonisation objective is to be sustained into the future, it is critical that all jurisdictions commit to it’.¹ However, variations continue to be enacted across the jurisdictions, and Victoria remains outside of the model framework.

This Review is recommending changes that will strengthen the model WHS framework, including updating Safe Work Australia’s governance arrangements and reframing model Codes of Practice as National Codes which will apply automatically once agreed. As a starting point, to support the continued work being done to strengthen and maintain harmonisation, this Review is recommending that WHS ministers recommit to harmonisation and the objectives of the model laws.

This Review identifies several actions which will support harmonisation that do not require agreement by WHS ministers to implement. Safe Work Australia Members have agreed to action these immediately, including developing an annual scorecard highlighting jurisdictional variations and creating new Strategic Interest Groups to focus on compliance and enforcement and the reduction of work-related fatalities.

One of the strongest messages from the *2018 National Review* was that ‘regulators are not consistently implementing the model WHS laws’.² It recommended reviewing the NCEP to include transparent decision-making frameworks for inspectors and regulators to promote national consistency. This work was never completed and, from what this Review heard, compliance and enforcement inconsistency continues to be a concern. The NCEP is a key pillar of the harmonised system, but in recent years it appears not to have been operating as such. This Review therefore recommends that a new NCEP be written to support consistency.

As required by its Terms of Reference, the Review examined significant jurisdictional variations and made recommendations on whether they incorporate a best practice approach and therefore should be included in the model WHS laws. A threshold question for every variation was ‘Does it meet the objects of the model WHS Act?’ The Review considers adopting the recommended variations identified in this report will deliver a best practice and harmonised approach.

Since 2018, the nature of work and workplaces has undergone significant change. There have also been several reviews of jurisdictional WHS laws. This Review has therefore not only considered harmonisation and variations to the model laws, but also these other reviews and the ongoing capacity of the model laws to respond to current and emerging workplace challenges.

In 2022, new model WHS Regulations were introduced to manage psychosocial hazards which have dramatically increased awareness and understanding of work-related mental health risks. This has led to a new focus on the WHS framework as the primary set of laws for managing risks from harmful behaviours such as racism, occupational violence, harassment and other forms of discrimination.

The environmental context has also changed. In 2022, the International Labor Organization (ILO) amended the *Declaration on Fundamental Principles and Rights at Work* to recognise the fundamental right to a safe and healthy working environment. Australia is a founding member of the ILO and one of only 28 countries to ratify all 10 fundamental conventions. One of the model WHS Act’s core premises is that all workers have a fundamental right to a healthy and safe working environment free from the risk of death, illness or injury, with elimination or minimisation of risk a priority. Consistent with a rights-based approach, it:

- empowers workers with the right to be consulted, participate in safety decisions and cease unsafe work, and
- provides legal protections against discrimination or adverse action for exercising these rights.

¹ Safe Work Australia, [Review of the model Work Health and Safety laws - Final report](#), 2018, p 6.

² Safe Work Australia, [Review of the model Work Health and Safety laws - Final report](#), 2018, p 9.

It is crucial that we support businesses to comply with the model WHS laws and this Review makes several recommendations for which industry and businesses have been advocating for many years. These include developing industry-based Codes of Practice, ‘deeming’ that compliance with a Code fulfils an employer’s duties to the extent the Code deals with a safety matter (which is intended to address the call particularly from small business to ‘tell us what to do’), and comprehensively reviewing the model WHS Regulations.

This Review welcomes the announcement by the Commonwealth Treasurer in May 2026 that the Australian Government will make all mandatory Australian standards free, including across construction and occupational health and safety. Business has consistently advocated for free standards, as has Safe Work Australia, and many individuals and organisations that made submissions to this Review.

This Review received significant feedback about major trends impacting Australian workplaces. Artificial intelligence (AI) is transforming the way we work, introducing both new methods for improving WHS, and new hazards.

The impacts of climate change are exacerbating risks associated with extreme weather.

There is increased attention being paid to harmful behaviours such as harassment, violence and racism within a WHS context.

While the principles-based model WHS laws are well placed to regulate these challenges, this Review is recommending new strategies be developed specifically to deal with AI, climate change and harmful behaviours.

Safe Work Australia is looking forward to working with its Members and WHS ministers as they consider these important reforms which the Review considers will go a long way towards strengthening and maintaining harmonisation and ensuring the model WHS laws adequately regulate emerging and persistent workplace risks and hazards.

Recommendations

The harmonisation objective

1. That WHS ministers recommit to the harmonisation of WHS laws and their objectives, which include:
 - a. nationally consistent protections for workers
 - b. nationally consistent obligations for businesses and employers
 - c. reduced compliance impact
 - d. improved regulatory efficiency
 - e. progressively higher standards of protection
 - f. fair and effective representation, consultation, cooperation and issue resolution, and
 - g. a constructive role for unions and employer organisations.
2. That harmonisation is maintained and strengthened through:
 - a. jurisdictions committing to potential local WHS law changes being considered at the national level
 - b. ensuring amendments to the model WHS laws agreed nationally are prioritised for passage through jurisdictional parliaments, and
 - c. introducing a harmonised approach to jurisdictional WHS Act and WHS Regulations reviews.
3. That harmonisation is enhanced through developing a new National Compliance and Enforcement Policy (NCEP) to support compliance and enforcement consistency and clarity.

The duties framework

4. Amend section 19(3) of the model WHS Act to clarify that the duty of care in section 19 includes the management of risks arising from harmful workplace behaviours.
5. Amend section 34 of the model WHS Act to reflect the South Australian variation providing that volunteer officers of a strata/community titles corporation are not liable for a breach of officer duties.
6. Clarify that the risk management process outlined in Part 3.1 of the WHS Regulations:
 - a. applies to all work and workplaces by elevating it into the model WHS Act, and
 - b. in the short term, amend regulation 55C(a) of the model WHS Regulations to ensure that the hierarchy of control measures applies to the management of psychosocial risks.
7. Amend the model WHS Act to:
 - a. require persons conducting a business or undertaking (PCBU) to provide workers with a WHS Information Statement that sets out the fundamentals of WHS, modelled on the *Fair Work Information Statement*, and
 - b. develop a WHS Information Statement specifically for small business owners.

Consultation, representation and participation

8. Amend the model WHS Act and model WHS Regulations to enact the best practice variations at **Appendix D, Appendix F, 1** and **Appendix G, 1** in relation to:
 - health and safety representative (HSR) elections, powers, functions and training entitlements
 - health and safety committee processes
 - consultation and representation processes
 - the right to cease unsafe work, and
 - union right of entry.

Compliance and enforcement

9. Amend the model WHS Act to:
 - a. extend the timeframes for internal review from 14 to 21 calendar days, with further extension by mutual agreement
 - b. provide workers, HSRs and unions standing in an external review, where they have raised or been involved in a matter, and
 - c. include an offence for non-payment of WHS infringement notices.
10. Amend the model WHS Act to provide general standing for any person or organisation to prosecute WHS offences informed by the New South Wales (NSW) and New Zealand approaches, with a review of the provisions 3 years after their commencement across all jurisdictions.
11. Amend the model WHS Act to ensure that a contract of insurance or grant of indemnity cannot be used to cover the legal fees of a person subject to a WHS prosecution.
12. Amend the model WHS Act to impose limits on the use of non-disclosure agreements where WHS rights and obligations under the model WHS Act might be compromised, drawing on the [Restricting Non-disclosure Agreements \(Sexual Harassment at Work\) Act 2025 \(Vic\)](#).
13. Develop a nationally consistent approach to infringement notice schemes as part of a larger project to consider which provisions of the model WHS laws should attract infringement penalties and which should attract civil penalties.
14. Amend the model WHS Act to enact the best practice variations set out at **Appendix E** in relation to:
 - regulator and inspector powers and functions
 - enforceable undertakings
 - review of decisions
 - legal proceedings, and
 - confidentiality of information.

Codes of Practice

15. Amend the model WHS Act to provide that a person who complies with a Code is taken to have complied with the relevant WHS duty in relation to matters addressed by that Code.
16. Develop industry-based Codes of Practice, with accompanying small business implementation toolkits, with initial priority given to the retail, education and training, agriculture and construction sectors.
17. Consider amending the model WHS Act to frame the model Codes of Practice as National Codes which apply automatically in model law jurisdictions once agreed by WHS ministers.

The model WHS Regulations: modernisation project

18. Undertake a model WHS Regulations modernisation project to improve consistency and appropriately regulate modern work, workplaces and emerging hazards, including by:
 - a. developing clear criteria for identifying where regulations are required, and
 - b. considering the issues outlined in **Appendix F** and **Appendix G** (subject to the criteria in (a) above).

Environmental scan

19. Safe Work Australia to develop a strategy on artificial intelligence and other emerging digital technologies which:
 - a. monitors how WHS laws are interpreted, applied and enforced in relation to digital technologies to ensure the model WHS Act, Regulations and Codes remain fit for purpose as new technologies develop and working arrangements change
 - b. makes new Regulations, Codes and/or amendments to the model WHS Act where gaps are identified
 - c. identifies, and clarifies through industry Codes of Practice, any areas of current regulatory uncertainty, and
 - d. supports through its *Research and Evaluation Strategy* research on how digital technologies impact WHS (including both benefits and risks) with practical solutions that can be applied in workplaces as a priority outcome of the research.
20. Safe Work Australia to develop a strategy on climate change which:
 - a. includes new model WHS Regulations to regulate extreme heat, air quality and vector-borne diseases
 - b. monitors how WHS laws are interpreted, applied and enforced in relation to extreme weather to identify any gaps in the model WHS Act, Regulations and Codes
 - c. makes new Regulations, Codes and/or amendments to the model WHS Act where gaps are identified
 - d. outlines how it will engage with stakeholders, including social partners, experts and other government agencies, to promote a national approach to managing climate-related WHS risks, and integrate WHS into a whole-of-government approach to climate change adaptation, and
 - e. supports further research through its *Research and Evaluation Strategy* on the WHS risks of climate-related hazards and the WHS impacts of climate change on under-researched industries.
21. Safe Work Australia to develop a strategy on harmful behaviours which:
 - a. amends the model WHS Act to clarify that the duty of care in section 19 includes the management of risks arising from harmful behaviours (see Recommendation 4)
 - b. develops new model WHS Regulations to regulate access to facilities, including female designated toilets, and prevention of work-related violence and harassment, including gender-related violence
 - c. supports a greater understanding of how the model WHS laws apply to harmful workplace behaviours
 - d. strengthens through its *Research and Evaluation Strategy* the evidence base on the management of harmful workplace behaviours, including how system level controls can prevent risks across different industries, and
 - e. provides transparency and consistency of enforcement approach through the NCEP, Codes and other supporting materials to support duty holders to manage risks.

Safe Work Australia actions

1. Develop and publish an annual scorecard which highlights jurisdictional variations to the model WHS laws; and variations where changes to the model WHS laws agreed at a national level have not been adopted.
2. Confirm the procedure in the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* which establishes that no response by a WHS minister to a request by the set deadline will be counted as the minister having voted to approve the recommendation.
3. Establish a Safe Work Australia Strategic Issues Group (SIG) - Compliance and Enforcement.
4. Establish a Safe Work Australia SIG-Reducing Work Related Fatalities.
5. Engage with coroners' courts to establish arrangements for sharing findings quickly and systematically.
6. Monitor opportunities to promote harmonisation of overlapping safety frameworks with the model WHS laws.
7. Work with relevant agencies, including the Australian Human Rights Commission, with the aim of advocating for positive duties in anti-discrimination laws to directly reference the primary duty of care in the model WHS Act.
8. Establish agreements with departments of justice (or equivalent) in each state and territory to access decisions relating to WHS matters.
9. Consider the Commonwealth, WA, NSW and Queensland approaches of an express statement that no limitation period should apply for an alternative verdict.
10. Do further work to inform potential amendments to the model WHS Act in relation to increasing the use of alternative sentencing for WHS offences, drawing on Recommendations 1-6 of the *Sentencing occupational health and safety offences in Victoria* report.
11. Do further work to inform potential amendments to the model WHS Act in relation to WHS penalties for large corporations, drawing on recent reforms to Commonwealth civil penalty regimes.
12. Establish a WHS technical panel to support informed decision-making on specialist WHS matters.
13. Develop education and communications activities to ensure PCBU, workers and others have clear, simple and easily accessible advice on how the current model WHS laws apply to artificial intelligence use in the workplace.

Introduction

The model WHS laws provide the framework for nationally consistent regulation of WHS in each Australian jurisdiction. They include the model WHS Act, model WHS Regulations, and 32 model Codes of Practice, supported by an NCEP. For the model WHS laws to be legally binding, each jurisdiction must separately adopt them. Since 1 January 2012, all jurisdictions have adopted the model WHS laws except Victoria.

In September 2024, WHS ministers asked Safe Work Australia to prepare a proposal on how it would undertake a best practice review of the model WHS laws in the context of seeking to maintain a harmonised approach (this Review). This would involve examining alternative approaches that jurisdictions are using that could be considered for adoption nationally. WHS ministers also requested Safe Work Australia look at relevant recommendations from the most recent South Australian and Queensland reviews for consideration nationally. The relevant WHS ministers' communique is provided at **Appendix A**. WHS ministers subsequently agreed the Terms of Reference for this Review in June 2025, which are provided at **Appendix B**.

A formal consultation process to inform this Review – the first national review of the model WHS laws since 2018 – ran from 1 September 2025 to 31 March 2026. It involved the release of a discussion paper; a call for written stakeholder submissions; and the publication of 3 online surveys to gain further insight from employers, workers and health and safety representatives (HSRs).

Safe Work Australia held over 100 in-person and online meetings with stakeholders across the WHS system. This included in-person meetings in every capital city and 2 regional centres; and several site visits. In March 2026, a consultation summary was published which identified key themes and issues raised during the consultation process.³ All feedback within the scope of the Terms of Reference was considered.

This Review also considered the outcomes of other best practice reviews and other inquiries relevant to its Terms of Reference. Wherever available, this Review has drawn on available data and research to inform its recommendations; and has pointed out key areas where there are gaps in the relevant evidence base.

As required by its Terms of Reference, Safe Work Australia also received expert advice on a range of matters to inform this Review. These experts included:

- Mr Richard Dennis AM PSM, legal practitioner and legislative drafter
- Ms Jane Hall, Partner, Thomson Geer Law
- Mr Edward Santow, Director, Human Technology Institute, University of Technology Sydney
- Dr Elizabeth Humphrys, Head of Social and Political Sciences, University of Technology Sydney
- Dr Eugene Schofield-Georgeson, Senior Lecturer, Faculty of Law, University of Technology Sydney.

³ Safe Work Australia, [Best Practice Review of the model Work Health and Safety laws: Consultation summary](#), 2026.

Safe Work Australia thanks all experts for their important contributions, noting this Review's conclusions and recommendations are our own. Safe Work Australia also established a Reference Group of its Members, who met throughout this Review process to consider key documents and provide valuable feedback. Thank you to the Reference Group for your input.

This Review is making 21 recommendations to WHS ministers to strengthen and maintain harmonisation and to incorporate best practice approaches currently contained in jurisdictional variations to support the objectives of the model WHS Act.⁴ Some recommendations are made to provide the foundation for future work by Safe Work Australia to deal with emerging issues such as AI. The Review also identified several actions that do not require agreement by WHS ministers to implement. Safe Work Australia Members have agreed to progress these immediately.⁵

Thank you to everyone who contributed to this Review.

⁴ See pp 8–10.

⁵ See p 11.

1. The harmonisation objective

Terms of Reference:

2.1, 2.2, 2.3, 2.4, 2.6

Reviews considered in this chapter:

- 1972 *Safety and Health at Work*, Report of the Committee
- 2004 *Occupational Health and Safety Act Review*
- 2008 *National Review into Model Occupational Health and Safety Laws (2008 National Review)*
- 2014 *COAG Review: Improving the model Work Health and Safety laws*
- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*
- 2018 Report of the Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia (2018 They Never Came Home Report)*.

Introduction

Harmonisation of WHS laws is the result of a significant amount of work done over many years to create a national system where every worker, no matter where they work or what industry they work in, will have the same WHS rights and protections; and every business, no matter where they are located, will be operating within the same set of rules and obligations.

In 2007, the Australian Government committed to achieving harmonised occupational health and safety (OHS) laws by working with all state and territory governments to develop and implement model legislation.

The *2008 National Review* examined OHS legislation across all jurisdictions to recommend the optimal structure and content of a model OHS Act. In parallel, COAG signed the *2008 Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA)*. The IGA included the commitment of all jurisdictions, including Victoria, to ‘work cooperatively to harmonise OHS regulation through the adoption and implementation of model OHS legislation’.⁶

Harmonisation is underpinned by the model WHS Act, model WHS Regulations and model Codes of Practice, supported by the NCEP, to provide a nationally consistent approach to compliance and enforcement.

⁶ [Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety](#), 2008, p 8.

Section 3(1) of the model WHS Act provides:

The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by

(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work

(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment

(d) promoting the provision of advice, information, education and training in relation to work health and safety

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures

(f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and

(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.⁷

In all its considerations and recommendations, this Review has referred to section 3(1) of the model WHS Act.

In line with this Review's Terms of Reference, this chapter considers the impact of jurisdictional variations on the harmonisation objective and makes recommendations which it considers will help maintain and strengthen harmonisation.

Other opportunities to maintain and strengthen harmonisation are considered throughout this report under the various chapter headings with associated recommendations.⁸

1.1 The impact of jurisdictional variations on harmonisation

Between 1 January 2012 and 31 March 2022, all jurisdictions implemented the model WHS laws except Victoria.

The initial adoption of the model WHS laws involved some level of variation, as compromises were often required and amendments were passed during the passage of the various jurisdictional WHS Bills through local parliamentary processes.⁹

The IGA anticipated future variations to the model WHS laws and established an agreed process by which variations contemplated by jurisdictions could be managed. Fundamentally the process required jurisdictions to bring local variations to the national table for consideration prior to their enactment.¹⁰

This process for managing variations has not been consistently used, with jurisdictions increasingly amending their WHS laws without national consideration.

⁷ Model WHS Act, s 3(1)(h).

⁸ See in particular Chapter 4.3 – Legal proceedings; and Chapter 5 – Codes of Practice.

⁹ For example, SA varied its WHS Act to provide a unique procedure for making approved Codes of Practice, including providing that the Minister may only approve, vary or revoke a Code following consultation with the Small Business Commission – s 274(3)(b) of the SA WHS Act.

¹⁰ [Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety](#), 2008, provision 5.5.2, p 11.

What we heard

Stakeholders expressed strong, continued support for a harmonised approach to WHS regulation. However, many, including WHS regulators, industry, unions, members of the public and WHS professionals, highlighted that, despite this support, variations in WHS regulation exist across all jurisdictions and at all levels of the WHS legal framework.

A recurring message from business and industry groups was the need for a renewed and sustained commitment to harmonisation. Submissions from a range of industry bodies called for jurisdictions to recommit to harmonisation, the IGA and its processes to ensure its sustainability; and for Victoria to adopt the model WHS laws.¹¹ Regulators in model laws jurisdictions supported these calls,¹² while NT WorkSafe emphasised the importance of harmonisation in smaller jurisdictions, which have fewer resources and therefore benefit more from a shared national approach.¹³

Australian Industry Group outlined how a lack of harmonisation across jurisdictions impacts everyday work processes, making things that should be simple confusing for businesses and workers. Australian Industry Group also expressed frustration that important policy positions about the content of the model WHS laws, settled nationally through robust debate, were sometimes later re-prosecuted within individual jurisdictions.¹⁴

Industry and WHS professionals noted that, for multi-jurisdictional businesses, jurisdictional differences lead to inefficient, low-value engagement with the WHS system, which can undermine the safety culture of an organisation.¹⁵ Carnival Safety Australia (CSA) highlighted the practical impacts of different requirements for plant registration and variations in auditing certificates and approvals when working in different jurisdictions.¹⁶ Another multi-jurisdictional business pointed to inconsistent compliance and enforcement approaches across jurisdictions, undermining the harmonisation of the model WHS Act and creating avoidable confusion and complexity for duty holders.¹⁷ Regulators also voiced concerns about the practical implications of jurisdictional variations that can result in different protections being applied to workers in a single workplace, and different obligations on businesses and employers, where they fall under the jurisdiction of multiple WHS regulators.¹⁸

Some unions, WHS regulators and industry representatives were more qualified in their support for harmonisation. Unions and some WHS regulators noted that jurisdictions need flexibility to respond to changing needs and emerging hazards at the local level.¹⁹ The Australian Council of Trade Unions (ACTU) noted it supports variations to the model WHS laws where they advance the object of the model WHS Act and strengthen protections for workers.²⁰ The Minerals Council of Australia (MCA) acknowledged that some variations address unique industry risks but emphasised these should be limited to essential changes and should not compromise the intent of the harmonisation objective contained in the model WHS framework.²¹

¹¹ [ACCI](#), Submission, p 6; [MBA](#), Submission, p 7; Anonymous and private, Submission #119, p 2.

¹² [WorkSafe WA](#), Submission, p 8; all jurisdictions in meetings expressed support for harmonisation, although they had different views on the impact of variations.

¹³ NT WorkSafe, Consultation, September 2025.

¹⁴ Australian Industry Group, Consultation, October 2025.

¹⁵ [HIA](#), Submission, p 10; [MBA](#), Submission, p 8; [Anonymous](#), Submission #135, pp 8–9; WHS professional, Consultation, October 2025.

¹⁶ [CSA](#), Submission, p 3.

¹⁷ Anonymous and private, Submission #119, p 2.

¹⁸ WorkSafe ACT, Consultation, September 2025; Comcare, Consultation, September 2025.

¹⁹ SA Unions, Consultation, September 2025.

²⁰ [ACTU](#), Submission, p 12.

²¹ [MCA](#), Submission, p 5.

Discussion and recommendations

What is clear from consultation is that the model WHS laws, and the objective of national harmonisation, remain strongly supported and have real practical benefits for businesses, employers and workers.

However, there is a growing pessimism about whether these benefits will continue to be realised if solutions are not found to prevent the increase in jurisdictional variations. The benefits of harmonisation are being compromised by the continuing increase in those variations.

While some of the jurisdictional variations have led to increased protections and rights for workers,²² a key goal of the model WHS laws is that workers should have the same protections and rights no matter where they live and work. And this Review did not hear of any compelling example of a WHS issue that requires a different legislative standard due to the state or territory where the work is being carried out or within which the workplace is situated.²³

Some variations reduce obligations for businesses and employers. However, these in turn require businesses to ‘navigate different rules, duplicate training and administrative requirements, and adjust procedures for each state and territory’.²⁴ This can result in inefficiencies for business and reduction in productivity. Findings from previous reviews, and feedback from the Business Council of Australia (BCA), recognised that the cost of compliance for multi-jurisdictional businesses is greater where WHS legal provisions differ between jurisdictions.²⁵ The impact of variations is often compounded for smaller businesses operating across multiple jurisdictions, as they lack dedicated resources to navigate different regulatory frameworks.²⁶

However, medium and large businesses, which are more likely to operate in more than one jurisdiction, account for over 60% of Australia’s employment²⁷ and close to 70% of Gross Domestic Product (GDP).²⁸ And because multi-jurisdictional businesses represent such a large share of Australia’s economic activity, the productivity impact from varied approaches to WHS regulation is likely to be significant. This conclusion is consistent with the *2008 National Review*, which stated, ‘it is widely accepted that harmonised OHS laws will reduce red tape and compliance costs for multi-state employers’.²⁹

Adopting and maintaining the harmonised model WHS laws also provides the foundation for strong and consistent compliance and enforcement of those laws across Australia. It supports increased sharing of inspector expertise and resources between jurisdictions. The *2008 National Review* argued this would ‘be cost saving, optimising inspector numbers and expertise across the country, and limiting the duplication of costly and time-consuming training’.³⁰

²² These will be discussed later in the context of best practice variations (Chapter 2 – The duties framework).

²³ There may be issues which are only relevant to one jurisdiction; however, these are not national issues and are not covered in the model laws. Part 5.1.8 of the IGA provides that jurisdictions may make additional provisions in such cases.

²⁴ WHS professional, Consultation, October 2025.

²⁵ BCA, Consultation, October 2025; C Maxwell, *Occupational Health and Safety Act Review*, Victorian Government, 2004, p 94; R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: first report](#), Department of Employment and Workplace Relations, Australian Government, 2008, p 7.

²⁶ Anonymous, Submission #166, p 9. J Douglas and A Land Pejaska, [Regulation and small business](#), 2017, pp 1–4.

²⁷ ASBFEO, [Contribution to Australian employment](#), May 2025, accessed 12 May 2026.

²⁸ ASBFEO, [Contribution to Australian Gross Domestic Product](#), May 2025, accessed 12 May 2026.

²⁹ R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: first report](#), Department of Employment and Workplace Relations, Australian Government, 2008, p 7.

³⁰ R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: second report](#), Department of Employment and Workplace Relations, Australian Government, 2009, p 274.

Following the commencement of the model WHS laws in 2012, there was an initial and significant decline in the rate of work-related fatalities. Between 2014 and 2021, the fatality rate decreased by 24%.³¹ However, over recent years, this progress appears to have plateaued.³²

Injury trends are more complex. The overall incidence rate for serious workers' compensation claims increased by 13.6% from 2018–19 to 2023–24, driven by growing claims for psychological injury in some jurisdictions.³³ However, this period saw widened claim eligibility in some workers' compensation schemes, increased understanding of work-related psychological injury and reduced stigma in relation to these claims, and statistics may reflect these factors rather than an increase in the number of actual injuries. Equally, however, not everyone who suffers a work-related psychological injury will make a workers' compensation claim. And, more recently, some schemes have narrowed eligibility rules for psychological injury claims.

Where variations have resulted in WHS improvements which are helping to reduce injuries, illnesses and deaths, this Review suggests they should be considered for adoption nationally. An objective of the model WHS Act is to provide a framework 'for continuous improvement and progressively higher standards of work health and safety'.³⁴ A consistent and responsive approach to maintaining and updating the model WHS laws is critical to ensuring that safety improvements identified in one jurisdiction can be adopted and implemented nationally.

The *2018 National Review* foresaw that 'if the harmonisation objective is to be sustained into the future, it is critical that all jurisdictions commit to it'.³⁵ This Review reinforces that sentiment and extends that call for commitment to the industry and worker representatives and other partners who play an important role in maintaining the model WHS laws.

The current approach to maintaining the model WHS laws, through the Safe Work Australia tripartite process, provides the opportunity to resolve issues through informed debate; consideration of different points of view from worker, business, industry, union, regulator and jurisdictional perspectives; and analysis of evidence and data.

This approach has proven successful in mitigating short-term policy fluctuations within the model WHS Act, WHS Regulations and model Codes of Practice. Such fluctuations can be driven locally by changes in the political landscape and responses to specific incidents.

While there have been numerous variations to jurisdictional versions of the model WHS laws, with some jurisdictional legal instruments swinging back and forth on the political and ideological pendulum, the model WHS laws themselves, which are maintained at the national level through the tripartite process, have tended to avoid those significant swings.

Tripartism does not always lead to consensus, but, when we are talking about workers' health and safety, consensus is more often than not reached. Tripartism has provided a strong, stable national set of model WHS laws.

To maintain and strengthen harmonisation, and ensure its sustainability, this Review recommends that WHS ministers renew their commitment to this significant reform project.

³¹ Safe Work Australia, [Key work health and safety statistics Australia](#), Insights, Safe Work Australia, October 2025, accessed May 2026; Safe Work Australia, [Work-related fatalities](#), Dashboard, Safe Work Australia, n.d., accessed May 2026.

³² Safe Work Australia, [Key work health and safety statistics Australia](#), Insights, Safe Work Australia, October 2025, accessed May 2026. Note: The causes of fatalities are complex, and data should be interpreted carefully. There can be significant year-on-year variation. Analysing the data over a longer time period can help to account for this variation.

³³ Safe Work Australia, [Jurisdictional comparison](#), Dashboard, Safe Work Australia, February 2026, accessed May 2026.

³⁴ *Work Health and Safety Act 2011* (Cth), s 3(g).

³⁵ Safe Work Australia, [Review of the model Work Health and Safety laws: - Final report](#), 2018, p 6.

The harmonisation objective – Recommendation 1

That WHS ministers recommit to the harmonisation of WHS laws and their objectives, which include:

- a. nationally consistent protections for workers
- b. nationally consistent obligations for businesses and employers
- c. reduced compliance impact
- d. improved regulatory efficiency
- e. progressively higher standards of protection
- f. fair and effective representation, consultation, cooperation and issue resolution, and
- g. a constructive role for unions and employer organisations.

1.2 Strengthening and maintaining harmonisation

What we heard

This Review heard there were several reasons for jurisdictional variations. Safe Work Australia Members and others believed national processes can take too long, leading jurisdictions to act alone more swiftly.³⁶ NT WorkSafe highlighted that it can take longer for smaller jurisdictions to adopt national changes in WHS laws; it stated that it is difficult for jurisdictions to go through legislative change concurrently.³⁷ Australian Industry Group and other Safe Work Australia Member bodies noted that change is often driven by political agendas,³⁸ while the Australian Institute of Health and Safety (AIHS) called for more Safe Work Australia decisions to be driven by objective technical expertise.³⁹

Some solutions to addressing variations and ensuring a sustained national approach were provided. Curran Risk Management,⁴⁰ and Professor Andrew Stewart and Peter Thorning,⁴¹ suggested that deviations from the model WHS laws could be addressed by establishing a national, independent regulator using mirror legislation or the referral of powers to the Commonwealth.

Others called for greater powers for Safe Work Australia to safeguard against fragmentation. Specifically, government and industry representatives suggested that the *Safe Work Australia Act 2008* (Cth) be amended to strengthen Safe Work Australia's ability to review jurisdiction-level changes, reinforce tripartite processes, and ensure proposed amendments are assessed nationally before enactment locally.⁴²

Industry and unions also proposed ideas to provide greater transparency of jurisdictional variations, including the publication of a scorecard to detail jurisdictional variations;⁴³ and periodic audits to monitor, review and evaluate variations at the national level.⁴⁴

³⁶ [WorkSafe WA](#), Submission, pp 8–9; [AIHS](#), Submission, p 4; [Veyter Pty Ltd](#), Submission, p 5.

³⁷ NT WorkSafe, Consultation, September 2025.

³⁸ Australian Industry Group, Consultation, October 2025.

³⁹ [AIHS](#), Submission, pp 5–6.

⁴⁰ [Curran Risk Management](#), Submission, pp 3–6.

⁴¹ [Andrew Stewart and Peter Thorning](#), Submission, pp 2, 4–8.

⁴² Anonymous and private, Submission #119, p 2; [MCA](#), Submission, p 5; [MBA](#), Submission, p 7; [WorkSafe WA](#), Submission, pp 8–9.

⁴³ [ACTU](#), Submission, pp 4, 12; Anonymous and private, Submission #119, p 3.

⁴⁴ [MCA](#), Submission, pp 3–5, 11.

Discussion and recommendations

This Review considered the suggestions made to adopt alternative schemes for regulating WHS.

The alternative schemes proposed were:

- **an applied law scheme** where standard provisions are enacted in one jurisdiction and adopted as law in participating jurisdictions with a single, co-funded national regulator, similar to the National Heavy Vehicle Regulator (NHVR) or Office of the National Rail Safety Regulator (ONRSR)
- **referral of powers to the Commonwealth** under section 51(xxxvii) of the Australian Constitution, enabling a single Commonwealth law to apply across participating states and territories; and requiring the Commonwealth to take over regulatory functions, including compliance and enforcement functions, achieving uniformity of WHS laws.

While it is true that both options could play a role in maintaining and strengthening harmonisation by ensuring consistent approaches and removing jurisdictional inconsistencies, there are drawbacks, including upfront costs and state and territory rights issues. Most crucially, both options would diminish the important contribution of the states and territories and their considerable existing experience and capability in WHS.

While feedback to this Review certainly pointed to frustration with the status quo and the readiness of jurisdictions to vary their laws or delay adoption of national changes, it did not indicate a broad appetite for structural or institutional reform. Instead, the focus of contributors to this Review was on how Safe Work Australia could more effectively manage and limit unilateral jurisdictional variations into the future.

Feedback to this Review clearly indicated that Safe Work Australia's governance arrangements have a role to play in preventing future variations. It was noted that simply following the process outlined in the IGA would have allowed many jurisdictional variations to be considered nationally.⁴⁵

The IGA requires:

*Any Party that proposes to amend its legislation or introduce new legislation so as to materially affect the operation of model OHS legislation will submit the proposed amendments or new legislation to Workplace Relations Ministers Council [WRMC] for decision. Each Party agrees that it will not progress implementation of any such amendment or such new legislation unless WRMC has endorsed the proposed amendment or new legislation.*⁴⁶

Some Safe Work Australia Members believed the length of time it takes to consult and make decisions nationally contributes to jurisdictional variations and why the IGA process has not been followed.⁴⁷ Simultaneously, there were calls for more time, believing national processes to be too rushed. For example, WorkSafe WA stated that, on one hand, Safe Work Australia can set timeframes that are too short for jurisdictions to properly consult on issues; and, on the other hand, if a jurisdiction identifies an issue requiring immediate action, Safe Work Australia's processes can move too slowly.⁴⁸

This Review recommends there should be a commitment to jurisdictions bringing any proposed variations to their WHS laws to Safe Work Australia for national consideration (as outlined in Part 5.5 of the IGA). This would require Safe Work Australia Members (particularly jurisdictional Members) to more routinely identify legislative, policy and compliance and enforcement issues affecting their jurisdictions at the national table.

⁴⁵ [South Australian Wine Industry Association](#), Submission, p 2; [ACCI](#), Submission, pp 1–2; [Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety](#), 2008, Part 5.5.

⁴⁶ [Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety](#), 2008, p 11.

⁴⁷ [WorkSafe WA](#), Submission, pp 8–9; Private, Submission #89, p 7.

⁴⁸ WorkSafe WA, Consultation, September 2025.

The Review also heard that delays in passing nationally agreed amendments to the model WHS Act and Regulations in some jurisdictions had contributed to a lack of harmonisation. This Review therefore recommends ensuring amendments to the model WHS laws agreed nationally are prioritised for passage through jurisdictional parliaments.

All jurisdictions have implemented tripartite advisory councils or committees to provide advice to the Minister.⁴⁹ While these jurisdictional consultation mechanisms are important, it would strengthen harmonisation if they operated as part of the harmonised national decision-making process. This includes having mechanisms in place to ensure issues identified through local tripartite processes are communicated by the relevant Safe Work Australia Member and brought forward for national consideration. Similarly, mechanisms to inform and seek feedback from jurisdictional advisory bodies as part of national policy discussion would be helpful so that issues raised during national decision-making are not later re-prosecuted at the local level.

This Review makes no recommendation on consultation timeframes, as this should be at the discretion of Safe Work Australia Members and may vary from issue to issue. However, to ensure matters ready for decision are resolved more swiftly, this Review recommends consistently following the voting processes outlined in 2.2.1(d) of the IGA. This provides:

*at a meeting of Workplace Relations Ministers Council, members who do not vote in person or by written vote or by proxy will be counted as having voted to approve a recommendation. Where a vote is conducted without a meeting, a member who does not submit his or her vote by the deadline set, will be counted as having voted to approve the recommendation.*⁵⁰

In their submissions, the ACTU and the Water Services Association identified that a scorecard or public register of jurisdictional variations would improve public transparency and accountability.⁵¹ This proposal is also consistent with Recommendation 2 of the 2018 *They Never Came Home Report*.⁵²

This Review recommends that Safe Work Australia should develop and publish an annual scorecard detailing information on individual variations to the model WHS laws, including local variations and variations where changes to the model WHS laws which have been agreed at a national level have not been adopted. The scorecard should also require jurisdictions to explain their reasons for retaining variations should they elect to remain outside of the nationally agreed approach. The scorecard could also be used to consider whether local variations should be elevated to the national process for consideration. Safe Work Australia Members have agreed that the Agency progress this action as a priority.

To support the harmonisation objective, this Review also recommends that amendments to the model WHS laws that have been agreed nationally are prioritised for passage through jurisdictional parliaments.

⁴⁹ *Safe Work Australia Act 2008* (Cth), s 10; Work Health and Safety Council, ACT WHS Act, Sch 2, Div 2.1.1; Safety Rehabilitation and Compensation Commission, Cth WHS Act, Sch 2, Pt 2; Advisory Council, NSW WHS Act, Sch 1A; Work Health and Safety Advisory Council, *Work Health and Safety (National Uniform Legislation) Act 2011* (NT), Sch 2; SafeWork SA Advisory Committee, SA WHS Act, Pt 1, Div 5 and Sch 2, Pt 2; Work Health and Safety Board, Qld WHS Act, Sch 2, Pt 2, Div 2; Workcover Tasmania Board, *Work Health and Safety Act 2012* (Tas), Sch 2, Pt 2; Occupational Health and Safety Advisory Committee, Vic OHS Act, Pt 2, Div 6; Work Health and Safety Commission, WA WHS Act, Sch 1, Div 3.

⁵⁰ *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, 2008, p 5.

⁵¹ ACTU, Submission, pp 11–12; *Water Services Association of Australia*, Submission, pp 4, 6.

⁵² Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, Australian Government, 2018.

Another key driver of variations are jurisdiction-level reviews, which often recommend changes that are then only adopted in one jurisdiction. Ideally, reviews should be nationally harmonised and occur periodically in unison. However, to the extent this is not possible, this Review recommends that jurisdictional reviews should be brought to the national table for discussion as early as possible and involve engagement with Safe Work Australia throughout the process. Where possible, Safe Work Australia should encourage common timing and approaches to jurisdiction-level reviews to reduce variations to the model.

The harmonisation objective – Recommendation 2

That harmonisation is maintained and strengthened through:

- a. jurisdictions committing to potential local WHS law changes being considered at the national level
- b. ensuring amendments to the model WHS laws agreed nationally are prioritised for passage through jurisdictional parliaments, and
- c. introducing a harmonised approach to jurisdictional WHS Act and WHS Regulations reviews.

1.3 Harmonisation in the approach to compliance and enforcement

One of Safe Work Australia's key functions under the *Safe Work Australia Act 2008* (Cth) is to produce an NCEP. The NCEP is fundamental to harmonisation and outlines the approach WHS regulators will follow to achieve nationally consistent compliance and enforcement practices.⁵³

The NCEP is currently a high-level document outlining 7 principles to guide WHS regulators' compliance and enforcement activities.

One of the strongest messages from the *2018 National Review* was that 'regulators are not consistently implementing the model WHS laws'.⁵⁴ It recommended the NCEP be reviewed and include decision-making frameworks to promote greater national consistency in the approach to compliance and enforcement.⁵⁵

Safe Work Australia commissioned this NCEP review in 2022; however, it did not ultimately achieve its recommended objective.

What we heard

As in 2018, concern about compliance and enforcement inconsistency was one of the messages most frequently heard by this Review. There was a broad-ranging consensus that the NCEP is not achieving its stated purpose of ensuring a nationally consistent approach to compliance and enforcement. Industry representatives and WorkSafe WA called for further work to address inconsistency in the compliance and enforcement approaches and activities of WHS regulators⁵⁶ and to improve transparency and clarity.⁵⁷

⁵³ Safe Work Australia, [NCEP](#), Safe Work Australia, 2024, p 4.

⁵⁴ Safe Work Australia, [Review of the model Work Health and Safety laws: final report](#), Safe Work Australia, 2018, p 9.

⁵⁵ Safe Work Australia, [Review of the model Work Health and Safety laws: final report](#), Safe Work Australia, 2018, p 110.

⁵⁶ [MBA](#), Submission, p 26; [WorkSafe WA](#), Submission, p 7; [MCA](#), Submission, p 4; [AIG](#), Submission, pp 5–6.

⁵⁷ [AIHS](#), Submission, pp 11, 16, 18; [ACCI](#), Submission, pp 5–6; Victorian Small Business Commission, Consultation, October 2025.

Variations across WHS regulators' operations were widely seen to affect WHS outcomes by undermining predictability and confidence in WHS laws. The Australian Chamber of Commerce and Industry (ACCI), Master Builders Australia (MBA) and the MCA all called for a further review to restore alignment and promote consistency in compliance and enforcement,⁵⁸ while unions were concerned that worker representation, participation and consultation are not covered by the current NCEP.⁵⁹

The BCA, among many other organisations, reflected that inspectors often have very different interpretations of WHS requirements, posing significant challenges for businesses that want to do the right thing.⁶⁰ One company told this Review that 2 near-identical complaints made within the same jurisdiction had been handled with vastly different approaches: the first investigation had been resolved quickly with a finding of no infringement, while the second had dragged on for months and cost the business over \$100,000.⁶¹

The AIHS suggested a national rollout of scenario-based guidance on the operation of the NCEP for inspectors, similar to that developed by SafeWork NSW, as an effective way to communicate the NCEP principles.⁶²

This Review heard the approach taken by regulators and inspectors can change as governments change, swinging like a pendulum between a predominately educative approach to an enforcement approach. The Chamber of Minerals and Energy of Western Australia noted these varied approaches taken by regulators and inspectors.⁶³ Master Builders Tasmania stated their experience with inspectors, including that the advice provided by regulators and inspectors on the ground can differ, leading to confusion and inconsistencies.⁶⁴ Workplace Health and Safety Queensland highlighted it is difficult to achieve uniformity across its approximately 300 inspectors.⁶⁵ This Review heard this variability can result in a reluctance to approach the regulator for advice.⁶⁶ WorkSafe ACT said this kind of variability between regulators can even occur within a single workplace when WHS jurisdictions overlap.⁶⁷ Comcare agreed, noting the NCEP inadequately addresses the complexities of co-regulated workplaces and interactions with other safety regulators.⁶⁸

Affected families and injured worker representatives also provided examples of delayed coordination between WHS regulators and other enforcement bodies during fatality investigations.⁶⁹ They highlighted the difficulty of navigating a complex system, where multiple government bodies play a role but do not coordinate (for example, WHS regulators, police, courts) while experiencing grief from the death of a loved one or adjusting to a life-altering injury or disease.

⁵⁸ [ACCI](#), Submission, pp 7–8; [MBA](#), Submission, pp 26, 32–33; [MCA](#), Submission, p 4.

⁵⁹ [ACTU](#), Submission, p 11; [NSW Nurses and Midwives' Association/Australian Nursing and Midwifery Federation NSW Branch](#), Submission, pp 15–16.

⁶⁰ BCA, Consultation, September 2025; Anonymous, Consultation, March 2026.

⁶¹ Private, Consultation, March 2026.

⁶² [AIHS](#), Submission, p 11.

⁶³ Chamber of Minerals and Energy Western Australia, Consultation, September 2025.

⁶⁴ Master Builders Tasmania, Consultation, September 2025.

⁶⁵ Workplace Health and Safety Qld, Consultation, September 2025.

⁶⁶ [CSA](#), Submission, p 4; [HIA](#), Submission, p 1; [Australian Retailers Association and National Retail Association](#), Submission, p 4; [ACFA](#), Submission, p 9.

⁶⁷ WorkSafe ACT, Consultation, September 2025.

⁶⁸ [Comcare](#), Submission, p 2.

⁶⁹ Affected Family and Workers Advisory Committee, Consultation, December 2025; Workplace Incidents Consultative Committee, Consultation, December 2025; Consultative Committee for Work-related Fatalities and Serious Incidents, Consultation, February 2026.

Family representatives also highlighted the importance of the right combination of skills and expertise being available when investigating a work-related fatality or serious injury. Acknowledging inspectors cannot specialise in every area, they called for a national framework to bring together appropriate skills to improve investigations.⁷⁰

Affected families and injured worker representatives also called for the lessons of fatalities, including coronial recommendations, to be shared across jurisdictions to reduce the risk of similar incidents being repeated.⁷¹

WHS professionals supported the establishment of independent non-regulator bodies to undertake investigations into serious incidents and disseminate lessons learned.⁷² For example, a submission to the Review proposed establishing an Australian Work Safety Bureau:

*Its central proposition is that Australia's WHS system has a structural gap: while it has regulators, policy agencies, courts and coroners, it lacks a clearly independent national body dedicated to investigating serious workplace incidents for the primary purpose of learning, prevention and public safety knowledge. An agency with that function could strengthen confidence in WHS systems, improve the national evidence base, and turn work-related incidents, fatalities and near misses into practical lessons that help prevent future harm.*⁷³

Discussion and recommendations

The model WHS laws provides the legislative framework for a nationally consistent approach to WHS regulation. But it is often through the compliance and enforcement activities of WHS regulators that the laws are experienced in practice by workers and businesses. What this Review heard most often was that inconsistencies, and a lack of transparency in decision-making, are undermining the effectiveness of harmonised WHS laws on the ground at work and in workplaces. Consistency in compliance and enforcement of the model WHS laws is fundamental to building confidence in the harmonised framework, securing compliance and improving health and safety outcomes.

Much of what this Review heard on the topic of harmonisation came in the form of criticism of WHS regulators and inspectors. This Review acknowledges the pressures faced by both. The sheer scope of their compliance and enforcement task across all industries, workplaces and work, coupled with resourcing, recruitment and training challenges and community expectations, all conspire to make the task of a WHS regulator a difficult and, at times, thankless one.

However, this makes the work to support and strengthen consistency in compliance and enforcement more important. Critical to supporting the work of the regulators and inspectors is the NCEP. It is a crucial component of the model WHS law framework. However, since 2008, it has had little if any attention paid to it to ensure it remains contemporary and fit for purpose to play its role in supporting the harmonisation objective.

This Review recommends moving away from a high-level principle-based NCEP to a new NCEP that provides more detail about how decisions will be made and how key aspects of the model WHS legal framework will be enforced.

As recommended by many who contributed to this Review, including a significant number of industry

⁷⁰ [Kay Catanzariti](#), Submission, p 2; [Kay Catanzariti and Vincent Pannell](#), Submission, p 3; Affected Family and Workers Advisory Committee, Consultation, December 2025; Workplace Incidents Consultative Committee, Consultation, December 2025; Consultative Committee for Work-related Fatalities and Serious Incidents, Consultation, February 2026.

⁷¹ Affected Family and Workers Advisory Committee, Consultation, December 2025; Workplace Incidents Consultative Committee, Consultation, December 2025; Consultative Committee for Work-related Fatalities and Serious Incidents, Consultation, February 2025.

⁷² [AIHS](#), Submission, pp 12–13.

⁷³ Kevin Jones, Submission, p 1.

representatives,⁷⁴ and the *2018 National Review*,⁷⁵ this Review reiterates the NCEP should include a decision-making framework to guide and support the activities of inspectors and provide greater transparency for duty holders and workers. This Review suggests a new approach could be informed by existing frameworks such as those in the Australian Capital Territory (ACT) and Queensland.

Unions, industry representatives, WHS regulators and WHS professionals all suggested elements that should be incorporated into a reworked NCEP to provide clarity and strengthen national consistency. These include:

- additional principles to guide compliance and enforcement activities⁷⁶
- minimum training and qualification requirements for inspectors⁷⁷
- identification of priority areas for investigation⁷⁸
- ensuring representation and consultation are covered⁷⁹
- detail on how inspector decisions can be reviewed⁸⁰
- requirements for the new NCEP to be reviewed at regular intervals.

It is suggested the new NCEP should also develop clear arrangements for managing compliance and enforcement activities where more than one WHS regulator, or another government body, has jurisdiction.⁸¹

To support the development of a new NCEP and ensure that compliance and enforcement issues have a strong conduit to the work of Safe Work Australia and decision-making by its Members, this Review recommends establishing a new Strategic Issues Group (SIG) focusing on Compliance and Enforcement.

This would provide a tripartite forum with appropriate expertise (ensuring all WHS regulators are contributing alongside social partners) to develop the new NCEP and ensure that practical compliance issues associated with applying the model WHS laws and enforcing them can be raised quickly at the national level.

The harmonisation objective – Recommendation 3

That harmonisation is enhanced through developing a new National Compliance and Enforcement Policy (NCEP) to support compliance and enforcement consistency and clarity.

⁷⁴ AIHS, Submission, pp 10–11; MBA, Submission, p 23; Water Services Association of Australia, Submission, p 5.

⁷⁵ Safe Work Australia, *Review of the model Work Health and Safety laws: final report*, Safe Work Australia, 2018, pp 107–110.

⁷⁶ WorkSafe WA, Submission, p 7.

⁷⁷ Safety Forward, Submission, p 3; ACFA, Submission, p 9.

⁷⁸ WorkSafe WA, Submission, p 7; WorkSafe ACT, Consultation, September 2025, WorkSafe Victoria, Consultation, September 2025.

⁷⁹ ACTU, Submission, p 11.

⁸⁰ ACFA, Submission, p 5.

⁸¹ The issues arising from co-regulated workplaces are discussed further in Chapter 1.5 – Overlapping safety frameworks.

1.4 A harmonised national approach to reducing work related fatalities

What we heard

This Review heard confronting feedback from the families of fatally injured workers about the need for a step-change in efforts to reduce work-related fatalities, including through improved compliance and enforcement actions. Consistent messages were heard throughout this Review's consultation with families and injured workers regarding the need for more work to be done to reduce the rates of workplace fatalities. The importance of learning from past events was also highlighted.⁸²

This Review heard calls for leveraging expertise across a range of specific areas, including high risk industries,⁸³ amusement devices,⁸⁴ rural and remote agriculture,⁸⁵ and essential utility services.⁸⁶

Discussion and recommendations

The *Australian Work Health and Safety (WHS) Strategy 2023–2033* sets a target to reduce the number of worker fatalities caused by traumatic injuries of at least 30%.⁸⁷ Since 2014, work-related fatalities have seen a 24% decline. However, in recent years this decline has stalled, averaging 191 deaths per year, or a rate of 1.4 fatalities per 100,000.⁸⁸ Industries with persistently high fatality rates include transport, agriculture, mining and construction.

This Review agrees that dedicated work is needed at a national level to systematically examine workplace fatalities to understand the contributing factors and inform efforts to reduce and prevent them. This would involve ongoing examination of available information, including court cases and coroners' reports, to understand what went wrong. It should also involve identifying areas for potential improvement within the WHS laws and sharing lessons learned across jurisdictions.

To support this work, this Review has identified that Safe Work Australia should establish a new SIG focused on Reducing Work Related Fatalities. This tripartite group would include expertise from relevant industries, social partners and WHS professional bodies to help shape national policy. The group would be responsible for considering lessons learned from workplace fatalities investigations, coroners and court outcomes; and recommending potential responses, including any amendments to the model WHS laws that might be required. The group should also consult regularly with the families of fatally injured workers. As a starting point, the group would focus on those industries which consistently record the highest numbers of fatalities each year, including agriculture, mining, construction, warehousing and transport.

To support the work of the SIG-Reducing Work Related Fatalities, Safe Work Australia will engage with coroners' courts to establish arrangements for sharing their findings quickly and systematically and to ensure that recommendations from coroners' inquests to Safe Work Australia or a jurisdictional regulator are considered by the proposed new SIG-Reducing Work Related Fatalities within 6 months of obtaining the outcomes.

⁸² Family and Injured Workers Support and Advisory Group (NSW), Consultation, November 2025; Families and Injured Workers Advisory Committee (Cth), Consultation, November 2025; Affected Families and Workers Advisory Committee (WA), Consultation December 2025; Workplace Incident Consultative Committee (Vic), Consultation, December 2025; Consultative Committee for Work-Related Fatalities and Serious Incidents (Qld), Consultation, February 2026.

⁸³ [MCA](#), Submission, p 3.

⁸⁴ [CSA](#), Submission, p 5.

⁸⁵ [NFF](#), Submission, p 7.

⁸⁶ [Water Services Association of Australia](#), Submission, p 5.

⁸⁷ Safe Work Australia, *Australian Work Health and Safety (WHS) Strategy 2023–2033*, Safe Work Australia, 2023, p 12.

⁸⁸ Safe Work Australia, [Key work health and safety statistics Australia](#), Insights, Safe Work Australia, October 2025, accessed 13 May 2026.

As recommended by some families of deceased workers, there is also often a need for greater technical expertise in some work-related fatality investigations, particularly in smaller states⁸⁹ or where fatalities involve specialist tasks or equipment. It is suggested the new SIG-Reducing Work Related Fatalities should consider a national approach to fatality investigations, including developing arrangements for jurisdictions to draw on a common pool of high risk industry and other specialist investigators and share this specialist expertise where appropriate.

This Review suggests a pilot of this approach could occur in the construction industry and, once trialled, be assessed with a view to extending it to other industries.

The establishment of the SIG-Reducing Work Related Fatalities and the work with coroners' courts are actions arising from this Review which Safe Work Australia Members have tasked the Agency with progressing immediately.

1.5 Overlapping safety frameworks

Some states and territories regulate high risk industries or specific hazards through specialist safety regimes which may sit within a jurisdiction's WHS framework⁹⁰ or operate under a separate legislative framework.⁹¹ Industries subject to separate or specialist legislative arrangements include mining, petroleum and gas, electricity, maritime, and aviation. Sectors such as dangerous goods, heavy vehicles, and rail safety operate under nationally harmonised frameworks that sit outside the WHS framework.⁹² Most of these safety frameworks are administered by specialist regulators.

Mining is notable as a high risk industry where safety is not uniformly regulated across the states and territories. Previous efforts to harmonise mining safety legislation through the *National Mine Safety Framework* and Chapter 10 of the model WHS Regulations, developed by Safe Work Australia in 2014, were never fully realised.

Safety in the maritime industry is regulated under the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth) (OHS(MI) Act), which has not been substantially amended since its enactment over 30 years ago. The Australian Government Department of Employment and Workplace Relations is currently considering reforms to harmonise the OHS(MI) Act and its subordinate legislation with the model WHS laws. Safe Work Australia will monitor this work and there may be opportunities for the Regulations modernisation project proposed at **Chapter 7** to consider the outcomes of this work.

Previous reviews into WHS, including the 2008 and 2018 Reviews, addressed the interaction of the WHS framework with other safety regimes. This Review has similarly considered how these separate legislative arrangements interact with the model laws.

Although often similar to the model WHS laws, duties and obligations under specialist work-related safety frameworks (overlapping safety frameworks) are not identical. Notwithstanding that differing levels of alignment contribute to a complex regulatory landscape, some safety frameworks have recently been reformed to improve national consistency and harmonisation with the model WHS laws.⁹³ A more detailed summary of the overlapping safety frameworks in Australia is at **Appendix C**.

⁸⁹ T Lyons, [Best Practice Review of Workplace Health and Safety in the Northern Territory: final report](#), NT Government, 2019, pp 48–49.

⁹⁰ For example, in NSW mining is regulated through both its WHS Act and its *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) – the latter and its regulations are to be interpreted as if they formed part of the WHS Act and Regulations.

⁹¹ For example, Queensland maintains separate legislation for electrical safety under the *Electrical Safety Act 2002* (Qld) and has a range of industry-specific overlapping safety frameworks covering dangerous goods, and mining, some of which apply to the exclusion of the Qld WHS Act: see Sch 1, Pt 2.

⁹² [Model Act on the Transport of Dangerous Goods by Road or Rail](#). The [Heavy Vehicle National Law](#) and [Rail Safety National Law](#) are implemented in participating jurisdictions as mirror legislation.

⁹³ For example, the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGGS) Safety Regulations 2024 (Cth) replaced the 2009 Regulations to more closely align with some elements with the Commonwealth WHS Act.

What we heard

Representatives from high risk industries suggested that the numerous overlapping safety frameworks applicable to their work create complex compliance challenges that divert attention from practical safe work practices and outcomes.⁹⁴ Mining organisations, including the MCA, identified inconsistencies between various jurisdictions' mining safety legislation as a particular challenge.⁹⁵ Notably, Queensland's standalone mining legislation requires all duty holders at a mine to reduce risk to 'as low as reasonably achievable' compared with the standard in the model WHS laws jurisdiction of 'so far as is reasonably practicable'. One regulator supported harmonising the mining regulations to assist smaller jurisdictions to prioritise their compliance activities.⁹⁶

Unions supported harmonising safety regimes for the offshore oil, gas and electricity industries to remove gaps that exclude some seafarers and workers from coverage under Australian WHS laws.⁹⁷

The Australian Government Department of Climate Change, Energy, the Environment and Water (DCCEEW) raised concerns that regulatory uncertainty and overlap risk being embedded as new sectors develop.⁹⁸ This includes the emerging hydrogen industry, which will be subject to multiple safety regimes.⁹⁹

Discussion and recommendations

Harmonisation of overlapping safety frameworks with the model WHS laws remains desirable, consistent with the original intent of the *2008 National Review* that 'there should be a presumption that separate and specific OHS laws ... should only continue where they have been objectively justified'.¹⁰⁰

The variability of WHS related duties and obligations across overlapping safety frameworks continues to contribute to duty holder confusion about their WHS duties, gives rise to concerns about workers' rights, and obscures gaps in coverage that reduce WHS protections for some workers. For example, this Review heard operators of domestic commercial vessels were unaware they were subject to both WHS laws and maritime safety laws.¹⁰¹ It also heard that Queensland host farmers who are legally required to accommodate energy-related infrastructure on their farms have unequal access to some WHS protections due to the structural separation of the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and the Queensland WHS Act.¹⁰²

⁹⁴ [Acran Sound Control](#), Submission, p 5; [MCA](#), Submission, p 7.

⁹⁵ [Anonymous](#), Submission #175, p 1; [MCA](#), Submission, p 6; Private, Submission #136, p 8.

⁹⁶ Private, Submission #89, p 16.

⁹⁷ [Maritime Union of Australia](#), Submission, p 11; [ACTU](#), Submission, p 12. The offshore safety regimes are provided by the OHS(MI) Act (Cth), OPGGS Act (Cth) and *Offshore Electricity Act 2011* (Cth).

⁹⁸ [DCCEEW](#), Submission, p 2.

⁹⁹ See also Chapter 7 – The model WHS Regulations: modernisation project.

¹⁰⁰ R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: second report](#), Department of Employment and Workplace Relations, Australian Government, 2009, p 17.

¹⁰¹ [Australian Maritime Safety Authority](#), Submission, p 2.

¹⁰² [Dr Shay Dougall, Dr Rachael Potter and Professor Maureen Dollard](#), Submission, p 1.

Several fatalities in the offshore oil and gas industry appear to underscore significant gaps in offshore safety regimes, which the ACTU notes continue to lack the protections contained in the model WHS Act.¹⁰³ These include consultation provisions, health monitoring, the right to cease unsafe work and regulations to manage risks from work at heights. If we are genuine about the goal of every Australian worker no matter where they work or what industry they work in having the same level of protections, workers in high risk offshore industries should receive, at minimum, the same protections as those that would apply onshore, and this Review suggests these protections should mirror those in the model WHS laws.

It is noted that some overlapping safety frameworks include provisions that are arguably best practice.¹⁰⁴ For example, there are regulations in the Queensland and NSW mining regulations which provide for the appointment of safety and health representatives and enhanced health monitoring.¹⁰⁵

This Review recommends that Safe Work Australia continue to work with overlapping safety framework jurisdictions to consider how harmonisation with the model WHS laws could be progressed to ensure workers do not inadvertently fall into regulatory gaps. Where overlapping safety frameworks provide higher levels of protection and provisions which assist in reducing workplace injury, the new SIG-Reducing Work Related Fatalities provides an opportunity for their consideration to inform potential adoption in the model WHS laws. Any recommended change arising from the new SIG should be proposed to Safe Work Australia Members through the usual process.

This Review suggests the new NCEP should include details about how WHS regulators will respond where WHS laws and overlapping safety frameworks both apply, to provide clarity and certainty to WHS regulators, duty holders and those owed duties.

Safe Work Australia will continue to monitor opportunities to support harmonisation with the model WHS laws as part of industry-specific or jurisdiction-level WHS reviews.

The proposal to continue monitoring developments in overlapping safety frameworks is an action item arising from this Review which Safe Work Australia Members have tasked the Agency with progressing as part of its ongoing workplan.

The model WHS laws also interact with a range of other legislative frameworks that are not primarily safety regimes but which also apply to work or workplaces, including the *Fair Work Act 2009* (Cth) (FW Act) and state and federal anti-discrimination laws.

¹⁰³ Australian Unions, [Closing the health and safety gaps for workers offshore](#), 2026, accessed 13 May 2026, pp 4, 6.

¹⁰⁴ Model WHS Act, s 3g.

¹⁰⁵ M Quinlan and H Jackson, 'The struggle for protective legislation in Australia, 1871–2024', *Australian Journal of Labour Law*, 2026, 39(1):15.

Other work-related legislative frameworks

What we heard

This Review heard concerns about overlap, duplication and inconsistencies between WHS and other work-related legislative frameworks, particularly where similar issues are regulated through parallel duties, processes and enforcement mechanisms. It heard the impact of these overlaps is particularly pronounced on small and medium businesses¹⁰⁶ and can impact the mental health of business owners.¹⁰⁷

In relation to the FW Act, the MBA asserted that safety laws should focus on safety matters and that non-WHS laws should not replicate WHS obligations.¹⁰⁸ Other industry representatives, including ACCI and the MCA, supported streamlining overlapping requirements and eliminating duplication,¹⁰⁹ as well as cross-referencing and aligning terminology.¹¹⁰

This Review also heard from many advocates, especially human rights advocates, that the WHS legislative framework was a key area of the law where the focus shifts from individual workers raising complaints or issues relating to their safety to the organisation's systems and processes to prevent harm.¹¹¹

Discussion and recommendations

Workplace issues often arise in a single factual setting but may link to a range of legislative frameworks, making some interaction between those frameworks unavoidable. For example, both the WHS laws and the FW Act include consultation, dispute resolution, and right of entry provisions, designed to serve different regulatory purposes.

Professor Andrew Stewart has observed that the difficulty lies not in the existence of overlapping laws but in legal incoherence.¹¹² Poorly aligned frameworks can create unnecessary regulatory impact, uncertainty for duty holders, confusion for workers and inconsistent outcomes in practice. Clear articulation of the scope, purpose and practical operation of each framework and how they interact is therefore essential. This is especially important considering increasing calls for action to prevent harmful behaviours such as racism and sexual harassment at workplaces.

Following the Respect@Work national inquiry,¹¹³ which introduced a positive duty to prevent sexual harassment into the *Sex Discrimination Act 1984* (Cth),¹¹⁴ more recent inquiries have proposed including similar positive duties in anti-discrimination legislation to prevent discrimination on the basis of race, disability, sexual orientation, gender identity and intersex status.¹¹⁵ This Review supports these proposals, which seek to prevent physical and psychological harm in Australian workplaces.

¹⁰⁶ MBA, Submission, p 10.

¹⁰⁷ ACCI, Submission, p 9, which quotes its recently published Small Business Conditions Survey, which showed that 44% of small business owners and managers are experiencing high levels of stress. One respondent commented that 'stress and toll on my mental health due to red tape is extremely high'.

¹⁰⁸ MBA, Submission, pp 8–9; see also HIA, Submission, p 19.

¹⁰⁹ ACCI, Submission, p 10; MCA, Submission, p 7.

¹¹⁰ HIA, Submission, p 11; ACFA, Submission, p 6.

¹¹¹ National Joint Submission – Safety Regulation for Primary Prevention of Gendered Violence, Submission, pp 35–36.

¹¹² A Stewart, *Regulating for work health and safety in Australia: Overcoming fragmentation*, Queensland University of Technology, 12 November 2025, slide 22.

¹¹³ AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, AHRC, 2020, accessed 13 May 2026.

¹¹⁴ Requires employers to take reasonable steps to prevent workplace sexual harassment and discrimination.

¹¹⁵ AHRC, *The National Anti-Racism Framework*, AHRC, November 2024, p 16, accessed 11 May 2026; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Executive summary, Our vision for an Inclusive Australia and recommendations', *Final report*, Commonwealth of Australia, September 2023, p 205, accessed 11 May 2026; AHRC, *Equal identities: A human rights review of the experiences of trans and gender diverse people in Australia*, AHRC, March 2026, p 13, accessed 18 May 2026.

However, the WHS framework is the primary legislation for the systematic management of health and safety hazards that arise at the workplace or in connection with work. This includes hazards arising from harmful behaviours. This Review has identified that Safe Work Australia should continue to advocate with relevant agencies, including the Australian Government Attorney-General's Department and the Australian Human Rights Commission (AHRC), for any positive duties in anti-discrimination laws to directly reference the primary duty of care contained in the model WHS Act.

Ensuring positive duties reference the primary duty would provide direct, rather than approximate, harmonisation between legislative frameworks so that overlapping laws operate consistently and employer obligations and workers' rights are clear. Small and medium businesses without dedicated human resources and WHS capabilities would particularly benefit from this alignment. It is noted that the proposal would not interfere with any other organisation's education/guidance/compliance and/or enforcement capacities.

A similar (and potentially instructive) approach has been taken in the FW Act in relation to employer obligations under the superannuation guarantee framework, which directly references the *Superannuation Guarantee Charge Act 1992* (Cth) so that employers can meet their obligations under both regulatory frameworks without duplication or conflict.¹¹⁶ The essential effect of referencing the superannuation obligation in the FW Act means that there are several regulators which can enforce the obligation and right – for example, the Fair Work Ombudsman and the Australian Taxation Office.

This Review's recommendation does not seek to displace the role of anti-discrimination legal frameworks in protecting individual rights; nor does it intend to diminish the role of the AHRC as the regulator of anti-discrimination positive duty laws. The AHRC would retain its current powers and functions in relation to the *Sex Discrimination Act 1984* (Cth) and any future powers and functions relating to positive duties within anti-discrimination laws that mirror the WHS primary duty. Rather, the proposal builds on the importance of the model WHS legal framework as a rights-based framework which complements human rights legislation. It also reinforces the ILO's 2022 recognition of a safe and healthy working environment as a fundamental right at work; and reflects the growing awareness of intersectionality as a key consideration when assessing psychosocial risks at work.¹¹⁷

Direct cross-referencing of the section 19 primary duty of care within the model WHS Act with anti-discrimination positive duties would also reduce the regulatory burden on persons conducting a business or undertaking (PCBUs), particularly small and medium businesses without dedicated human resources and WHS capabilities.

The advocacy work identified in this part of the report is an action which Safe Work Australia Members have agreed the Agency will progress as part of its general activities.

¹¹⁶ FW Act, Pt 2–2, Div 10A.

¹¹⁷ For further discussion of harmful workplace behaviours see Chapter 7 – Broader considerations of the model WHS Regulations; and Chapter 8.3 – Harmful workplace behaviours.

Coordination between WHS regulators and other regulators

WHS regulators can share information with each other or with other regulators in certain circumstances.¹¹⁸ The NCEP acknowledges that WHS regulators may be a lead or support agency where investigations are conducted in conjunction with other relevant agencies or regulators, but the NCEP does not provide any detail on how this may be determined or managed.¹¹⁹ Similarly, the NCEP notes that WHS regulators may share information and intelligence with each other but does not set out details in relation to the approach to co-regulated workplaces.¹²⁰ This can create significant compliance challenges where PCBU's work across geographical borders or need to comply with overlapping safety frameworks.¹²¹

There are also challenges where WHS regulators and other enforcement bodies need to determine which one is best placed to respond to matters that may fall jointly within their remit.

What we heard

WHS regulators reported they currently adopt a case-by-case approach, with broad agreement that matters should be led by the regulator with the most relevant specific legislative mandate and expertise. Most WHS regulators have a triage model or processes to allocate work and refer matters that fit under the remit of another regulator to that regulator.¹²² SafeWork NSW noted challenges in relation to investigating and responding to psychological injury matters arising from sexual assault, violence and aggression, suicide and NDIS-related matters.¹²³ Other challenges to prioritisation and resource allocation were reported to arise from an increase in notifications of matters with a limited connection to work or work activities.¹²⁴ Memorandums of understanding (MOUs) are commonly used to formalise information-sharing arrangements with specialist regulators.¹²⁵ For example, the Australian Maritime Safety Authority signed a single MOU with all state and territory WHS regulators (except Comcare) in 2024 to provide guidance on the role of each party in responding to maritime workplace incidents.¹²⁶ The NHVR is also currently developing an MOU to formalise a cooperative working relationship and information sharing on cross-jurisdictional matters.¹²⁷ While WHS regulators generally supported MOUs, they noted they were only effective when they were targeted and flexible and supported information sharing; and that drafting them could be administratively burdensome given the need to ensure they do not create requirements contradicting each agency's legislation.¹²⁸

¹¹⁸ Model WHS Act, s 271A.

¹¹⁹ Safe Work Australia, [NCEP](#), Safe Work Australia, 2020, p 7.

¹²⁰ Safe Work Australia, [NCEP](#), Safe Work Australia, 2020, p 6.

¹²¹ [Comcare](#), Submission, p 1; Comcare, Consultation, September 2025.

¹²² Heads of Workplace Safety Authorities, Consultation, April 2026.

¹²³ SafeWork NSW, Consultation, May 2026.

¹²⁴ HWSA Chair, Correspondence, February 2026.

¹²⁵ Heads of Workplace Safety Authorities, Consultation, April 2026.

¹²⁶ [AMSA](#), Submission, p 3.

¹²⁷ [NHVR](#), Submission, p 6.

¹²⁸ Regulators, Consultation, April 2026.

The division of roles and responsibilities among WHS and other enforcement bodies is not always well understood by duty holders. The MCA said that, even with MOUs, the roles of resources regulators and WHS regulators were not clear in multi-hazard incidents.¹²⁹ The Flight Attendants' Association of Australia noted that in the aviation industry there are differing views about the application of the model WHS Act to aviation operations, which has led to regulatory gaps arising from the division of safety oversight between the Civil Aviation Safety Authority, Australian Transport Safety Bureau and WHS regulators, particularly when incidents occur in flight.¹³⁰ Families affected by workplace fatalities also provided examples of what they considered to be inadequate coordination between WHS regulators and other enforcement bodies, which can lead to adverse impacts on fatality investigations.¹³¹

Government, industry and WHS professionals supported a model of interagency cooperation that could variously enable the activation of different 'levers' among regulators, improve information-sharing arrangements, and facilitate a joint education strategy to deliver unified guidance.¹³²

Discussion and recommendations

Current arrangements between multi-jurisdictional regulators appear to be compromising the delivery of consistent safety outcomes and the provision of clear, accessible information for duty holders. This Review encourages greater coordination and cooperation between WHS and other safety regulators.

From the feedback to this Review, greater clarity is needed about each regulator's respective remit, roles and responsibilities where the WHS laws intersect with other safety or regulatory regimes.¹³³

This Review recommends that a summary of these arrangements be included in the new NCEP so they are visible and accessible to regulators, duty holders, health and safety representatives and others who assist with and/or have an interest in ensuring WHS laws are complied with.¹³⁴ In this context, this Review notes that the Heads of Workplace Safety Authorities (HWSA) has begun moving away from reliance on formal MOUs and is exploring more flexible and responsive mechanisms for cooperation, including communication protocols and the use of letters of intent.¹³⁵ These approaches have the potential to better support clarity and coordination in practice and to work on a bilateral level within each jurisdiction.

The issues arising from this chapter of the report will be provided to the new SIG-Compliance and Enforcement for their consideration.

¹²⁹ MCA, Submission, p 6.

¹³⁰ Flight Attendants' Association of Australia, Private Submission, p 4.

¹³¹ Affected Family and Workers Advisory Committee, Consultation, December 2025; Workplace Incidents Consultative Committee, Consultation, December 2025; Consultative Committee for Work-related Fatalities and Serious Incidents, Consultation, February 2026.

¹³² Comcare, Consultation, September 2025; ACFA, Submission, p 6; AIHS, Submission, p 13.

¹³³ AIHS, Submission, p 21.

¹³⁴ See Chapter 1.3 – Harmonisation in the approach to compliance and enforcement.

¹³⁵ Heads of Workplace Safety Authorities, Consultation, September 2025.

2. The duties framework

Terms of Reference:

2.1, 2.2, 2.3, 2.5, 2.6, 3.1, 3.2, 3.3

Reviews considered for this chapter:

- 2008 *National Review into Model Occupational Health and Safety Laws (2008 National Review)*
- 2017 *Best Practice Review of Workplace Health and Safety Queensland*
- 2017 *Modernising work health and safety laws in Western Australia*
- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*
- 2020 *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*
- 2022 *Review of the Work Health and Safety Act 2011 (Queensland) (2022 Queensland Review)*
- 2022 *Independent Review of SafeWork SA*
- 2023 *Independent Review of SafeWork NSW*
- 2023 *Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*
- 2024 *Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions*
- 2025 *Independent Review of Employee Representatives – Interim report (Victorian Review Interim Report).*

Introduction

This chapter examines the WHS duties framework in the model WHS Act, including the principles that apply to these duties. It also considers options to increase capacity and knowledge of businesses and employers who owe duties under the model WHS Act and the workers who are owed them.

Criteria for assessing variations

Consistent with its Terms of Reference, this Review has:

- assessed jurisdictional variations that significantly depart from the model WHS Act
- considered if these best achieve the object of the Act
- made recommendations on whether they should be incorporated into the model WHS Act.

2.1 Health and safety duties (Part 2, ss 13–34, model WHS Act)

Principles that apply to duties (ss 13–17, model WHS Act)

The principles that apply to WHS duties make it clear that these duties are non-transferable and can be shared, that a person can have more than one duty, and that duties may be held concurrently by multiple parties.

Consultation revealed that in complex contracting and investment chains it can be difficult to understand how these principles apply in practice.¹³⁶

The *2018 National Review* recommended that a model Code of Practice be developed to explain how the principles apply, particularly in complex situations; however, guidance was developed instead. This Review proposes that an explanation of how the principles apply to complex supply chains and contracting arrangements should be provided in relevant industry model Codes of Practice (as recommended in **Chapter 5**).

Management of risks (s 17(2), SA WHS Act)

What we heard

South Australia (SA) has varied section 17 of the model WHS Act to require that a PCBU must eliminate or minimise risks so far as is reasonably practicable, but ‘only to the extent to which the PCBU has the capacity to influence or control the matter’.¹³⁷ This Review heard some support for this variation,¹³⁸ noting that it clarifies how duties apply when multiple PCBUs share WHS duties at a single workplace. However, Western Australia (WA) suggested that the additional qualifier in section 17 may subvert the requirement under section 46 (duty to consult with other duty holders) and that consideration be given to providing duty holders further guidance on the application of the principles.¹³⁹

Discussion and recommendations

This Review has concluded that the SA variation is unnecessary, as the model WHS Act already provides for situations involving multiple duty holders. Section 16 provides that more than one person can have a duty in relation to the same matter. Each person must comply with that duty to the standard required by the Act and must discharge their duty to the extent they have capacity to influence and control the matter (whether that matter is a work activity, workers or the workplace).¹⁴⁰ Where more than one person has a duty in relation to the same matter, each person must consult, cooperate and coordinate activities with all other persons, so far as is reasonably practicable.¹⁴¹

However, given some duty holders still experience difficulty in applying these principles in practice, this Review proposes including examples of how ‘influence and control’ may operate across multiple duty holders in industry-based Codes of Practice, as recommended in **Chapter 5**.

¹³⁶ Tas ACCI, Consultation, October 2025; Acran Sound Control, Consultation, December 2025.

¹³⁷ SA WHS Act, s 17(2).

¹³⁸ [Anonymous](#), Submission #137, p 9.

¹³⁹ [WorkSafe WA](#), Submission, p 11.

¹⁴⁰ Model WHS Act, s 16.

¹⁴¹ Model WHS Act, s 46.

Reasonably practicable (s 18, model WHS Act)

In WHS legislation, ‘reasonably practicable’ is the qualifier used to determine what a duty holder is required to do to meet their WHS duties.¹⁴² It is defined to mean that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters.

What we heard

The Construction, Forestry and Maritime Employees Union (CFMEU) recommended the definition be amended to remove the cost consideration at section 18(e).¹⁴³ Industry and WHS advocates raised longstanding concerns about the practical application of the concept, noting that it can create uncertainty in practice, particularly for small businesses that lack the expertise to interpret it without legal or consultancy support.¹⁴⁴ One submission called for ‘clarifying and strengthening the definition and practical application of reasonably practicable’.¹⁴⁵

Discussion and recommendations

This Review does not propose any amendments to the definition of ‘reasonably practicable’. However, many stakeholders are calling for clearer, more practical direction on how the standard applies in specific circumstances. This Review’s recommendations on Codes of Practice at **Chapter 5** will directly assist duty holders to understand the application of the reasonably practicable standard in practice in their industry.

Duty of PCBU that provide services relating to WHS (s 26A, WA WHS Act)

WA has an additional duty for PCBU that provide WHS services to another PCBU. These WHS service providers must ensure, so far as is reasonably practicable, that the services they provide will not put at risk the health and safety of people at a workplace. This duty picks up on an original recommendation of the *2008 National Review*.¹⁴⁶

What we heard

WA indicated in its submission it heard concerns this provision has had unintended consequences, including some professionals and professional associations withdrawing from providing WHS services due to liability concerns.¹⁴⁷

Discussion and recommendations

Noting this matter is also currently being considered by the Statutory Review of the *Work Health and Safety Act 2020* (WA), this Review does not recommend adopting this variation in the model WHS laws.

¹⁴² Model WHS Act, s 18.

¹⁴³ CFMEU, Submission, pp 5–8.

¹⁴⁴ [Small Business Development Corporation WA](#), Submission, p 2; [AIHS](#), Submission, p 15; Submission #30 (survey response).

¹⁴⁵ Submission #30 (survey response).

¹⁴⁶ R Stewart-Crompton, S Mayman and B Sherriff, *National Review into Model Occupational Health and Safety Laws: first report*, Department of Employment and Workplace Relations, Australian Government, 2008, Recommendation 37.

¹⁴⁷ [WorkSafe WA](#), Submission, pp 11–12.

Primary duty of care (s 19, model WHS Act)

This Review makes a recommendation relevant to section 19 of the model WHS Act. This recommendation is discussed in **Chapter 8.3** – Harmful workplace behaviours.

The duties framework – Recommendation 4

Amend section 19(3) of the model WHS Act to clarify that the duty of care in section 19 includes the management of risks arising from harmful workplace behaviours.

Exceptions (s 34, model WHS Act)

Section 34 of the model WHS Act provides specific exceptions to breach of duties offences for volunteers and unincorporated associations.

What we heard

WA advised that the current drafting of duties and exclusions applying to volunteers is difficult to follow and, while it did not make amendments in its own Act, it identified a need for clearer drafting or supporting explanatory material.

SA noted its variation to section 34 clarifies that volunteer officers of a prescribed strata/community titles corporation, including those operating in mixed residential and commercial settings, will not be liable for a breach of officer duties under the Act.

Discussion and recommendations

This Review recommends amending section 34 of the model WHS Act, and other relevant provisions, drawing on the SA variation, to ensure the intention of the model WHS Act in relation to exempting volunteers from liability for officer duty breaches is clear.

The duties framework – Recommendation 5

Amend section 34 of the model WHS Act to reflect the South Australian variation providing that volunteer officers of a strata/community titles corporation are not liable for a breach of officer duties.

General risk and workplace management (Part 3.1, model WHS Regulations)

Part 3.1 of the model WHS Regulations, and specifically model regulation 36, provides the hierarchy of control measures that a PCBU must use to manage risks where elimination of the risk is not reasonably practicable. However, Part 3.1 only applies to a PCBU that has an express duty under the Regulations to manage risks to health and safety.¹⁴⁸ Both the *2018 National Review* and the *2022 Queensland Review*¹⁴⁹ recommended that the hierarchy of control measures be elevated to the model WHS Act and apply to all risks. The *2018 National Review* noted that the Act covered all 4 steps of effective risk management except the last (and most important step): that is, how to stop something going wrong.¹⁵⁰ This last step is contained in regulation 36.

The *2018 National Review* recommendation was never adopted, limiting the hazards and risks to which the hierarchy of control measures apply, and this Review considers this remains problematic.

¹⁴⁸ Model WHS Regulations, reg 32.

¹⁴⁹ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 95.

¹⁵⁰ Safe Work Australia, *Review of the model Work Health and Safety laws: Final report*, Safe Work Australia, 2018, p 140.

The problem was highlighted in *Catholic Healthcare Limited v SafeWork NSW* [2025] NSWIRComm 1046, an external review hearing where the NSW Industrial Relations Commission (IRC) set aside an improvement notice issued by an inspector in relation to the requirement for the PCBU to fit test personal protective equipment (PPE). The NSW IRC found that the improvement notice was invalid because WHS regulation 44 did not apply in the circumstances related to managing the risk of work-related biological hazards, given these hazards are not expressly mentioned in the Regulations. This case highlights the problem with limiting the scope of generally applicable risk management principles to a subset of hazards in the model WHS Regulations.

What we heard

During consultation some WHS regulators also questioned whether the hierarchy of control measures contained in the model WHS Regulations can be effectively applied to psychosocial hazards. WA noted ‘systems of work are not well captured in the hierarchy of controls’ and ‘it is not possible to eliminate psychosocial risks’.¹⁵¹ Unions disagreed.¹⁵²

Discussion and recommendations

Currently the model WHS Regulations applying to the management of psychosocial risks specifically exclude regulation 36 – the hierarchy of control measures. However, this has led to variations across the jurisdictional WHS regulations, with Queensland, SA, the ACT, the Northern Territory (NT) and the Commonwealth all having amended their versions of the WHS Regulations to explicitly require application of the hierarchy of control measures to the management of psychosocial risks.¹⁵³ Victoria has introduced a modified hierarchy under separate regulations.¹⁵⁴ This Review considers that the hierarchy of control measures should be applied to the management of psychosocial risks.

This Review further recommends the hierarchy of control measures be elevated into the model WHS Act. This Review has confirmed through expert advice¹⁵⁵ that the hierarchy of control measures can be moved into the model WHS Act and that doing so would improve clarity for duty holders and better protect workers.

This Review also recommends consideration be given to clarifying the application of the hierarchy of control measures to psychosocial risks and in circumstances where multiple hazards interact.

In the short term, this Review recommends an amendment should be made to the model WHS Regulations (regulation 55C(a)), consistent with jurisdictional variations, to confirm that the hierarchy of control measures apply to the management of psychosocial risks.

The duties framework – Recommendation 6

Clarify that the risk management process provided in Part 3.1 of the WHS Regulations:

- a. applies to all work and workplaces by elevating it into the model WHS Act, and
- b. in the short term, amend regulation 55C(a) of the model WHS Regulations to ensure that the hierarchy of control measures applies to the management of psychosocial risks.

¹⁵¹ [WorkSafe WA](#), Submission, pp 31–32.

¹⁵² Including the AMWU, Qld Unions, the Victorian Trades Hall, ACTU.

¹⁵³ See reg 55D in each jurisdiction’s version of the model WHS Regulations.

¹⁵⁴ Occupational Health and Safety (Psychological Health) Regulations 2025 (Vic), reg 15(2).

¹⁵⁵ R Dennis, *Expert advice to the Best Practice Review of the model WHS laws – hierarchy of controls*, 2026, pp 2–4.

2.2 WHS knowledge and capability

What we heard

Industry, unions, and regulators agreed that PCBUs, officers and middle management would benefit from improved WHS knowledge and capability. They emphasised the importance of employers understanding their WHS duties and responsibilities, including the requirement to consult with workers, and the importance of understanding and supporting the role of HSRs.¹⁵⁶ There was general agreement across all of those consulted that long-term safety improvements depend on lifting WHS competency across all industries.

In calling for better education of officers, WHS advocates also proposed better integration of the due diligence requirements into corporate governance;¹⁵⁷ and a requirement for officers to ensure mechanisms are in place to proactively manage, review and report on psychosocial risks.¹⁵⁸

Discussion and recommendations

This Review notes there is a likely gap between what is expected of officers under the model WHS laws and how consistently those obligations are operationalised and discharged in governance practices across many organisations, given:

- the *Australian WHS Survey – Autumn Edition 2024*¹⁵⁹ identified ‘lower levels of workplace WHS system and commitment to WHS’,¹⁶⁰ with ‘cost savings and project delivery taking precedent over WHS’¹⁶¹
- a qualitative study of senior leaders found WHS prioritisation operates along a continuum, with many senior leaders falling closer to the compliance-driven end (that is, meeting the minimum standard) rather than being driven by a moral or values-based approach¹⁶²
- the Australian Council of Superannuation Investors¹⁶³ found that many high risk companies continue to rely heavily on ‘backward looking’ safety metrics, limiting the ability of boards to identify emerging risks or systemic issues before serious incidents occur.

¹⁵⁶ Master Builders Qld, Consultation, September 2025; Safe Work Australia Research Summit, Consultation, September 2025; Queensland Council of Unions, Consultation, September 2025; [Australian Education Union – ACT Branch](#), Submission, p 2; Tas ACCI, Consultation, October 2025.

¹⁵⁷ [AIHS](#), Submission, p 15.

¹⁵⁸ Safe Work Australia Research Summit, Consultation, September 2025; Queensland Council of Unions, Consultation, September 2025; [Australian Education Union – ACT Branch](#), Submission, p 2; Tas ACCI, Consultation, October 2025; [The Reckoning Room](#), Submission, p 12.

¹⁵⁹ SafeWork NSW, *Australian WHS Survey Autumn Edition 2024*, NSW Government, 2024. The survey notes that its sample size is not considered to be representative of Australia’s labour force but does contain comparable proportions of participants to labour force data across age groups and membership of some major industries: see p 6.

¹⁶⁰ NSW Autumn 2024 Survey, p 38. Declining levels compared to previous Spring 2023 Survey.

¹⁶¹ NSW Autumn 2024 Survey, p 38.

¹⁶² T Bentley, LA Onnis, S O’Neill, Y Brunetto, K Blackwood, P Bezemer, E Franken, B Farr-Warton, AH Grande and L Huuskes, [Strengthening the priority of WHS for business leaders: Phase 2 summary report](#), NSW Centre for WHS and Edith Cowan University, Southern Cross University and University of New South Wales, August 2023, p 2, accessed 13 May 2026; see also [Strengthening the priority of WHS for business leaders: Phase 2 report](#), NSW Centre for WHS and Edith Cowan University, Southern Cross University and University of New South Wales, August 2023, pp 17–18, accessed 13 May 2026. The project found business leaders prioritise WHS along a continuum: compliance approach; commercially-driven (influenced by reputational risk, investor expectations, ESG considerations and workforce pressures, with WHS viewed as important to business performance rather than solely compliance); and prosocial prioritisation (WHS is pursued because it is ‘the right thing to do’, is associated with personal values, lived experience and higher organisational WHS maturity, rather than compliance and enforcement alone), pp 25–32.

¹⁶³ Australian Council of Superannuation Investors, [2023–2024 Stewardship report](#), ACSI, September 2024, p 31, accessed 13 May 2026. The report assessed the disclosures of 78 companies operating in sectors considered to have inherently high safety risks.

This Review notes the Safe Work Australia *Research and Evaluation Strategy* has a focus on shifting mindsets around WHS fundamentals to increase understanding and capability around fundamental duties and obligations for risk management and injury recovery, including for senior leaders and boards.

This Review does not have a clear picture of the extent to which WHS training is provided by PCBUs to their workers, including their managers and supervisors who are likely responsible for the day-to-day management of people and the WHS risks their workers are exposed to. This Review notes that the draft report of the Closing Loopholes Review included a recommendation for the Australian Government to work with WHS regulators to ensure targeted and accessible training for PCBUs, HSRs and their assistants (including union officials) to understand their WHS and industrial relations roles and responsibilities.¹⁶⁴

While a significant amount of guidance material already exists, industry representatives noted it is not always accessible, practical or well-known in practice, particularly for small businesses and dispersed workforces.¹⁶⁵ WHS information is spread across multiple sources and largely relies on individuals actively seeking it out, meaning it may not reach workers who receive minimal or inconsistent WHS induction or training. As a result, workers' and duty holders' understanding of WHS concepts, duties and consultation rights likely varies in practice across workplaces.

This Review concludes that the existing approach of providing guidance materials has not been sufficiently effective. There is a need to dramatically lift the profile of fundamental WHS duties by providing consistent information to all workers, including managers and supervisors, in a clear and accessible form.

This Review therefore recommends Safe Work Australia develop a WHS Information Statement, modelled on the *Fair Work Information Statement*,¹⁶⁶ which PCBUs should be required to provide to all workers upon commencement with the business or undertaking. Where multiple PCBUs may owe this duty to the same workers, the consultation, cooperation and coordination duty can be used to avoid duplication.

The WHS Information Statement should be no more than 2 pages and provide a clear overview of the most important WHS rights, duties and consultation requirements that apply to workers, managers and supervisors. As a minimum, the WHS Information Statement should cover:

- the PCBU primary duty of care, including in relation to the work environment, plant, systems of work, adequate facilities and information, training and supervision
- the PCBU duty to eliminate or minimise both physical and psychosocial risks to health and safety
- that WHS laws apply to digital work systems, including AI (see **Chapter 8.1**)
- general duties of officers, workers and other persons
- the PCBU duty to consult on WHS matters and the nature of consultation
- the powers and functions of HSRs and health and safety committees (HSCs)
- the prohibition of discriminatory conduct (see **Chapter 3.2**)
- rights of workers, including the right to cease unsafe work
- the role of WHS regulators and their contact details.

¹⁶⁴ S Booth, *Closing loopholes: An independent statutory review: Draft report*, Department of Employment and Workplace Relations, Australian Government, 2026, Recommendation 44.

¹⁶⁵ ACFA, Submission, p 8.

¹⁶⁶ FW Act 2009, ss 124 and 125; *Fair Work Regulations 2009*, regs 2.01 and 2.02; *Fair Work Information Statement*.

This Review also recommends Safe Work Australia develop a second WHS Information Statement specifically designed for small business owners which would include the same fundamental information reframed for these duty holders.

The duties framework – Recommendation 7

Amend the model WHS Act to:

- a. require persons conducting a business or undertaking (PCBU) to provide workers with a WHS Information Statement that sets out the fundamentals of WHS, modelled on the *Fair Work Information Statement*, and
- b. develop a WHS Information Statement specifically for small business owners.

3. Consultation, representation and participation

Terms of Reference:

2.1, 2.2, 2.3, 2.5, 2.6, 3.1, 3.2, 3.3

Reviews considered for this chapter:

- 2008 *National Review into Model Occupational Health and Safety Laws (2008 National Review)*
- 2017 *Best Practice Review of Workplace Health and Safety Queensland*
- 2017 *Modernising work health and safety laws in Western Australia*
- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*
- 2022 *Review of the Work Health and Safety Act 2011 (Queensland) (2022 Queensland Review)*
- 2022 *Independent Review of SafeWork SA*
- 2023 *Independent Review of SafeWork NSW*
- 2024 *Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions*
- 2025 *Independent Review of Employee Representatives – interim report*
- 2026 *Closing loopholes: an independent statutory review: Draft report.*

Introduction

This chapter examines the consultation, representation and participation provisions in the model WHS Act, including those provisions relevant to HSRs, right of entry and issue resolution.

These provisions have frequently shifted over time as governments in harmonised jurisdictions have changed. In some jurisdictions, the same provisions have been amended, repealed and amended again. This chapter is therefore, by necessity, longer than others and deals in some detail with the various provisions under Part 5 of the model WHS Act.

Criteria for assessing variations

Consistent with its Terms of Reference, this Review has:

- assessed jurisdictional variations that significantly depart from the model WHS Act
- considered if these best achieve the object of the Act, and
- made recommendations on whether they should be incorporated into the model WHS Act.

Recommendations relating to this chapter which derive from specific jurisdictional variations are set out in **Appendix D** and **Appendix F, 1**.

Critical to this part of the Review is the consideration of recommendations from recent jurisdictional reviews – the *Independent Review of SafeWork SA* by John Merritt and the *2022 Queensland Review* – as required by WHS ministers and this Review’s Terms of Reference.

Variations that have been adopted in at least one jurisdiction and which meet the object of the model WHS Act have been recommended for inclusion in the model WHS Act.

Objects of the model WHS Act that are of relevance to this chapter include:

- providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to WHS (s 3(1)(b))
- encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices (s 3(1)(c))
- providing a framework for continuous improvement and progressively higher standards of work health and safety (s 3(1)(g))
- providing for a balanced and nationally consistent framework (s 3(1)).

Consultation, representation and participation (Part 5, ss 46–103, model WHS Act)

Consultation is fundamental to compliance with the model WHS Act. A PCBU must consult with workers who carry out work for the business who are likely to be directly affected by a matter relating to work health or safety, so far as reasonably practicable.¹⁶⁷ The model WHS Act also provides that workers have a right to elect HSRs to represent their work group; and sets out their functions and powers, how they are elected and trained, how work groups are determined, and a PCBU’s obligations to HSRs.¹⁶⁸

All harmonised jurisdictions share the same core set of provisions relating to consultation, representation and participation, as set out in Part 5 of the model WHS Act. However, there are significant variations in the detail. The *2022 Queensland Review* made a range of recommendations in relation to Part 5, which resulted in subsequent amendments to the Queensland WHS Act. This Review has examined the Queensland amendments, and other jurisdictional variations, consistent with its Terms of Reference and recommends adopting those amendments it considers are best practice and meet the object of the model WHS Act, using the criteria outlined above.

¹⁶⁷ Model WHS Act, s 47.

¹⁶⁸ Model WHS Act, Pt 5.

What we heard

During meetings with unions, including in the NT, Victoria, the ACT, and Queensland, officials and HSRs expressed concern about widespread non-compliance with consultation and representation duties, driven by a poor understanding of WHS laws at management level.¹⁶⁹ HSRs state that consultation can be treated as a ‘tick-a-box’ process where they are given insufficient time to review information and consult with workers or meaningfully influence decisions.¹⁷⁰

As part of its consultation, this Review met with HSRs in each jurisdiction and undertook a survey of 778 workers and HSRs. Survey responses (see **Appendix J**) broadly supported the view that employers and managers do not always comply with consultation duties and underscored the important role HSRs play.

Workers who reported having an HSR showed the highest level of agreement that their manager is aware of WHS responsibilities (58.3%). In contrast, workers who were unsure whether an HSR was present reported poorer perceptions of managerial WHS awareness, with nearly half (47.3%) indicating that their manager was not aware of WHS responsibilities and 19.4% reporting they were unsure. One respondent stated, ‘Employers are already required to consult HSRs at the start of decision making but it is not happening ...’.¹⁷¹

There was broad consensus that the HSR role is important, with WorkSafe ACT emphasising that constructive relationships between HSRs and PCBUs are critical to effective consultation and safety outcomes.¹⁷² However, this Review consistently heard there is a reluctance or fear among workers to nominate or renominate for the role.¹⁷³ Similar concerns were identified in the *Victorian Review Interim Report*, including that the role is seen to negatively affect career progression.¹⁷⁴

This Review also heard examples of PCBUs discouraging HSR elections in practice, such as withholding information needed to support nominations,¹⁷⁵ stating HSRs are only for high risk industries,¹⁷⁶ and hand-picking HSRs without conducting elections.¹⁷⁷ HSRs also consistently described the stress and practical barriers associated with the role, which sometimes led them to step away.¹⁷⁸

Regulators and unions reported the use of pseudo-HSR roles, such as ‘safety advisor’ or ‘WHS officer’, that mirror HSR functions but lack formal election and the powers or protections provided under the model WHS Act.¹⁷⁹

¹⁶⁹ Unions NT, Consultation, September 2025; UnionsACT, Consultation, September 2025; Queensland Council of Unions, Consultation, September 2025; Victorian Trades Hall Council, Consultation, September 2025; [Community and Public Sector Union](#), Submission, p 8; [Shop, Distributive and Allied Employees' Association](#), Submission, p 6; [Queensland Council of Unions](#), Submission, p 16.

¹⁷⁰ HSRs in Bunbury, Consultation, September 2025.

¹⁷¹ See Appendix J.

¹⁷² WorkSafe ACT, Consultation, September 2025.

¹⁷³ Queensland Council of Unions, Consultation, September 2025; Unions NT, Consultation, September 2025; National HSR meeting, Consultation, October 2025.

¹⁷⁴ E White, [Independent Review of Employee Representatives: Interim report](#), Victorian Government, 2025, paras 9, 206–207.

¹⁷⁵ National HSR meeting, Consultation, October 2025.

¹⁷⁶ Unions NT, Consultation, September 2025.

¹⁷⁷ HSRs in Bunbury, Consultation, September 2025.

¹⁷⁸ Victorian Trades Hall Council, Consultation, September 2025.

¹⁷⁹ WorkSafe ACT, Consultation, September 2025; Unions NT, Consultation, September 2025; also raised by Chamber of Minerals and Energy in Bunbury, Consultation, September 2025.

A recurring sentiment was that, despite clear legislative powers, HSRs often feel they must continually assert their role, with one stating, ‘it’s like you have to fight every step of the way’.¹⁸⁰ These issues were reported across all jurisdictions, in both the government and private sectors, and were attributed to PCBU’s poor understanding of, and engagement with, HSRs. This was, at times, described as a ‘blatant disregard’ for the role.¹⁸¹ Many HSRs also reported they are not provided with sufficient time to undertake their HSR duties, particularly in frontline and shift-based environments where work time is tightly structured.¹⁸²

The ACTU recommended a range of changes to address these issues, including by advocating for Queensland amendments which reinforce the role of unions in worker consultation and issue resolution.¹⁸³ Some HSRs noted the positive support they receive from unions during disputes.¹⁸⁴ Australian Industry Group said that union involvement should complement, not override, the role of HSRs and opposed Queensland’s amendments, as did MBA.¹⁸⁵ Other industry representatives raised concerns about how increased statutory powers could be misused by union officials.¹⁸⁶ MBA highlighted provisions that allow persons assisting HSRs to enter a workplace, including union officials without a WHS entry permit,¹⁸⁷ and stated this can allow ‘union officials that have lost their entry permit for bad behaviour to access the workplace to potentially exert inappropriate industrial pressure’.¹⁸⁸

Industry representatives also sought greater flexibility in consultation arrangements, including consideration of requirements that are scaled to business size and risk profile,¹⁸⁹ and noted that many workplaces do not have HSRs.¹⁹⁰ This was supported in survey results indicating that small and medium-sized businesses were less likely to have an HSR and HSC.¹⁹¹ Australian Industry Group stated that the model WHS Act already provides for ‘meaningful engagement between PCBU’s and workers’, including HSRs where elected, and appropriately balances worker representation with ‘operational realities’, without requiring PCBU’s to establish or promote HSRs beyond existing obligations.¹⁹² The MBA, Housing Industry Association (HIA) and Australian Cabinet and Furniture Association Ltd (ACFA) broadly cautioned against introducing new, prescriptive obligations, particularly for small business,¹⁹³ and Master Builders SA expressed concern that expanding HSR powers could shift the role toward that of a ‘quasi-regulator’.¹⁹⁴

This Review also heard suggestions to strengthen the consultation framework overall,¹⁹⁵ including through greater engagement with occupational therapists and WHS professionals – for instance, by ‘expanding consultation provisions to include allied health representation in WHS advisory and review structures’.¹⁹⁶ Another submission recommended introducing full-time industry safety and health representatives, as used in the Queensland and NSW mining industries, for high risk workplaces.¹⁹⁷

¹⁸⁰ Unions NT, Consultation, September 2025.

¹⁸¹ [Community and Public Sector Union](#), Submission, p 8; National HSR meeting, Consultation, October 2025; HSRs in Bunbury, Consultation, September 2025.

¹⁸² Private, Submission #150, p 9; Unions NT, Consultation, September 2025; National HSR meeting, Consultation, October 2025; HSRs in Bunbury, Consultation, September 2025.

¹⁸³ [ACTU](#), Submission, pp 38–44.

¹⁸⁴ National HSR meeting, Consultation, October 2025.

¹⁸⁵ [Australian Industry Group](#), Submission, p 9; [MBA](#), Submission, pp 15–16 and 24.

¹⁸⁶ [Australian Constructors Association](#), Submission, p 2.

¹⁸⁷ Model WHS Act, s 68(2)(g).

¹⁸⁸ [MBA](#), Submission, p 30.

¹⁸⁹ Business Chamber Qld, Consultation, September 2025.

¹⁹⁰ [Australian Industry Group](#), Submission, pp 8–9.

¹⁹¹ See Appendix J.

¹⁹² [Australian Industry Group](#), Submission, pp 8–9.

¹⁹³ [MBA](#), Submission, p 11; [HIA](#), Submission, p 13, [ACFA](#), Submission, pp 4, 8.

Discussion and recommendations

In a consultation meeting with the Victorian Chamber of Commerce and Industry, a participant shared their experience of consultation in the workplace as an employer representative: that she had developed constructive relationships with unions and worker representatives, routinely asking them what they thought about safety issues and listening to what they had to say. Doing so had led to better safety systems and a culture of cooperation instead of dispute.¹⁹⁸ This is an example of the kind of best practice the model WHS Act aims for, as set out in its object, which includes ‘encouraging unions and employer organisations to take a constructive role in promoting improvements in WHS practices’.¹⁹⁹

This Review considers the overall approach to consultation and representation in the model WHS laws is sound, imposing a clear and proactive duty on PCBUs to engage with workers and their representatives. However, the effectiveness of Part 5 is sometimes undermined by how consultation obligations are understood and applied in practice.

Evidence received by this Review indicates that gaps in understanding of the duty to consult at the officer level, and how to consult effectively at the managerial and supervisory levels, are contributing to ineffective consultation in many workplaces. This includes ‘tick-a-box’ approaches rather than genuine engagement; and sometimes resistance to cooperation with HSRs and unions.²⁰⁰ This evidence is consistent with the *2022 Queensland Review* and the *Victorian Review Interim Report*.²⁰¹ Where leadership capabilities and/or understanding of the model WHS laws are lacking, consultation tends to become a procedural exercise, limited to information sharing rather than cooperative WHS risk management.

Many of these implementation issues or gaps have been considered in detail by jurisdictional reviews, particularly the *2022 Queensland Review*, and have resulted in amendments to the model WHS Act being made in the Queensland version in relation to the functions and powers of HSRs.²⁰² This Review is recommending many of those variations be adopted as best practice, as they meet the object of the model WHS Act, clarify existing obligations under WHS laws and respond to implementation gaps also identified as part of this Review.

¹⁹⁴ Master Builders SA, Consultation, September 2025. This comment was made in the context of other feedback around the primary function of HSRs as opposed to regulators under WHS laws and instances of misuse of powers by WHS EPHs.

¹⁹⁵ The [Shop, Distributive and Allied Employees Association](#) (Submission, pp 2 and 6) recommended amending the consultation duties to create a positive duty to consult with workers, similar to that found in the *Sex Discrimination Act 1984* (Cth) - see Recommendation 5.

¹⁹⁶ [Occupational Therapy Australia](#), Submission, pp 5–6. Also see [AIHS](#), Submission, pp 15–16.

¹⁹⁷ See s 108 of the *Mining and Quarrying Safety and Health Act 1999* (Qld) as pertaining to district workers’ representatives; and Pt 7 regarding site safety and health representatives. Also, NSW’s *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) includes provisions for industry safety and health representatives and site safety and health representatives. [M Quinlan](#) (Submission, pp 2–13) highlighted representative roles specific to the mining industry in certain jurisdictions.

¹⁹⁸ Victorian Chamber of Commerce and Industry, Consultation, September 2025.

¹⁹⁹ Model WHS Act, s 3(1)(c).

²⁰⁰ Safe Work Australia Research Summit, Consultation, September 2025; Queensland Council of Unions, Consultation, September 2025.

²⁰¹ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 7–9; E White, [Independent Review of Employee Representatives: Interim report](#), Victorian Government, 2025, p 68, para 196.

²⁰² T Lyons, [Best Practice Review of Workplace Health and Safety Queensland](#), Queensland Government, 2017; Western Australian Government, *Modernising work health and safety laws in Western Australia*, Ministerial Advisory Panel, 2017; Safe Work Australia, [Review of the model Work Health and Safety laws: Final report](#), Safe Work Australia, 2018; C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022; J Merritt, [Independent Review of SafeWork SA](#), SafeWork SA, 2022; R McDougall KC, [Independent Review of SafeWork NSW](#), SafeWork NSW, 2023; E White, [Independent Review of Employee Representatives: Interim report](#), Victorian Government, 2025.

Embedding these amendments into the model WHS laws will help to resolve ongoing jurisdictional variations in this critical part of the model WHS Act and reduce the scope for further divergence. This Review also considers that the NCEP should include information on how WHS regulators will enforce consultation duties and representation rights and obligations.

This Review notes that continual ‘pendulum swings’ in this part of the Act create uncertainty for duty holders and workers and may reduce cooperation. For this reason, this Review recommends adopting the variations at **Appendix D** into the model WHS Act and those at **Appendix F, 1** and **Appendix G, 1** into the model WHS Regulations as representing the best practice nationally harmonised standard.

In relation to industry feedback about who can assist an HSR in the workplace, this Review notes the *2018 National Review* considered the issue in detail and found ‘the rights of an HSR to bring in a person with appropriate experience and knowledge to assist them should not be restricted if that person is also a union official’. The *2018 National Review* made a recommendation which has been implemented through amendments to the FW Act.²⁰³

This Review also considered several other jurisdictional variations, and other recommendations proposed in submissions to this Review, relating to the model WHS Act consultation framework that are not recommended for national adoption. For example, this Review found there is insufficient evidence for adopting Queensland’s WHS officer framework, as it could have an unintended consequence of reducing the impact of the general ‘officer’ duties in the model WHS Act.²⁰⁴ It similarly does not recommend Victoria’s requirement to engage suitably qualified WHS advisers.²⁰⁵ This Review is also not recommending Queensland’s variation which requires PCBUs to inform workers about representation arrangements.²⁰⁶ The intent of this provision is already covered by this Review’s recommendation relating to a WHS Information Statement (see **Chapter 2.2**).

Health and safety representative elections (ss 50–67, model WHS Act) and health and safety committee processes (ss 75–79, model WHS Act)

HSRs are elected workers who act as the voice for their colleagues on WHS matters. Supporting their election is therefore an important objective of the model WHS Act. While not every workplace has elected HSRs, this likely arises in part from a lack of knowledge about the role and many of the barriers to their election which this Review’s consultation has identified.

This Review acknowledges that some small businesses have constructive consultation arrangements with their workers which comply with the model WHS Act in the absence of electing HSRs. Consistent with the *2022 Queensland Review*,²⁰⁷ this Review notes that not all workplaces will adopt HSR arrangements and therefore does not support mandating the role of HSRs.²⁰⁸

Drawing on the *2022 Queensland Review*, this Review recommends providing clearer structures to support HSR arrangements, including clearer timeframes for work group negotiation and mechanisms to ensure an inspector may be appointed to resolve failures of negotiation.²⁰⁹ It also recommends Queensland’s variation which prohibits a PCBU from discouraging an HSR election.²¹⁰

²⁰³ Safe Work Australia, *Review of the model Work Health and Safety laws: Final report*, Safe Work Australia, 2018, pp 65–68, Recommendation 8; FW Act 2009 (Cth), s 494(4); *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth), ss 2(1), 22A.

²⁰⁴ Qld WHS Act, Pt 5A.

²⁰⁵ Vic OHS Act, s 22(2)(b).

²⁰⁶ Qld WHS Act, s 50B.

²⁰⁷ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 29.

²⁰⁸ *Unions NT* (Submission, p 1) advocated for mandatory HSRs.

²⁰⁹ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, Recommendation 2; Qld WHS Act, ss 52 and 54.

²¹⁰ Qld WHS Act, s 50A.

Under the model WHS Act, PCBUs must take all reasonable steps to commence work group negotiations within 14 days of a worker requesting an HSR election.²¹¹ Consultation feedback and the *2022 Queensland Review* identified that unclear timeframes for completing work group negotiations can delay HSR elections and that the current provisions are being implemented inconsistently.²¹² The *2022 Queensland Review* also found that negotiations often produced work groups that did not result in readily accessible HSRs.²¹³ It recommended clearer timeframes, defined negotiation failure points to guide when regulators can intervene, and clarifications to ensure HSR accessibility across geographical locations, the work stream or work type, and shift arrangements.²¹⁴ This Review recommends these amendments should be made to both the model WHS Act and model WHS Regulations to provide greater clarity and support timely and workable HSR arrangements, particularly in regional, rural and remote settings (see **Appendix D, 1A and 1B**; and **Appendix F, 1**).

This Review has also identified that the model WHS Act should be amended in relation to workplace determination processes for multi-business work groups,²¹⁵ reflecting union concerns that inspectors currently lack binding decision-making powers in these disputes.²¹⁶ This Review acknowledges this difference is likely due to a drafting error, as the provisions for single-employer work groups provide this power to inspectors and there is no apparent reason for the difference in approach.

Clarifying health and safety committee processes

Under the model WHS Act,²¹⁷ HSCs facilitate cooperation between employers and workers, acting as a formal forum for consultation on WHS matters. Consistent with its findings on HSR elections, the *2022 Queensland Review* found that clearer timeframes would also remedy delays in establishing HSCs.²¹⁸ In line with this recommendation, and Queensland's amendments, this Review recommends that the WHS Act be amended to provide that an HSC be established as soon as practicable but no later than 28 days after a request is made²¹⁹ (see **Appendix D, 1C**). However, this Review is not recommending variations made by WA to strengthen the ability of an HSC to act on decisions it makes through senior leadership commitment,²²⁰ as this Review did not hear significant feedback in relation to problems with senior representation on HSCs.

²¹¹ Model WHS Act, ss 50–54.

²¹² Queensland Council of Unions, Consultation, September 2025; Unions NT, Consultation, September 2025; NT WorkSafe, Consultation, September 2025; [Queensland Council of Unions](#), Submission, p 9; C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 33–34.

²¹³ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 34–35.

²¹⁴ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 38–39; Queensland implemented these amendments in its WHS Act, ss 52(2) and 54 and WHS Regulation, reg 16(2).

²¹⁵ Model WHS Act, s 55.

²¹⁶ [ACTU](#), Submission, p 5; [Shop, Distributive and Allied Employees Association](#), Submission, p 5.

²¹⁷ Model WHS Act, ss 75–77.

²¹⁸ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 60–62.

²¹⁹ Qld WHS Act, s 75(1).

²²⁰ WA WHS Act, s 76(5).

In some jurisdictions, more structured consultation arrangements are required in high risk settings. The ACT has introduced additional requirements to consult with unions, and stronger requirements to facilitate HSR elections, for major construction projects (over \$5 million).²²¹ The *2022 Queensland Review* also recommended further consideration of making HSCs mandatory in high risk contexts, although this was not ultimately implemented.²²² Consultation highlighted challenges with applying consultation requirements in short-term or transient work arrangements such as entertainment and the arts. In these contexts, the duration of work and workforce turnover can limit the effectiveness of work group negotiations and HSR election processes.²²³ Submissions further identified consultation challenges in workplaces involving multiple PCBUs operating at a single site.²²⁴ There are potential solutions to these issues, such as establishing a mandated HSC for the life of the project only. Further, where multiple PCBUs operate at a single workplace, an HSC may assist in managing the complexity of coordination and compliance across duty holders.

This Review considers this issue raises additional considerations not contemplated by the ACT variations. Rather than recommend it be adopted, this Review proposes that SIG-WHS undertake further work and consultation to assess whether mandating HSCs or other structured consultation arrangements are appropriate in high risk industries, short-term projects or complex work arrangements.

Health and safety representative powers and functions (ss 68–70, 74, 92, 94, model WHS Act)

Drawing on jurisdictional variations, this Review recommends several amendments to the model WHS Act to modernise the existing powers and functions of HSRs. Where elected, HSRs support improved safety outcomes by ensuring workers are represented. The recommended amendments are consistent with the existing intent of HSR provisions. These changes aim to ensure HSR powers remain relevant to modern workplaces and working arrangements. Note this chapter also discusses amendments made by Queensland which this Review considered and is not recommending for adoption.

Modernising health and safety representative information-gathering powers

HSRs have powers to monitor WHS measures, investigate complaints and inspect workplaces in relation to WHS matters relevant to their work group.²²⁵ This Review recommends the model WHS Act should be amended to clarify and modernise the information-gathering powers of HSRs to support the effective performance of their existing functions. This would include the ability to document hazards, including by taking photographs, measurements, sketches or recordings, consistent with the approach in Victoria and (now repealed) amendments made in Queensland, following a recommendation of the *2022 Queensland Review*.²²⁶

²²¹ See *Work Health and Safety Act 2011* (ACT) (ACT WHS Act), ss 50A–50C, and industry-specific representative roles under jurisdictional mining legislation. See also the *Mining and Quarrying Safety and Health Act 1999* (Qld), s 108, regarding district workers' representatives, and Pt 7, regarding site safety and health representatives. Also, *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) (Pt 5, Div 2) includes provisions for industry safety and health representatives and site safety and health representatives.

²²² C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, pp 60–62.

²²³ Private, Submission #150; Media, Entertainment & Arts Alliance as referenced in *Unions SA*, Submission, p 27.

²²⁴ *Anonymous*, Submission #166, p 7.

²²⁵ Model WHS Act, s 68(1)(b)–(d), (2)(a).

²²⁶ Vic OHS Act, s 58(ab), provides HSR powers to take photos or measurements or make sketches or recordings when they are exercising their functions under the Act. The *Electrical Safety and Other Legislation Amendment Act 2024* (Qld), cl 46, amended s 68 of the Qld WHS Act to clarify the power of HSRs to take measurements, conduct tests and take photos and videos. However, these provisions were removed following concerns raised regarding potential misuse and privacy safeguards – see *Brisbane Olympic and Paralympic Games Arrangements and Other Legislation Amendment Act 2024* (Qld), Pt 4; C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, Recommendation 3(D).

This Review considers that preventing HSRs from information gathering, including taking photographs of hazards in the workplace with the purpose of inquiring into risks, does not support an HSR's role. However, this Review acknowledges the powers will require appropriate safeguards, including to protect privacy and commercially sensitive information (see **Appendix D, 2A(i)**). These issues are also discussed in **Chapter 3.3** – Right of entry, concerning WHS entry permit holders (EPHs), and this Review recommends a consistent approach be applied to HSRs.

Access to information including incident investigations, inspections and outcome

To effectively perform their role, HSRs require access to information from PCBUs concerning the WHS-related information of their work group.²²⁷ The provisions in the model WHS Act that provide for access to information for HSRs lack specificity, resulting in inconsistent access to WHS-related information and reduced visibility of WHS risks.²²⁸ As stated by a survey respondent, 'Management does not always share the information required by legislation, despite being requested to'.²²⁹ This can also lead to disputes.

Queensland amendments, recommended by the *2022 Queensland Review*, respond to this lack of clarity by identifying the categories of information HSRs are entitled to access (which includes statutory notices issued by inspectors, entry notices and incident notifications) and establishes a positive right to request information relevant to a safety matter, supported by a corresponding obligation on PCBUs to provide it.²³⁰

This Review recommends adopting similar amendments, subject to appropriate safeguards for confidential commercial and personal medical information; and minimum timeframes for responding to information requests (see **Appendix D, 2A(ii), (iii) and (iv)**). Amendments should also include a mechanism to resolve disputes between the PCBU and HSR about access to information under the amended provisions.

Provisional improvement notices

Following the *2022 Queensland Review*, Queensland amended its WHS Act to reduce the timeframe to remedy the contravention included in a provisional improvement notice (PIN) from 8 days to 4 days.²³¹ The ACTU supported these reforms.²³² While this Review supports safety issues being remedied as quickly as possible and as a priority, it does not recommend adopting this amendment. The safety issues covered by PINs can vary significantly, meaning uniformly reducing timeframes could create unintended consequences such as encouraging quick but insufficient fixes to safety issues.

²²⁷ Model WHS Act, s 68(2)(f) – in exercising a power or performing a function, the HSR may receive information concerning the work health and safety of workers in the work group. Model WHS Act, s 70(1)(c) – the PCBU must allow any HSR for the work group to access to the information that the person has relating to hazards at the workplace affecting workers in the work group; and the health and safety of the workers in the work group. [Comcare](#) (Submission, p 7) submits that this obligation extends to the provision of inspector reports that have direct relevance to the HSR and workers in that work group.

²²⁸ The following unions raised concern with the lack of provision of information from the inspector to the HSR: Unions NT, Consultation, September 2025; SA Unions, Consultation, September 2025; [Community and Public Sector Union](#), Submission, pp 7–10; [SA Unions](#), Submission, pp 19–21.

²²⁹ See Appendix J.

²³⁰ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 42–44; Qld WHS Act, s 70(1)(ca)–(cc).

²³¹ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, Recommendation 6.

²³² [ACTU](#), Submission, p 39.

However, this Review does recommend adoption of the Queensland variation (also recently adopted by NSW)²³³ requiring PCBUs to provide the WHS regulator with a copy of any PIN issued to it by an HSR (see **Appendix D, 2B**). This amendment will provide regulators with greater visibility of workplaces where safety issues may be emerging and provide regulators with valuable data.

Cooperation between health and safety representatives and inspectors

Under the model WHS Act, HSRs have a right to accompany inspectors during inspections and PCBU must permit this to occur.²³⁴ Inspectors are also required to take reasonable steps to notify HSRs when attending a workplace.²³⁵ In practice, consultation feedback indicated this provision is often not being followed,²³⁶ as PCBU lack incentives to comply and regulators note they were not always able to communicate with HSRs.²³⁷ The model WHS Act also does not include a requirement for PCBU to provide the regulator with a list of HSRs, although most jurisdictional WHS laws provide for this.²³⁸

This Review recommends amending the model WHS Act to reflect the *2022 Queensland Review* findings, and subsequent Queensland amendments, to clarify that PCBU are responsible for ensuring HSRs are notified of, and made available to accompany, an inspector and WHS EPH at the workplace.²³⁹ This Review also recommends including a requirement, supported by regulators, to have PCBU provide regulators with a list of HSRs (see **Appendix D, 3A and 3B**). This is likely to facilitate greater cooperation and collaboration between inspectors and HSRs²⁴⁰ and enable better data collection by regulators to inform improved HSR uptake.

Guidance for health and safety representatives

The *2022 Queensland Review* noted that Safe Work Australia's *Worker representation and participation guide* outlines examples of appropriate resources, facilities and assistance for HSRs.²⁴¹ However, it found that awareness of this material is low and recommended its inclusion in the Queensland Work Health and Safety Regulation 2011. While Queensland implemented this recommendation,²⁴² consultation feedback consistently indicated that guidance material is more helpful for businesses, particularly small businesses.²⁴³

²³³ Qld WHS Act, s 97A; NSW WHS Act, s 97A. Queensland amended its Act following the 2017 Qld Review as a result of fatalities at Dreamworld and Eagle Farm: T Lyons, *Best Practice Review of Workplace Health and Safety Queensland: final report*, Queensland Government, 2017, p 125.

²³⁴ Model WHS Act, ss 68(2)(b) and 70(1)(h).

²³⁵ Model WHS Act, s 164(2)(c).

²³⁶ SA Unions, Consultation, September 2025; National HSRs meeting, Consultation, October 2025.

²³⁷ NT WorkSafe, Consultation, September 2025; SafeWork SA, Consultation, September 2025.

²³⁸ In 2016, the model WHS Act was amended to remove the requirement for PCBU to provide a list of HSRs to the regulator, retaining the requirement for them to maintain and display the list at the workplace (Safe Work Australia, *Amendments to the model WHS laws*, Safe Work Australia website, n.d., accessed 12 May 2026 – see 2016 Amendments (21 March 2016) Item 3). Only WA has implemented this amendment. In Queensland, the requirement was removed in 2014 – see Explanatory Note, *Work Health and Safety and Other Legislation Amendment Act 2014* (Qld). The requirement was then reintroduced in 2017 – see *Work Health and Safety and Other Legislation Amendment Act 2017* (Qld), cl 6.

²³⁹ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 14, Recommendation 3A.

²⁴⁰ SafeWork SA, Consultation, September 2025; Department of Employment and Workplace Relations, Office of the Federal Safety Commissioner and Comcare, Consultation, September 2025.

²⁴¹ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 43, Recommendation 3E; Safe Work Australia, *Worker representation and participation guide*, Safe Work Australia website, 2024, accessed 12 May 2026, p 26.

²⁴² Qld WHS Regulations, reg 20A.

²⁴³ ACFA, Submission, p 8; HIA, Submission, pp 3 and 5.

This Review therefore concludes that updating and promoting existing guidance materials on appropriate resources, facilities and assistance for HSRs is a more effective response. It notes industry-specific information could also be included in the relevant industry code (see **Chapter 5 – Codes of Practice**).

Health and safety representative training entitlements (ss 70, 72, 85(6), 90(4), model WHS Act; model WHS Regulation 21)

HSRs are entitled to attend an initial training course of up to 5 days and one day's refresher training each year.²⁴⁴ While this training is not mandatory, HSRs must undertake training to perform certain functions, including directing workers to cease unsafe work or issuing a PIN.²⁴⁵ Jurisdictions have adopted different entitlements for HSR training and different approaches to when HSRs are qualified to exercise their powers. In Victoria, an HSR may exercise their powers upon election without being trained.²⁴⁶

What we heard

In its submission to this Review, the ACTU recommended increasing HSR training entitlements to at least 5 days each year, with days reset at re-election.²⁴⁷ Unions raised concerns around the adequacy and relevance of HSR training, including limited coverage of psychosocial risks and industry-specific content.²⁴⁸ Face-to-face training was strongly supported, particularly for initial training; however, this Review also heard that flexibility should be provided where needed, including modular approaches for workers who cannot be released for long periods. Barriers to accessing training were frequently raised, particularly in regional areas.²⁴⁹

Discussion

This Review recognises the need for HSRs to be adequately trained and recommends adopting the SA approach to HSR training entitlements, which provides at least 5 days in the first year, 3 days in the second year and 2 days in the third year, with initial training applying again on re-election.²⁵⁰ This approach provides a proportionate balance between supporting HSR capability, including the ability to deal with increasingly complex WHS issues and limiting additional impacts on business. This Review also supports SA's approach of specifying HSR training entitlements in the WHS Act, as opposed to the regulations, to increase awareness and elevate its importance.

²⁴⁴ Model WHS Regulations, reg 21(1): if the HSR or deputy HSR is re-elected in the same work group and has already participated in initial HSR training, they do not have an entitlement to take time off work with pay to attend the initial training course again – see Safe Work Australia, [Worker representation and participation guide](#), 2024, p 31.

²⁴⁵ Model WHS Act, ss 85(6) and 90(4).

²⁴⁶ The Vic OHS Act does not require an HSR to receive training before performing their powers – see ss 60 and 74.

²⁴⁷ [ACTU](#), Submission, pp 18–19.

²⁴⁸ Limited coverage of psychosocial hazards in HSR training was raised by the [ACTU](#) (Submission, p 18), [SA Unions](#) (Submission, p 21) and HWSA (Consultation, September 2025). Requests for HSR training tailored to specific industries was raised by the Maritime Union of Australia (Consultation, September 2025) and [ANMF \(Vic Branch\)](#) (Submission, p 17).

²⁴⁹ UnionsWA, Consultation, September 2025; Unions NT, Consultation, September 2025.

²⁵⁰ Under the SA WHS Act, HSRs are entitled to minimum prescribed training days – see s 72(1) and (9). Under the model WHS laws, this requirement is included in the model WHS Regulations – see reg 21.

Following a recommendation of the *2022 Queensland Review*,²⁵¹ Queensland arrangements vary from the model by decreasing timeframes for the provision of HSR training from 3 months to 28 days after election or as soon as reasonably practicable if the initial course is not reasonably available. This Review recommends adopting Queensland's 28-day timeframes as an adequate period for a PCBU to provide training. Consistent with a combination of the Queensland and Victorian approaches,²⁵² this Review also recommends that PCBUs should facilitate HSRs' access to training upon appointment, but, if this has not occurred within 28 days, the HSR may exercise their powers. This approach recognises that PCBUs may lack an incentive for HSRs to be trained²⁵³ (see **Appendix D, 4A (i), (ii), (iii) and (iv)**).

The model WHS Act currently provides that PCBUs must pay course fees and any other reasonable costs associated with HSR training attendance.²⁵⁴ Consultation indicated that, in practice, HSRs in part-time or shift work often did not have their penalty rates or overtime paid if training or performance of their HSR functions fell outside usual rostered hours.²⁵⁵ This Review recommends that the model WHS Act should be amended to ensure HSRs are not financially disadvantaged by undertaking their role or attending training, including where training occurs outside usual rostered hours or exceeds ordinary weekly hours.²⁵⁶ This approach is consistent with Queensland amendments which ensure workers receive their usual remuneration for time spent in HSR training²⁵⁷ (see **Appendix D, 4B**).

In relation to other 'reasonable costs' PCBUs must cover associated with HSR training,²⁵⁸ consultation indicates that for regional and remote HSRs this should ordinarily include travel, accommodation and meals where training is only available in metropolitan locations.²⁵⁹ This Review considers that regulatory amendments are unlikely to fully capture the range of applicable circumstances. Instead, this Review notes that practical examples in relation to other 'reasonable costs' should be provided in relevant industry codes, with a clear avenue to resolve issues through dispute resolution mechanisms.

²⁵¹ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 49, Recommendation 4B; Qld WHS Regulation, reg 21(2).

²⁵² In Queensland, PCBUs must ensure HSRs undertake training – see Qld WHS Act, s 72(1). Mandatory HSR training is not required under the model WHS laws. Also see Qld WHS Regulation, reg 21(2) and Vic OHS Act, ss 60 and 74.

²⁵³ In consultation with Unions NT (Consultation, September 2025), an attendee raised that PCBUs have specifically delayed training to prevent HSRs from issuing PINs. A similar sentiment of PCBU unwillingness to train HSRs was raised by the following stakeholders: [SA Unions](#), Submission, p 21; HSRs in Bunbury, Consultation, September 2025.

²⁵⁴ Model WHS Act, s 72(2)(b).

²⁵⁵ [ANMF Vic](#), Submission, p 17, highlighted their survey results, which identified a lack of employer willingness to fund travel or time off for training, which is a particular barrier for HSRs in regional and remote areas. UnionsWA (Consultation, September 2025) noted HSRs are reluctant to attend courses if there is no payment or delayed reimbursement of attendance costs – for example, HSRs not being paid the fifth day of training because they are only rostered to work 4 days and workers on night shift not being paid allowances because they attend a training course during the day. A similar sentiment was raised by the [ACTU](#) (Submission, p 19).

²⁵⁶ Model WHS Act, ss 70(3) and 72(4).

²⁵⁷ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 49, Recommendation 4D; Qld WHS Act, ss 70(3) and 72(4).

²⁵⁸ Model WHS Act, s 72(2).

²⁵⁹ UnionsWA, Consultation, September 2025; Unions NT, Consultation, September 2025.

Content and delivery of health and safety representative training

In 2011, jurisdictions agreed on principles for nationally consistent practical and participatory HSR training.²⁶⁰ However, jurisdictions have adopted different mechanisms for approving and delivering this.²⁶¹ Responsibility for HSR training approval and quality assurance sits with individual regulators, and Safe Work Australia has a limited role in this area. This Review therefore does not make recommendations but notes, in the context of this Review's other recommendations, that there may be benefit in jurisdictions reviewing existing HSR training arrangements to ensure they deliver consistent, practical and effective outcomes. Industry-based HSR training could also be considered in the future in line with this Review's recommendation on industry codes (see **Chapter 5**).

Unions' role in consultation and representation (ss 45A and 45B, Queensland WHS Act)

What we heard

The ACTU recommended adopting Queensland amendments that recognise only unions registered under the FW Act or relevant state or territory industrial laws as suitable entities for WHS representation. The *2022 Queensland Review* highlighted a growing number of unregistered bodies purporting to represent workers and stated this is 'undesirable' due to the absence of regulatory oversight and statutory protections.²⁶²

Discussion

This Review recommends the Queensland variation to strengthen the integrity and accountability of WHS processes.²⁶³ It also reinforces the object of the model WHS Act, which specifically calls on unions and employers to play a constructive role. This Review notes that, as well as responding to union concerns about unregistered bodies purporting to represent workers,²⁶⁴ the *Fair Work (Registered Organisations) Act 2009* (Cth) also governs the registration, operation and accountability of both employers and unions, setting strict governance standards and providing oversight by the Fair Work Commission.

This Review therefore recommends that the model WHS Act be amended so that a reference to a 'union' means an employee organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) or relevant jurisdictional industrial laws (see **Appendix D, 5A**).

²⁶⁰ For example, Comcare, [Health and safety representative \(HSR\) training course requirements: guidance 2](#), Comcare, December 2017, accessed 21 May 2026; and WorkSafe ACT, [Underpinning principles and learning outcomes for development of a regulator-approved health and safety representatives training curriculum](#), WorkSafe ACT, August 2025, accessed 21 May 2026.

²⁶¹ Comcare, [Training providers](#), Comcare website, n.d., accessed 8 May 2026; WorkSafe ACT, [Health and Safety Representative training](#), WorkSafe ACT website, n.d., accessed 8 May 2026; WorkSafe WA, [Information for training providers](#), WorkSafe WA website, 2025, accessed 8 May 2025; SafeWork NSW, [HSR training providers](#), SafeWork NSW website, n.d., accessed 8 May 2025.

²⁶² C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, p 89.

²⁶³ ACTU, Submission, p 27.

²⁶⁴ ACTU, Submission, pp 27–28.

Encouraging a constructive role for unions and employer organisations in WHS (ss 48, 52, 80, model WHS Act)

Consistent with the object of the model WHS Act,²⁶⁵ unions and employer organisations are encouraged to play a constructive role in promoting improved WHS practices and assisting PCBU and workers to achieve a healthy and safe working environment. Evidence demonstrates a cooperative approach between unions and employers is the best way to improve WHS outcomes. This occurs in many workplaces, but there is work to do in some industries to improve cooperation.²⁶⁶

Drawing on recommendations from the 2022 *Queensland Review*, and consultation feedback, this Review therefore recommends reinforcing the established principles of representation, collaboration and assistance by adopting Queensland amendments that enable unions to be part of consultations when requested by a worker and at a time and place agreed to by the parties²⁶⁷ (see **Appendix D, 5B**). These amendments recognise that unions often have industry-specific expertise in supporting workers to raise safety issues, which some workers are not always comfortable doing by themselves.²⁶⁸ This Review considers that these amendments complement, rather than replace, the role of HSRs in workplace consultation.

This Review also recommends adopting the Queensland amendment to confer principal party status on unions for negotiations to determine work groups or resolve WHS issues²⁶⁹ where unions make a written request to the PCBU²⁷⁰ (see **Appendix D, 5C**). Union involvement can assist workers with additional capability and guidance in these situations, which may reduce disputes, particularly where workers may be less experienced or confident in negotiating with their employer to reach a resolution.²⁷¹

²⁶⁵ Model WHS Act, s 3(1)(c).

²⁶⁶ Department of Employment and Workplace Relations, [Blueprint for the future: A building and construction industry that works for everyone](#), Australian Government, 2025, p 2.

²⁶⁷ Qld WHS Act, s 48, as amended by *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld), cl 18; C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 59–60.

²⁶⁸ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 59–60.

²⁶⁹ Under the model WHS Act, workers, if they choose, can be represented by their representative for work group determination or issue resolution – see ss 52(1)(b) and 80(1)(c). A representative can include an HSR, union official or other person – see s 4 for the definition of representative. The recommendation to give unions principal party status follows the Qld WHS Act, s 52(4B) and (5B) – see C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, pp 38–39, Recommendation 2.

²⁷⁰ Qld WHS Act, s 80(1), as amended by *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld) cl 30. See also see C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, p 90, Recommendation 18.

²⁷¹ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, p 89.

3.1 Right to cease unsafe work (Part 5, Division 6, s 84, model WHS Act)

What we heard

A worker has the right to cease unsafe work if the worker has a reasonable concern that to carry out the work would expose them to a serious health and safety risk emanating from an immediate or imminent exposure to a hazard.²⁷² WA has varied its Act to grant a worker an additional right to cease work where the worker has a reasonable concern that the work would expose *another person* to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard.²⁷³ The WA variation followed a recommendation of the *Modernising work health and safety laws in Western Australia* review.²⁷⁴

Discussion

The right to cease unsafe work in the model WHS Act currently only extends to work that would expose ‘the worker’ (that is, the one who exercises the right to cease unsafe work) to a serious WHS risk.²⁷⁵ There may also be situations where other workers or people in the workplace are exposed to serious WHS risks, requiring work to be ceased to prevent a work-related fatality or serious injury. This Review recommends the WA amendment be adopted in the model WHS Act as best practice (see **Appendix D, 6**).

²⁷² Model WHS Act, s 84.

²⁷³ WA WHS Act, s 84(1)(b). This amendment was examined by this Review following a recommendation of the Ministerial Advisory Panel, *Modernising work health and safety laws in Western Australia*, WA Government, 2017; and 2008 *National Review*.

²⁷⁴ Ministerial Advisory Panel, *Modernising work health and safety laws in Western Australia*, WA Government, 2017, Recommendation 16.

²⁷⁵ Model WHS Act, s 84.

3.2 Discriminatory conduct (Part 6, ss 104–115, model WHS Act)

Part 6 of the model WHS Act provides that a person must not engage in discriminatory conduct for a prohibited reason.²⁷⁶ Discriminatory conduct includes putting ‘a worker to his or her detriment’ because the worker is an HSR, exercises their powers or functions as an HSR or raises a WHS issue.²⁷⁷

What we heard

We consistently heard from HSRs that they fear retribution, victimisation or bullying for raising safety concerns or exercising powers.²⁷⁸ The ACTU stated that this ‘conduct not only undermines the confidence and effectiveness of HSRs but also weakens the integrity of the WHS regime’.²⁷⁹

In response to its 2022 Review, Queensland amended its definition of ‘discriminatory conduct’ to include circumstances where a worker is treated ‘less favourably’ than other workers.²⁸⁰ The ACTU recommended Safe Work Australia review relevant model law provisions to close any gaps and amend the model WHS Act to expressly prohibit treating HSRs and workers less favourably than others for exercising their WHS rights, in line with the Queensland approach.²⁸¹ In making its recommendation, the ACTU also highlighted protections under the FW Act, which include discriminating between employees in the meaning of ‘adverse action’.²⁸²

Discussion

This Review heard that reports of discriminatory conduct in relation to HSRs is widespread.²⁸³ To respond to the issue, this Review examined the Queensland approach, which amended the definition of ‘discriminatory conduct’ in section 105 of the Queensland WHS Act to reflect the definition of ‘adverse action’ in the *Industrial Relations Act 2016* (Qld) (IR Act).²⁸⁴ This Review also considered whether the definition of ‘adverse action’ in the FW Act provides better protection against discriminatory conduct than the model WHS Act.

²⁷⁶ Model WHS Act, s 104(1).

²⁷⁷ Model WHS Act, ss 105–106.

²⁷⁸ ACTU, Submission, p 21; MUA, Consultation, September 2025; [Queensland Council of Unions](#), Submission, p 21; VTHC, Consultation, September 2025; AMWU, Consultation, September 2025; [AMWU](#), Submission, pp 6–7; [SA Unions](#), Submission, pp 23–24; National HSR meeting, Consultation, October 2025. [ANMF Vic \(Branch\)](#), Submission, pp 8–12; UnionsACT, Consultation, September 2025; [Shop, Distributive and Allied Employees Association](#), Submission, p 5; Unions NT, Consultation, September 2025.

²⁷⁹ ACTU, Submission, p 21.

²⁸⁰ Qld WHS Act, s 105, as amended by *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld), cl 30; C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, p 57, Recommendation 7.

²⁸¹ ACTU, Submission, p 22.

²⁸² FW Act (Cth), s 342.

²⁸³ ACTU, Submission, p 21; Victorian Trades Hall Council, Consultation, September 2025; [AMWU](#), Submission, pp 6–7; [Community and Public Sector Union](#), Submission, p 10.

²⁸⁴ Qld IR Act, s 282(1)(d).

The model WHS Act applies a ‘detriment test’ for discriminatory conduct.²⁸⁵ A complainant must establish unfavourable treatment on the grounds of a prohibited reason,²⁸⁶ after which the burden shifts to the respondent to prove that the prohibited reason was not the dominant reason for the conduct.²⁸⁷ This approach reflects the difficulty workers face in proving an employer’s motivation and is designed to reduce evidentiary barriers and uphold protections from discrimination.

Queensland has amended the term ‘discriminatory conduct’ in its WHS Act to include circumstances where a worker is treated ‘less favourably’ than other workers.²⁸⁸ This amendment introduces a new legal test known as the ‘comparator test’ for establishing discriminatory conduct. A comparator test requires that a worker show that they were treated differently from another employee, whether real or hypothetical. This Review examined this approach and found the threshold for proof under the ‘comparator test’ is likely to be met whenever the ‘detriment test’ is met and therefore is unlikely to provide an additional legal avenue for proving discriminatory conduct, while also likely introducing additional complexity into the Act.

This Review also considered amending the definition of ‘discriminatory conduct’ to align with the definition of ‘adverse action’ in the FW Act, which includes a ‘comparator test’ without a ‘detriment test’.²⁸⁹ This Review does not recommend adopting this approach. Across discrimination law more broadly, there is evidence of a shift away from the comparator test, with the AHRC noting the difficulty and uncertainty involved in identifying appropriate comparators.²⁹⁰

This Review considers a detriment-based test is better suited to the harmonised WHS context, particularly for HSRs and workers raising safety concerns, as it avoids additional complexity and reduces evidentiary barriers so a worker who experiences discrimination does not face undue barriers in proving it. While HSRs continue to face practical barriers, including fear of reprisal, this Review was not persuaded that introducing a comparator-based pathway would remedy the problem.

Instead, these challenges are more likely to reflect broader issues identified in this Review, including low awareness of HSR roles and practical barriers to exercising their functions. This Review’s recommendations in **Chapter 2.2** and **Chapter 3** are directed to these issues, including the development of a Safe Work Information Statement, modelled on the *Fair Work Information Statement*, to provide clear guidance about discriminatory conduct under the WHS Act.

²⁸⁵ This approach is also applied in other jurisdictions: *Disability Discrimination Act 1991* (ACT), s 8; *Equal Opportunity Act 2010* (Vic), s 8; *Disability Discrimination Act 1992* (Cth), s 5 (as one part of the direct discrimination test); *Equal Opportunity Act 1984* (WA), s 11 (discrimination against applicants and employees); *Equal Opportunity Act 1984* (SA), s 30 (Discrimination against applicants and employees), *Anti-Discrimination Act 1977* (NSW), s 8 (Discrimination against applicants and employees). Notably, most states and territories apply the ‘detriment test’ for discrimination against applicants and employees under their discrimination laws.

²⁸⁶ Model WHS Act, s 106.

²⁸⁷ Model WHS Act, s 110(2).

²⁸⁸ Qld WHS Act, s 105, as amended by *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld), cl 42; C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, p 57, Recommendation 7.

²⁸⁹ FW Act 2009 (Cth), s 342.

²⁹⁰ AHRC, [How can the test for direct discrimination be simplified?](#), AHRC website, 2025, accessed 11 May 2026; I Wainwright, ‘Pushing Australia’s federal discrimination laws into the 21st Century: Time for a practical and intersectional approach’, *Australian Human Rights Institute Blog*, n.d., accessed 11 May 2025; AHRC, [Free and equal: A reform agenda for federal discrimination laws](#), AHRC website, 2021, accessed 11 May 2026, pp 279–281. P Spyrou, A Taylor and R Banks, ‘Confusion about disability discrimination law is weakening its power to protect people’, *ABC*, 2 December 2025, accessed 11 May 2026.

3.3 Right of entry (Part 7, ss 116–151, model WHS Act)

Under Part 7 of the model WHS Act, a union may apply to the relevant jurisdictional authority for a WHS entry permit to be issued to an official of the union.²⁹¹ To issue the permit, the official must hold, or will hold, an entry permit under the FW Act or relevant state or territory industrial law and complete training prescribed by the regulations.²⁹² A WHS EPH may enter a workplace for the purpose of:

- inquiring into a suspected contravention of the WHS Act that relates to or affects a relevant worker, has occurred or is occurring
- inspecting and making copies of employee records or information (if already entitled to enter a workplace to inquire into suspected contraventions), or
- consulting or advising workers in relation to WHS matters.²⁹³

Upon entering the workplace to inquire into a suspected contravention, WHS EPHs may exercise rights including inspecting any work system, plant, substance or structure; inspecting documents directly relevant to the suspected contravention; and consulting with relevant workers or the PCBU in relation to the suspected contravention.²⁹⁴ The model WHS laws require written notice of entry.²⁹⁵ For suspected contraventions, a WHS EPH must, as soon as practicable after entry, give notice of the entry and the suspected contravention to the PCBU and person with management or control of the workplace, unless giving notice would defeat the purpose of entry or unreasonably delay the WHS EPH in an urgent case.²⁹⁶ A WHS EPH must also give the PCBU at least 24 hours, but not more than 14 days, notice before entry to inspect employee records or information; or to consult or advise workers in relation to WHS matters.²⁹⁷

The model WHS Act also sets out various prohibitions which apply to both WHS EPHs and other parties. A WHS EPH must not intentionally and unreasonably delay, hinder or obstruct any person or disrupt any work.²⁹⁸ The Act also prohibits a person from taking certain actions against a WHS EPH who is entering a workplace or exercising rights, including unreasonably refusing or delaying entry to a workplace and intentionally and unreasonably hindering or obstructing a WHS EPH.²⁹⁹ A person must not take action with the intention of giving the impression (or being reckless as to the impression) that they are authorised to do something under WHS EPH provisions when they are not, unless the person reasonably believes that they are authorised.³⁰⁰ Finally, a WHS EPH must not use or disclose information obtained in an inquiry into a suspected contravention for a purpose that is not related to the inquiry, noting certain exemptions apply in exceptional circumstances.³⁰¹

When exercising a right of entry under the model WHS laws, the EPH must also comply with relevant parts of the FW Act.³⁰²

²⁹¹ Model WHS Act, s 131.

²⁹² Model WHS Act, s 133; model WHS Regulations, reg 25.

²⁹³ Model WHS Act, ss 117, 120, 121.

²⁹⁴ Model WHS Act, s 118.

²⁹⁵ Model WHS Regulations, reg 27.

²⁹⁶ Model WHS Act, s 119; Model WHS Regulations, regs 27–28.

²⁹⁷ Model WHS Act, ss 120–122.

²⁹⁸ Model WHS Act, s 146.

²⁹⁹ Model WHS Act, ss 144–145.

³⁰⁰ Model WHS Act, s 147.

³⁰¹ Model WHS Act, s 148.

³⁰² FW Act, Pt 3–4, Div 3.

What we heard

The ACTU stated that unions continue to face unnecessary restrictions and administrative barriers that impede their ability to enter workplaces and exercise their rights under the model WHS Act. Unions advocated for amendments to the model WHS Act to strengthen the ability of EPHs to enter workplaces and perform their functions effectively, including through enhanced information-gathering powers.³⁰³

Industry representatives disagreed, believing that enhanced powers for union EPHs could risk their misuse to disrupt work and advance industrial interests.³⁰⁴ The MBA pointed to ‘commonplace’ misconduct in parts of the building and construction industry, characterising the continued presence of ‘bad actors’ as a cultural issue and arguing this context should be considered when examining jurisdictional variations. They said it is ‘common’ for unions in the building and construction industry to ‘nominate’ a site HSR and this is ‘frequently a person not familiar with a particular worksite nor actually employed by the company’.³⁰⁵ MBA also stated it regularly receives feedback from its members about instances of misconduct, including poor culture and practices, in the industry.³⁰⁶ It recommended additional eligibility restrictions on EPHs and supported Queensland’s reinstatement of a 24-hour notice requirement before entry, to inquire into suspected contraventions.³⁰⁷ HIA expressed concerns about ‘documented incidents of misbehaviour and abuse of power by CFMEU officers across the country’ and stated that ‘governments and regulators should be concentrating their efforts on addressing the misuse of existing powers before they begin considering further reforms’.³⁰⁸ The MCA highlighted the lack of harmonised EPH provisions across jurisdictions, stating that variations can create significant operational challenges.³⁰⁹

Discussion

Use of entry permit holder powers in the building and construction industry

This Review heard significant concerns from industry about the misuse of EPH powers in the building and construction industry and how these roles have been used to enable both unlawful and criminal conduct. While acknowledging the seriousness of this conduct where it has occurred, it is important to note that the model WHS laws apply generally to all industries and workplaces. WHS laws are founded on fair and effective workplace representation, consultation and cooperation, with unions and employers encouraged to play a constructive role in promoting WHS improvements.

³⁰³ ACTU, Submission, p 23; [Electrical Trades Union](#), Submission, pp 4–7, [CFMEU](#), Submission, pp 3–4; [ANMF \(Vic Branch\)](#), Submission, p 13; [SA Unions](#), Submission, pp 27–29.

³⁰⁴ [HIA](#), Submission, pp 13–14; [MBA](#), Submission, pp 31–32; [Australian Industry Group](#), Submission, pp 9–11.

³⁰⁵ [MBA](#), Submission, p 29.

³⁰⁶ [MBA](#), Submission, p 18.

³⁰⁷ [MBA](#), Submission, p 24. Also see MBA, [Breaking building bad](#), MBA, July 2024, accessed 11 May 2026.

³⁰⁸ [HIA](#) Submission, p 13.

³⁰⁹ [MCA](#), Submission, p 6.

The independent statutory review of the Closing Loopholes reforms examined this issue and found:

*There is limited evidence to confirm whether misuse is occurring and, if so, its prevalence. Excluding the CFMEU, the 9 of the other largest unions combined recorded only 37 breaches of industrial laws in the 5 years prior to the CFMEU's administration in June 2024. The low number of breaches suggests that general misbehaviour among unions is not widespread.*³¹⁰

This Review also notes efforts underway to improve the culture in the building and construction industry, with the CFMEU administrator noting the union is 'changing its culture' and 'working to regain its position in civil society'.³¹¹ Cooperation between government, the CFMEU and industry has led to the *Blueprint for the future*, endorsed by the National Construction Industry Forum (NCIF),³¹² which sets out actions to address long-term challenges facing the industry, including seeking to 'move away from conflict-based relationships towards collaborative and cooperative models' and for the industry to 'create a culture of lawfulness, which actively combats non-compliance across all areas of the industry'.³¹³

Noting this work and that the WHS EPH provisions are operating effectively for the vast majority of workplaces, this Review considers that the model WHS laws do not require amendments to introduce new restrictions on WHS EPHs. Instead, this Review has focused on greater harmonisation of EPH provisions, consistent with its Terms of Reference.

WHS entry permit holder information-gathering powers (s 118, model WHS Act)

There are a number of significant jurisdictional variations relating to EPH information-gathering powers. This includes providing EPHs with the power to take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings).³¹⁴ Jurisdictions also apply varying safeguards to these powers.³¹⁵

This Review notes that allowing HSRs (see **Chapter 3**) and EPHs to collect information (such as taking a photo) in relation to workplace hazards supports the objects of the model WHS Act. This Review recommends amending the model WHS Act to provide information-gathering powers to both HSRs and EPHs in a consistent manner but subject to appropriate safeguards, including to:

- ensure information is only used for the purpose of exercising functions under the WHS Act
- prevent live-streaming
- protect the privacy of individuals
- ensure information is collected in a way that does not create WHS risks
- protect commercially sensitive information, and national security for certain work sites. (See **Appendix D, 7A.**)

³¹⁰ S Booth, *Closing loopholes: An independent statutory review: Draft report*, Department of Employment and Workplace Relations, Australian Government, May 2026, p 381.

³¹¹ CFMEU, *Announcement of appointment of Michael Crosby as CFMEU Administrator* [media release], CFMEU, 22 May 2026, accessed 25 May 2026.

³¹² Department of Employment and Workplace Relations, *Blueprint for the future*, Australian Government, March 2025. The NCIF endorsed the *Blueprint for the future: A building and construction industry that works for everyone*, providing tripartite advice to government to address cultural, governance and compliance challenges in the building and construction industry.

³¹³ Department of Employment and Workplace Relations, *Blueprint for the future: A building and construction industry that works for everyone*, Australian Government, March 2025, p 8.

³¹⁴ ACT WHS Act, s 118(1)(da); SA WHS Act, s 118(1)(ab); Vic OHS Act, ss 58 and 89(1)(ba).

³¹⁵ SA has a number of additional safeguards on expanded information-gathering powers. The EPH must take account of the need to take the measurements and conduct tests in compliance with the Act and other relevant laws. In addition, a photo or video must not be live streamed and there are restrictions on which people may be captured by a photo or video.

Additional amendments – best practice jurisdictional variations (ss 118–119, 130, model WHS Act)

This Review has also recommended a series of additional technical amendments (see **Appendix D, Parts 7B–7D**), informed by a range of jurisdictional variations, that it considers remove unnecessary administrative barriers. These include:

- clarifying EPHs may remain at the workplace during usual working hours for the time necessary to achieve the purpose of entry³¹⁶
- not requiring EPHs to re-enter the workplace or leave WHS risks unaddressed when they find more than one WHS risk at a workplace³¹⁷
- not being excluded from a workplace because of a typo on their entry permit.³¹⁸

This Review notes the *2022 Queensland Review* also recommended exploring mechanisms and any necessary amendments to section 130³¹⁹ to protect the anonymity of, and prevent discriminatory or coercive action against, a worker who has raised a WHS concern or alleged contravention of the Act (unless the worker has provided the permit holder with consent to disclose their identity to the PCBU).³²⁰ Queensland has not made any amendments to date; however, this Review considers this may be an issue for further consideration by Safe Work Australia.

Mutual recognition of WHS EPH training is discussed in **Chapter 6.4**, with a related recommendation outlined in **Appendix G, 1**.

Consultation, representation and participation – Recommendation 8

Amend the model WHS Act and model WHS Regulations to enact the best practice variations at **Appendix D, Appendix F, 1** and **Appendix G, 1** in relation to:

- health and safety representative (HSR) elections, powers, functions and training entitlements
- health and safety committee processes
- consultation and representation processes
- the right to cease unsafe work, and
- union right of entry.

³¹⁶ Qld WHS Act, s 118(1)(f), as amended by *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld). See C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, p 69, Recommendation 11.

³¹⁷ In 2020, s 118(5) was inserted into the ACT WHS Act, which specifies that if, in the course of inquiring into a suspected contravention of the Act, the EPH reasonably suspects that another contravention has occurred, the WHS EPH may exercise the same rights in relation to the other contravention. Similarly, the NSW WHS Act was amended in 2025 to insert s 118(5), which includes that the EPH may exercise the same functions in relation to another contravention relating to, or affecting, a relevant worker the EPH comes to reasonably suspect while at the workplace.

³¹⁸ Qld WHS Act, s 119, as amended by *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld). Section 119 was further amended by the *Brisbane Olympic and Paralympic Games Arrangements and Other Legislation Amendment Act 2024* (Qld). See C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, pp 69–71, Recommendation 13.

³¹⁹ Model WHS Act, s 130 (WHS entry permit holder not required to disclose names of workers).

³²⁰ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, Recommendation 15.

4. Compliance and enforcement

Terms of Reference:

2.1, 2.2, 2.3, 2.5, 2.6, 3.1, 3.2, 3.3

Reviews considered for this chapter:

- 2004 *Occupational Health and Safety Act Review*
- 2008 *National Review into Model Occupational Health and Safety laws (2008 National Review)*
- 2017 *Modernising work health and safety laws in Western Australia*
- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*
- 2018 Report of the Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia (2018 They Never Came Home Report)*
- 2019 *Best Practice Review of Workplace Health and Safety in the Northern Territory (2019 NT Review)*
- 2022 *Independent Review of SafeWork SA (2022 SA Review)*
- 2022 *Conduct of Work Health and Safety Prosecutions Review (WorkSafe ACT) (2022 ACT WHS Prosecutions Review)*
- 2023 *Independent Review of SafeWork NSW (2023 NSW Review)*
- 2025 *Statutory Review of the Work Health and Safety Act 2020 (WA)*
- 2025 *Sentencing Occupational Health and Safety Offences in Victoria*

Introduction

This chapter examines variations across the compliance and enforcement provisions in the model WHS Act and includes a discussion of regulator and inspector powers and functions, legal proceedings, and offences and penalties.

Criteria for assessing variations

Consistent with its Terms of Reference, this Review has:

- assessed jurisdictional variations that significantly depart from the model WHS Act
- considered if these best achieve the object of the Act
- made recommendations on whether they should be incorporated into the model WHS laws.

Recommendations relating to this chapter which derive from specific jurisdictional variations are set out in **Appendix E**.

Note this Review is also making recommendations about compliance and enforcement that do not relate directly to jurisdictional variations but otherwise respond to issues raised by stakeholders. These recommendations are presented throughout this chapter separately to **Appendix E**.

Only variations that have been adopted in at least one jurisdiction and meet the object of the model WHS Act have been recommended. Objects of particular relevance to this chapter include:

- securing compliance with this Act through effective and appropriate compliance and enforcement measures **(3(1)(e))**
- ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act **(3(1)(f))**
- providing a framework for continuous improvement and progressively higher standards of work health and safety **(3(1)(g))**.

4.1 Compliance and enforcement

Structure of regulators and local tripartite arrangements (Part 8, ss 152–154 and Schedule 2, model WHS Act)

The model WHS Act provides for the establishment of a regulator (in each jurisdiction) with broad statutory functions, including to monitor and enforce compliance, provide advice and information, promote and support education and training on WHS matters and conduct and defend proceedings before a court or tribunal.³²¹ However, the jurisdictional notes contained in the model WHS Act leave the institutional design of that regulator largely to the discretion of each jurisdiction, including the establishment of local tripartite consultative arrangements.³²²

In practice, this has resulted in differences in each regulator's structure and independence. Some WHS regulators are located within larger government departments and are subject to ministerial direction and control, while others are headed by an independent WHS commissioner, providing clearer separation from executive government.

All jurisdictions have established tripartite advisory councils or committees, generally comprising both employee and employer representatives, charged with providing advice to the relevant minister.³²³ In some jurisdictions, the relevant council or committee can advise the minister on the WHS Act's operation and effectiveness and make recommendations³²⁴ or review the effectiveness of the laws or Codes of Practice.³²⁵

³²¹ Schedule 2 may be used to establish the regulator: model WHS Act, s 152.

³²² Model WHS Act, Appendix, Sch 2, p 239.

³²³ Work Health and Safety Council, ACT WHS Act, Sch 2, Div 2.1.1; Safety Rehabilitation and Compensation Commission, Cth WHS Act, Sch 2, Pt 2; Advisory Council, NSW WHS Act, Sch 1A; Work Health and Safety Advisory Council, *Work Health and Safety (National Uniform Legislation) Act 2011* (NT), Sch 2; SafeWork SA Advisory Committee, SA WHS Act, Pt 1, Div 5, and Sch 2, Pt 2; Work Health and Safety Board, Qld WHS Act, Sch 2, Pt 2, Div 2; Workcover Tasmania Board, *Work Health and Safety Act 2012* (Tas), Sch 2, Pt 2; Occupational Health and Safety Advisory Committee, Vic OHS Act, Pt 2, Div 6; Work Health and Safety Commission, WA WHS Act, Sch 1, Div 3.

³²⁴ ACT WHS Act, Sch 2, s 2.2(2)(a); Tas WHS Act, Sch 2, s 2(b)–(c). See also WA WHS Act, Sch 1, s 18(1)(b).

³²⁵ Qld WHS Act, Sch 2, s 4(e).

What we heard

Regulators, industry, and union representatives all emphasised effective compliance and enforcement requires compliance and enforcement decision-making to be free of political bias or influence and called for independent or standalone regulators.³²⁶ Unions in particular expressed concern that regulators located in government departments may be less willing to effectively regulate or prosecute non-compliance in government workplaces.³²⁷ This Review identified that at least one jurisdiction has an MOU between its Premier's department and state regulators, including the WHS regulator, requiring internal consultation before prosecution decisions are made.³²⁸

Discussion

Consultation indicated that the governance arrangements and independence of WHS regulators can influence perceptions of trust, credibility and impartiality in WHS administration and enforcement.³²⁹ Similar concerns have been reflected in previous reviews. The *2023 NSW Review* observed that regulators embedded within government departments may be exposed to competing administrative objectives, which can undermine perceptions of independence.³³⁰

The *2019 NT Review* found there was no political interference in the NT regulator but emphasised the 'need to ensure that the reality and perception of independence is maintained, and delineation of functions is clear'.³³¹

While it is within the scope of this Review to make recommendations on any variations to the model WHS Act, as a practical matter this Review has focused on legal, rather than institutional, variations and has not considered the optimal structure of jurisdictional regulators in any great detail.

In relation to local tripartite arrangements, this Review recognises the important role of local bodies in jurisdictional-level consultation. However, it is important such consultation feeds into the harmonised national decision-making process as discussed in **Chapter 1.2**.

³²⁶ [WorkSafe WA](#), Submission, p 15; [Office of WHS Commissioner ACT](#), Submission, p 15; [NFE](#), Submission, p 8; [CFMEU](#), Submission, p 9; Unions Tasmania, Consultation, September 2025; Queensland Council of Unions, Consultation, September 2025.

³²⁷ Queensland Council of Unions, Consultation, September 2025; Unions Tasmania Consultation, September 2025; Unions NSW Consultation, October 2025, [New South Wales Nurses and Midwives Association](#), Submission, pp 23–25.

³²⁸ NSW Department of Premier and Cabinet, [M1997-26 Litigation Involving Government Authorities](#), Memorandum, 1997.

³²⁹ See also Organisation for Economic Co-operation and Development, [Being an independent regulator](#), Governance of Regulators, OECD, 2016, accessed 8 May 2026, pp 34–35.

³³⁰ R McDougall KC, [Independent Review of SafeWork NSW](#), SafeWork NSW, 2023, p 294.

³³¹ T Lyons, [Best Practice Review of Workplace Health and Safety in the Northern Territory: final report](#), NT Government, 2019, p 5. See also C Maxwell, *Occupational Health and Safety Act Review*, Victorian Government, 2004, p 56.

Regulator powers and functions (Part 8, ss 152–154, model WHS Act)

Section 152 of the model WHS Act sets out the functions of the regulator, which include monitoring and enforcing compliance, providing WHS advice and information, promoting and supporting education and training on WHS matters, conducting and defending proceedings before a court or tribunal, and advising the minister. Section 153 of the model WHS Act confers a general power to do all things necessary or convenient to perform these functions. Jurisdictions have made variations to regulator powers and functions, particularly in WA. These include a new function to investigate and report on WHS matters such as particular hazards, industries or PCBUs,³³² a new power to require PCBUs to obtain an independent report from a suitably qualified person,³³³ and a new power to copy and retain documents as long as necessary.³³⁴ The Commonwealth WHS Act also includes an additional duty to consult, cooperate and coordinate activities with other duty holders that have a duty under a corresponding WHS law in relation to the same matter.³³⁵

What we heard

Master Electricians Australia (MEA) stated that ‘increasing divergence in regulator powers risks undermining harmonisation and creating additional compliance burdens, particularly for small business’. It noted WA’s ‘expanded information-gathering powers pose threats to proportionality, transparency, business costs and data use’.³³⁶ WorkSafe WA supported the revised powers, noting they assisted with the regulator’s role and had been used successfully.³³⁷

WorkSafe ACT highlighted that WHS investigations are complex, often requiring expert evidence to prove a breach of an Act beyond reasonable doubt.³³⁸ Where regulators experience resource gaps, these demands can undermine their ability to secure compliance.

Discussion and recommendations

This Review recommends the WA variations listed in **Appendix E** be adopted into the model WHS Act. They are:

- specifying that a regulator can investigate and report on WHS matters relating to particular industries or hazards (see **Appendix E, 1A**)
- allowing the regulator to require PCBUs to procure expert consultant reports for complex WHS matters (see **Appendix E, 1B**)
- clarifying that documents provided or obtained by the regulator may be retained for the period considered necessary by the regulator (see **Appendix E, 1C**).³³⁹

³³² WA WHS Act, s 152.

³³³ WA WHS Act, s 155B.

³³⁴ WA WHS Act, s 155C.

³³⁵ Cth WHS Act, s 12B.

³³⁶ [Master Electricians Australia](#), Submission, p 8.

³³⁷ [WorkSafe WA](#), Submission, p 16.

³³⁸ [Office of WHS Commissioner ACT](#), Submission, pp 15–16.

³³⁹ WA WHS Act, s 155B.

All would support investigations involving complex or technical WHS risks,³⁴⁰ which often rely on specialist evidence to establish non-compliance,³⁴¹ and reflect an established PCBU practice of obtaining expert advice for risks beyond their expertise.³⁴² In considering these amendments, attention should also be given to a review mechanism to allow PCBUs to challenge a direction to procure a report. Consideration should also be given to the potential impacts on small businesses in absorbing the cost of procuring a report.

This Review also supports adopting amendments in relation to consultation obligations in co-regulated workplaces (see **Appendix E, 1D**). While the Commonwealth WHS Act expressly requires Commonwealth-regulated PCBUs to consult with state and territory PCBUs, the model WHS Act (and, therefore, the WHS Acts of each harmonised jurisdiction) do not clearly include the reciprocal obligation.³⁴³ This Review recommends clarifying this to meet the policy intent of the relevant provision and support effective consultation where duty holders under different WHS Acts are involved in the same matter.

4.2 Inspector powers (Part 9, ss 156–190, model WHS Act)

Regulators appoint WHS inspectors, who have a wide range of powers and functions, including those relating to entry into workplaces, assisting with WHS matters, requiring compliance with the model WHS Act by issuing notices and investigating contraventions of the model WHS Act.³⁴⁴

WHS investigations are complex, requiring inspectors to have broad skills, including people skills, sector-specific knowledge, technical capability in gathering and assessing evidence, and the ability to prepare effective briefs of evidence. These skills are usually developed through a training program provided by each WHS regulator. For example, SafeWork NSW requires all new inspectors to obtain a Diploma of Government (Workplace Inspection) through a tailored training program provided by their Registered Training Organisation.³⁴⁵

What we heard

One of the most consistent messages from unions, industry and WHS professionals during this Review concerned inconsistency in how inspectors interpret and apply WHS laws, within and between jurisdictions.³⁴⁶ Australian Industry Group noted that differing interpretations of the same laws create uncertainty and undermine confidence in what should be predictable regulation, contributing to delays, increased costs and legal risk, and resulting in inconsistent safety outcomes.³⁴⁷ These concerns were echoed by many industry representatives.³⁴⁸ Small business representatives and some legal professionals suggested that regulators focus disproportionately on small businesses, which are perceived as easier to prosecute than larger companies, which have more complex organisational structures, better legal representation, and corporate governance and assurance systems that inspectors may be unfamiliar with.

³⁴⁰ [WorkSafe WA](#), Submission, p 16.

³⁴¹ [Office of the Work Health and Safety Commissioner ACT](#), Submission, p 18.

³⁴² *Dial A Tow Australia Pty Ltd v Campbell* [2023] SAET 4 [26].

³⁴³ [Comcare](#), Submission, pp 4–5.

³⁴⁴ Model WHS Act, ss 156, 160, 163.

³⁴⁵ SafeWork NSW, Correspondence, April 2026.

³⁴⁶ [Safety Forward](#), Submission, p 3; [Australian Industry Group](#), Submission, pp 5–6. [ACFA](#), Submission, p 9.

³⁴⁷ [Australian Industry Group](#), Submission, pp 5–6.

³⁴⁸ [NFE](#), Submission, p 1; [MBA](#), Submission, pp 27, 32; [Master Electricians Australia](#), Submission, p 6; [National Disability Services](#), Submission, p 6; [CSA](#), Submission, p 3.

Industry and unions observed that individual inspectors can differ starkly in taking educative and enforcement-focused approaches.³⁴⁹ In response, regulators suggested that 100% consistency is not achievable given differences in inspector background, experience and use of discretion. However, consultation also highlighted concerns about inspector capability and sector-specific knowledge, particularly in complex or high risk industries, which it was suggested can hinder effective compliance and enforcement outcomes and delay the resolution of safety issues.³⁵⁰ For example, the Australian Nursing and Midwifery Federation (ANMF Victorian Branch) reported limited inspector familiarity with other regulatory frameworks in health care.³⁵¹

A range of suggestions to improve capability and consistency were put forward, including more industry or hazard-specific training, cross-jurisdictional secondments, and shared learning resources.³⁵² Australian Industry Group also highlighted the value of inspectors recognising good compliance practices and providing practical assistance alongside enforcement action.³⁵³

Discussion and recommendations

Inspectors must exercise their statutory powers independently, informed by experience, knowledge and training and, most importantly, what is required by WHS laws. While individual capability influences how inspectors exercise their discretion, consistency in compliance and enforcement outcomes also depends on how decision-making is structured, guided and applied in practice. Where decision-making is not sufficiently bound by a nationally consistent framework through the NCEP, variability can reduce predictability, increase actual and perceived unfairness, undermine confidence in the WHS framework and create uncertainty for duty holders and workers.

Inconsistency in the use of statutory powers may also affect the quality of investigations and, in some cases, undermine the evidentiary foundations of a prosecution. Inspectors must be able to tailor their responses to the circumstances but within a nationally consistent decision-making framework supported by transparency and documented reasoning.³⁵⁴ Strengthening the NCEP to provide for clear decision-making frameworks is likely to reduce avoidable inconsistency while preserving appropriate discretion.³⁵⁵

This Review therefore recommends the NCEP be updated to support greater consistency and transparency, including through:

- clearer expectations about when verbal directions or onsite remedial action may be used and requirements for recording those directions³⁵⁶
- clearer guidance on what duty holders can expect when inspectors attend worksites and conduct investigations.³⁵⁷

³⁴⁹ [AALARA](#), Submission, p 2; [ACCI](#), Submission, p 5; [NFF](#), Submission; [ACTU](#), Submission, p 11.

³⁵⁰ [NFF](#), Submission, p 8; [Electrical Trades Union of Australia](#), Submission, p 4; [Safety Forward](#), Submission, p 3.

³⁵¹ [Australian Midwifery and Nursing Federation \(Victorian Branch\)](#), Submission, pp 7–8.

³⁵² [Kay Catanzariti and Vince Pannell](#), Submission; AMNF Vic Branch, Consultation, September 2025; ACCI Tas, Consultation, September 2025.

³⁵³ [Australian Industry Group](#), Submission, pp 5–6.

³⁵⁴ Note that some regulators do align their internal guidance for inspectors exercising discretion to the NCEP – for example, WorkSafe Tasmania: WorkSafe Tasmania, Correspondence, 24 April 2026.

³⁵⁵ See discussion in Chapter 1, 1.3 – Harmonisation in the approach to compliance and enforcement.

³⁵⁶ While the NCEP requires written confirmation of an oral prohibition direction, it is otherwise silent on verbal directions given during inspections.

³⁵⁷ See the discussion of the NCEP in Chapter 1.3.

This Review notes some jurisdictions, including NSW³⁵⁸ and Victoria,³⁵⁹ already have guidance on inspectors' actions, including when an inspection may occur, the powers of inspectors and how the decisions of inspectors are audited and can be reviewed.

Training

What we heard

Consultation reinforced the importance of inspector knowledge, experience and training in supporting sound compliance and enforcement decision-making. This Review considered whether national minimum qualification requirements for inspectors would assist to address these concerns.

Discussion and recommendations

Inspector training was frequently raised in consultation and has also been explored in previous reviews.³⁶⁰ While regulators continue to improve training and capability of inspectors within available resources, a harmonised approach to training is unlikely to deliver meaningful benefit without first addressing consistency in broader compliance and enforcement practices. This Review's recommendation to write a new NCEP to strengthen the harmonisation of compliance and enforcement practices will be a key first step. This approach should provide a solid foundation for the continued development of inspector training through HWSA.³⁶¹

Regulators also noted the increasing technical complexity of work and the need to rely on expert evidence in some WHS prosecution proceedings.³⁶² Previous reviews indicated smaller jurisdictions do not always have the resources required to maintain the specialised expertise required. The Review notes in this context the regulator's ability to appoint inspectors from other jurisdictions to access specialist capability.³⁶³

³⁵⁸ SafeWork NSW, [Customer service standard – Raising a work health and safety concern](#), SafeWork NSW Gosford, NSW, 2017, accessed 22 April 2026.

³⁵⁹ WorkSafe Victoria, [A guide for employers: Occupational health and safety compliance and enforcement policy](#), WorkSafe Victoria, Geelong, Victoria, 2021, accessed 22 April 2026.

³⁶⁰ For example, Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, Australian Government, 2018, Ch 4; R McDougall KC, *Independent Review of SafeWork NSW*, SafeWork NSW, 2023, pp 33–35.

³⁶¹ C Allen, C Massy and D Swan, [Review of the Work Health and Safety Act 2011](#), Queensland Government, 2022, p 48; WorkSafe Tasmania, Correspondence, 24 April 2026; WorkSafe ACT, Correspondence, 21 April 2026.

³⁶² [Office of WHS Commissioner ACT](#), Submission, pp 17–18; HWSA, Consultation, September 2025.

³⁶³ Model WHS Act, s 156(d). See also T Lyons, [Best Practice Review of Workplace Health and Safety in the Northern Territory: Final report](#), NT Government, 2019, Recommendation 10.4 and p 47.

Minor amendments to inspector powers – best practice variations

What we heard

Regulators raised and recommended a number of targeted, largely technical proposals to improve Division 3 of Part 9 of the model WHS Act (Powers relating to entry), drawing on established Commonwealth and WA variations.

These include:

- adding ‘testing’ and ‘examination’ as reasons to take and remove samples to the inspector’s general powers on entry to a workplace³⁶⁴
- permitting an inspector to enter a place used for only residential purposes if they obtain the consent of a person who has apparent management or control over the place or is apparently the occupier³⁶⁵
- updating inspector powers in response to technological change³⁶⁶
- enabling inspectors to accept copies of documents they request be produced, and the recording of interviews³⁶⁷
- limiting access to original documents and seized things only by a person with written authorisation from the owner or provider of the original document / seized thing³⁶⁸
- providing that the regulator does not have to allow inspection of a seized item where it is evidence of a WHS offence.³⁶⁹

The ACT WHS Commissioner advocated for a new express provision allowing the use of body worn cameras when entering a workplace, noting that that audiovisual recording improves evidentiary reliability, transparency and inspector safety.³⁷⁰

Discussion and recommendations

This Review recommends each of the variations identified by regulators above (see **Appendix E, 2A–2F**). They do not significantly expand inspectors’ powers but instead modernise existing entry, investigation and evidentiary powers so they operate effectively in contemporary workplaces. They also aim to improve the clarity, consistency and usability of inspector powers, while maintaining appropriate safeguards.

This Review notes Safe Work Australia should clarify whether an amendment is required to expressly provide for the use of body worn cameras, noting that some regulators are already using these devices when exercising compliance powers.³⁷¹

³⁶⁴ WA WHS Act, s 165.

³⁶⁵ WA WHS Act, s 170(a).

³⁶⁶ Cth WHS Act, ss 165A and 165B.

³⁶⁷ WA WHS Act, s 171.

³⁶⁸ WA WHS Act, ss 174 and 181.

³⁶⁹ WA WHS Act, s 181.

³⁷⁰ [Office of the Work Health and Safety Commissioner ACT](#), Submission, p 13.

³⁷¹ SafeWork SA, [Body worn cameras](#), SafeWork SA website, n.d., accessed 25 May 2026; SafeWork NSW, [Body worn cameras](#), SafeWork NSW website, n.d., WorkSafe ACT, [Conduct of Work Health and Safety Prosecutions Review \(WorkSafe ACT\)](#), WorkSafe ACT, 2022, p 20, accessed 25 May 2026; SafeWork NT, [Body worn cameras](#), SafeWork NT website, n.d., accessed 25 May 2026.

Enforceable undertakings (Part 11, ss 216–222, model WHS Act)

An enforceable undertaking (EU) is a legally binding agreement entered into as an alternative to legal proceedings. EUs are mutually agreed by both the PCBU and the regulator. They are not available for Category 1 offences.³⁷²

What we heard

There were mixed views about the use of EUs and for which offences they should be accepted, with some calling for a ban or restrictions³⁷³ and others encouraging their use as a learning tool.³⁷⁴ The Victorian Sentencing Advisory Council (VSAC) Report encouraged the use of EUs as an ‘investment in safety’ equal to or greater than the value of a monetary penalty.³⁷⁵ AIHS supported the use of EUs to focus on repair and organisational learning.³⁷⁶ These views align with existing guidance and practice in some jurisdictions.³⁷⁷ An evaluation in 2020 found that EUs were generating improvements that extend beyond the immediate incident and supporting longer-term safety outcomes.³⁷⁸ Many EUs include actions to support local communities. In Queensland, an EU included funding WHS scholarships.³⁷⁹

Discussion and recommendations

This Review considers that EUs could be increasingly used to support initiatives that strengthen compliance capability and enforcement effectiveness across the system. For example, an EU could fund a specialist inspector position in the relevant PCBU’s industry. This is particularly relevant given this Review’s conclusions about variations in inspector capability and the need for stronger industry and hazard-specific knowledge in some industries.

This Review notes that the Commonwealth, the ACT, NSW, Queensland, SA, Tasmania, WA and the NT Acts all prevent the use of EUs for industrial manslaughter.³⁸⁰ This Review recommends the model Act should be amended to reflect this consensus position (see **Appendix E, 3**).

Beyond making these conclusions, this Review does not recommend further legislative changes to the operation of EUs under the model laws.

Internal and external review (Part 12, ss 223–229, model WHS Act)

The model WHS Act and Regulations specify which decisions made under them are reviewable and who is eligible to apply for that review. Generally, the worker affected by the decision or their representative, a PCBU whose interests are affected by the decision and an HSR who represents a worker whose interests are affected by a decision have standing.³⁸¹

³⁷² Model WHS Act, s 216(2).

³⁷³ Safe Work Australia Research Summit, Consultation, September 2025.

³⁷⁴ [ACFA](#), Submission, p 10.

³⁷⁵ Sentencing Advisory Council, *Sentencing occupational health and safety offences in Victoria: Report and recommendations*, 2025, p xix.

³⁷⁶ [AIHS](#), Submission, p 9.

³⁷⁷ SafeWork NSW, [Enforceable undertakings guidelines](#), SafeWork NSW website, n.d., accessed 1 May 2026.

³⁷⁸ SafeWork NSW, [Enforceable undertakings guidelines](#), SafeWork NSW website, n.d., accessed 1 May 2026.

³⁷⁹ Workplace Health and Safety Queensland, [Enforceable undertakings: Helping improve worker safety for industry and community](#), Workplace Health and Safety Queensland website, 31 October 2023, accessed 1 May 2026.

³⁸⁰ ACT WHS Act, s 216(2); Cth WHS Act, s 216(2); NSW WHS Act, s 216(2); NT WHS Act, s 34C(b); Qld WHS Act, s 216(2); SA WHS Act, s 216(2); Tas WHS Act, s 216(2); WA WHS Act, s 216(2).

³⁸¹ See model WHS Act, ss 223, 224 and 229; reg 676 sets out decisions made under the model WHS Regulations that are reviewable and primarily deal with decisions about licensing, authorisation and exemption applications.

For the most part, inspector decisions are subject to internal review by the regulator followed by a further external review (where requested), while regulator decisions proceed directly to external review.³⁸² However, some jurisdictions have made changes to internal and external review provisions. For example, in response to the *2022 Queensland Review*³⁸³ inspector decisions regarding negotiation and variation of a work group in that jurisdiction are referred directly to the Queensland Industrial Relations Commission for consideration and resolution.³⁸⁴

What we heard

The ACTU sought union eligibility to seek a review of a decision, noting current arrangements create barriers to worker representation, particularly when unions are assisting their members.³⁸⁵ The ACTU referred to the SA variation that clarifies ‘eligible persons’ include the representatives of workers and PCBUs whose interests are affected by a reviewable decision.³⁸⁶ NSW has similarly recognised relevant unions representing workers as ‘eligible persons’.³⁸⁷ The ACTU also advocated for workers, HSRs and unions to be formally recognised as a party to an external review, where the applicant is the PCBU and the respondent is the regulator, but others involved in the relevant matter, such as an HSR, do not have a formal role in the proceedings.³⁸⁸ In SA, standing for these other parties is already permitted with leave under the relevant tribunal laws.³⁸⁹

The ACT WHS Commissioner and Comcare suggested that review timeframes should be extended to benefit both the applicant and regulator.³⁹⁰ The ACT WHS Commissioner noted that, under section 226(6), a decision is confirmed if it is not set aside or varied after 14 days. This approach is unhelpful when the matter is then considered during external review, because the basis for the internal review decision is that there was no decision.³⁹¹ External reviewers then frequently send the matter back for further internal review, recommencing the process and wasting time and money.³⁹²

Discussion and recommendations

This Review recommends adopting SA’s variation allowing representatives of a PCBU or a worker to be eligible persons for the purposes of section 223. A similar variation may also be required for reviewable decisions made under the model WHS regulations. The amendment is consistent with the object of the model WHS Act to encourage unions and employer organisations to take a constructive role in WHS (see **Appendix E, 4A**).³⁹³

This Review also recommends Queensland’s variation entitling a person who has applied for external review to ask for a statement of decisions and reasons once the matter is decided. This provides transparency to applicants and ensures consistency with internal review processes, which similarly require written reasons to be provided³⁹⁴ (see **Appendix E, 4B**).

³⁸² Model WHS Act, ss 223–224, 229(1).

³⁸³ C Allen, C Massy and D Swan, *Review of the Work Health and Safety Act 2011*, Queensland Government, 2022, Recommendation 2.

³⁸⁴ Qld WHS Act, Part 5, Div 7A.

³⁸⁵ ACTU, Submission, pp 24–25.

³⁸⁶ SA WHS Act, s 223(1a).

³⁸⁷ NSW WHS Act, s 223 Table; SA WHS Act, s 223(1a).

³⁸⁸ ACTU, Submission, pp 24–25.

³⁸⁹ ACTU, Submission, pp 24–25. Also see *South Australian Employment Tribunal Act 2014* (SA), s 49.

³⁹⁰ Office of the Work Health and Safety Commissioner ACT, Submission, p 14; Comcare, Submission, pp 9–10.

³⁹¹ Office of the Work Health and Safety Commissioner ACT, Submission, p 14.

³⁹² Office of the Work Health and Safety Commissioner ACT, Submission, p 14.

³⁹³ Model WHS Act, s 3(1)(c).

³⁹⁴ Model WHS Act, s 227.

There are several recommendations being made by this Review relevant to compliance and enforcement which are not based on jurisdictional variations.

These are:

- extending the timeframes for internal review
- providing workers, HSRs and unions standing in an external review in certain circumstances, and
- including an offence for non-payment of WHS infringement notices.

As recommended by WorkSafe ACT, this Review recommends amending Division 2, Part 12 of the model WHS Act to extend the timeframe for internal review from 14 to 21 calendar days, with further extension by mutual agreement of the parties. This would reduce the inefficiencies that occur when matters are confirmed automatically under section 226(6) then redirected back to a regulator by an external reviewer; and better account for public holidays or recognised shutdowns.

This Review recommends providing standing to affected workers, PCBUs and their representatives to join external review matters they have raised or been involved in to support procedural fairness and appropriate scrutiny of decisions without materially altering how reviews currently operate.³⁹⁵

This Review also recommends a new offence category for the non-payment of WHS infringement notices to discourage the evasion of penalties, as proposed by WorkSafe ACT.³⁹⁶ WorkSafe ACT stated that ‘collecting payments, providing reminders, and conducting reviews are resource intensive and even when a matter results in court proceedings there are limited options for the regulator to recoup the costs of managing these processes’.³⁹⁷

Compliance and enforcement – Recommendation 9

Recommendation 9: Amend the model WHS Act to:

- a. extend the timeframes for internal review from 14 to 21 calendar days, with further extension by mutual agreement
- b. provide workers, HSRs and unions standing in an external review, where they have raised or been involved in a matter, and
- c. include an offence for non-payment of WHS infringement notices.

4.3 Legal proceedings (Part 13, ss 230–267, model WHS Act)

Jurisdictions have taken varied approaches to WHS legal proceedings, reflecting differences in who can prosecute, how decisions are made and how procedural safeguards are applied. When breaches of the model WHS Act are identified, various compliance and enforcement tools can be used to rectify or penalise the breach. How and where these tools can be used is generally harmonised. However, the jurisdictional note which provides for jurisdictions to create their own local infringement schemes has led to more extensive variations than anticipated.

³⁹⁵ Model WHS Act, s 3(1)(f).

³⁹⁶ [Office of the Work Health and Safety Commissioner ACT](#), Submission, p 14.

³⁹⁷ [Office of the Work Health and Safety Commissioner ACT](#), Submission, p 14.

Bringing criminal prosecution proceedings

Under the model WHS Act, prosecutions may be initiated by the regulator or by an inspector with the written authorisation of the regulator either generally or in a particular case (section 230 (1)). The Director of Public Prosecutions (DPP) can also initiate proceedings, and there are relevant jurisdictional notes within section 230 of the model WHS Act to ensure the provisions can work with prosecutorial and other jurisdictional arrangements.³⁹⁸ In practice, because of these jurisdictional notes and those linked to Schedule 2, which establishes the regulator, the operational framework differs in each jurisdiction, with varying levels of involvement from the DPP in the regulator's decision to initiate prosecution or to undertake prosecutions themselves, particularly for more serious offences (see **Appendix L**). Queensland is the only jurisdiction with a prosecutorial office for WHS, separate to the Queensland regulator and the DPP.

What we heard

The number of prosecutions brought and completed across each jurisdiction varies greatly. This Review heard that some jurisdictions bring relatively few prosecutions, with unions noting this reduces the deterrent effect of the WHS laws.³⁹⁹ Some regulators identified challenges in bringing prosecutions where the DPP is involved in decision-making, indicating that differences in priorities or assessment of cases can affect whether prosecutions proceed.⁴⁰⁰

Discussion and recommendations

This Review has not identified any recommendations to amend the model WHS Act in relation to the right of a regulator to decide to bring legal proceedings. As criminal matters are generally the responsibility of states and territories, decisions on whether to bring legal proceedings, including the interaction between regulators and DPPs, sit with individual jurisdictions. The following observations are therefore provided for context, drawing on expert advice to this Review.

Decisions during the investigation phase can materially affect the veracity of the evidence and therefore the viability of a prosecution, influencing decisions about whether proceedings are commenced or not.

This may occur, for example, where variability in inspector decision-making, or differing views about what constitutes a 'reasonably practicable' step, complicate the assessment of compliance. This Review also heard that operational investigation practices frequently affect the admissibility and quality of evidence in WHS prosecutions. For example, a prosecution may fail if the basis for exercising statutory powers is not sufficiently articulated, witnesses are not interviewed or incomplete records are kept.

Access to in-house legal and prosecutorial expertise may support regulators to assess potential prosecutions, make decisions about whether to bring proceedings and prepare briefs of evidence. The *2022 ACT WHS Prosecutions Review* identified advantages associated with in-house prosecution teams, including support for risk-based prosecutions, facilitating test cases, and greater consistency and timeliness, but this model may not be available or practicable for all regulators due to jurisdictional size or resourcing constraints.⁴⁰¹

³⁹⁸ Implementation may require jurisdiction-specific legislation where this cannot be achieved through amendments to the model WHS Act.

³⁹⁹ [ACTU](#), Submission, pp 25–26.

⁴⁰⁰ HWSA, Consultation, September 2026.

⁴⁰¹ WorkSafe ACT, [Conduct of Work Health and Safety Prosecutions Review \(WorkSafe ACT\)](#), WorkSafe ACT, 2022, p 20.

Alternatively, arrangements that enable regulators to draw on external legal counsel or the use of expert consultants (discussed earlier in this chapter), as well as a strong national community of practice, may also assist in building capability across jurisdictions, improving investigation quality and supporting prosecution decision-making. The success of this approach is reflected in the increase in commenced prosecutions in the ACT from 2 in 2022 to 22 in 2025, following reforms permitting the WHS Commissioner to use external legal counsel to manage prosecutions. The Queensland Office of the Work Health and Safety Prosecutor indicated that it benefits from sharing prosecutorial expertise with Queensland investigators and inspectors to support the quality of investigations and briefs.⁴⁰²

More data on WHS prosecutions, including total numbers initiated, defended matters and successful outcomes, may also help identify if, and where, issues arise across the prosecution process. This Review has identified that Safe Work Australia should establish agreements with the departments of justice (or equivalent) in each state and territory to gain access to information and data concerning decisions from Magistrates Courts, many of which currently go unpublished.

Standing for private criminal prosecutions

What we heard

Unions advocated for the right to have standing to prosecute WHS offences. They supported the NSW model as best practice, stating current arrangements create a ‘monopoly’ impacting workers’ and their representatives’ ability to seek recourse for WHS offences, particularly when regulators choose not to prosecute or delay actions.⁴⁰³ They also pointed to their rights under the FW Act, maintaining it is ‘inconsistent and indefensible’ that unions do not have standing for WHS proceedings when they can represent workers in industrial relations matters.⁴⁰⁴

Unions noted that low prosecution rates mean there is not an effective deterrent⁴⁰⁵ and that some industries and types of hazards receive almost no prosecution action by regulators. By way of example, they pointed to a lack of prosecutions in the healthcare and social assistance sector, which has the highest rate of serious workers’ compensation claims.⁴⁰⁶ They also supported more ‘risk-based’ prosecutions, noting that most prosecutions that do occur are made in response to worker fatalities or injuries, while the goal of the WHS framework is instead to *prevent* death and injury. SA Unions were critical of the lack of prosecutions for psychological injury and noted only 5 risk-based prosecutions occurred across 2020–2024 in SA.⁴⁰⁷ The Electrical Trades Union said that even in the construction industry, which has the highest rate of prosecutions, they still represent a response to a very small proportion of serious injuries.⁴⁰⁸

⁴⁰² Meeting with Queensland Office of the Work Health and Safety Prosecutor. See also WorkSafe ACT, [Conduct of Work Health and Safety Prosecutions Review \(WorkSafe ACT\)](#), WorkSafe ACT, 2022, pp 27–28.

⁴⁰³ [ACTU](#), Submission, p 25.

⁴⁰⁴ [ACTU](#), Submission, p 26.

⁴⁰⁵ Safe Work Australia, [Work Health and Safety Prosecutions Database](#) [data set], accessed 24 April 2026.

⁴⁰⁶ Safe Work Australia, [Workers’ Compensation Database](#) [data set], accessed 24 April 2026.

⁴⁰⁷ [SA Unions](#), Submission, p 9.

⁴⁰⁸ [Electrical Trades Union](#), Submission, pp 8–9. The union states that there were a total of 17,609 workers’ compensation claims for serious injury in 2023–2024 but just 124 prosecutions.

Unions suggest that low prosecutions rates are compounded by resourcing constraints that limit regulators' capacity to prosecute WHS breaches. Regulators acknowledged that resourcing limitations restrict proactive compliance and enforcement activity, with smaller jurisdictions noting they are generally only able to pursue the strongest cases.⁴⁰⁹

Unions contended that granting them the right to prosecute WHS offences would leverage their significant cross-industry expertise and access to workers to target interventions that drive WHS cultural and organisational change, improve compliance and strengthen workers' involvement in WHS management.⁴¹⁰ As well as having standing in criminal matters, SA Unions also supported the recommendation of the *2022 SA Review* to provide standing to workers, families of injured workers, and employee associations to bring civil penalty proceedings for breaches of WHS duties.⁴¹¹

Australian Industry Group and WorkSafe WA submitted that the decision to prosecute should be limited to statutory agencies bound to act in the public interest, rather than 'the rights of one individual or interest group against another'.⁴¹² AIHS noted providing standing for prosecution to parties other than the WHS regulator, inspectors and the DPP could risk 'vexatious litigation from unqualified representatives'.⁴¹³ Industry also submitted that giving a range of parties standing for prosecution would upset the power balance between unions and businesses, creating more adversarial workplace dynamics where the model WHS laws intend for unions to have a 'role of "assistance" in WHS matters'.⁴¹⁴ Industry also expressed concern that unions could bring cases for minor breaches which may be disproportionate.⁴¹⁵ While industry acknowledged unions have standing to represent workers in civil matters under the FW Act, they argued the objects of these legislative frameworks are different.⁴¹⁶

Discussion and recommendations

The right for persons other than the State to bring private prosecutions is not a novel concept and has historical roots in the common law, which provides a general right to citizens to bring private prosecutions.⁴¹⁷ In the case of WHS, that right is removed by the model WHS Act. The benefits and risks of granting private parties, specifically unions, the right to prosecute has been examined across multiple reviews over time, including during the initial development of the model WHS laws.⁴¹⁸ Different reviews have come to different conclusions on the issue, and the *2008 National Review* ultimately did not support the concept of private prosecution.⁴¹⁹

⁴⁰⁹ WorkSafe Tas, Consultation, September 2025.

⁴¹⁰ ACTU, Submission, p 26.

⁴¹¹ SA Unions, Submission, Recommendation 1, p 14; J Merritt, *Independent Review of SafeWork SA*, SafeWork SA, 2022, Recommendation 39.

⁴¹² WorkSafe WA, Submission, p 21.

⁴¹³ AIHS, Submission, p 16.

⁴¹⁴ Australian Business Industrial (Australian Business Lawyers & Advisors), Submission, p 8.

⁴¹⁵ Australian Business Industrial (Australian Business Lawyers & Advisors), Submission, p 16.

⁴¹⁶ Australian Business Industrial (Australian Business Lawyers & Advisors), Submission, p 16.

⁴¹⁷ The common law right to private prosecutions originates from England and is established in Australia under the *Australian Courts Act 1828*: see T Kirchengast, *The victim in criminal law and justice*, Palgrave Macmillan, London, 2006, Ch 2, Private prosecution.

⁴¹⁸ R Stewart-Crompton, S Mayman and B Sherriff, *National Review into Model Occupational Health and Safety Laws: Second report*, Department of Employment and Workplace Relations, 2009, paras 46.10–46.23. This Review noted divergent views on this issue across previous Australian OHS reviews, including J Rae and M Easson, *Work, health and safety: an inquiry into occupational health and safety: Industry Commission*, Report No. 47, Australian Government, 1995; C Maxwell, *Occupational Health and Safety Act Review*, Victorian Government, 2004; R Hooker, *Final report: Review of the Occupational Health and Safety Act 1984 WA*, WA Government, 2006.

⁴¹⁹ R Stewart-Crompton, S Mayman and B Sherriff, *National Review into Model Occupational Health and Safety Laws: Second report*, Department of Employment and Workplace Relations, 2009, paras 46.10–46.23.

This Review has considered whether the grounds traditionally relied upon to limit prosecution rights continue to outweigh the benefits of private prosecution. This Review has considered this in the context of not only granting unions the right to prosecute but also providing the right to any person, consistent with the common law.

Regulators' capacity to prosecute matters is constrained. During consultation, unions and some regulators acknowledged that funding constraints hinder compliance and enforcement activities, including impacts on inspector capability and availability.⁴²⁰ Regulators in smaller jurisdictions advised they could not pursue proactive compliance and enforcement activities and are forced to be very selective with what matters they progress to prosecution. The ACTU noted incidences where regulators proceeded with prosecutions relating to serious incidents only after significant union and community advocacy.⁴²¹ Earlier reviews, including the Occupational Health and Safety Act Review, envisaged that such constraints could be addressed through increased funding and strengthened compliance and enforcement capacity. In practice, this has not materialised to the extent hoped for, and the constraints have persisted.

Ensuring effective deterrence is critical to the continued effectiveness of the model WHS laws. A harmonised approach is essential for ensuring that compliance and enforcement approaches are used consistently to respond to breaches of obligations and denial of rights; and that outcomes across Australia are comparable and fair.

Progress in reducing fatality rates has slowed⁴²² and serious injury and illness rates are increasing, as reflected in the growth of serious workers' compensation claims, particularly psychological injury claims.⁴²³ This raises the question of whether existing enforcement settings continue to incentivise compliance, particularly where some duty holders may perceive investment in safety as affecting profitability⁴²⁴ and where the costs of injury and illness are overwhelmingly borne by workers, families and the broader community. Prosecution outcomes remain uneven across jurisdictions and industries, as reflected in the data at **Appendix I**.

Of particular concern is that, despite the risk profiles in many industries, enforcement action remains very low. For example, the healthcare and social assistance industry employs more than 3 million workers and has the highest number of work-related injuries but saw only 4 successful prosecutions nationally in 2024.⁴²⁵ Pervasive industry hazards such as sexual harassment that disproportionately affect female or diverse workers⁴²⁶ are rarely prosecuted under WHS laws, perpetuating failures to systemically prevent the risk. In effect, prosecutions continue to focus on male-dominated work where there has been a fatality or a serious physical injury.⁴²⁷

Providing standing to third parties for private prosecution has the potential to strengthen deterrence by operating as a supplementary enforcement mechanism where a regulator has chosen not to pursue prosecution for reasons such as resource constraints.

⁴²⁰ HWSA, Consultation, September 2025. WorkSafe Tas, Consultation, September 2025. NT WorkSafe, Consultation, September 2025. Unions NT raised concerns about inspector salaries being a limiting factor for recruiting suitably qualified inspectors in industries where salaries are higher: MBA Qld, Consultation, September 2025.

⁴²¹ ACTU, Submission, pp 25–26.

⁴²² Safe Work Australia, *Australian Work Health and Safety Strategy 2023–2033*, Safe Work Australia, 2023, p 5.

⁴²³ Safe Work Australia, *Workers' Compensation Database* [data set], accessed 24 April 2026.

⁴²⁴ P Drahos (ed) *Regulatory theory: foundations and applications*, ANU Press, Canberra, 2017.

⁴²⁵ Safe Work Australia, *WHS prosecutions*, Dashboard, accessed 1 May 2026.

⁴²⁶ R Cooper et al, *Just another day in retail: Understanding and addressing workplace sexual harassment in the Australian retail industry*, Australian National Research Organisation for Women's Safety, 2024, p 96.

⁴²⁷ Safe Work Australia, *WHS prosecutions*, Dashboard, accessed 1 May 2026.

Private prosecution by unions was previously a longstanding part of the WHS enforcement framework in NSW and the ACT⁴²⁸ prior to the model WHS laws being developed, without evidence that it compromised prosecutorial discretion or resulted in inappropriate or vexatious proceedings being brought.⁴²⁹ Unions initiated a small number of prosecutions under the (pre-model WHS laws) NSW framework, of which a number were successful. One prominent example is the Financial Services Union initiating prosecutions in the 2000s against major banks for failing to protect workers against the risks of persistent armed hold-ups, resulting in significant new investments in improved security measures.⁴³⁰ New Zealand has also long permitted private prosecutions by any person other than the regulator, with very few cases brought in recent years.⁴³¹ The New Zealand regulator did not identify significant concerns arising from the operation of this right.⁴³²

The risk of ‘frivolous’ proceedings is constrained by practical and institutional factors. Commencing and running a prosecution involves significant cost, time and evidentiary burden. In addition, the rules and structures of courts perform a critical gatekeeping role⁴³³ in determining whether proceedings should be initiated and ultimately succeed.⁴³⁴

This Review considers that providing general standing for third parties to prosecute WHS offences would be consistent with the object of the model WHS Act, which provides that PCBUs, workers and their representatives each have a role to play in influencing and securing work health and safety outcomes. It is also consistent with the fact that the right to a safe and healthy workplace is recognised by ILO Members (including Australia) as one of the fundamental workplace rights alongside freedom of association and collective bargaining, elimination of forced and compulsory labour, abolition of child labour and elimination of workplace discrimination.⁴³⁵ All other workplace rights are able to be privately litigated.

This conclusion also accords with the Robens model of self-regulation underpinning the WHS framework. The Robens approach is premised on shared responsibility between business and workers and on the recognition that compliance cannot be secured through a regulator’s inspection, compliance and enforcement activities alone. Regulators cannot be everywhere, and effective risk management depends on behaviours and decisions made within workplaces. A general right of standing to prosecute is consistent with this approach and gives practical effect to the idea that effective WHS outcomes rely on the participation of multiple actors.

⁴²⁸ R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: Second report](#), Department of Employment and Workplace Relations, Australian Government, 2009, p 419, Table 75.

⁴²⁹ Previous NSW inquiries into the union right to prosecute prior to the model laws found no evidence of misuse. See NSW WorkCover Review, p 64; and Stein Inquiry, pp 127–128, as cited in R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: Second report](#), Department of Employment and Workplace Relations, Australian Government, 2009, p 421.

⁴³⁰ R Guthrie, and A Bunn, ‘Occupational health and safety in the banking industry’, *Legal Issues in Business*, 2009, 11:79: banks introduced control measures still in wide use today in response to cases, including bullet-resistant barriers, rising security screens, armed guards and anti-jump barriers.

⁴³¹ This Review could only find cases from as recent as 2015; and WorkSafe New Zealand indicated it was not aware of recent ones, although it does not keep track.

⁴³² Meeting with WorkSafe New Zealand, 8 April 2026.

⁴³³ For example, in *Thompson v R (Private Prosecution)* [2007] NZAR 722 (HC) [24] the judge refused leave to commence a private prosecution in part because the question of whether charges should be laid became ‘inextricably woven’ with a proposal for payment for large sums of money to avoid the prosecution.

⁴³⁴ For example, in Queensland, judges have discretionary powers to issue a justice’s summons or grant leave for private prosecutors to bring a criminal proceeding: *Justices Act 1886* (Qld), s 53; *Criminal Code Act 1899* (Qld), s 686. Defendants to private prosecutions can also bring applications before evidence is led for the magistrate to dismiss the proceeding if it an abuse of process, frivolous or vexatious: *Justices Act 1886* (Qld), s 102C.

⁴³⁵ ILO, *Declaration on Fundamental Principles and Rights of Work and its Follow-up*, adopted by the ILO, 86th session, Geneva, 18 June 1998.

This Review therefore recommends providing standing for private prosecution of WHS criminal offences in circumstances where regulators have decided not to bring proceedings. This Review considers that the right should not just be limited to unions but also be made available to anyone, including workers, affected families and PCBU's.

In doing so, the Review considers the development of effective safeguards are critical to ensure the integrity and consistency of prosecution approaches. This Review considers that a combination of the safeguards in the NSW and New Zealand models provide a sound basis for a model provision. Under the NSW model, registered organisations may bring proceedings only where the regulator has declined to prosecute, the organisation has consulted the regulator, and the matter concerns a member of the organisation, with prosecutions remaining subject to general prosecution guidelines and the DPP's power to take over or discontinue proceedings.⁴³⁶ New Zealand, which provides the right to any person, has similar additional safeguards.⁴³⁷

Given the concerns raised by industry representatives, this Review also considers there is merit in providing for a future review of any extended prosecution right. Such a right can only be effective if used appropriately and judiciously and in a manner that preserves the balance between the important objectives of cooperation and deterrence under the model WHS laws. Appropriate safeguards would also prevent vexatious or frivolous prosecutions. A future review should focus on how the right has operated in practice, including the nature and outcomes of cases brought and any impacts on enforcement. This approach would enable assessment of whether the concerns raised in this Review have materialised, reinforce expectations that the right is exercised appropriately, and ensure that any future reconsideration is informed by evidence.

Compliance and enforcement – Recommendation 10

Amend the model WHS Act to provide general standing for any person or organisation to prosecute WHS offences informed by the New South Wales (NSW) and New Zealand approaches, with a review of the provisions 3 years after their commencement across all jurisdictions.

Civil penalty proceedings (Part 13, Division 7, ss 254–266, model WHS Act)

Under the model WHS laws, a civil penalty regime applies in relation to right of entry under Part 7. Proceedings for a contravention of a WHS civil penalty provision may only be brought by the regulator or an inspector with the written authorisation of the regulator (either generally or in a particular case).⁴³⁸ The prohibitions relate to both the conduct of WHS entry permit holders⁴³⁹ and persons at the workplace.⁴⁴⁰ A contravention of a WHS civil penalty provision is not an offence.⁴⁴¹

⁴³⁶ NSW Office of the Director of Public Prosecutions, [Prosecution guidelines](#), NSW DPP, 2021, Ch 7.

⁴³⁷ *Health and Safety at Work Act 2015* (NZ), s 144.

⁴³⁸ ACTU Submission, pp 25–27, Appendix 1, p 4.

⁴³⁹ Model WHS Act, ss 123–126, 128–129.

⁴⁴⁰ Model WHS Act, ss 118(3), 143, 144(1), 145–146, 147(1)(b), 148(e), 149(1) and 150(c).

⁴⁴¹ Model WHS Act, s 257.

Recent legislative changes in both NSW⁴⁴² and Queensland⁴⁴³ have expanded who can bring such proceedings. In NSW, registered unions can bring proceedings on behalf of a person affected by the contravention for any civil penalty proceeding.⁴⁴⁴ Courts may order a portion of any fine or penalty resulting from a civil proceeding be paid to the registered union.⁴⁴⁵ Queensland permits registered unions, entry permit holders or a person affected by a contravention to bring proceedings for some (but not all) WHS civil penalty provisions.⁴⁴⁶

What we heard

The ACTU has called for the NSW reforms to be implemented as national best practice.⁴⁴⁷ The Queensland Council of Unions supported the ACTU position to adopt the ‘more comprehensive’ NSW variation, noting the Queensland amendments largely establish standing for civil proceedings under the Queensland WHS Act that are functionally already available under the FW Act.⁴⁴⁸

Industry warned against providing unions with rights to commence civil proceedings, citing concerns with ‘fundamentally shifting’ the power dynamic between unions and PCBUs and undermining the model framework’s legitimacy through potential misuse.⁴⁴⁹

Discussion and recommendations

This Review recommends providing unions with the ability to bring civil penalty proceedings, consistent with NSW’s amendments (see **Appendix E, 5A**).

This includes standing to pursue a penalty against a PCBU that, without reasonable excuse, fails or refuses to comply with a request from an EPH to inspect and make copies of documents directly relevant to a suspected contravention.⁴⁵⁰ During consultation, this Review heard consistent concerns about the barriers EPHs face in exercising their workplace rights, including to obtain relevant documents from PCBUs. Both PCBUs and EPHs may access dispute resolution mechanisms concerning the exercise of entry rights.⁴⁵¹ PCBUs may also pursue improper use of WHS EPH powers, should these occur, by applying to the relevant court or tribunal for a WHS entry permit to be revoked.⁴⁵² Unions, however, currently lack an equivalent pathway when PCBUs obstruct or refuse EPH rights under the model Act.

This Review considers that the NSW amendments are consistent with the object of the WHS Act to provide for fair and effective workplace representation.⁴⁵³ Courts are well placed to manage the risks raised by industry that unions may misuse these enforcement rights.

⁴⁴² *Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025* (NSW), s 260(c).

⁴⁴³ *Work Health and Safety and Other Legislation Amendment Act 2023* (Qld), ss 260(3) and (4).

⁴⁴⁴ NSW WHS Act, s 260(c). Unions also have rights to bring proceedings in relation to contravention of a dispute settlement order, s 102E, as part of NSW’s dispute resolution framework.

⁴⁴⁵ NSW WHS Act, ss 262(6).

⁴⁴⁶ Qld WHS Act, s 260(4); the relevant provisions are Qld WHS Act, ss 126, 144(1), 145, 146, 147(1).

⁴⁴⁷ [ACTU](#), Submission, p 26.

⁴⁴⁸ [Queensland Council of Unions](#), Submission, p 32.

⁴⁴⁹ [Australian Business Industrial](#), Submission, p 4.

⁴⁵⁰ Model WHS Act, s 118(2)(d), (3).

⁴⁵¹ Model WHS Act, ss 141–142.

⁴⁵² Model WHS Act, s 138.

⁴⁵³ Model WHS Act, s 3(1)(b).

Limitation periods (s 232, model WHS Act)

Section 232 of the model WHS Act sets out the limitation periods for when proceedings for an offence may begin, which in the model WHS Act and in most jurisdictions is ‘within 2 years after the offence first comes to the notice of the regulator’.⁴⁵⁴ Proceedings for a Category 1 offence can be brought after the end of the applicable limitation period if fresh evidence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the limitation period.⁴⁵⁵

What we heard

Regulators, unions and affected family and injured worker representatives identified the current 2-year limitation period for most offences as a barrier to the effective enforcement of the model WHS laws. WorkSafe ACT noted no criminal offence in their jurisdiction resulting in death is subject to a limitation period, other than under WHS law.⁴⁵⁶ Comcare suggested providing greater clarity on when the 2-year limitation commences, noting that the current definition is open to interpretation.⁴⁵⁷ Some family and injured worker representatives argued for removing the 2-year limitation period altogether, while others raised concerns that this could result in matters taking much longer to resolve.⁴⁵⁸

Discussion and recommendations

A recent NSW court decision⁴⁵⁹ highlighted the impact of the limitation period on prosecutions for occupational diseases and other injuries or illnesses, including asbestosis, silicosis and psychological harms, and has prompted several jurisdictions to amend their limitation provisions as follows:

- In NSW and the ACT, a proceeding can be brought at the end of the limitation period with the court’s leave if it is in the ‘interests of justice’.⁴⁶⁰
- In Queensland, a proceeding can be brought within 2 years of when the offence first comes to the attention of the prosecutor (rather than the regulator).⁴⁶¹
- In WA, a proceeding can be brought up to 6 months after the limitation period if the prosecutor commenced and discontinued, or decided not to commence, proceedings in the original 2 years.⁴⁶²
- In Victoria, the prosecutor can commence proceedings at any time with the DPP’s written authorisation.⁴⁶³

⁴⁵⁴ Model WHS Act, s 232(1).

⁴⁵⁵ Model WHS Act, s 232(2).

⁴⁵⁶ [Office of the Work Health and Safety Commissioner](#), Submission, p 20.

⁴⁵⁷ [Comcare](#), Submission, p 8.

⁴⁵⁸ WA Family and Affected Workers, Consultation, December 2025.

⁴⁵⁹ *Prime Marble & Granite Pty Ltd v Safework NSW* [2024] NSWCCA 105.

⁴⁶⁰ NSW WHS Act, s 232(2)–(3) as amended by [Industrial Relations and Other Legislation Amendment \(Workplace Protections\) Bill 2025 \(NSW\)](#), Sch 3, cl 16. Note: this has not been enacted yet.

⁴⁶¹ Qld WHS Act, s 232(1)(a).

⁴⁶² WA WHS Act, s 232(4) and (5).

⁴⁶³ Vic OHS Act, s 132(d).

This Review considered each of these approaches in light of the objects of the model WHS Act and stakeholder views, balancing timely resolution for PCBUs and families with the public interest in thorough investigations.⁴⁶⁴ This Review notes that a longer limitation period may impact the feasibility of a prosecution due to practical constraints, including witness memory loss, investigator turnover and worker mobility. For this reason, this Review does not recommend removing or extending limitation periods, except in relation to industrial manslaughter and Category 1 offences. Removing the limitation period for these offences is consistent with the approaches in most jurisdictions⁴⁶⁵ and aligns with other duty-based safety schemes, including the Heavy Vehicle National Law and Rail Safety National Law.

For all other offences, this Review recommends retaining the 2-year limitation but adopting Victoria's approach of enabling the regulator to commence proceedings at any time with the written authorisation of the DPP (see **Appendix E, 5B**).

Alternative verdicts

Currently, the model WHS Act does not enable courts to consider alternative verdicts when prosecutions are brought. These 'alternative verdicts' allow courts, when they are not satisfied a PCBU is guilty of one offence (for example, industrial manslaughter) but are satisfied the PCBU is guilty of another offence (for example, a Category 1 or 2 offence – or 'alternative offence'), to find the PCBU guilty of that alternative offence.⁴⁶⁶ Almost all jurisdictions allow for alternative verdicts to industrial manslaughter but with differing approaches to which category offences are available. Queensland⁴⁶⁷ and WA⁴⁶⁸ have included the capacity to reach alternative verdicts for Category 1 prosecutions. WA also allows alternative verdicts for Category 2 offences.⁴⁶⁹

What we heard

The Queensland Council of Unions indicated support for the consideration of alternative verdicts,⁴⁷⁰ including their ability to safeguard against injustices and prevent inefficient use of the regulator's and court resources when the evidence supports a finding that a breach of the WHS laws has occurred.

Discussion and recommendations

This Review considers the capacity for courts to deliver alternative verdicts fills a gap in the WHS criminal penalty regime and recommends they be allowed for industrial manslaughter, Category 1 and Category 2 offences (see **Appendix E, 5C**). As part of implementing this recommendation, consideration should be given to the Commonwealth, WA, NSW and Queensland approaches, including providing for an express statement that no limitation period should apply for an alternative verdict.⁴⁷¹

⁴⁶⁴ Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, Australian Government, 2018, [5.86].

⁴⁶⁵ Cth WHS Act, s 232(2A); ACT WHS Act, s 232(3); Qld WHS Act, s 232(3); SA WHS Act, s 232(3); Tas WHS Act, s 232(3); WA WHS Act, s 232(1).

⁴⁶⁶ Comcare, [Regulatory guide – Prosecutions](#), Comcare, 2026, accessed 30 April 2026.

⁴⁶⁷ Qld WHS Act, s 233A.

⁴⁶⁸ WA WHS Act, s 31(4).

⁴⁶⁹ WA WHS Act, s 32(2).

⁴⁷⁰ Queensland Council of Unions, Consultation, September 2025.

⁴⁷¹ Cth WHS Act, s 30A(5); WA WHS Act, s 232(6); NSW WHS Act, s 34F(2); Qld WHS Act, s 34E(2).

Insurance and indemnity

Following a recommendation by the *2018 National Review*, the model WHS Act was amended to prohibit the taking out of insurance or indemnity for WHS fines.⁴⁷² However, that prohibition does not extend to preventing PCBUs from taking out insurance or indemnity against legal costs for related proceedings. Penalties are sometimes small relative to the legal fees incurred defending cases, potentially reducing the deterrent effect from bringing a prosecution.

What we heard

The AIHS noted that, at the time of the *2018 National Review*'s insurance reforms, it foresaw this potential loophole and raised concerns that it would undermine the changes,⁴⁷³ while industry representatives argued that the ability to have insurance for WHS penalties should be reinstated for officers.⁴⁷⁴

Discussion and recommendations

This Review recommends the model WHS Act be amended to prohibit a contract of insurance or other arrangement under which the person or another person is covered for legal costs associated with a WHS prosecution or proceeding. This is consistent with the intent of the previous insurance reforms to make WHS penalties stick and prevent them from being seen as just another cost of doing business.⁴⁷⁵ This approach is also consistent with recent reforms prohibiting companies from indemnifying directors against penalties under the Australian Consumer Law and from any legal cost incurred in defending an action where a director is found to be liable.⁴⁷⁶

Compliance and enforcement – Recommendation 11

Amend the model WHS Act to ensure that a contract of insurance or grant of indemnity cannot be used to cover the legal fees of a person subject to a WHS prosecution.

Non-disclosure agreements

What we heard

Regulators and WHS advocates told this Review that non-disclosure agreements (NDAs) are being used to impede WHS investigations, limit information-sharing and undermine compliance and enforcement activities.⁴⁷⁷

Discussion and recommendations

While NDAs cannot lawfully displace statutory WHS obligations, this Review notes they appear nevertheless to be discouraging reporting of WHS risks and cooperation with regulators' investigations in practice.

⁴⁷² Model WHS Act, s 272A.

⁴⁷³ [AIHS](#), Submission, p 11.

⁴⁷⁴ [Australian Institute of Company Directors](#), Submission, pp 6–7.

⁴⁷⁵ Safe Work Australia, *Review of the model Work Health and Safety laws: Final report*, Safe Work Australia, 2018, Recommendation 26.

⁴⁷⁶ Australian Consumer Law, *Australian Competition and Consumer Act 2010* (Cth), Sch 2, s 229.

⁴⁷⁷ WorkSafe WA (Bunbury), Consultation, September 2025; Working Women's Centre NT, Consultation, September 2025.

This Review therefore recommends limiting the use of NDAs that prevent a worker from raising WHS concerns, making complaints to WHS regulators or participating in WHS investigations, with amendments to be informed by Victorian reforms under the *Restricting Non-disclosure Agreements (Sexual Harassment at Work) Act 2025* (Vic). Those reforms require specific preconditions to be met before a workplace NDA can be entered into, including safeguards against pressure or influence.

Compliance and enforcement – Recommendation 12

Amend the model WHS Act to impose limits on the use of non-disclosure agreements where WHS rights and obligations under the model WHS Act might be compromised, drawing on the [Restricting Non-disclosure Agreements \(Sexual Harassment at Work\) Act 2025](#) (Vic).

Infringement notices

The model WHS Act provides for the issuing of infringement notices and includes a jurisdictional note to allow jurisdictions to establish their own infringement scheme within local arrangements.⁴⁷⁸ This has led to variations across the country, including in the provisions to which infringements apply and the associated penalty amounts.⁴⁷⁹

What we heard

This Review heard broad support for harmonising infringement notice provisions. Some regulators supported the NSW approach of prescribing a broad range of offences for infringement notices as best practice.⁴⁸⁰ Some unions supported increased use of infringement notices by regulators to ensure clear breaches are penalised quickly and visibly.⁴⁸¹

Discussion and recommendations

Infringement notices are an important tool in the WHS compliance ‘toolbox’. They can improve timeliness in responding to WHS risks and reduce reliance on full investigation or prosecutions for clear contraventions.

Noting the discussion and recommendations in **Chapter 1.3** – Harmonisation in the approach to compliance and enforcement – on the need for greater harmonisation in compliance and enforcement, this Review recommends developing a harmonised model framework for infringement notice schemes. A jurisdictional note can provide the scope for the schemes to interact with local jurisdictional laws.

In considering the harmonised scheme’s scope, the benefits of infringement notices must be balanced against their practical implications. Extending notices beyond highly prescriptive, objective offences increases the likelihood of contestation, requiring regulators to establish facts in proceedings that can resemble trials of substantive offences, with associated resource impacts.⁴⁸² Therefore, this Review agrees with Australian Industry Group, which indicated that the role of infringement notices should be clearly set out within the broader compliance and enforcement framework; and their use should be aligned with objectively ascertainable strict liability offences, supported by clear national direction in the NCEP.⁴⁸³

⁴⁷⁸ Model WHS Act, Appendix, Jurisdictional Notes, p 238.

⁴⁷⁹ Safe Work Australia, [Maximum monetary penalties comparison table](#), Safe Work Australia website, 2025, accessed 5 May 2026.

⁴⁸⁰ HWSA, Consultation, September 2025; WorkSafe Tas, Consultation, September 2025.

⁴⁸¹ [New South Wales Nurses and Midwives Association](#), Submission, p 16.

⁴⁸² [WorkSafe WA](#), Submission, p 24.

⁴⁸³ [Australian Industry Group](#), Submission, p 13.

It is proposed the model WHS Act could include a provision which identifies the types of offences to which infringement notices apply; review and withdrawal arrangements; and mechanisms for the enforcement and recovery of unpaid notices. Complementing this work, the Review recommends that a review of the types of offences to which civil penalty offences apply should also be undertaken.

Compliance and enforcement – Recommendation 13

Develop a nationally consistent approach to infringement notice schemes as part of a larger project to consider which provisions of the model WHS laws should attract infringement penalties and which should attract civil penalties.

Technical amendments

This Review recommends that a small number of targeted, technical amendments, drawing on established WA variations, be made to the model WHS Act (See **Appendix E, 5D and 5E**). One proposed amendment requires a person to notify the regulator once they comply with an improvement notice (drawing on WA WHS Act, section 193). Another provides the court with discretion to admit evidence if it is satisfied the benefit outweighs the harm, in circumstances where errors of law have been made (drawing on WA WHS Act, section 232A). This Review notes this amendment will require further consideration and drafting to ensure it does not routinely excuse unlawful conduct but, rather, meets the intention of not excluding evidence with probative value due to relatively minor procedural errors. These recommended amendments seek to improve clarity, consistency and administrative workability without altering substantive compliance and enforcement powers.

4.4 Offences and penalties (Part 13, ss 230–267, model WHS Act)

Industrial manslaughter

The model WHS Act was amended in 2023 to include a jurisdictional note allowing jurisdictions to create or retain individual industrial manslaughter provisions.⁴⁸⁴ The jurisdictional note was used because many jurisdictions had already introduced industrial manslaughter offences or had committed to doing so.⁴⁸⁵ All jurisdictions now have an industrial manslaughter offence but with inconsistent elements, including duty holders subject to the offence⁴⁸⁶ and maximum penalties.⁴⁸⁷

⁴⁸⁴ *Work Health and Safety Legislation Amendment (Offences and Penalties) 2023* (Cth), Sch 2; model WHS Act, Appendix, Jurisdictional Notes, p 233.

⁴⁸⁵ Meetings of Work Health and Safety Ministers Communiqués, [Meeting of Ministers – 28 February 2023](#) [departmental document], Department of Employment and Workplace Relations, Australian Government, accessed 29 July 2025. It is noted that jurisdictional notes should ordinarily only be used to facilitate model WHS law provisions operating within other state and territory legislative frameworks, such as criminal law frameworks.

⁴⁸⁶ For example, all the jurisdictions other than Queensland apply the same definition of ‘officer’ for industrial manslaughter offences as that which applies for all other offences under the WHS legislation. See Queensland WHS Act, s 34D.

⁴⁸⁷ Victoria and NSW’s newest industrial manslaughter offence will carry the highest maximum penalties of all jurisdictions, with a \$20 million fine for body corporates and 25 years imprisonment for individual offenders. Vic OHS Act, s 39G(1); NSW WHS Act, s 34C as amended by *Work Health and Safety Amendment (Industrial Manslaughter) Act 2024* (NSW), Sch 1, cl 2. The Commonwealth also has a 25 years’ imprisonment penalty but, along with Tasmania, South Australia and ACT, has adopted the model WHS law penalty, without indexation, of \$18 million for a body corporate: Tas WHS Act, s 29C; SA WHS Act, s 30A(1)(b); ACT WHS Act, Sch 4, Cth WHS Act, s 30A(1)(b); model WHS Act, Appendix Jurisdiction Notes, p 205.

What we heard

Industry representatives consistently highlighted industrial manslaughter provisions as an example of the arbitrary nature of jurisdictional variations that can occur when the national process is not followed.⁴⁸⁸ In this context, the variations in industrial manslaughter provisions represent a lost opportunity for a consistent deterrent within the model WHS framework, directed at the most serious safety failures.

Discussion and recommendations

To date, jurisdictional industrial manslaughter provisions remain relatively untested across the jurisdictions. Only Queensland and Victoria have recorded successful industrial manslaughter prosecutions, all involving small to medium-sized businesses.⁴⁸⁹ Of those matters, only one has been contested, meaning the resulting judgments provide limited guidance on the broader application of the offences. It is therefore too early to recommend a specific model provision based on any one jurisdiction. There is merit in monitoring the operation of industrial manslaughter provisions, with a view to re-examining a model industrial manslaughter offence after an appropriate body of case law emerges.

This Review notes this aligns with the draft report of the statutory review of the amendments made in the Closing Loopholes Acts,⁴⁹⁰ which recommended the Commonwealth evaluate the industrial manslaughter offence's impact on deterrence, workplace culture and prevention of workplace fatalities.⁴⁹¹ If implemented, this evaluation would provide useful data to further inform this work. This Review also notes specific 'objects' accompany the industrial manslaughter provisions in Victoria and Tasmania, including to prevent work-related deaths, and reflect the severity of conduct that places life at risk through work and the workplace.⁴⁹² Courts have previously considered these objects in determining an appeal by the DPP against the adequacy of a sentence.⁴⁹³ Any future reforms to industrial manslaughter provisions could consider the benefit of including an object provision to clarify that the principal sentencing purpose for industrial manslaughter is general deterrence.

Variations in penalties (Schedule 4, model WHS Act)

The model WHS Act was amended in 2023 to include a tiered system of maximum penalties.⁴⁹⁴ However, only the ACT and the Commonwealth have implemented the changes in full.⁴⁹⁵ NSW has amended its Act to increase penalties but did not introduce the tiered system or remove the use of penalty units.⁴⁹⁶ These variations persist despite agreement by WHS ministers to reforms more than 2 years ago and continue to undermine the consistency of the WHS legal framework.⁴⁹⁷

⁴⁸⁸ For example, [Australian Institute of Company Directors](#), Submission, p 3; [MBA](#), Submission, p 26; [Water Services Association of Australia](#), Submission, p 5.

⁴⁸⁹ *R v Brisbane Auto Recycling Pty Ltd & Ors* [2020] QDC 113; unreported decision in the Queensland District Court, 2024; *R v Jeffrey Owen* [2022] QDCSR 168; *Director of Public Prosecutions v LH Holding Management Pty Ltd* (2025) 77 VR 377.

⁴⁹⁰ *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth); *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth); *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth).

⁴⁹¹ S Booth, [Closing loopholes: An independent statutory review: Draft report](#), Department of Employment and Workplace Relations, Australian Government, 2026.

⁴⁹² *Occupational Health and Safety Act 2004* (Vic), s 39G; *Tas WHS Act*, s 29A.

⁴⁹³ *Director of Public Prosecutions (Vic) v LH Holding Management Pty Ltd* (2025) 199 77 VR 377, p 66.

⁴⁹⁴ Model WHS Act, Sch 4.

⁴⁹⁵ Cth WHS Act, Sch 4, as amended by *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth), sch 4A, Part 6, Div 11, s 72; ACT WHS Act, Sch 4, as amended by *Workplace Legislation Amendment Act 2024* (ACT), Part 4, s 26.

⁴⁹⁶ See *Work Health and Safety Amendment Act 2023 No 34* (NSW).

⁴⁹⁷ Department of Employment and Workplace Relations, [Work Health and Safety Ministers' Meeting – 20 May 2021](#), communique, Department of Employment and Workplace Relations, Australian Government, 2021, accessed 22 May 2026.

Given Safe Work Australia Members have already considered and agreed to a national approach, this Review makes no further recommendation on this issue. However, jurisdictions are strongly encouraged to implement the agreed penalty reforms to restore consistency and reinforce the harmonisation objective.

Sentencing for offences (Part 13, Division 2, ss 234–242, model WHS Act)

The model WHS Act provides a range of sentencing options if a court convicts a person of an offence against the model WHS laws.⁴⁹⁸ The court can impose a range of alternative sentencing orders in addition to monetary penalties, including adverse publicity orders, restoration orders, WHS project orders, court-ordered WHS undertakings and training orders.⁴⁹⁹ Sentencing is subject to the law, practices and procedures in each of the jurisdictions that have implemented the model WHS laws. Courts also consider case law relevant to the legislation and circumstances of the case.

What we heard

Both the AIHS and MBA called for sentencing guidelines.⁵⁰⁰ In its submission, the AIHS supported the greater use of non-monetary sentencing options, pointing to Victorian Law Reform Commission and VSAC frameworks that explicitly endorse remedial and non-monetary sentencing orders.⁵⁰¹

Discussion and recommendations

There are longstanding concerns about the adequacy and consistency of sentencing outcomes for WHS offences. Adequate and consistent sentencing outcomes are crucial to meeting the object of the model WHS Act.⁵⁰² Multiple reviews, including the *2018 National Review* and most recent VSAC Report, found sentencing approaches have consistently fallen short of achieving proportionate punishment, meaningful deterrence and effective use of non-monetary sentencing options.⁵⁰³

In relation to sentencing guidelines, the feasibility of both binding and non-binding guidelines was previously considered by Safe Work Australia Members in 2022. However, it did not progress due to perceived constitutional risks, jurisdictional legislative differences and practical implementation challenges. There are many jurisdictional differences between general criminal procedure and sentencing frameworks, their practical application and overarching sentencing principles.⁵⁰⁴ Non-binding sentencing guidelines remain an option but would rely on significant commitment from all jurisdictions.

⁴⁹⁸ Model WHS Act, Part 13, Div 2.

⁴⁹⁹ Model WHS Act, Part 13, Div 2; model WHS Act, ss 235–239, 241.

⁵⁰⁰ [AIHS](#), Submission, p 11, [MBA](#), Submission, p 23.

⁵⁰¹ [AIHS](#), Submission, p 10.

⁵⁰² Particularly ss 3(1)(e) and 3(1)(h).

⁵⁰³ R Stewart-Crompton, S Mayman and B Sherriff, [National Review into Model Occupational Health and Safety Laws: First report](#), Department of Employment and Workplace Relations, Australian Government, 2008, pp 129, 139, 148–149; Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, Australian Government, 2018, p 70; Safe Work Australia, [Review of the model Work Health and Safety laws: Final report](#), 2018, pp 127–128; Sentencing Advisory Council, [Sentencing occupational health and safety offences in Victoria: Report and recommendations](#), Victorian Government, 2025, pp 51–52.

⁵⁰⁴ For example, in Queensland, the court imposes sentence for a breach of the WHS Act in that jurisdiction in accordance with the *Penalties and Sentences Act 1992* (Qld) and in South Australia in accordance with the *Sentencing Act 2017* (SA).

In the short term, this Review has instead identified that non-monetary penalty orders should be encouraged and should complement the use of monetary penalties. The VSAC Report considered the use of non-monetary penalties in the Victorian context, finding that these types of orders are underutilised in Victoria,⁵⁰⁵ due to the cost to regulators of monitoring compliance with orders and the limitation on this cost not exceeding the maximum fine amount.⁵⁰⁶ Based on available case law and jurisdictional data, it is also likely non-monetary orders are underused across other jurisdictions.⁵⁰⁷

The VSAC Report made a number of recommendations (4–6) to enhance the use of non-monetary penalties specific to Victoria’s legislation, which provide a useful basis for reviewing the operation of non-monetary order provisions in the model WHS Act.⁵⁰⁸ In Recommendation 6, it proposed measures to encourage prosecutors to seek adverse publicity orders. In Recommendations 4 and 5, it also proposed amendments to make court undertakings (on health and safety) more versatile and effective.⁵⁰⁹ A revised NCEP could help guide and support regulators and prosecutorial agencies to apply a consistent national approach to non-monetary orders, including by providing guidance on how to frame the attached conditions for courts.

The VSAC Report also made recommendations relating to restorative justice which seek to enhance procedural fairness and enable affected persons in WHS cases to have greater participation in sentencing processes (see Recommendations 1, 2 and 3). This includes Recommendation 1, enabling those impacted by WHS offences to make victim impact statements to inform the sentencing court; and Recommendations 2 and 3, allowing affected persons in WHS cases to participate in restorative justice conferences in WHS criminal proceedings, with an appropriate framework to govern those processes and evaluation to ensure they operate effectively.⁵¹⁰

Safe Work Australia Members have agreed to do further work to assess the applicability of Recommendations 1 to 6 of the VSAC Report to the model WHS laws. This would include considering opportunities for harmonisation given general criminal procedure and sentencing frameworks are not uniform across jurisdictions.

⁵⁰⁵ Sentencing Advisory Council, [Sentencing occupational health and safety offences in Victoria: Report and recommendations](#), Victorian Government, 2025, paras 3.63, 3.114, 3.237, 4.23, 5.22, pp 58, 79, 125 and 150.

⁵⁰⁶ Sentencing Advisory Council, [Sentencing occupational health and safety offences in Victoria: Report and recommendations](#), Victorian Government, 2025, pp 58–64.

⁵⁰⁷ This Review identified a small sample of jurisdictions that had data available on use of non-monetary penalties, indicating limited use of non-monetary orders in some jurisdictions.

⁵⁰⁸ Sentencing Advisory Council, [Sentencing occupational health and safety offences in Victoria: Report and recommendations](#), Victorian Government, 2025, Recommendations 4–6.

⁵⁰⁹ Sentencing Advisory Council, [Sentencing occupational health and safety offences in Victoria: Report and recommendations](#), Victorian Government, 2025, para 3.1-3.117.

⁵¹⁰ Sentencing Advisory Council, [Sentencing occupational health and safety offences in Victoria: Report and recommendations](#), Victorian Government, 2025, Recommendations 1, 2 and 3, para 2.1-2.51.

Penalties for large body corporates (Schedule 4, model WHS Act)

Penalties under the model WHS Act for corporations currently range from a maximum of \$795,000 for Category 3 offences to \$20,441,000 for industrial manslaughter.⁵¹¹ In practice, penalties handed down by courts have not approached the maximums provided in the model WHS Act and Victoria's OHS Act.⁵¹² The average monetary penalty for a WHS offence prosecution in Australia is currently \$122,920,⁵¹³ and the highest monetary penalty ever awarded by a court for a WHS offence was \$3,600,000.⁵¹⁴

What we heard

This Review heard support for increasing penalties for large body corporates. The AIHS argued that current WHS penalties can represent a 'negligible' cost of doing business for large corporations, strongly limiting their deterrent effect. It questioned whether existing penalty settings adequately reflect corporate scale and capacity.⁵¹⁵ Conversely, MEA said penalty frameworks should be proportionate for small businesses, ensuring sums act as a deterrent without entirely eroding a business's viability.⁵¹⁶ MEA reasoned that determining penalties without considering businesses' relative sizes would only encourage safety cost-cutting and create an unfair competitive advantage for large businesses, which have greater resources to defend or, when unsuccessful, absorb penalties.⁵¹⁷

Discussion and recommendations

For very large body corporates, existing monetary penalties representing a marginal cost to the business may not encourage board-level prioritisation of managing WHS risks. From 2018–19 to 2023–24, there were approximately 2,164 corporate groups in Australia with turnover above \$250 million that collectively generated \$3.1 trillion in income.⁵¹⁸ Penalties under the model WHS Act must be sufficient to operate as an effective deterrent, and consideration by this Review indicates there is merit in exploring alternative penalty models for large body corporates that would overcome the diminishing deterrent effect of current WHS penalties at scale.

Reviewing offence and penalty settings under the WHS Act provides an opportunity to strengthen compliance incentives for larger PCBU's, particularly at senior decision-making levels. Boards of large organisations balance a range of legal and commercial duties, and existing penalty settings may not provide sufficiently strong market signals to elevate the management of WHS risks alongside many other competing priorities. Recalibrating penalties would help ensure they remain proportionate, credible and capable of influencing corporate behaviour, consistent with approaches adopted in other Commonwealth regulatory regimes for entities with substantial resources and turnover. For example, the Australian Government recently amended civil penalty regimes in the *Competition and Consumer Act 2010* (Cth), *Privacy Act 1988* (Cth) and the *FW Act* to respond to similar problems.

⁵¹¹ Similarly in Victoria, under the *Occupational Health and Safety Act 2004* (Vic), the maximum penalty is 100,000 penalty units, which at 1 July 2026 equates to \$20.91 million.

⁵¹² In Victoria, under the *Occupational Health and Safety Act 2004* (Vic), the maximum penalty is 100,000 penalty units, which at 1 July 2026 equates to \$20.91 million.

⁵¹³ Safe Work Australia, [Work Health and Safety Prosecutions Database](#) [data set], accessed 24 April 2026.

⁵¹⁴ See Office of the Work Health and Safety Prosecutor, [Court reports: Ardent Leisure Limited fined \\$3.6 million over Dreamworld fatalities](#), Office of the Work Health and Safety Prosecutor website, n.d., accessed 1 May 2026. However, the Dreamworld case involved the deaths of 3 people. In June 2026, the Victorian Supreme Court issued a \$3.4 million fine for the workplace manslaughter of one man: see *DPP v Risham Nominees Pty Ltd* [2026] VSC 412 (25 June 2026).

⁵¹⁵ AIHS, Submission, p 11.

⁵¹⁶ [Master Electricians Australia](#), Submission, p 10.

⁵¹⁷ [Master Electricians Australia](#), Submission, p 10.

⁵¹⁸ Australian Tax Office, [Demographics of large corporate groups](#), October 2025, accessed 15 April 2026.

As an indicative example only, the recently introduced civil penalty provisions for a body corporate in the Privacy Act include:

- an amount not exceeding the greater of \$50,000,000
- 3 times the value of the benefit obtained that is reasonably attributable to the relevant conduct
- if the court cannot determine the value of the benefit, 30% of the body corporate's adjusted turnover during the breach period.

This more flexible approach to penalties gives courts more latitude to determine appropriate penalties for PCBU's of different sizes. Safe Work Australia Members have agreed to do further work to determine the most appropriate penalties for WHS offences, with a view to revising the model penalty provisions, drawing on the approach taken in these Commonwealth civil penalty regimes.

4.5 Confidentiality of information (Part 14, Division 1, s 271, model WHS Act)

Section 271 (Confidentiality of information) of the model WHS Act seeks to protect information acquired during the exercise of any power or function under the model WHS Act to ensure the integrity of investigations and personal privacy, while allowing disclosure in specific circumstances.⁵¹⁹ Following the *2018 National Review*, section 271A was introduced to clarify how WHS regulators can use and share information with other regulators or agencies.⁵²⁰

What we heard

Unions, and those affected by work-related fatalities and injuries, consistently advocated for regulators to have more powers to disclose information to them. Family members shared experiences of being kept in the dark for years about the circumstances surrounding a work-related fatality⁵²¹ and their frustration at having to 'navigate complex and fragmented systems' without support.⁵²² Their grief was often exacerbated by limited access to timely information and the asymmetric power imbalances between them, regulators, courts and businesses during the investigation and litigation processes.⁵²³

Unions also sought improved access to information relating to inspections and investigations. The ACTU supported NSW amendments that enable regulators to disclose information to unions, employer organisations or HSRs where inspections or investigations arise from matters raised by those parties.⁵²⁴ Industry generally did not support expanding information sharing with unions, expressing concern about potential misuse of this information.⁵²⁵ MEA suggested disclosure be subject to a public interest criterion specifying what information may be shared.⁵²⁶

⁵¹⁹ Noting that s 148 provides the obligations on EPH regarding use and disclosure of information/documents obtained during workplace entry.

⁵²⁰ Model WHS Act, s 271A.

⁵²¹ Safe Work Australia, [Best Practice Review of the model Work Health and Safety laws: Consultation summary](#), Safe Work Australia, 2026; Victorian Incidents Consultative Committee, Consultation, December 2025.

⁵²² [Kay Catanzariti](#), Submission, p 1.

⁵²³ WA Family and Affected Workers, Consultation, December 2025.

⁵²⁴ R McDougall KC, [Independent Review of SafeWork NSW](#), SafeWork NSW, 2023, pp 119–120; [NSW WHS Act](#), s 271(c1).

⁵²⁵ [Australian Industry Group](#), Submission, pp 25–26.

⁵²⁶ [Master Electricians Australia](#), Submission, pp 25–26.

Regulators were also cautious, emphasising the need to protect privacy and the integrity of investigations.⁵²⁷ However, SafeWork SA noted that their section 271A was more effective and less frustrating for families, who would otherwise rely on freedom of information processes.⁵²⁸ Comcare noted that HSRs can have access to relevant inspector reports where that report has been provided to the PCBU but did not consider the current legislative framework should extend to broader information sharing.⁵²⁹

Some regulators identified section 271 as a barrier to information sharing and effective compliance and enforcement responses. The WorkSafe ACT Commissioner noted that it restricted the information inspectors can provide to law enforcement agencies if they uncover other potential criminal offences in the course of their work.⁵³⁰ SafeWork NSW raised the difficulties of addressing licensing and competent person issues in relation to the inspection and certification of amusement devices, noting the practical limitations of revoking licenses that have been issued by other jurisdictions.⁵³¹

Discussion and recommendations

The *2023 NSW Review*, *2022 SA Review* and *2018 They Never Came Home Report* each identified the importance of improved information sharing with affected workers and families, emphasising how a lack of information can compound grief and re-traumatisation.⁵³² Likewise, research shows families' unanswered questions years after fatal work incidents complicate the grieving process.⁵³³ This Review considers that affected families have the greatest need of any party to know what happened to their loved ones. Under-sharing can be as harmful as over-sharing, and it was sometimes felt that regulators were overly restrictive when applying their legitimate discretion to prevent disclosures that could prejudice an ongoing investigation or prosecution.

This Review recommends amending the model WHS Act in line with the approach adopted by SA following the *2022 SA Review*, which balances the need to ensure persons affected by work-related incidents are kept informed about actions and activities taken in response to an incident and the need to preserve the integrity of an investigation (see **Appendix E, 6A**). SA's variation provides regulators discretion to consider and determine what information is appropriate to be released to injured workers or families of deceased or seriously injured workers. The regulator may also disclose information to other interested parties with a direct connection to the incident if the regulator believes that disclosure would assist in enforcing or administering the Act.

A number of jurisdictions have established specialised services for family members. This includes family liaison officers in some jurisdictions and grief support services providing tailored counselling; peer support; and assistance to access entitlements, exercise rights and navigate legal and related processes.⁵³⁴ While acknowledging the ongoing work of jurisdictions, this Review suggests further consideration should be given to improving supports for families affected by a work-related fatality.

⁵²⁷ [Comcare](#), Submission, p 7; WorkSafe WA, Consultation, March 2026.

⁵²⁸ SafeWork SA, Consultation, September 2025.

⁵²⁹ [Comcare](#), Submission, p 7.

⁵³⁰ [Office of the ACT WHS Commissioner](#), Submission, p 15.

⁵³¹ HWSA, Consultation, September 2025.

⁵³² R McDougall KC, *Independent Review of SafeWork NSW*, SafeWork NSW, 2023, pp 119–120. J Merritt, *Independent Review of SafeWork SA*, SafeWork SA, 2022, p 27. Senate Education and Employment References Committee, *They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, Australian Government, 2018, Ch 6.

⁵³³ M Ngo, L R Matthew, M Quinlan and P Bohle, 'Information needs of bereaved families following fatal work incidents', *Death Studies*, 2020, 44(8): 478–489.

⁵³⁴ For further information, see Uniting Church, [Griefwork: healing work-related harm](#), Uniting Church website, n.d., accessed 29 April 2026.

This Review also recommends section 271 should be amended to enable HSRs, unions and employer organisations to access information about matters they have raised with the regulator (see **Appendix E, 6B**). This is consistent with the approach of NSW⁵³⁵ and the *2022 SA Review*.⁵³⁶ This Review considers the approach is consistent with the object of the WHS Act, specifically in relation to encouraging unions and employer organisations to take a constructive role in promoting improvements to WHS practices and ensuring appropriate scrutiny and review of actions.⁵³⁷ While acknowledging industry concerns, this Review considers the potential for possible misuse should not prejudice the ability of unions, HSRs and employer organisations to be provided with information about actions taken by the regulator in response to issues they raised. In implementing this recommendation, section 271 should also be amended to enable disclosure of compliance notices already required to be displayed in a prominent place under section 210⁵³⁸ and to adopt the safeguards in the NSW WHS Act, including limiting disclosure where it may be prejudicial to an ongoing investigation, prosecution or exercise of other compliance powers.⁵³⁹

Improved information and evidence sharing between jurisdictions would support more effective compliance and enforcement activities. This Review recommends adopting sections 271AA and 271AB of the NSW WHS Act, which enable the regulator to enter an information-sharing arrangement with relevant agencies, including law enforcement bodies, regulatory agencies and other government agencies (see **Appendix E, 6C**). This streamlined approach, with appropriate safeguards, would allow regulators to more fully carry out their functions in relation to engaging, promoting and coordinating the sharing of information to achieve the object of the model WHS Act.⁵⁴⁰

Compliance and enforcement – Recommendation 14

Amend the model WHS Act to enact the best practice variations set out at **Appendix E** in relation to:

- regulator and inspector powers and functions
- enforceable undertakings
- review of decisions
- legal proceedings, and
- confidentiality of information.

⁵³⁵ NSW WHS Act, s 271(3)(c1).

⁵³⁶ J Merritt, *Independent Review of SafeWork SA*, SafeWork SA, 2022, Recommendation 24 – regulators adopt an informal release of information policy that enables appropriately redacted inspection reports to be provided to interested parties.

⁵³⁷ Model WHS Act, s 3(1)(c) and (f).

⁵³⁸ NSW WHS Act, s 271(3)(c2).

⁵³⁹ NSW WHS Act, s 271(3B). See also SA WHS Act, s 271A(2)(d).

⁵⁴⁰ Model WHS Act, s 152(g).

5. Codes of Practice

(Part 14, ss 274–275, model WHS Act)

Terms of Reference:

2.1, 2.2, 2.3, 2.6

Reviews considered in this chapter:

- 2017 *Best Practice Review of Workplace Health and Safety Queensland*
- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*
- 2022 *Review of the Work Health and Safety Act 2011 (Queensland) (2022 Queensland Review)*.

5.1 Codes of Practice

Introduction

This chapter examines the role of model Codes of Practice within the 3-tiered framework of the model WHS laws. It considers issues raised about their accessibility and usefulness for duty holders and workers. This chapter also considers whether, in providing a key source of evidence of what is reasonably practicable (which arguably provides the answer to the question, ‘What am I supposed to do to meet my duty?’), Codes should become mandatory.

Some jurisdictions have made Codes mandatory in their versions of the model WHS Act. This is the only significant area of variation in how Codes operate (other than the fact that different jurisdictions have adopted different Codes). Apart from the question of whether Codes should be mandatory, this Review considers and makes recommendations on other ways in which the harmonisation of Codes could be improved.

What we heard

Both unions and industry supported industry-specific Codes 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 Codes in relation to their interaction with the model WHS Regulations and the way their status varies across jurisdictions.

There were mixed views on whether to mandate Codes, including from industry. Most employer bodies opposed mandatory Codes, suggesting they may impede innovation and undermine the 'reasonably practicable' concept. Unions supported making them mandatory, as is the case in Queensland and NSW.

In its submission, the ACTU recommended that Codes should be made mandatory but noted they should be a 'floor, not a ceiling' due to concerns mandatory Codes could quickly go out of date and would need to be drafted like Regulations, diluting their value as a practical communications tool. Expert advice to this Review confirms this concern and indicates that such an approach may be 'counterproductive'. Following Queensland's approach would potentially turn Codes into de facto Regulations, creating 2 (likely confusing) sets of requirements.⁵⁴¹

Discussion and recommendations

Much of the feedback provided in relation to Codes was consistent with that provided to previous WHS reviews. There remains a core tension between those who seek clarity through Codes and those who see them as adding undue complexity to the framework or reducing the ability for WHS risks to be managed flexibly.

The role of Codes in court proceedings is to provide evidence of whether or not a duty or obligation under the model WHS Act has been complied with (section 275(2)). A court may have regard to a Code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the Code relates (section 275(3)(a)) and rely on the Code in determining what is reasonably practicable in the circumstances to which the Code relates (section 275(3)(b)). Importantly, the model WHS Act also provides that a person can comply in a manner that is different from the Code but provides a standard of WHS that is equivalent or higher than the standard required in the Code (section 275(4)).

This Review is recommending key changes to Codes which will reinforce their role in providing evidence of how a duty can be met, reduce confusion for duty holders and support compliance with the model WHS laws. Balancing flexibility and clarity should be a feature, not a bug, of the model WHS laws; and improving Codes is a key to restoring this balance.

⁵⁴¹ R Dennis, *Expert advice to the Best Practice Review of the model WHS laws*, 2026, pp 6–7.

This Review examined each of the 3 existing approaches taken to Codes as follows:

- **the model approach**, in which a Code can be used as evidence of how to fulfil a duty and what is reasonably practicable in the circumstances; however, duty holders may introduce evidence of compliance in a different way but to an equivalent or higher safety standard⁵⁴²
- **Queensland's approach**, in which duty holders must either comply with the Code or manage risks in a different way but to an equivalent or higher safety standard⁵⁴³
- **Victoria's approach**, in which there is no legal obligation to comply with a Code; however, a person who complies is taken to have complied with the Act.⁵⁴⁴

While their legislative formulation is different, it is striking that all 3 approaches in practice:

- establish Codes as sources of evidence of how to fulfil a duty
- give duty holders the option of complying in a different way
- establish a minimum standard against which courts can judge compliance.

It is also striking that, under the model WHS Act's approach, there is likely little practical difference between a Code and other types of guidance materials: both can be (and have been) used by a court as authoritative evidence of the current state of knowledge on how to fulfil a duty.

While the practical effect of the 3 approaches is broadly similar, each sends a different message, and these messages create different expectations which influence how the Codes themselves are developed and used.

The drafting of the model WHS Act's provision may have influenced the content of the current crop of model Codes, which Australian Industry Group describes as containing 'far too much legal language and explanation'.⁵⁴⁵

Queensland's 'you must comply' message is simpler. However, its framing has the potential to highlight inconsistencies that must inevitably arise (that is, 'Why is it mandatory here but not there?') and to possibly require ever-increasing levels of prescription. Despite being framed as 'mandatory', it nonetheless allows duty holders to comply in a different way. Under either approach, to the extent that a Code recommends a particular risk control, it should be considered as evidence of a minimum standard to be met or exceeded by the PCBU. It also gives an inspector the option of issuing a notice where this standard is not met or exceeded.

Victoria's approach most closely aligns with the Robens model, which recognises that it is not possible to prescribe rules in all instances but that duty holders will need assistance in understanding their duties; and regulators should provide this where there are well-understood and recognised ways to comply. However (as with the other approaches) in having advice they can rely on, the onus then shifts to duty holders to either follow that advice or prove conclusively they can meet their duty through other means.

This Review recommends that Codes not be mandatory but, rather, that Victoria's approach of 'deeming compliance' through following the requirements in them be adopted.

Codes of Practice – Recommendation 15

Amend the model WHS Act to provide that a person who complies with a Code is taken to have complied with the relevant WHS duty in relation to matters addressed by that Code.

⁵⁴² Model WHS Act, s 275.

⁵⁴³ Qld WHS Act, s 26(a).

⁵⁴⁴ Vic OHS Act, s 152.

⁵⁴⁵ [Australian Industry Group](#), Submission, p 13.

Industry Codes

What we heard

In its submission, MBA noted a ‘vast array of issues-based codes’ that PCBU’s must navigate and the ‘challenge [involved] in determining how these Codes apply to industry-specific settings’. It also noted ‘unhelpful Codes of Practice that default to a “one-size-fits-all” approach rather than providing practical guidance’.⁵⁴⁶ This feedback is indicative of the view of Codes provided across many submissions made to this Review, which also often called for simplified, easy-to-read Codes tailored with industry-relevant information for diverse workforces and workplaces.⁵⁴⁷

Discussion and recommendations

To be effective in providing evidence and examples of how to manage WHS risks, Codes need to be accessible, well-contextualised and easy to understand. This Review considers that plain English, practical industry codes provide the best way to deliver on this objective. Rather than explaining the WHS laws in detail, Codes should provide practical guidance and examples of the most important things to do to manage WHS in a given industry context, including how to assess risks, consult, and put in place effective controls for common industry hazards.

This approach will be critical to improving WHS for smaller businesses, which are time-poor and have indicated they struggle with the proliferation of laws, regulations and codes. For many smaller businesses, an industry Code may be the only Code they ever need to read. This Review recommends that a small business toolkit should also be developed to accompany each industry Code.⁵⁴⁸ The toolkit would include resources that have been further simplified to present the most salient information and practical materials, such as checklists or diagrams.

Industry Codes also provide the most authoritative mechanism for setting out prescriptive, industry-specific requirements, where it has been agreed that these are needed, and referring PCBU’s to existing hazard-based Codes where they need to understand the relevant hazard in more detail.

This Review also heard suggestions for Safe Work Australia to develop a chatbot or similar AI tool,⁵⁴⁹ drawn from the model WHS laws, Codes and guidance materials. This Review considers this idea should be considered by Safe Work Australia once an initial suite of industry Codes has been developed, as a way of making information more accessible to duty holders. This Review further notes that such a tool would require a harmonised approach to be helpful to users.

The Review therefore recommends developing industry-based Codes, including accompanying small business implementation toolkits.

⁵⁴⁶ [MBA](#), Submission, p 6.

⁵⁴⁷ Master Builders Qld, Consultation, September 2025; [ACFA and KBDi](#), Submission, p 7; [National Disability Services](#), Submission, p 7.

⁵⁴⁸ A similar recommendation was made by the [Small Business Development Corporation WA](#) (Submission, p 4).

⁵⁴⁹ Behavioural Insights Team Australia, Consultation, September 2025; Victorian Chamber of Commerce and Industry, Consultation, September 2025.

Priority industry Codes

Recognising that one challenge with an industry Code model will be the demand it creates for new Codes, it will be important for Safe Work Australia to develop a consistent template and approach to consultation for Codes. The model used to develop the Healthcare and Social Assistance Code was successful, with the relevant industry and union taking a lead role in preparing it. The Review suggests a similar model for the development of future industry Codes. There would also be benefit in considering the range of existing jurisdictional Codes for adoption nationally, where these are targeted at particular industries.

This Review received many proposals for new Codes. To ensure high-level coverage of Australia's industries, it is suggested Safe Work Australia should initially develop industry Codes across the *Australian and New Zealand Standard Industrial Classification* first-digit level, with Codes prioritised according to the size of the workforce, fatality and injury data, and extent of existing guidance available. Considering these factors, the Review recommends Safe Work Australia prioritise for immediate development Codes for the retail trade, education and training, agriculture and construction industries.

Codes of Practice – Recommendation 16

Develop industry-based Codes of Practice, with accompanying small business implementation toolkits, with initial priority given to the retail, education and training, agriculture and construction sectors.

National Codes of Practice

To improve harmonisation, this Review recommends that model Codes should be replaced by national Codes. This would involve amending the model WHS Act so that Codes are automatically adopted in all model law jurisdictions once agreed by a two-thirds majority of WHS ministers. This approach would be the most likely to eliminate variations in model Codes.

Safe Work Australia develops Codes through an extensive tripartite consultation process and requires agreement from two-thirds of WHS ministers before a Code can be approved and published. This process is rigorous and can take some time but ensures that Codes reflect the expert knowledge and views of those who will use them.

Jurisdictions often vary Codes and may conduct their own additional consultation process after their minister's endorsement. Feedback to this Review noted these processes allow stakeholders to re-prosecute issues that had already been resolved through compromise at the national level and often result in a Code having a different version in each jurisdiction, creating considerable confusion for duty holders.

A shift from model Codes to national Codes would better support harmonisation by establishing nationally consistent protections for workers through a single set of practical controls and guidance. It would also reduce compliance impacts and reduce the likelihood of the same policy questions being renegotiated separately across jurisdictions.

In the rare circumstances where a Code needs to be varied to reflect jurisdictional differences that relate to local laws or institutions, these differences could be set out in the Code itself, or a jurisdictional note could be used.

Codes of Practice – Recommendation 17

Consider amending the model WHS Act to frame the model Codes of Practice as National Codes which apply automatically in model law jurisdictions once agreed by WHS ministers.

6. The model WHS Regulations: variations

Terms of Reference:

2.1, 2.3, 2.4, 2.6, 2.7. 3.3

Reviews considered in this chapter:

- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*.

Introduction

This chapter examines variations made by jurisdictions to the model WHS Regulations. These variations are a source of complexity and confusion for many duty holders. The model WHS Regulations are relied upon, particularly by both PCBUs and regulators, to provide the necessary detail to support the operation of the model WHS Act. Establishing and maintaining national consistency, and preventing variations, is therefore just as important for the model WHS Regulations as it is for the model WHS Act.

This Review is making recommendations to amend the model WHS Regulations to pick up those jurisdictional variations which are identified as best practice. These are set out in **Appendix F**.

This Review also received feedback on technical issues with the model WHS Regulations which are not linked to jurisdictional variations. Recommendations related to these issues are set out in **Appendix G**.

Given the range of issues to cover in this chapter, it is divided into the following sections:

- Variations recommended for adoption
- Variations not recommended for adoption
- Issues recommended for inclusion in model Codes of Practice or guidance
- Issues for further consideration or work by Safe Work Australia.

Chapter 7 considers the model WHS Regulations more broadly and makes recommendations about how they could be modernised to reflect current working arrangements, changing workplaces and emerging industries. The amendments recommended in this chapter should be considered as part of that larger modernisation project.

6.1 Variations recommended for adoption

Representation and participation (Chapter 2, model WHS Regulations)

As set out in **Chapter 3**, this Review made recommendations to adopt jurisdictional variations to the model WHS Regulations to specify when an HSR is ‘readily accessible’ to workers, by reference to location, work type and shift type (see **Chapter 3** and **Appendix F, 1**).

Amenities and facilities (reg 315A, Queensland WHS Regulations)

What we heard

This Review heard extensive feedback that inadequate sanitary facilities disadvantage female workers and undermine their equitable participation in male-dominated industries.⁵⁵⁰

Unions supported requirements being placed on principal contractors to provide workers access to, and sufficient time to access, worker amenities and facilities, drawing on the Queensland requirement for designated female toilets and hygiene facilities at construction sites.⁵⁵¹

WorkSafe WA suggested the Queensland variation be expanded to all industries where there is a fixed place of employment.⁵⁵² UnionsWA also emphasised access to amenities can be impacted by work arrangements and scheduling pressures. They reported that tight delivery schedules, route constraints and productivity demands can limit a worker’s ability to take breaks or access facilities, even where amenities exist.⁵⁵³ HSRs from WA said that, on mine sites, amenities and toilets may be up to a kilometre away from work locations with no easy way to reach them.⁵⁵⁴ They noted inadequate time to access amenities is a health and safety risk, with potential impacts on hydration, rest and hygiene.

Discussion and recommendations

This Review acknowledges the work done by Queensland to amend the model WHS Regulations to mandate amenities, including designated female toilets, on construction sites but notes the issue is not limited to this industry alone. Any amendments to amenities requirements should capture all workplaces. Therefore, this Review recommends new regulations relating to workplace amenities be developed as part of the WHS Regulations modernisation project recommended at **Chapter 7**. These regulations should clarify that duty holders must ensure that facilities, including designated female toilets, are provided in sufficient number and location to enable effective use at any workplace and that workers must be afforded adequate time and opportunity to access and use those facilities, including appropriate breaks.

Note the relevant recommendation is included at **Chapter 8.3** – Harmful workplace behaviours.

⁵⁵⁰ [Powering Skills Organisation](#), Submission, p 3.

⁵⁵¹ Qld WHS Regulations, reg 315A and Sch 5A; [ACTU](#), Submission, p 31; UnionsWA, Consultation, September 2025.

⁵⁵² [WorkSafe WA](#), Submission, p 32.

⁵⁵³ UnionsWA Consultation, September 2025; M Vujkovic and B Herbert, ‘[Female transport workers suffer health issues over lack of clean toilet access, union says](#)’, ABC, 24 November 2025, accessed 12 March 2026.

⁵⁵⁴ UnionsWA, Consultation, September 2025.

Construction work (Part 6.1, reg 292, Part 6.5 regs 316–327, model WHS Regulations)

Under the model WHS Regulations a ‘construction project’ valued at more than \$250,000 is subject to a range of regulatory requirements. SA and the NT have different monetary thresholds.⁵⁵⁵ WA defines a major construction project by workforce size instead, specifically where 5 or more persons are, or are likely to be, working at the same time.⁵⁵⁶

What we heard

Unions NT and the HIA disagreed on what the dollar figure should be when characterising a ‘construction project’ but broadly supported a nationally consistent approach.⁵⁵⁷ Unions NT highlighted that the current NT monetary threshold, which was adjusted to reflect the higher cost of construction in remote areas, exempts many small construction projects from WHS obligations.⁵⁵⁸ HIA called for the monetary threshold to be indexed.⁵⁵⁹ Australian Industry Group noted that the WA approach warrants further consideration but may be difficult to regulate.⁵⁶⁰

Discussion and recommendations

This Review has considered the different approaches jurisdictions have used to define a construction project. It recommends amending the definition in line with the WA variation. This would provide a national threshold that is consistent over time and avoid issues associated with a monetary threshold such as regional variations in building prices, and inflation, influencing which WHS Regulations apply to a construction project (see **Appendix F, 2**).

General construction induction training (Part 6.5, model WHS Regulations)

The *2018 National Review* raised concerns about the quality and integrity of general construction induction (white card) training, particularly variability in training delivery and assessment rigour. Feedback indicated that some training courses do not provide adequate engagement or assurance of competence, contributing to a perception that the white card has become a procedural requirement rather than an effective safety control.⁵⁶¹

The relevant Unit of Competency was subsequently updated in 2022 to include stricter delivery and assessment rules.

This Review also notes NSW digitised its white card licences in May 2025.⁵⁶²

⁵⁵⁵ Model WHS Regulations, reg 292.

⁵⁵⁶ WA WHS Regulations, reg 292.

⁵⁵⁷ [Unions NT](#), Submission, p 6; [HIA](#), Submission, p 17.

⁵⁵⁸ [Unions NT](#), Submission, p 6.

⁵⁵⁹ [HIA](#), Submission, p 17.

⁵⁶⁰ [Australian Industry Group](#), Submission, p 14.

⁵⁶¹ Safe Work Australia, *Review of the Model Work Health and Safety Laws: Final report*, Safe Work Australia, 2018, p 148.

⁵⁶² SafeWork NSW, [Digital white card now available](#), SafeWork NSW website, 13 May 2025, accessed 25 May 2026; NSW WHS Regulations, reg 325A.

What we heard

This Review also received some submissions on this topic, although the updates to the relevant Unit of Competency since 2018 seem to have reduced these and the significance of the issue. A business and improvement auditor⁵⁶³ raised the continued inconsistency of the vocational education and training (VET) framework for white cards and inadequacy of the training materials,⁵⁶⁴ and the MBA advocated for white cards to contain photo identification.⁵⁶⁵

Discussion and recommendations

Training quality is a matter for the VET sector and Safe Work Australia's role is limited to facilitating engagement between WHS regulators and the VET sector.

While this Review did not hear feedback about digital white cards, the Review notes other jurisdictions are likely to adopt NSW's approach and therefore recommends amending the model WHS Regulations to allow for these (see **Appendix F, 3**).

Lithium batteries

The model WHS Regulations do not classify lithium batteries under the *Globally Harmonized System of Classification and Labelling of Chemicals*, nor are they listed in Schedule 11. This means they do not require an emergency plan in certain circumstances.

What we heard

NSW amended its version of the model WHS Regulations to require PCBU's to provide their emergency plan to Fire and Rescue NSW when a site stores, handles or installs 25,000 kilograms or more of lithium batteries.⁵⁶⁶ This ensures emergency services have access to critical information needed to respond to large-scale incidents.

Discussion and recommendations

Given the risks associated with lithium batteries and their growing prevalence, this Review recommends adopting the NSW amendment as best practice (see **Appendix F, 4**).

⁵⁶³ On behalf of Executive Pathway Pty Ltd.

⁵⁶⁴ [Andrew Watt](#), Submission, p 25.

⁵⁶⁵ [MBA](#), Submission, p 35.

⁵⁶⁶ NSW WHS Regulations, reg 361. Lithium batteries are defined in this legislation as including lithium-ion batteries, lithium-ion polymer batteries and lithium metal polymer batteries.

6.2 Variations not recommended for adoption

Psychosocial risks (Part 3.2, reg 55C, model WHS Regulations)

In 2025, Queensland amended its WHS Regulations to require that PCBUs develop a sexual harassment prevention plan where a psychosocial risk of sex or gender-based harassment has been identified and control measures are needed to eliminate or minimise the risk.⁵⁶⁷

What we heard

The ACTU and the National Joint Submission for Safety Regulation for Primary Prevention of Gendered Violence both supported the Queensland variations.⁵⁶⁸ MBA and WorkSafe WA did not support them, with the latter noting ‘there are many risks in workplaces, and a prevention plan is not mandated for each risk type, as this could become unwieldy and lead to resources being spent on writing plans instead of implementing control measures’.⁵⁶⁹

Discussion and recommendations

This Review agrees with the ACTU and other submissions about the seriousness of sexual harassment as a workplace issue but does not recommend Queensland’s approach.

This Review has separately recommended developing model WHS Regulations on gendered harassment and violence (including sexual harassment), which it considers should focus on practical prevention controls rather than new documentation requirements (see **Chapter 7**).

Tobacco and vaping

What we heard

Cancer Council Australia and WorkSafe WA supported a WA variation to the model WHS Regulations that bans the use of tobacco smoking, vaping and e-cigarettes in workplaces,⁵⁷⁰ including controls on exposure to second-hand smoke and vapour.⁵⁷¹ This was due to WA’s previous smoking regulations existing in their (now repealed) Occupational Safety and Health Regulations 1996, rather than other health legislation.⁵⁷²

Discussion and recommendations

Smoking and vaping in enclosed workplaces are already covered to a similar standard across jurisdictions, often through public health and tobacco control legislation. This Review therefore does not recommend adopting WA’s variation.

⁵⁶⁷ Model WHS Regulations, reg 55C; Qld WHS Regulations, regs 55C(2), 55E–55H.

⁵⁶⁸ ACTU, Submission, p 32; [National Joint Submission for Safety Regulation for Primary Prevention of Gendered Violence](#), Submission, p 38; MBA, Submission, p 34.

⁵⁶⁹ [WorkSafe WA](#), Submission, p 32.

⁵⁷⁰ [Cancer Council Australia](#), Submission, pp 3–4; [WorkSafe WA](#), Submission, p 27.

⁵⁷¹ WA WHS Regulations, regs 50D–50I.

⁵⁷² Occupational Safety and Health Regulations 1996 (WA), regs 3.44A–3.44I.

Noise (reg 57(2), WA WHS Regulations)

What we heard

WorkSafe WA proposed adopting an amendment into the model WHS Regulations based on its variation that clarifies that hearing protection can be taken into account when measuring noise exposure standards.⁵⁷³

Discussion and recommendations

This Review considers the model WHS Regulations already allow for PPE to be taken into account when measuring noise exposure and does not recommend adopting the WA variation. However, there is scope in the proposed modernisation review of the model WHS Regulations to consider if all workplace exposure limits are sufficiently clear about the use of PPE.

6.3 Issues recommended for inclusion in Codes of Practice or guidance

Diving (Part 4.8, regs 167–184, model WHS Regulations)

The model WHS Regulations establish detailed requirements across different types of occupational diving.⁵⁷⁴ They attracted significant commentary, some of which indicated confusion or misunderstanding about what the Regulations cover and how they apply.

What we heard

The University of Tasmania and Mr Paul Stevens reported confusion about the operation of ‘incidental diving work’ and ‘limited scientific diving work’.⁵⁷⁵ Dr John McCarthy noted that underwater scientific excavations would be classified as ‘high risk construction work’ and sought an exemption from this requirement.⁵⁷⁶ Other submissions indicated support for the ‘general’ and ‘high risk diving’ frameworks,⁵⁷⁷ including the requirement for only hyperbaric-trained medical practitioners to issue certificates of medical fitness.⁵⁷⁸

Discussion and recommendations

The level of prescription in the model diving regulations is high for a small (but still high risk) industry. This Review considers the requirements set out in the Regulations could be better addressed through an industry Code of Practice, particularly if the recommendation about adopting the Victorian approach to Codes is supported (see **Chapter 5**). This would maintain the same level of safety standards – which, due to the high risk nature of diving work, requires some prescription – while providing for consultation and clarification in those areas which are causing confusion; and revised requirements where needed.

⁵⁷³ WA WHS Regulations, reg 57(2); WorkSafe WA, Correspondence, August 2025.

⁵⁷⁴ Model WHS Regulations, Part 4.8.

⁵⁷⁵ [University of Tasmania](#), Submission, p 11; [Paul Stevens](#), Submission, p 10.

⁵⁷⁶ [Dr John McCarthy](#), Submission, p 2.

⁵⁷⁷ [University of Tasmania](#), Submission, p 7.

⁵⁷⁸ [NSW Department of Primary Industries and Regional Development](#), Submission, p 1; [Anonymous](#), Submission #157, p 7.

Food delivery platforms (Part 4.10, NSW WHS Regulations)

In 2022, NSW introduced specific WHS regulations covering food delivery platforms and riders, including requiring platforms to provide high-visibility PPE, safe food transport equipment and induction training to riders; and to keep training records. The NSW Regulations also require riders to wear PPE and carry records for inspection.⁵⁷⁹

What we heard

The ACTU supported national adoption of these regulations,⁵⁸⁰ while Australian Industry Group argued additional prescription is unnecessary, as the model WHS Act already establishes relevant duties.⁵⁸¹

Discussion and recommendations

Noting the general duties in the model WHS Act apply to food delivery PCBU, this Review proposes that Safe Work Australia develop an industry Code of Practice and accompanying small business toolkit (aimed specifically at sole trader delivery riders) for food delivery, covering the matters included in the NSW variation (see **Chapter 5**).

6.4 Issues for further consideration

Mutual recognition of WHS EPH training (reg 25, model WHS Regulations)

What we heard

Unions raised that EPHs operating in multiple jurisdictions should not be required to hold multiple permits to perform their functions and argued this is an unnecessary administrative barrier.⁵⁸² The Electrical Trades Union highlighted that EPH training is substantially similar across the majority of jurisdictions.⁵⁸³

Discussion and recommendations

In December 2023, Safe Work Australia Members considered and agreed an approach to mutual recognition of WHS EPH training to reduce unnecessary duplication, noting the frequency of union representatives working across jurisdictions.⁵⁸⁴ The ACTU submission also noted this issue and supported mutual recognition of WHS EPH training.⁵⁸⁵ This Review recommends amending the model WHS Regulations to enable mutual recognition of prescribed training completed in one model jurisdiction for the purpose of meeting WHS entry permit eligibility requirements in other jurisdictions (see **Appendix G, 1**).

⁵⁷⁹ NSW WHS Regulations, Part 4.10, as amended by Work Health and Safety Amendment (Food Delivery Riders) Regulation 2022 (NSW), Sch 1–4.

⁵⁸⁰ ACTU, Submission, p 30.

⁵⁸¹ Australian Industry Group, Submission, p 15.

⁵⁸² ACTU, Submission, p 23; New South Wales Nurses and Midwives Association, Submission, p 20 Electrical Trades Union, Submission, p 7.

⁵⁸³ Electrical Trades Union, Submission, p 7

⁵⁸⁴ ACTU (Submission, pp 28–29) also raised this issue.

⁵⁸⁵ ACTU, Submission, pp 28–29, see Recommendation 18.

High risk work licences (Part 4.5, Division 1, model WHS Regulations)

What we heard

An anonymous construction company⁵⁸⁶ noted inconsistencies in high risk work licensing for cranes, particularly Victoria's telehandler licence⁵⁸⁷ and WA's licence for using earthmoving machinery as a crane.⁵⁸⁸ Neither of these licence classes are currently included in the model WHS Regulations.

In its submission, SafeWork NSW raised the issue of a regulator's inability to revoke the licences of non-compliant workers in their state if their licences were issued elsewhere.⁵⁸⁹

The National Farmers' Federation (NFF) flagged the emergence of automated plant on worksites⁵⁹⁰ and the use of automatic guided vehicles, such as forklifts, being used without a worker. Currently, the model WHS Regulations require that high risk plant be operated by a licensed person.⁵⁹¹

Discussion and recommendations

Safe Work Australia is already progressing existing, separate work to consider the variations in the model WHS Regulations in relation to cranes. This Review therefore defers consideration of these issues to that process.

This Review considers that the issues raised by SafeWork NSW in relation to the ability to revoke licences issues in other jurisdictions should be considered as part of the proposed regulations modernisation project.⁵⁹²

The Review recommends that the modernisation project should also review Division 1 of Part 5.3 (Plant design to be registered) to determine how high risk work licensing should apply when automated high risk plant is used (see **Appendix G, 2**).

Demolition work (Part 4.6, regs 142–143, model WHS Regulations)

What we heard

WorkSafe WA and the CFMEU noted that the lack of a demolition licensing framework in the model WHS Regulations, and variable jurisdictional approaches, were creating ongoing inconsistencies.⁵⁹³ The Maritime Union of Australia suggested the current framework does not clearly capture offshore demolition and decommissioning work despite increasing activity in this area.⁵⁹⁴

⁵⁸⁶ Private, Submission #119, p 4.

⁵⁸⁷ Vic OHS Regulations, Sch 3 as amended by Occupational Health and Safety Amendment (Telehandlers) Regulations 2024 (Vic), regs 5–7.

⁵⁸⁸ WA WHS Regulations, Sch 3, item 14A.

⁵⁸⁹ SafeWork NSW, Consultation, October 2025.

⁵⁹⁰ [NFF](#), Submission, p 3.

⁵⁹¹ Model WHS Regulations, Sch 4, items 24–25.

⁵⁹² See Chapter 7 – Broader considerations of the model WHS Regulations.

⁵⁹³ [WorkSafe WA](#), Submission, p 33; [CFMEU](#), Submission, p 17.

⁵⁹⁴ [Maritime Union of Australia](#), Submission, p 10; Department of Industry, Science and Resources, [Offshore resources decommissioning roadmap](#), Offshore Decommissioning Directorate, n.d.

Discussion and recommendations

This Review recommends considering the definition of ‘demolition work’ as part of the model WHS Regulations modernisation project, including by ensuring it expressly includes offshore demolition and decommissioning activities (see **Appendix G, 3**).

Amusement devices and competent persons (Part 5.2, regs 238–242, model WHS Regulations)

In the wake of the 2016 Dreamworld fatalities, Queensland amended its WHS Regulations to include more detailed requirements for log book use and major inspections and introduced the *Amusement Devices Code of Practice 2023*.⁵⁹⁵ Some of Queensland’s amendments were later adopted into the model WHS Regulations.

What we heard

The Australian Amusement, Leisure and Recreation Association (AALARA) and CSA both proposed greater harmonisation and scrutiny across jurisdictions to reduce duplication, support more consistent safety outcomes and ensure the industry is better able to sustain its costs.⁵⁹⁶

A number of fatalities at metropolitan and regional shows have resulted in coronial inquests and recommendations, including for harmonised processes across jurisdictions and a national database of design registration numbers and plant registration numbers that is accessible by all regulators.⁵⁹⁷ This suggestion was echoed in submissions.⁵⁹⁸ Other issues raised included inconsistent design and plant registration requirements and limited transparency of registrations.

Although registrations are mutually recognised under the model WHS laws,⁵⁹⁹ coronial reports and submissions indicate that inconsistency between jurisdictions has often led to tragic consequences. One PCBU indicated this had driven it to apply additional checks or refuse devices registered in some jurisdictions.⁶⁰⁰ There are also concerns about whether the current ‘competent person’ framework provides sufficient oversight for amusement devices, with AALARA believing that the approach is creating a shortage of qualified engineers able to conduct the mandated inspections.⁶⁰¹

Discussion and recommendations

Many of the issues identified in relation to amusement devices have been considered by both Safe Work Australia Members and HWSA but not resolved. Over the years there has been a lack of national coordination to agree to operational issues, which this Review has made recommendations to address.

To make meaningful progress on improving amusement device safety, this Review recommends that the new SIG-Compliance and Enforcement be given the initial task of harmonising, with the support of jurisdictions, the registration requirements for plant and design of amusement before considering the matter of a national dataset (which would likely require referral to HSWA for consideration) (see **Appendix G, 4A**).

⁵⁹⁵ Amusement Devices Code of Practice (2024) (Qld).

⁵⁹⁶ [AALARA](#), Submission, p 1; [CSA](#), Submission, p 3.

⁵⁹⁷ [White](#), *Inquest into the death of Adelene Leong Yi Hui* (94/2020), Courts SA, 2022, p 153.

⁵⁹⁸ [AALARA](#), Submission, p 2; [CSA](#), Submission, p 5.

⁵⁹⁹ Model WHS Regulations, reg 247.

⁶⁰⁰ [White](#), *Inquest into the death of Adelene Leong Yi Hui* (94/2020), Courts SA, 2022, p 31. The Royal Horticultural Society of South Australia highlighted that they ‘did not automatically accept their PRNs registered in Vic or WA as valid’ at the SA Royal Show.

⁶⁰¹ [AALARA](#), Submission, p 2.

This Review also recommends the model WHS Regulations modernisation project discussed in **Chapter 7** consider opportunities to improve the operation of the competent persons framework in relation to amusement devices (see **Appendix G, 4B**).

Prohibited and restricted carcinogens (Part 7.1, reg 328, model WHS Regulations)

What we heard

The NSW Nurses and Midwives Association raised concerns that cytotoxic drugs used in a medical setting are not sufficiently covered by the model WHS Regulations, including in the wording of regulation 328(6) and the restricted carcinogens list in Schedule 10.⁶⁰²

Discussion and recommendations

This Review recommends these issues, as well as germ cell mutagens and reproductive toxicants, be considered as part of the model WHS Regulations modernisation project discussed at **Chapter 7**, including the option of developing criteria for including carcinogens in Schedule 10 (see **Appendix G, 5**).

Respirable crystalline silica (Chapter 8A, model WHS Regulations)

What we heard

Australian Industry Group raised concerns regarding the lack of harmonisation in implementation of recent crystalline silica amendments.⁶⁰³ SafeWork NSW noted the notification timeframe for respirable crystalline silica exposure may delay regulator intervention,⁶⁰⁴ and the HIA called for the adoption of the Queensland Code of Practice relating to crystalline silica.⁶⁰⁵

Discussion and recommendations

The Engineered Stone Prohibition Review highlighted that designers, manufacturers, importers and suppliers should provide downstream users with current, relevant information about a product's intended purpose, hazards identified through testing, and conditions required to ensure the product can be used without risks to health and safety.⁶⁰⁶ It recommended the model WHS laws be amended to require the use of consistent labelling and/or safety data sheets for engineered stone and alternative products.⁶⁰⁷

The Engineered Stone Prohibition Review also noted a potential disconnect between the prohibition of engineered stone and the legal capacity of inspectors to issue compliance notices and found 'Safe Work Australia should consider whether there is a legislative gap in relation to the suitability of compliance notices to address the conduct of prohibited work'.⁶⁰⁸

⁶⁰² [New South Wales Nurses and Midwives Association](#), Submission, pp 28–29; [ACTU](#), Submission, p 31.

⁶⁰³ [Australian Industry Group](#), Submission, p 15.

⁶⁰⁴ [SafeWork NSW](#), Submission, p 14.

⁶⁰⁵ [HIA](#), Submission, p 17; Managing respirable crystalline silica dust exposure in construction and manufacturing of construction elements Code of Practice 2022 (Qld).

⁶⁰⁶ Safe Work Australia, [Review of the engineered stone prohibition](#), Safe Work Australia, 2025, p 21.

⁶⁰⁷ Safe Work Australia, [Review of the engineered stone prohibition](#), Safe Work Australia, 2025, p 8.

⁶⁰⁸ Safe Work Australia, [Review of the engineered stone prohibition](#), Safe Work Australia, 2025, p 68.

There is a need to provide a consistent regulatory approach across all products that may pose risks when processed – not just those products containing silica.

Therefore, this Review recommends that Safe Work Australia should:

- examine whether existing duties and definitions adequately capture products that generate hazards when processed, particularly where those products are not hazardous in their unprocessed state (see **Appendix G, 6i**)
- assess whether current labelling and safety information requirements, including safety data sheets (SDS), consistently and appropriately inform downstream users of processing-related risks (see **Appendix G, 6ii**)
- consider how to address processing-related risks where labelling and safety information requirements are found to be inadequate (see **Appendix G, 6iii**)
- commence consideration of whether there is a legislative gap in relation to the legal capacity of inspectors to issue compliance notices where prohibited work is being done (see **Appendix G, 7**).

Underground and overhead facilities (reg 166, model WHS Regulations)

What we heard

A submission from the underground services industry noted that jurisdictional differences in the stand-off distances, requirements for use of spotters, and no-go-zone locations for overhead and underground power lines were causing confusion for PCBU⁶⁰⁹.

Discussion and recommendations

While some of these requirements are drawn from jurisdictional electricity safety legislation, others, including the use of spotters, could be harmonised within the model WHS Regulations, to provide for the most consistent possible safety standards. This Review therefore recommends this issue be considered as part of the model WHS Regulations modernisation project recommended in **Chapter 7** (see **Appendix G, 8**).

⁶⁰⁹ Private, Submission #102, p 8.

Major hazard facilities (Chapter 9, model WHS Regulations)

What we heard

SafeWork NSW called for a review to clarify and update changing industry definitions and practices regarding plant and structures, and the treatment of hazardous substances (such as lithium-ion), within the model WHS framework to keep pace with changes in the workplace.⁶¹⁰ DCCEEW noted the WHS implications of a number of aspects of the transition to green energy for Australia, including having access to necessary manufacturer information for specialised equipment sourced from overseas to ensure Australian WHS requirements are being met; and the future use of uncrewed and automated facilities.

R2A (due diligence engineers) noted there is a misalignment between planning and WHS laws and that, in the absence of a specific legal requirement, hazards associated with major hazard facilities (MHF) and dangerous goods are often not eliminated or minimised at the early design stage, where it is most feasible.⁶¹¹ DCCEEW also noted the intersection between WHS and planning decisions.⁶¹²

Discussion and recommendations

This Review recommends the definitions in the model WHS Regulations should be considered through the proposed model WHS Regulations modernisation project (see **Chapter 7**) to ensure they reflect modern working environments and equipment. It also recommends consideration be given to potential new model WHS regulations to regulate dangerous goods and MHFs to ensure they remain current and fit for purpose (see **Appendix G, 9**).

Harmful chemicals (Part 3.2, regs 49–50; Parts 7.1, 7.2, and Chapter 8, model WHS Regulations)

Safe Work Australia is currently undertaking a number of reviews in relation to harmful chemicals and other substances that can impact worker health.

What we heard

This Review heard significant feedback about these issues, including in relation to:

- WA variations to the threshold for health monitoring⁶¹³
- the duty on medical practitioners to give health monitoring reports to the regulator⁶¹⁴
- workplace exposure limits (WEL)⁶¹⁵
- asbestos,⁶¹⁶ and
- lead.⁶¹⁷

⁶¹⁰ [SafeWork NSW](#), Submission, p 14.

⁶¹¹ [R2A](#), Submission, p 3.

⁶¹² [Department of Climate Change, Energy, Environment and Water](#), Submission, p 4.

⁶¹³ Occupational Safety and Health Regulations 1996 (WA), reg 5.23.

⁶¹⁴ WA WHS Regulations, regs 276, 412, 442.

⁶¹⁵ [NFE](#), Submission, p 6; [MCA](#), Submission, p 9.

⁶¹⁶ [AER Environmental](#), Submission, pp 1–17.

⁶¹⁷ Private, Submission #89, p 15.

Discussion and recommendations

The issues raised in submissions on these matters will be considered through Safe Work Australia's current reviews of the health and air monitoring frameworks, the Asbestos Framework Review⁶¹⁸ and consultation on proposed changes to better protect workers from lead exposure.

Lasers (Part 5.1, reg 223, model WHS Regulations)

What we heard

An anonymous submission to this Review raised concerns about coverage of the use of Class 3B and Class 4 lasers in construction work under the model WHS Regulations. The submission noted inconsistent interpretation of the model WHS Regulations in relation to lasers; and out-of-date guidance materials.⁶¹⁹

Discussion and recommendations

The model WHS Regulations do not account for new construction-related laser applications such as laser cleaning, welding and cutting. This Review recommends this issue be examined and clarified through the model WHS Regulations modernisation project (see **Chapter 7** and **Appendix G, 10**).

Quad bikes (regs 226A–226C, Queensland WHS Regulation)

What we heard

WorkSafe WA suggested that Queensland's amendments relating to quad bike helmets, age restrictions, and areas of use could inform the model WHS Regulations,⁶²⁰ although industry groups cautioned that regulatory change alone is unlikely to be effective without accompanying education and behaviour-change measures.⁶²¹

Discussion and recommendations

Safe Work Australia is currently considering potential regulatory and non-regulatory options relating to quad bike safety, including variations made by Queensland and Tasmania.

⁶¹⁸ Safe Work Australia, [Asbestos Framework Review](#), Safe Work Australia, February 2026, accessed 25 May 2026.

⁶¹⁹ Private, Submission #161, p 7.

⁶²⁰ Qld WHS Regulations, regs 226A–226C; [WorkSafe WA](#), Submission, p 30.

⁶²¹ Private, Submission #143, p 2.

Child safety

What we heard

Some submissions raised concerns about gaps in how risks to children are managed in workplaces where adults and children may work alongside each other without a requirement for Working with Children Checks. The Shop, Distributive and Allied Employees Association highlighted that retail generally falls outside the definition of child-related work and therefore existing screening frameworks, resulting in insufficient safeguards and potential harm to children.⁶²²

Discussion and recommendations

This Review recommends addressing this issue through the proposed retail industry Code of Practice (See **Chapter 5** – Codes of Practice), noting all Australian governments are currently reviewing Working with Children Check schemes.⁶²³

⁶²² [Shop, Distributive and Allied Employees Association](#), Submission, p 7.

⁶²³ The Hon M Rowland MP, [Albanese Government announces \\$37 million to support Working with Children Check Reform](#) [media release], Attorney-General's Department, 14 November 2025, accessed 16 March 2026.

7. The model WHS Regulations: modernisation project

Terms of Reference

2.1, 2.2, 2.3, 2.5, 2.6

Reviews considered in this chapter:

- 1972 *Safety and Health at Work*, Report of the Committee
- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*.

7.1 The model WHS Regulations: modernisation project

Introduction

This chapter considers the model WHS Regulations more broadly, with a view to examining longstanding concerns that they are outdated, inconsistent and difficult to comply with. Many of the issues in relation to the model WHS Regulations raised in this Review are consistent with those raised in the *2018 National Review*. Rather than continuing to take piecemeal and reactive approaches to amending the model WHS Regulations, this chapter considers a more comprehensive program of work to modernise and improve them.

What we heard

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 including regulations specific to female-dominated industries, such as retail or healthcare and social assistance; and the workplace risks disproportionately faced by women, such as gendered violence.⁶²⁴

Submissions to this Review included a range of proposals for new model WHS regulations, including many recommendations from the ACTU to address ‘emerging and neglected areas of risk’ and ‘gender considerations’; for example, gaps in addressing reproductive hazards and access to facilities for all workers.⁶²⁵

⁶²⁴ ACTU, Submission, p 32; Centre for Future Work, Submission, p 7; ANMF (Vic Branch), Submission, p 5; Queensland Council of Unions, Submission, p 30.

⁶²⁵ ACTU, Submission, p 8.

Industry representatives generally opposed new regulations, particularly in relation to AI⁶²⁶ and psychosocial risks.⁶²⁷ Australian Industry Group also cautioned against reflexively introducing new regulations to correct PCBU behaviour:

*Adding more regulation on top of existing regulations, when non-compliance is the predominant issue, is a fundamentally flawed approach.*⁶²⁸

Industry consistently asked for clearer, simplified and streamlined requirements to help businesses meet their obligations, including accessible plain English materials, digital tools and scalable obligations tailored to business size. Industry representatives, especially those representing small business, noted they found the WHS laws to be overly complex and proposed they be simplified rather than expanded.⁶²⁹

There was strong support for maintaining enforceable standards for high risk hazards but taking principles-based approaches to emerging risks such as AI.⁶³⁰ Some industry representatives explicitly supported the 2018 National Review recommendation of reassessing the model WHS Regulations against agreed criteria to provide greater clarity on how hazards should be regulated.⁶³¹

Discussion and recommendations

The 2018 National Review concluded that the 3-tiered approach to WHS legislation remained strongly supported. And this Review confirms that view.

The 2018 National Review noted deficiencies in the model WHS Regulations sprang from the process of consolidation that created them and recommended they be reviewed against agreed criteria.⁶³² This analysis is as true today as it was in 2018 and this Review will not reproduce it here. Ultimately, the relevant recommendation was not progressed and, arguably, this has contributed to the continued increase in complexity, inconsistency and confusion in relation to the model WHS Regulations.

This Review therefore recommends that a review of the model WHS Regulations should proceed as intended by the 2018 recommendation – but goes further by proposing below some key considerations to inform it.

The first consideration is to identify those regulations which set out principles that apply to all duty holders and elevate these to the model WHS Act. The hierarchy of controls in Part 3.1 is an example of this and is the subject of a recommendation in **Chapter 2.1**.

The second consideration is to identify those regulations which only apply within specific industry contexts and are not generally applicable in most workplaces. It is proposed these could be covered instead by Codes of Practice. The diving regulations in Part 4.8 of the model WHS Regulations are an example of this, while the regulations on construction work (which apply to construction work across many different industries, rather than the construction industry) are not. This proposal is inextricably linked to the proposal that the legal status of Codes should be elevated and made clearer by adopting the Victorian ‘deeming’ provision discussed in **Chapter 5**. Importantly, this approach still allows Codes to be used as evidence of a breach of the model WHS Act.

⁶²⁶ BCA, Submission, pp 1–4.

⁶²⁷ Australian Institute of Company Directors, Submission, p 11.

⁶²⁸ Australian Industry Group, Submission, p 16.

⁶²⁹ Australian Industry Group, Submission, pp 14–16; Private, Submission #143, pp 1, 4; Private, Submission #119, pp 5–6, 9–10; Australian Retailers Association and National Retail Association, Submission, pp 1–4; ACFA, Submission, pp 1–18.

⁶³⁰ MBA, Submission, p 5.

⁶³¹ SafeWork NSW, Submission, pp 12–13.

⁶³² Safe Work Australia, *Review of the Model Work Health and Safety Laws: Final report*, Safe Work Australia, 2018, p 12.

Once these 2 initial considerations are completed, the following questions should be asked of the remaining regulations and of any new regulations being considered for inclusion:

1. Do they:
 - a. set an outcome or goal that ensures compliance with a duty under the model WHS Act?
 - b. involve risks where the options to control them are limited?
 - c. apply across multiple industries?
2. Do they include a financial penalty?
3. Do they provide a supporting or administrative framework for the model WHS Act (for example, by explaining how a licence scheme will operate)?

Unlike Codes of Practice, a regulation needs to be legally precise rather than in plain language, and it may often fall to Codes or guidance materials to explain how a regulation should work in practice.

For example, regulation 79 sets out the steps a PCBU must take to manage the risks of a fall. While the MBA noted this regulation can be difficult to understand,⁶³³ this Review considers this to be a shortcoming in how the regulation has been communicated in other materials, rather than a problem with the regulation itself. The regulation is designed to cover *all* fall risks in *all* workplaces, so it cannot consider which controls may be reasonably practicable in a given industry context in the way that a Code can.

Modernising the model WHS Regulations will be a significant undertaking and require a coordinated tripartite process. Consistent with the approach adopted in developing the original model WHS Act, it will be important to establish targeted working groups based on specific industries or hazards. These groups will need to draw on technical and practical expertise. To support this work, the Review suggested Safe Work Australia should establish a WHS technical panel. The panel would comprise respected experts from a diverse range of subject matter specialities, WHS knowledge, skills and experience; and would operate consistent with Commonwealth procurement panel arrangements. This would enable the Safe Work Australia Agency to flexibly access relevant expertise to support the tripartite working groups and develop well-informed national policy advice for Safe Work Australia Members and ultimately WHS ministers.

The establishment of the WHS technical panel is an action item arising from the Review which Safe Work Australia Members have tasked the Agency with progressing immediately.

Finally, this Review considers that the model WHS Regulations modernisation project should consider ways to evaluate the effectiveness of the model WHS laws, including through its research activities and data collections.

The model WHS Regulations: modernisation project – Recommendation 18

Undertake a model WHS Regulations modernisation project to improve consistency and appropriately regulate modern work, workplaces, and emerging hazards, including by:

- a. developing clear criteria for identifying where regulations are required, and
- b. considering the issues outlined in **Appendix F** and **Appendix G** (subject to the criteria in (a) above).

⁶³³ [MBA](#), Submission, p 23.

8. Environmental scan

Terms of Reference:

2.1, 2.2, 2.3, 2.5, 2.6

Reviews considered in this chapter:

- 2018 *Review of the model Work Health and Safety laws (2018 National Review)*
- 2024 *Report of the Statutory Review of the Online Safety Act 2021*
- 2024 *Report of the Senate Select Committee on Adopting Artificial Intelligence*
- 2025 Report of the House Standing Committee on Employment, Education and Training, *The Future of Work: Inquiry into the Digital Transformation of Workplaces*
- 2025 Report of the Productivity Commission, *Harnessing data and digital technology: Inquiry report*
- 2025 Report of the Victorian Legislative Assembly Economic and Infrastructure Committee, *Inquiry into workplace surveillance.*

Introduction

This chapter explores 3 key issues that consultation indicates will likely be among the most significant shaping our workplaces, including how we work and manage persistent and emerging WHS risks in the coming years.

They are:

- digital transformation of work and workplaces
- climate change
- harmful workplace behaviours.

8.1 Digital transformation of work and workplaces

Digital technologies have been transforming work and workplaces for decades, but the emergence of AI is significant enough to be considered part of the 'Fourth Industrial Revolution', with the potential to affect every sector of the economy.⁶³⁴ AI is a broad term, encompassing digital systems that can perform tasks previously requiring human intelligence, and its use is changing rapidly.

⁶³⁴ T Philbeck and N Davis, 'The Fourth Industrial Revolution: Shaping a new era', *Journal of International Affairs*, Fall 2018 / Winter 2019, 72(1):17–22; Organisation for Economic Co-operation and Development, [Using AI in the workplace: Opportunities, risks and policy responses](#), OECD, March 2024, accessed 13 May 2026, p 3.

Some automated decision-making (ADM) systems use AI to automate all or part of a decision-making process, without the need for human intervention.⁶³⁵ Other major current categories of AI systems include:

- **generative AI:** systems trained on large volumes of real-world data that can interpret and generate content such as text, images and other media⁶³⁶
- **agentic AI:** systems that integrate with other software to complete tasks independently or with minimal human supervision.⁶³⁷

AI is increasingly reshaping the nature of work in Australia, with its adoption accelerating across industries and occupations at varying rates. An estimated 63% of Australian businesses were using generative AI tools in 2024,⁶³⁸ and 84% of Australians in office jobs reported using AI at work in 2024.⁶³⁹ Tasks are increasingly automated or allocated by AI systems (for example, on digital labour platforms), and PCBUs and workers are responding by integrating AI into their daily workflow. Industry is also increasingly using AI to understand, summarise or contextualise the WHS requirements that apply to their businesses.

While AI can assist in identifying and controlling existing hazards, its use can also create new and evolving WHS risks, particularly where systems influence work allocation, monitoring or surveillance, or decision-making with limited transparency or human oversight. As AI becomes more embedded, the model WHS laws will remain the key legislative framework through which the physical and psychosocial risks arising from its use in workplaces are managed.

Several inquiries have examined AI and other digital technologies and have recognised the importance of the model WHS laws as a means of mitigating harms associated with AI. The *2025 Productivity Commission inquiry report* on harnessing data and digital technology recommended reliance on established regulatory systems to manage potential harms and referred to the model WHS laws as an example of a regulatory framework that can be readily adapted to manage risks.⁶⁴⁰ This approach would involve assessing laws (including the model WHS laws) for potential AI-related gaps and considering whether targeted law reform may be needed.⁶⁴¹

The Australian Government's *National AI Plan* similarly concluded that established legal and regulatory frameworks are best placed to mitigate AI-related risks, as an alternative to new economy-wide regulation.⁶⁴²

This Review notes the AI Employment and Workplace Forum was established in April 2026 to drive tangible actions and outcomes to achieve the objectives of the *National AI Plan*, facilitating tripartite dialogue on AI adoption in the workplace.⁶⁴³ The forum's first meeting examined the themes of trust, capability, transparency, safety and productivity, with WHS a key safety consideration.

⁶³⁵ Senate Select Committee on Adopting Artificial Intelligence, *Final report*, Australian Government, 2024, accessed 18 May 2026, p 113.

⁶³⁶ Australian Cyber Security Centre, *Engaging with artificial intelligence (AI)*, Australian Signals Directorate, 2024, accessed 24 April 2026, p 5; Department of Industry, Science and Resources, *Terms and definitions*, Australian Government, 2025, accessed 24 April 2026.

⁶³⁷ C Stryker, *What is agentic AI?*, IBM, n.d., accessed 30 April 2026.

⁶³⁸ B Abbott, *Australian enterprises coming 4th in 2024 Global Survey of Generative AI Usage*, TechRepublic, August 2024, accessed 10 April 2026.

⁶³⁹ Microsoft and LinkedIn, *Work Trend Index 2024*, May 2024, accessed 10 April 2026.

⁶⁴⁰ Productivity Commission, *Harnessing data and digital technology: Inquiry report*, Productivity Commission, 2025, pp 2, 80, accessed 18 May 2026.

⁶⁴¹ Productivity Commission, *Harnessing data and digital technology: Inquiry report*, Productivity Commission, 2025, p 2.

⁶⁴² Department of Industry, Science and Resources, *National AI Plan*, Australian Government, December 2025, accessed 13 May 2026, p 28.

⁶⁴³ A Rishworth, *Speech to Australian Financial Review Workforce Summit*, 28 April 2026, accessed 13 May 2026.

What we heard

Some submissions emphasised the WHS benefits of AI adoption in workplaces, while others emphasised the risks and harms. Industry groups⁶⁴⁴ praised its potential to improve safety and efficiency through automation, predictive analysis and reduced exposure to hazards. Unions and non-government submissions⁶⁴⁵ raised concerns about the potential physical and psychosocial risks it poses, including:

- low job control
- intrusive surveillance
- increasing bias and discrimination against workers
- high work intensity
- the facilitation of harassment and abuse.

The Centre for Future Work acknowledged digital technology can be used to manage WHS risks (for example, by using surveillance cameras to monitor aggressive customers) but suggested excessive or unreasonable use can lead to physical or psychological harm.⁶⁴⁶ It noted productivity tools that determine 'optimal' work patterns can result in unrealistic standards or high work intensity, increasing the risk of incidents and injuries.⁶⁴⁷ This can also endanger others, such as when transport workers, pressured to meet unrealistic targets, become more prone to road accidents.⁶⁴⁸ SA Unions highlighted the psychosocial risks of workplace surveillance arising from poor organisational change management, low job control, lack of role clarity and poor organisational justice.⁶⁴⁹

Submissions also expressed concerns about worker privacy, data governance and the accuracy of AI decisions and outputs, including AI-generated safety documents and content, particularly SDS.⁶⁵⁰

Stakeholder views were mixed regarding the adequacy of existing WHS laws for regulating AI. Industry cautioned against rushing to introduce new prescriptive legislation without first considering the evidence of harm,⁶⁵¹ instead proposing that the safety impact of new technologies be monitored.⁶⁵² Unions considered current regulatory settings insufficient, particularly for managing the psychosocial hazards arising from AI use, and supported introducing new regulations and practical guidance.⁶⁵³

Within this context, the ACTU requested this Review consider recent amendments made to the NSW WHS Act through the *Work Health and Safety Amendment (Digital Work Systems) Act 2026* (discussed further below). SafeWork NSW suggested the model WHS Regulations be reviewed to ensure they cover the risk of AI.⁶⁵⁴ Strategy and design firm Veyter Pty Ltd noted its concern that the designer duty in the model WHS Act does not explicitly apply to AI.⁶⁵⁵

⁶⁴⁴ [Australian Institute of Company Directors](#), Submission, p 6; [Australian Retailers Association and National Retail Association](#), Submission, pp 3–4.

⁶⁴⁵ [SA Unions](#), Submission, p 35; [The Reckoning Room](#), Submission, p 13; [Centre for Future Work](#), Submission, pp 8–9; [BRIDGES at Work](#), Submission, p 9.

⁶⁴⁶ [Centre for Future Work](#), Submission, p 8; [BRIDGES at Work](#), Submission, p 18.

⁶⁴⁷ [Centre for Future Work](#), Submission, pp 8–9.

⁶⁴⁸ S Farthing, S Sacher, E Santow and A Vos, [Surveillance creep: Technology-enabled worker surveillance](#), Human Technology Institute, University of Technology Sydney, 2026, p 16, accessed 9 April 2026.

⁶⁴⁹ [SA Unions](#), Submission, p 35.

⁶⁵⁰ [Andrew Watt](#), Submission, p 26; [Community and Public Sector Union](#), Submission, p 15; [Australian Institute of Occupational Hygienists](#), Submission, p 6.

⁶⁵¹ [Australian Institute of Company Directors](#), Submission, p 6; [Australian Retailers Association and National Retail Association](#), Submission, pp 3–4.

Discussion and recommendations

Application of the model WHS laws to AI

The model WHS laws are ‘technology neutral’, designed to be flexible and capable of dealing with changing work and workplaces. Regardless of their level of autonomy, AI, agentic AI and ADM are all, in a legal sense, tools designed and used by humans to undertake specific tasks. In this respect, they are no different to any software, plant or work system a PCBU may use to carry out work.

The primary duty in the model WHS Act requires PCBUs to provide and maintain safe systems of work. Where AI systems are used at work and in workplaces, a PCBU must consider the risks to workers’ health and safety, both physical and psychological, and eliminate or minimise those risks so far as is reasonably practicable. The model WHS Act also requires upstream duty holders, including designers, to ensure, so far as reasonably practicable, that plant, substances or structures (including software) are made without risks to end users.⁶⁵⁶ Like any other designer of plant, tools or equipment used in a workplace, AI designers and providers must ensure that potential harms are ‘designed out’ of the AI system early or resolved before deployment.

Current WHS laws therefore apply to AI-powered systems and tools, although there may be practical challenges in applying and enforcing WHS laws in practice. For example:

- The opacity of many AI systems makes it difficult to understand and interrogate them, leading to compliance and enforcement challenges.
- AI systems typically change over time, as they ‘learn’ by adapting to new inputs. This dynamism makes it more difficult to foresee risks and ensure adequate oversight.
- Third-party companies often train, update and manage AI systems used by PCBUs, which may make assigning liability for AI-related harms more complex.
- AI systems have known risks of bias, discrimination, and inaccuracy – and, due to the capacity of AI systems to operate and make decisions at scale, this can lead to systemic and widespread safety and discrimination problems.
- Many AI systems rely on mass collection and use of personal data about workers, which can be used for a range of harmful purposes – for example, to penalise or discriminate against workers or to interfere with their private lives.
- Highly automated systems have the potential to subject workers to rigid and inflexible decisions, limit workers’ autonomy and discretion, reduce accountability for decisions, and threaten workers’ jobs.
- New AI products and services are introducing particular WHS risks. For example, adopting sophisticated surveillance technology such as emotion recognition and neurotechnology leads to new and potentially excessive forms of intrusion into workers’ emotions, minds and bodies.

To ensure the technology neutral model WHS laws are operating as intended, it is important to test whether they are being applied effectively to deal with the WHS risks of new technologies such as AI; and that how they are applied is clearly articulated to duty holders and those to whom the duty is owed, to support compliance and enforcement.

⁶⁵² [Australian Institute of Company Directors](#), Submission, p 9; [Australian Retailers Association and National Retail Association](#), Submission, p 4.

⁶⁵³ [Community and Public Sector Union](#), Submission, p 13; [ACTU](#), Submission, p 7. See also [ANMF \(Vic Branch\)](#), Submission, p 10 in the context of regulations specific to the health industry.

⁶⁵⁴ [SafeWork NSW](#), Submission, p 13.

⁶⁵⁵ [Veyter Pty Ltd](#), Submission, p 4; [ANMF \(Vic Branch\)](#), Submission, p 9.

⁶⁵⁶ Model WHS Act, s 22.

This Review notes there are several areas that will require particular attention regarding how technology-neutral WHS principles apply to AI systems in the workplace context, including considering:

- what is reasonably practicable in a context where AI-enabled tools have the potential to cause harm to workers while simultaneously assisting PCBUs to meet their WHS requirements
- how shared and upstream duties apply, and
- whether the powers and functions of regulators, HSRs and EPHs remain fit for purpose as new technologies develop and working arrangements change.

This Review's recommendation to monitor and identify areas of uncertainty (see below) will ensure that these issues are contemplated when considering whether the model WHS laws may need any amendments into the future.

Responses by governments

Australian governments have in recent years sought to understand and respond appropriately to the health and safety risks posed by AI both in the workplace and the wider social sphere.⁶⁵⁷

Government responses reflect diverging views on how best to regulate rapidly evolving technologies and highlight the challenge of achieving a balance between safeguards and flexibility. AI tools can quickly acquire new capabilities that may not have been foreseen by legislation, making AI regulation a challenging task.

NSW Digital Work System variation

In February 2026, NSW varied its WHS Act to require PCBUs to ensure, so far as is reasonably practicable, that the health and safety of a worker is not put at risk from the allocation of work by a digital work system.⁶⁵⁸ This includes consideration of workloads, metrics and monitoring and surveillance that may be excessive or unreasonable. The amendments also allow an EPH to require a PCBU to provide them with reasonable assistance to access and inspect a digital work system relevant to a suspected contravention of the Act. At least 48 hours' notice, but no more than 14 days, must be given if an EPH proposes to exercise the power, which comes with additional safeguards.⁶⁵⁹ The variations also provide for a review of the amendments should Safe Work Australia make changes to the model laws on substantially the same subject matter.

Unions supported the amendments,⁶⁶⁰ while industry representatives, including Australian Industry Group and ACCI, considered the current PCBU duties to be sufficient and raised concerns about the practical implications of expanded entry permit powers.⁶⁶¹

This Review considered NSW's variations and whether they should be adopted in the model WHS laws.

⁶⁵⁷ See Legislative Assembly Economic and Infrastructure Committee, [Inquiry into workplace surveillance](#), Victorian Government, 2025; House Standing Committee on Employment, Education and Training, [Inquiry into the digital transformation of workplaces](#), Australian Government, 2025; and Senate Select Committee on Adopting Artificial Intelligence, [Final report](#), Australian Government, 2024,

⁶⁵⁸ The [Work Health and Safety Amendment \(Digital Work Systems\) Act 2026](#) (NSW) defines digital work system as an algorithm, artificial intelligence, automation or online platform.

⁶⁵⁹ Including ss 118 (2A) and 118A, which provide that the regulator must issue and publish, on the regulator's website, guidelines about the power of WHS entry permit holders to require PCBUs to provide reasonable assistance to access and inspect digital work systems relevant to suspected contravention.

⁶⁶⁰ [Shop, Distributive and Allied Employees Association](#), Submission, pp 2–3.

⁶⁶¹ [ACCI](#), Submission, p 7; [Australian Institute of Company Directors](#), Submission, p 10; [Australian Industry Group](#), Submission, p 19.

The existing primary duty of care (section 19) in the model WHS Act requires a PCBU to manage WHS risks, regardless of their source. This includes physical and psychosocial risks arising from the use of AI. The NSW amendment clarifies the primary duty applies to AI and digital technologies. It does this by expressly recognising that WHS obligations extend to ‘digital work systems’ and articulating particular risks associated with these systems that must be considered by PCBUs. In this way, the NSW amendment seeks to clarify how the duty practically applies to AI and digital technologies and what kinds of psychological harms may arise.

The NSW amendments introduce the new concept of a ‘digital work system’ into its version of the model WHS Act. While the NSW amendment may seek to clarify how the duty practically applies to AI and digital technologies, this Review considers it has done so by introducing a new definition which may not apply to all types of systems, particularly highly sophisticated automated software systems which continue to evolve apace. In doing so, the Review considers it may have unintentionally limited the principles-based approach underpinning the model WHS laws.

This Review considers that introducing new definitions and new prescriptive provisions should be approached with care, to avoid the risk that future courts see in this a narrowing of the general applicability of the model WHS Act and find a future area of risk is not covered because it is not explicitly defined in the model WHS Act or Regulations. This is particularly relevant with AI, which is evolving fast.

This Review is also concerned that the NSW amendment does not appear to have taken into account the legislative duties of upstream duty holders such as designers, whose influence on designing out potential harms is particularly relevant to AI systems and who have a WHS duty to remove those harms.⁶⁶²

Given this Review’s view that the primary duty contained in the model WHS Act already covers the situation considered by the NSW amendment, it is this Review’s view that the rest of the model WHS legal framework also applies, including right of entry provisions and other worker rights and PCBU obligations. This Review notes NSW’s amendments to right of entry powers were likely consequential to the introduction of the new duty and do not indicate a gap in existing right of entry provisions which are not limited to certain types of work-related risks.

It is noted, however, that Recommendation 19(a) of this Review will allow Safe Work Australia to continuously monitor the impact of the NSW amendments in the context of its broader consideration of AI and WHS and identify any gaps in the model WHS law framework which might require future amendments.

Research

Previous reviews and inquiries, submissions to this Review and research all indicate the potential reach of AI is so vast, and the speed of change so fast, that there remain many unknowns. A report commissioned by the NSW Centre for WHS noted there is currently a lack of system-wide effort and resources dedicated to understanding and analysing the effects of AI on workers and workplaces.⁶⁶³ As raised in many industry submissions, there is a need to continue monitoring the effects of emerging digital technology on safety, in consultation with business, industry and workers.⁶⁶⁴ This Review therefore considers there is a need to build on existing research on the benefits and risks associated with digital technologies, including impacts on work design, workload, psychosocial risks and decision-making.

⁶⁶² This Review also notes that the Bill’s second reading speech acknowledges the proposed duty ‘reflects the reality that harm does not arise from the technology itself, but from how digital work systems are designed, deployed and managed in practice’.

⁶⁶³ A Cebulla, Z Szpak, G Knight, C Howell and S Huzzain, *Ethical use of artificial intelligence in the workplace final report*, NSW Centre for WHS, 2021, p 45, accessed 16 April 2026.

⁶⁶⁴ [Australian Institute of Company Directors](#), Submission, p 9; [SA Unions](#), Submission, p 35; [Australian Retailers Association and National Retail Association](#), Submission, p 4.

Recommendations

The model WHS Act is flexible and technology-neutral, which renders it well placed to respond to new and emerging technologies such as AI. While the law theoretically applies to all technologies, there are some specific practical challenges in seeking to apply the law to AI. In light of these challenges, it is important to ensure that the law remains effective and that it provides sufficient certainty to allow PCBUs to comply with their obligations, regulators to enforce the law, and workers to understand their rights in the AI context.

This Review has highlighted the challenges for the WHS framework as AI is increasingly adopted in the workplace, and with those challenges comes the potential for future legislative gaps.

This Review therefore recommends Safe Work Australia develop a broad strategy on AI and other emerging technologies. The strategy will allow it to monitor, through its tripartite membership, how the model WHS laws are being applied, interpreted and enforced. It could then consider whether there is a need for any immediate legislative clarifications to address gaps and uncertainties or whether these uncertainties can be dealt with through industry Codes and clear guidance. Technology-specific and industry-specific considerations could also be included in the newly recommended national industry Codes. There is also an opportunity to reinforce regulators' compliance and enforcement stance on AI through the new NCEP.

This Review considers any future amendments to the model WHS Act should be technology neutral (and avoid introducing new legal concepts and terms) to ensure that the model WHS framework applies to AI and digital technologies in the same way as it would to other technologies. This approach would not change the underlying duties in the model WHS Act or create a separate duty for AI – rather, it would ensure that the existing law remains clearly applicable to AI. This approach has the benefit of ensuring that proactive measures are taken by duty holders to prevent AI-related harm in the workplace, while retaining the principles-based approach that characterises the model WHS laws.

This Review also recommends Safe Work Australia conduct further research to more fully understand the challenges AI presents to the application of WHS laws, clarify areas of compliance uncertainty, and monitor the benefits and risks of AI. Research should also be translated into practical solutions to support the safe adoption of AI in Australian workplaces.

To support this strategy, Safe Work Australia will undertake sustained education and communications activities to ensure PCBUs, workers and others have clear, simple and easily accessible advice on how the current model WHS laws apply to AI use in the workplace.

Environmental scan – Recommendation 19

Safe Work Australia to develop a strategy on artificial intelligence and other emerging digital technologies which:

- a. monitors how WHS laws are interpreted, applied and enforced in relation to digital technologies to ensure the model WHS Act, Regulations and Codes remain fit for purpose as new technologies develop and working arrangements change
- b. makes new Regulations, Codes and/or amendments to the model WHS Act where gaps are identified
- c. identifies, and clarifies through industry Codes of Practice, any areas of current regulatory uncertainty, and
- d. supports through its *Research and Evaluation Strategy* research on how digital technologies impact WHS (including both benefits and risks) with practical solutions that can be applied in workplaces as a priority outcome of the research.

8.2 Climate change

Climate change is exacerbating existing workplace hazards. Rising temperatures and more frequent heatwaves pose the most significant risk for mortality and injury.⁶⁶⁵ However, other associated hazards include floods, bushfires, poor air quality, communicable diseases, ultraviolet (UV) radiation and agrochemicals (such as pesticides, the use of which is expected to increase).⁶⁶⁶ The ILO's 2024 report on ensuring health and safety in a changing climate presents evidence linking climate change to deteriorating work environments and an increased risk of occupational injury, disease and death.⁶⁶⁷

Climate-related hazards affect workers across a range of industries to varying extents. Outdoor workers in agriculture, natural resource management, construction, waste collection, emergency repair work, transport, tourism and sports are most at risk of heat stress,⁶⁶⁸ as are workers working in poorly ventilated enclosed spaces and environments that generate heat, such as bakeries, foundries and laundries. First responders are likely to be at risk of both psychological harm and physical injury in responding to increasingly severe and frequent extreme weather events. Certain cohorts of workers may be at higher risk of harm, including pregnant women, workers with certain types of disabilities, and gig workers.⁶⁶⁹ Additionally, new WHS risks may arise from the shift to green industries in response to climate change; and the adoption of technologies such as lithium batteries and solar panels, which contain chemicals hazardous to human health.⁶⁷⁰

Climate change impacts on WHS not only have a human cost but an economic cost as well, affecting productivity more broadly. In Australia, mining, construction, agriculture, power generation and transmission, and some service occupations, are particularly at risk from labour productivity reductions due to higher temperatures. The Department of the Treasury estimates a reduction in Australia's aggregate labour productivity by between \$135 billion and \$423 billion by 2063 due to heat-related costs.⁶⁷¹

⁶⁶⁵ E Humphrys, 'Inertia in transformed times: Work health and safety admit climate change', *Journal of Industrial Relations*, 2024, 66(5):685–702, p 685.

⁶⁶⁶ Australian Climate Service, *Australia's national climate risk assessment report*, Australian Climate Service, 2025, p 11, accessed 11 May 2026; ILO, *Ensuring safety and health at work in a changing climate*, ILO, 2024, p 6, accessed 11 May 2026.

⁶⁶⁷ ILO, *Ensuring safety and health at work in a changing climate*, ILO, 2024, p 7.

⁶⁶⁸ ILO, *Ensuring safety and health at work in a changing climate*, ILO, 2024, p 17.

⁶⁶⁹ ILO, *Ensuring safety and health at work in a changing climate*, ILO, 2024, p 9.

⁶⁷⁰ ILO, *Ensuring safety and health at work in a changing climate*, ILO, 2024, p 7.

⁶⁷¹ Department of the Treasury, *Intergenerational report*, 2023, p 99, accessed 11 May 2026.

What we heard

The ACTU called for targeted provisions in the model WHS Act or Regulations to explicitly require PCBU's to control climate-related hazards. It also reiterated the recommendations in its position paper for regulatory reforms relating to air quality, inclement weather and vector-borne illnesses.⁶⁷² The Community and Public Sector Union encouraged Safe Work Australia to support and lead coordinated planning regarding the WHS impacts of climate change.⁶⁷³

Other commentary on climate-related hazards focused primarily on work in extreme heat. The NFF focused on heat stress and fatigue during seasonal peaks and recommended publishing heat stress protocols with practical hydration and rest breaks.⁶⁷⁴ The Water Services Association of Australia suggested updating national heat guidance for outdoor and 24/7 workforces; and aligning psychosocial risk frameworks with heat and fatigue management.⁶⁷⁵

Discussion and recommendations

Better coordination and strategic planning for WHS impacts

The ILO published 2 key reports in 2024 on WHS and climate change and global best practice.⁶⁷⁶ The ILO 2024 reports identified 4 broad actions to tackle the impact of climate change on working conditions:

- interdepartmental coordination
- meaningful consultation with key stakeholders, underpinned by enhanced research to develop robust policy
- new regulations, policies and action plans across a wide range of industries and activities, in addition to enhancing established legislation and policy frameworks
- new public health education for specific industries and the broader population.

This Review supports the ILO identification of greater policy coherence and cooperation between governments and social partners to effectively deal with the impacts of climate change on WHS.⁶⁷⁷ A number of Australian Government departments have developed plans in response to climate change, including the *National Adaptation Plan* and the *National Health and Climate Strategy*, which identify certain workers as being at higher risk of negative health effects associated with climate change.⁶⁷⁸ The *National Health and Climate Strategy* also highlights the impact of climate change on mental health and wellbeing.⁶⁷⁹ The *Australian WHS Strategy 2023–2033*⁶⁸⁰ and *Safe Work Australia Research and Evaluation Strategy* draw from these frameworks, recognising the impacts of climate change on workers and the need for more consultation on how best to respond to climate change. Managing the WHS challenges posed by climate change is also part of Australia's international obligations under ILO Convention No. 155.⁶⁸¹

⁶⁷² ACTU, Submission, pp 35–36. See also ACTU, [Work health and safety in the era of climate crisis](#), ACTU, 2025, accessed 18 May 2026.

⁶⁷³ [Community and Public Sector Union](#), Submission, p 16.

⁶⁷⁴ NFF, Submission, p 7.

⁶⁷⁵ [Water Services Association of Australia](#), Submission, p 6.

⁶⁷⁶ ILO, [Ensuring safety and health at work in a changing climate](#), ILO, 2024; and ILO, [Heat at work: Implications for safety and health](#), ILO, 2024.

⁶⁷⁷ ILO, [Ensuring safety and health at work in a changing climate](#), ILO, 2024, p 14.

⁶⁷⁸ DCCEEW, [National Adaptation Plan](#), Australian Government, 2025, p 40, accessed 1 May 2026; Department of Health and Aged Care, [National Health and Climate Strategy](#), Australian Government, 2023, p 20, accessed 1 May 2026.

⁶⁷⁹ Department of Health and Aged Care, [National Health and Climate Strategy](#), Australian Government, 2023, p 94.

⁶⁸⁰ Safe Work Australia, [Australian WHS Strategy 2023–2033](#), Safe Work Australia, February 2023, p 9, accessed 11 May 2026.

⁶⁸¹ Convention No. 155 requires Member States to formulate, implement and periodically review a coherent national policy on occupational safety and health and the working environment.

This work illustrates that WHS considerations have been ‘integrated somewhat into broader Commonwealth climate change planning processes, but not in a coordinated or comprehensive manner’.⁶⁸² There is an opportunity for more coordinated, systematic engagement within the WHS ‘ecosystem’ and within and across governments to respond to the WHS impacts of climate change, including through Safe Work Australia’s tripartite processes.

An absence of strategic engagement may see jurisdictions individually respond to climate-related risks, weakening harmonisation. In November 2025, the ACT introduced a new Code of Practice on managing the risks associated with extreme temperatures,⁶⁸³ while in April 2026 the NSW Net Zero Commission⁶⁸⁴ recommended amending the NSW WHS Regulations to mandate heat stress prevention plans and safe heat thresholds.

WHS impacts will also be felt as industries and occupations evolve during the transition to net zero. Employment in the mining sector is expected to decline by 6% by 2030 and by 12% by 2050,⁶⁸⁵ while demand for critical roles in the trades, technical occupations and engineering professions will rise.⁶⁸⁶ Sectors where strong jobs growth is expected include hydro-electricity generation, wind generation, solar generation and offshore wind generation.⁶⁸⁷ As workers transition to new roles or leave the workforce, PCBU’s will need to assess the risks of psychological harm associated with poor organisational change management. At the same time, jobs in the clean energy sector must be safe and healthy, and there is a need to better understand the WHS risks posed by work in the sector (such as the physical and psychosocial risks from work in remote offshore wind farms) and associated technologies (such as solar panels, lithium batteries and energy-efficient fluorescent lamps, which contain hazardous chemicals including lead, cadmium and mercury).⁶⁸⁸

Within this context, this Review recommends that the proposed model WHS Regulations modernisation project review how the Regulations apply to grid-scale battery energy storage systems and small hydrogen facilities (see **Appendix G, 11**).⁶⁸⁹

This Review also recommends Safe Work Australia develop a strategy to ensure a nationally consistent understanding of how WHS laws apply to climate-related hazards and the clean energy industry to prevent future variations across jurisdictions and ensure clarity and certainty for duty holders, workers and regulators. A strong evidence base will also assist in identifying any legislative gaps and informing any necessary amendments to the model WHS laws.

In developing the strategy, Safe Work Australia should engage with federal government agencies involved in climate adaptation, such as the Australian Centre for Disease Control, to ensure that WHS is integrated into national climate change policy. This would align with international best practice and a recommendation by the ILO in April 2026 to ‘strengthen inter-institutional coordination among labour, public health, meteorological, environmental, infrastructure and disaster management bodies’⁶⁹⁰ to promote integrated approaches to WHS in the context of extreme weather events and changing weather patterns.

⁶⁸² E Humphrys, ‘[Inertia in transformed times: Work health and safety admit climate change](#)’, *Journal of Industrial Relations*, 2024, 66(5):685, p 687.

⁶⁸³ Work Health and Safety (Managing the Risks Associated with Extreme Temperatures) Code of Practice 2025 (ACT).

⁶⁸⁴ NSW Net Zero Commission, [Heat stress spotlight report](#), NSW Net Zero Commission, 2026, p 48, accessed 11 May 2026.

⁶⁸⁵ P Hurley, M Hildebrandt, E Knight, C Nguyen and S Hoang, [Counting down to Net Zero 2050: Australian labour market impacts and regional training responses](#), 2023, p 12, accessed 11 May 2026.

⁶⁸⁶ Jobs and Skills Australia, [The clean energy generation](#), Jobs and Skills Australia, October 2023, p 156, accessed 30 April 2026.

⁶⁸⁷ Jobs and Skills Australia, [The clean energy generation](#), Jobs and Skills Australia, October 2023, p 156.

⁶⁸⁸ ILO, [Ensuring safety and health at work in a changing climate](#), ILO, 2024, p 104.

⁶⁸⁹ DCCEEW, Submission, p 3.

⁶⁹⁰ ILO, [Tripartite experts agree on measures to protect workers and enterprises from weather-related risks](#), ILO, 28 April 2026, accessed 13 May 2026.

The ILO notes that the scientific evidence base regarding the impact of climate change on WHS is limited in many critical areas, and further research is needed to guide policymaking.⁶⁹¹ Industries where work is primarily performed indoors, such as healthcare and social assistance, education and training, arts and recreation and retail, have tended to be under-researched even though they will also be impacted by climate change.⁶⁹² The impacts of UV radiation and air pollution on WHS require further research in the Australian context. This Review recommends supporting further research into the climate-related WHS impacts on a wider range of hazards and industries with a focus on translating findings into practical support for PCBUs.

The model WHS Regulations and climate-related hazards

The model WHS Regulations do not explicitly refer to climate change or climate-related hazards. Climate-related hazards are, however, captured by the primary duty of care in the model WHS Act, which requires PCBUs to provide and maintain a work environment without risks to health and safety, so far as is reasonably practicable.⁶⁹³

Climate-related risks are also covered generally across various model WHS Regulations, model Codes of Practice and guidance materials, including through specific regulations dealing with extreme temperatures, ventilation, emergency plans and air monitoring, and a model Code of Practice on managing biological hazards at work.⁶⁹⁴ However, these laws and guidance materials generally relate to 'business as usual' risks and not all have been updated in response to the more serious and systemic intensification of risks caused by climate change. (The Review notes the model *Code of Practice on Managing the Work Environment and Facilities* is currently being updated to reconsider ventilation and indoor air quality control measures.)

Given the significant risks associated with climate related hazards, this Review recommends new model WHS Regulations in 3 key areas, to be progressed as a priority as part of the proposed model WHS Regulations modernisation project (discussed at **Chapter 7**). These are:

- extreme heat
- air quality
- vector-borne diseases.

Extreme heat

The *National Health and Climate Strategy* identifies heat as one of the most significant climate risks to health and wellbeing. It has immediate and long-term health impacts, from illnesses such as heat exhaustion and heatstroke to the development of chronic diseases. In Australia, severe and extreme heatwave events are projected to double if global warming reaches +2°C and more than quadruple at up to +3°C. Data shows that, between 2012 and 2022, twice as many working age males (1,434) as females (716) were hospitalised due to extreme heat, which may reflect higher numbers of men in outdoor-based work. Although current WHS laws impose a duty on PCBUs to provide a safe working environment free from extreme temperatures, the ILO has found that such general regulations are inadequate to respond to the challenges of a warming planet. It suggests following the lead of countries that have legislated specific measures for extreme heat, such as heat stress indicators, temperature thresholds and protective measures including rest areas, hydration, education and training, and PPE.

⁶⁹¹ ILO, *Ensuring safety and health at work in a changing climate*, ILO, 2024, p 2.

⁶⁹² L Wuersch, A Neher, FE Marino, L Bamberly and R Pope, 'Impacts of climate change on work health and safety in Australia: a scoping literature review', *International Journal of Environment Research and Public Health*, 2023, 20(21):7004, p 3.

⁶⁹³ Model WHS Act, s 19(3)(a).

⁶⁹⁴ Regs 40(f) and (e) require PCBUs to ensure that workers carrying out work in extremes of heat or cold are able to carry out work without risk to health and safety and to ensure ventilation enables workers to carry out work safely respectively. Reg 43 requires PCBUs to prepare, maintain and implement an emergency plan. Reg 50 requires a PCBU to carry out air monitoring to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies.

Air quality

Air quality is a major environmental determinant of health. Outdoor and indoor air pollution is associated with a wide range of adverse effects on respiratory, cardiovascular, reproductive and mental health and can increase the risk of cancer, stroke and cardiovascular disease. Climate change is likely to lead to more frequent and widespread episodes of bushfire smoke, ozone pollution and thunderstorm asthma, which will particularly affect outdoor workers and first responders. In the 2019–20 Black Summer bushfires, close to 80% of Australia's population was impacted by bushfire smoke, contributing to 417 excess deaths and a range of other health impacts. Conventional engineering controls such as hazard enclosure and ventilation may not always be applicable to outdoor work environments, in which case specific regulations would provide greater clarity to PCBU's on how to manage risks.

Indoor air quality protection will also require close attention given human exposure to air pollution occurs predominantly indoors, where people spend around 90% of their time. Indoor air pollution is affected by outdoor air quality, which in turn is projected to worsen due to climate change, with increased emissions of particulate matter, ground-level ozone and other pollutants. Climate change can also alter concentrations of indoor air pollutants from indoor sources, such as mould and volatile organic compounds. The current model WHS Regulations rely on workplace exposure standards that are primarily designed for industrial airborne contaminants, which do not meaningfully impact indoor workplaces including schools, offices, retail settings and health and aged care. The Australian Academy of Science suggests strengthening WHS obligations around indoor air quality and gradually introducing specific mandatory indoor air quality parameters to measure and report against.

Vector-borne diseases

The risk from communicable diseases is likely to increase with climate change as rising temperatures, altered rainfall patterns and flooding affect the distribution, abundance and seasonality of disease vectors such as mosquitos and ticks. Outdoor workers are particularly susceptible to vector-borne diseases, as are emergency responders and healthcare workers who deal with infected subjects. Long-term climate change projections estimate an increased geographic range and duration for mosquito-borne diseases beyond historical patterns. For example, the 2023 Japanese encephalitis virus outbreak was observed in Victoria, SA and NSW, when it had only previously been recorded in far north Queensland. Specific regulations will assist PCBU's to sufficiently manage the risks associated with vector-borne diseases as their likelihood and spread grows.

The 2024 AIHS member survey found fewer than a quarter of respondents felt confident in their ability to help organisations manage climate-related WHS risks.⁶⁹⁵

This Review recommends the model WHS Regulations are amended to regulate extreme heat, air quality and vector-borne diseases. Regulations will provide clarity to duty holders, workers and regulators on how the principles-based WHS laws apply to hazards that climate change continues to intensify.

This Review also notes that industry Codes will play a crucial role in providing practical information about climate-related hazards, given the differences in how climate change is impacting different industries. Industries involving outdoor work, such as agriculture, construction, civil works and road transport, will particularly benefit from advice on heat-related risks via industry Codes.

⁶⁹⁵ AIHS, [AIHS Position Statement: Climate Change and Work Health and Safety](#), AIHS, 2026, accessed 23 April 2026.

Environmental scan – Recommendation 20

Safe Work Australia to develop a strategy on climate change which:

- a. includes new model WHS Regulations to regulate extreme heat, air quality and vector-borne diseases
- b. monitors how WHS laws are interpreted, applied and enforced in relation to extreme weather to identify any gaps in the model WHS Act, Regulations and Codes
- c. makes new Regulations, Codes and/or amendments to the model WHS Act where gaps are identified
- d. outlines how it will engage with stakeholders including social partners, experts and other government agencies to promote a national approach to managing climate-related WHS risks, and integrate WHS into a whole-of-government approach to climate change adaptation, and
- e. supports further research through its *Research and Evaluation Strategy* on the WHS risks of climate-related hazards and the WHS impacts of climate change on under-researched industries.

8.3 Harmful workplace behaviours

In 2022, the model WHS Regulations were amended to include specific regulations detailing how businesses and employers should manage psychosocial risks. Regulation 55D reinforces that PCBU's must implement control measures to eliminate and minimise psychosocial risks so far as is reasonably practicable.⁶⁹⁶ When determining the control measures to implement, PCBU's must consider all relevant matters, including, for the purposes of this discussion, 'workplace interactions or behaviours'.⁶⁹⁷ The psychosocial regulations support a 'systems-based' approach to managing mental health risks at a workplace, recognising that risks may stem from organisational practices, power imbalances, and workplace culture, as well as from individual behaviours.

The psychosocial regulations define a psychosocial hazard as 'a hazard that arises from, or relates to the design or management of work; or a work environment; or plant at a workplace; or workplace interactions or behaviours; and may cause psychological harm (whether or not it may also cause physical harm)'.⁶⁹⁸ The *model Code of Practice for Managing psychosocial hazards at work* (Psychosocial Code) lists 14 common examples of psychosocial hazards to help duty holders identify them in the workplace, including violence and aggression, conflict or poor workplace relationships and interactions, bullying, and harassment (including sexual harassment).⁶⁹⁹

The introduction of the psychosocial regulations has dramatically increased the awareness of these risks in the workplace and the duties of PCBU's to manage them and prevent psychological injuries to workers.

It is noted that consultation for this report occurred in the context of rising workers' compensation claims for psychological injury and many reports of increasing rates of harmful workplace behaviours.⁷⁰⁰

⁶⁹⁶ Model WHS Regulations, reg 55D(1).

⁶⁹⁷ Model WHS Regulations, reg 55D(2)(h).

⁶⁹⁸ Model WHS Regulations, reg 55A.

⁶⁹⁹ Safe Work Australia, *model Code of Practice: Managing psychosocial hazards at work*, Safe Work Australia, 2022, pp 18, 48–53.

⁷⁰⁰ Safe Work Australia, [Workplace and work-related violence and aggression in Australia report](#), Safe Work Australia, 2024.

What we heard

Unions and WHS advocates called for the psychosocial regulations to be amended to include specific regulations to cover certain psychosocial hazards, particularly work-related violence and harassment.⁷⁰¹ The ACTU's submission reflected what this Review heard from many unions: that the overarching psychosocial regulations 'cannot adequately address the complexity and variety of psychosocial risks, just as one physical hazard regulation cannot cover all risks related to asbestos, confined spaces and manual handling'.⁷⁰² The Australian Nursing and Midwifery Federation NSW Branch said that the 'one size fits all' approach of treating all psychosocial hazards as equivalent fails to recognise 'the different risk profiles, causes and controls for hazards such as occupational violence, sexual harassment, fatigue and trauma exposure'.⁷⁰³ The Shop, Distributive and Allied Employees' Association noted the need for more to be done to address customer abuse and violence in the retail and fast-food sectors.⁷⁰⁴ The ACTU also advocated for the list of common hazards in the Psychosocial Code to match those in the Commonwealth version, which has added fatigue, job insecurity and intrusive surveillance.⁷⁰⁵

ACCI called for more support for businesses managing psychosocial risks, highlighting jurisdictional variations in both the Act and Codes of Practice.⁷⁰⁶ Industry representatives noted the value of guidance, while the Business Chamber of Queensland believed the Psychosocial Code strikes the right balance between prescriptive and general requirements.⁷⁰⁷ Others called for more practical guidance to support small to medium-sized businesses that do not have dedicated human resource or WHS teams to navigate psychosocial hazards.⁷⁰⁸ The NFF stated that tailored guidance is needed for the agriculture sector, recognising unique factors such as isolation and the fact that many farm workplaces are also family homes.⁷⁰⁹ Several submissions highlighted the need for additional training for WHS inspectors to better regulate psychosocial hazards.⁷¹⁰

Submissions from The Reckoning Room and Leon Moussa both called for more to be done to address workplace bullying and to enhance psychological safety in the workplace.⁷¹¹

Consultation also highlighted persistent and increasing rates of racism experienced by Aboriginal and Torres Strait Islander and culturally and linguistically diverse (CALD) workers. Submissions noted that racism at work undermines productivity, interacts with workplace power imbalances and can also intersect with other personal attributes to heighten impacts.⁷¹² An inconsistent understanding of cultural safety by employers and managers was identified as limiting efforts to address racism effectively.⁷¹³ The AHRC said that greater efforts should be made to address racism as a WHS issue; and advocated for including a requirement for anti-racism training in the Psychosocial Code.⁷¹⁴

This Review also heard from the Australian Federation of Disability Organisations that people with disabilities experience discrimination in the workplace and that specific disability training is more effective than standard bullying and harassment training to address this.⁷¹⁵

A joint submission from a range of advocacy organisations described how personal characteristics (for example, gender, sexuality, race and disability) often intersect to increase risks of harmful behaviours like discrimination, bullying and harassment, impacting how WHS hazards are experienced and reported.⁷¹⁶ There were also calls for moral injury (the lasting psychological impact arising from impacts of a potentially morally injurious event at work), and the events that cause it, to be recognised as a psychosocial hazard and to be included as a consideration in managing WHS risks.⁷¹⁷ The impacts of structural under-resourcing, vicarious trauma and emergency call-outs for first responders were also raised.⁷¹⁸

⁷⁰¹ [ANMF \(Vic Branch\)](#), Submission, p 10; [Community and Public Sector Union](#), Submission, p 13; [National Joint Submission on Safety Regulation for Primary Prevention of Gendered Violence](#), Submission, pp 14–15.

⁷⁰² [ACTU](#), Submission, p 32.

⁷⁰³ [New South Wales Nurses and Midwives Association](#), Submission, p 26.

⁷⁰⁴ [Shop, Distributive and Allied Employees Association](#), Submission, p 5.

Discussion and recommendations

Evidence supports a need for a greater national effort to improve understanding of, and responses to, harmful workplace behaviours, including work-related violence and harassment. This Review heard about the severity of the injuries they cause and how PCBUs often struggle to understand how to manage the associated risks.

In 2023–24, there were almost 20,000 workers' compensation claims related to harmful behaviours, including 8,613 physical assaults, 7,051 incidences of work-related bullying or harassment, and 3,150 exposures to work-related violence and harassment causing mental stress.⁷¹⁹

These numbers represent a fraction of the true number of incidents⁷²⁰ but support the significant anecdotal evidence heard by this Review of the severe impact of work-related violence and harassment. The impact appears to be compounded by what many perceive to be a lack of clarity in the model WHS laws and a focus by regulators on enforcing compliance relating to risks of physical injury in high risk industries such as construction.⁷²¹

Industries where risks of harmful behaviours are significant, including public administration and safety, healthcare and social assistance, and education and training,⁷²² can often be overlooked during compliance and enforcement activities. The risks of harmful behaviours in these industries are also disproportionately experienced by women.⁷²³

This Review recommends developing new model WHS Regulations to set out how existing WHS duties apply in relation to workplace violence and harassment (including gendered violence) as part of the model WHS Regulations modernisation project recommended at **Chapter 7**. As discussed in **Chapter 6.1**, the Review also recommends new regulations to regulate access to adequate facilities, including designated female toilets, in the workplace.

⁷⁰⁵ [ACTU](#), Submission, p 29; Work Health and Safety (Managing Psychosocial Hazards at Work) Code of Practice 2024 (Cth).

⁷⁰⁶ [ACCI](#), Submission, pp 12–13.

⁷⁰⁷ Business Chamber Qld, Consultation, September 2025.

⁷⁰⁸ [Anonymous](#), Submission #69, p 1.

⁷⁰⁹ [NFF](#), Submission, p 6.

⁷¹⁰ [Shop, Distributive and Allied Employees Association](#), Submission, p 6; [Anonymous](#), Submission #137, p 9.

⁷¹¹ [The Reckoning Room](#), Submission, pp 4–7; [Leon Moussa](#), Submission, p 1.

⁷¹² [National Joint Submission on Safety Regulation for Primary Prevention of Gendered Violence](#), Submission, p 12.

⁷¹³ Australian Medical Association, Consultation, September 2025; Professor Nareen Young, Consultation, October 2025; ACTU, Consultation, February 2026; Reconciliation Australia, Consultation, March 2026.

⁷¹⁴ AHRC (Race Discrimination Team), Consultation, September 2025.

⁷¹⁵ Australian Federation of Disability Organisations, Consultation, October 2025.

⁷¹⁶ [National Joint Submission – Safety Regulation for Primary Prevention of Gendered Violence](#), Submission, pp 57–58.

⁷¹⁷ [Dean Yates](#), Submission, pp 2, 6, 11, 14; [Rev Dr Mark Layson](#), [Nikki Jamieson](#), [Assoc Prof Lindsay Carey](#), Submission, p 5.

⁷¹⁸ [ACTU](#), Submission, Recommendation 21; Private, Submission #78, 2025, pp 1–3; [Water Services Association of Australia](#), Submission, p 5.

⁷¹⁹ Safe Work Australia, [National Data Set for Compensation-based Statistics](#) [data set], n.d., accessed 6 May 2026.

⁷²⁰ By way of illustration, only 22 of these claims were for racial harassment, despite considerable feedback that this is a common and growing hazard. It is clear that, while reporting of some psychological harms has grown, the extent of some others likely remains under-reported.

⁷²¹ Safe Work Australia, [WHS prosecutions](#), Dashboard, Safe Work Australia, n.d., accessed 1 May 2026.

⁷²² Safe Work Australia, [National Data Set for Compensation-based Statistics](#) [data set], Safe Work Australia, n.d., accessed 6 May 2026.

⁷²³ For example, in the healthcare and social assistance industry, 75% of all claims for exposure to violence and harassment were made by women.

Racism was also raised by many as a significant and growing workplace risk, with some contributors noting there is a limited understanding of how racism operates systemically and how repeated or relatively minor behaviours can accumulate to produce significant psychological harm.⁷²⁴ The Centre for Indigenous People and Work's *Gari Yala 2 (Speak the Truth)* report shows a quarter of Aboriginal and Torres Strait Islander respondents find their workplaces culturally unsafe, and 66% reported hearing frequent racial slurs or jokes in the workplace.⁷²⁵ The Speak the Truth report identified that, even among workplaces with cultural safety programs, only 43% had a racism complaint procedure and anti-discrimination training, which it considers are fundamental protections.⁷²⁶

Increasingly, the WHS framework is seen as critical to preventing harmful behaviours in workplaces, including racism and other forms of discrimination. To provide further clarity about the role of the model WHS Act to prevent injury from harmful behaviours and to elevate the need for PCBUs to be aware of their duties, this Review recommends amending the non-exhaustive list in section 19(3) of the model WHS Act to include a reference to harmful behaviours. The intent is not to expand the scope of the primary duty but to elevate awareness of these risks and reinforce a proactive, systemic risk-management approach. The exact wording of the recommendation can be found in **Chapter 2.1**.

Importantly, the impact of workplace harmful behaviours is not limited to those directly subjected to that harm. Research suggests those who witness harmful behaviours can also experience a range of associated negative psychological impacts,⁷²⁷ contributing to unsafe work environments.

Work to address these issues should consider the complex nature of harmful behaviours, including how intersectionality increases exposure risks.⁷²⁸ Care is also required to ensure that WHS risk guidance does not inadvertently position affected workers as the 'problem'.⁷²⁹

In this context, this Review recommends the development of a strategy to strengthen the evidence base and improve understanding of how harmful workplace behaviours are regulated through existing WHS duties, the intersection with other psychosocial hazards, and which system-level controls are most effective in practice. The strategy should also consider how this information is best translated and communicated within the WHS framework.

This approach is consistent with Safe Work Australia's *Research and Evaluation Strategy*, which identified the need to expand the evidence base around effective systemic controls and regulatory approaches on psychological harm.⁷³⁰

⁷²⁴ ACTU, Consultation, February 2026; Australian Medical Association, Consultation, September 2025.

⁷²⁵ N Young, J Gilbert, O Evans and J O'Leary, *Gari Yala 2 (Speak the Truth) full report: Centreing the work experiences of Aboriginal and/or Torres Strait Islander Australians in 2025–2026*, University of Technology Sydney, Gari Yala, 2026, p 24, accessed 13 May 2026.

⁷²⁶ N Young, J Gilbert, O Evans and J O'Leary, *Gari Yala 2 (Speak the Truth) full report: Centreing the work experiences of Aboriginal and/or Torres Strait Islander Australians in 2025–2026*, University of Technology Sydney, Gari Yala, 2026, pp 27–28.

⁷²⁷ MB Nielsen, SV Einarsen, S Parveen and M Rosander, 'Witnessing workplace bullying – A systematic review and meta-analysis of individual health and well-being outcomes', *Aggression and Violent Behaviour*, 2024, 75.

⁷²⁸ V O'Keeffe, S Howard, A Neall, A Cebulla and A Hordacre, *Harmful behaviours in the workplace – A literature review*, Flinders University, Australian Industrial Transformation Institute, June 2024, p 63, accessed 13 May 2026.

⁷²⁹ Reconciliation Australia, Consultation, March 2025.

⁷³⁰ Safe Work Australia, *Research and Evaluation Strategy*, Safe Work Australia, 2025, accessed 13 May 2026.

Environmental scan – Recommendation 21

Safe Work Australia to develop a strategy on harmful behaviours which:

- a. amends the model WHS Act to clarify that the duty of care in section 19 includes the management of risks arising from harmful behaviours (see Recommendation 4)
- b. develops new model WHS Regulations to regulate access to facilities, including female designated toilets, and prevention of work-related violence and harassment, including gender-related violence
- c. supports a greater understanding of how the model WHS laws apply to harmful workplace behaviours
- d. strengthens through its *Research and Evaluation Strategy* the evidence base on the management of harmful workplace behaviours, including how system level controls can prevent risks across different industries, and
- e. provides transparency and consistency of enforcement approach through the NCEP, Codes and other supporting materials to support duty holders to manage risks.

Appendix A: Communiqué – Meeting of WHS ministers

18 September 2024

1. Commonwealth, state and territory Work Health and Safety (WHS) Ministers met today and discussed a number of key WHS matters, including new national strategic plans for asbestos and silica and dispute resolution processes.
2. The meeting was chaired by Senator the Hon Murray Watt, Minister for Employment and Workplace Relations.
3. There are still too many deaths, injuries and illnesses arising from work. Ministers reflected on WHS statistics published by Safe Work Australia today which show in 2023, 200 workers died from a workplace injury, and in 2022-23, 139,000 workers made a workers' compensation claim for a serious injury.
4. Ministers discussed the importance of ensuring the model WHS laws provide the highest level of protection for workers. Ministers asked Safe Work Australia to prepare a proposal on how it would undertake a best practice review of the model WHS laws in the context of seeking to maintain a harmonised approach. This would involve examining alternative approaches used across jurisdictions that could be considered for adoption nationally.

...

Dispute Resolution

18. Ministers noted recent amendments made by the South Australian and Queensland governments to their respective WHS Acts following independent reviews conducted in their jurisdictions in 2022 - the Independent Review of SafeWork SA and the Review of Queensland's Work Health and Safety Act 2011.
19. The amendments allow for certain unresolved WHS disputes to be settled through referral to a relevant court or tribunal. The amendments seek to implement the policy intent of Recommendation 13 of the Review of the model WHS Laws (Boland Review) conducted in 2018.
20. Ministers discussed the importance of timely and effective resolution of WHS disputes and agreed to re-examine Recommendation 13 of the 2018 National Review and task Safe Work Australia to scope options to improve practical dispute resolution processes under the model WHS laws and to provide advice to WHS Ministers within 6 months.
21. WHS Ministers also agreed to request Safe Work Australia look at other relevant recommendations from the South Australian and Queensland reviews for consideration nationally.

Appendix B: Terms of Reference

Context

- 1.1 In September 2024, Work Health and Safety (WHS) ministers asked Safe Work Australia to prepare a proposal on how it would undertake a best practice review of the model WHS laws in the context of seeking to maintain a harmonised approach.
- 1.2 This would involve examining alternative approaches used across jurisdictions that could be considered for adoption nationally.
- 1.3 The objective of a harmonised approach is to ensure workers across Australia have the same protections no matter where they work or what industry they work in and that the compliance and regulatory impact on employers is consistent and reduced for those with operations in more than one jurisdiction.
- 1.4 Safe Work Australia was established by the Safe Work Australia Act 2008 with primary responsibility to lead the development of policy to improve WHS and workers' compensation arrangements across Australia. One of Safe Work Australia's statutory functions is to develop, evaluate and, if necessary, revise a model WHS legislative framework for approval by WHS ministers for adoption as laws by the Commonwealth, the States and the Territories.
- 1.5 Eight of the nine jurisdictions have implemented the model WHS laws. The Commonwealth, Australian Capital Territory, New South Wales, Northern Territory and Queensland implemented the model WHS laws on 1 January 2012; South Australia and Tasmania implemented the laws on 1 January 2013. Western Australia implemented the laws on 31 March 2022. Victoria has not implemented the model WHS laws in their jurisdiction.

Scope of the review

- 2.1 Safe Work Australia will undertake a thematic review of the model laws by examining and making recommendations on whether the model WHS Act and model WHS Regulations incorporate a best practice approach that achieves the object of the model WHS Act (s3).
- 2.2 The review will consider outcomes from other recent best practice reviews, including relevant recommendations from the:
 - a) 2018 Review of the model WHS laws
 - b) 2022 Review of the Work Health and Safety Act 2011 (Queensland)
 - c) 2022 Independent Review of SafeWork SA.
- 2.3 The review will also consider provisions in the jurisdictional WHS Act and WHS Regulations (and equivalent Victorian OHS Act) that significantly depart from the model WHS Act and Regulations. The review will consider if these jurisdictional provisions best achieve the object of the model WHS Act and make recommendations on whether they should be incorporated into the model WHS laws.
- 2.4 The review will also examine the process for jurisdictions to notify Safe Work Australia Members

of proposed departures from the model WHS laws to:

- a) determine if the process is operating as intended
 - b) ensure jurisdictions bring any proposed changes that deviate from the model WHS laws to Safe Work Australia Members, and
 - c) if required, make recommendations to improve the process.
- 2.5 The review will have regard to recent and ongoing work of the Safe Work Australia Agency, including theme specific reviews, which will support national best practice in making recommendations.
- 2.6 The review will have regard to achieving a harmonised approach to the WHS legislative framework across all jurisdictions, while also allowing for jurisdictional discretion where appropriate, provided the agreed policy intent is met.

Timing and process

- 3.1 Safe Work Australia will lead the review, engaging expert advice where required and establishing working group/s to assist with liaison across Safe Work Australia Member organisations. Safe Work Australia will work closely with and encourage participation by Safe Work Australia Members and all relevant stakeholders in the review.
- 3.2 The review will also ensure engagement with interested parties, including through public and targeted consultation processes.
- 3.3 The review will provide a written report including where relevant, recommendations for amendments to the model WHS Act and Regulations, for the consideration of WHS ministers and matters that may require further scoping and review.
- 3.4 The review will commence in mid-2025, with a final report to WHS ministers in mid-2026.

Appendix C: Overlapping safety frameworks

Industry-specific frameworks

Mining

WHS in the mining industry is regulated by the states and territories. In 2008, the COAG Energy Council agreed to the National Mine Safety Framework with the aim of improving the safety of mining workers through consistent OHS regulations. The framework outlined a set of drafting instructions and example clauses that states and territories could use to amend their existing mine safety legislation or regulations.

In 2014, Safe Work Australia developed Chapter 10 of the model WHS Regulations to regulate mining safety; however, consensus was not reached on its inclusion in the Regulations. The provisions were instead made available for individual jurisdictions to implement as they saw fit. Specific mining chapters have been incorporated into the OHS Regulations of Victoria (Chapter 5.3) and the WHS Regulations of SA (Chapter 10) and the NT (Chapter 10). In NSW,⁷³¹ WA⁷³² and Tasmania,⁷³³ mining safety is regulated under separate Acts or Regulations but treated as part of the general WHS framework. The ACT does not have a mining industry.

Currently, only Queensland relies on standalone mining safety legislation that operates independent of its WHS Act. The sector is regulated through 2 principal industry-specific statutes: the *Coal Mining Safety and Health Act 1999* for coal operations and the *Mining and Quarrying Safety and Health Act 1999* for all other mining and quarrying activities.⁷³⁴ The laws provide a risk management model based on keeping risk within ‘acceptable’ limits and ‘as low as reasonably achievable’.⁷³⁵

Mining is regulated by the WHS regulator in most jurisdictions. Separate mining regulators exist in the major mining states of NSW (NSW Resources Regulator), Queensland (Resources Safety and Health Queensland) and WA (Department of Mines, Industry, Regulation and Safety).

⁷³¹ *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* (NSW).

⁷³² *Work Health and Safety (Mines) Regulations 2022* (WA).

⁷³³ *Mines Work Health and Safety (Supplementary Requirements) Act 2012* (Tas) and *Mines Work Health and Safety (Supplementary Requirements) Regulations 2025* (Tas).

⁷³⁴ T Cvetkovski and N Weston, ‘[Mining work health, safety laws and serious industrial crimes in Australia: down the shaft of jurisdictional inconsistency](#)’, *Laws*, 2025, 14(4):49.

⁷³⁵ Department of Natural Resources and Mines, [Nationally consistent mine safety legislation: Queensland’s proposal for a nationally consistent legislative framework](#), Queensland Government, 2012, p 10, accessed 9 February 2026.

Maritime

Maritime safety is governed by multiple pieces of legislation (see below). Responsibility for the maritime industry sits across a number of Australian Government departments, including the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, the Department of Industry, Science and Resources and the Department of Employment and Workplace Relations. Relevant legislation includes:

- the *Navigation Act 2012* (Navigation Act)
- the OHS(MI) Act
- the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Marine Safety National Law Act)
- the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act).

The Navigation Act sets out a range of requirements that apply to foreign-flagged vessels, and certain Regulated Australian Vessels, in Australian waters.⁷³⁶ The Australian Maritime Safety Authority (AMSA) is responsible for regulating these vessels by enforcing Marine Orders, which are requirements in Australian law based on international maritime treaty obligations. They prescribe the various duties that apply to these vessels, including in relation to health and safety.

There is complexity as to whether foreign flagged ships will have WHS jurisdiction applied to them when in coastal waters. Some foreign flagged vessels sail under so-called ‘flags of convenience’, meaning they are not subject to regulations that would otherwise apply, even on ships that operate wholly within Australian waters and have Australian crews. Some countries have implemented explicit laws to prevent this practice.⁷³⁷

The OHS(MI) Act covers prescribed Australian ships that are engaged in trade or commerce on international and domestic voyages. The scheme provides WHS protections to seafarers on ships that do not fall under state and territory coverage but have a connection to Australia. Criteria for coverage is complex and includes reference to the repealed *Navigation Act 1912*. The OHS(MI) Act is based on pre-harmonised WHS legislation and was not updated with the introduction of the model laws.

The Marine Safety National Law Act applies to domestic commercial vessels not covered under the Navigation Act and is regulated by AMSA. It imposes a general duty of care on owners of domestic commercial vessels to, so far as reasonably practicable, ensure the safety of the vessel. As the definition of ‘workplace’ under the model WHS laws includes a vessel, operators of most domestic commercial vessels have duties under both state and territory WHS laws and the Marine Safety National Law Act.⁷³⁸

AMSA signed a single MOU with state and territory WHS regulators (except Comcare) in 2024 to provide guidance on the role of each party in responding to maritime workplace incidents in Australia.⁷³⁹

⁷³⁶ N Beech and D Catanese, [Australian maritime WHS laws: seeking harmony](#), Hall & Wilcox, 2022, accessed 9 February 2026.

⁷³⁷ For example, a ship visiting more than one port in the United States must change over to a US flag and thereby becomes subject to US domestic maritime laws.

⁷³⁸ [Australian Maritime Safety Authority](#), Submission, p 2.

⁷³⁹ [Australian Maritime Safety Authority](#), Submission, p 3.

Offshore petroleum, gas and electricity

The Australian Government regulates offshore oil and gas activities in Commonwealth waters 3 nautical miles from the coastline and beyond, to the boundary of Australia's exclusive economic zone.⁷⁴⁰ The Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024 (OPGGS Safety Regulations) provide the WHS regime for all offshore petroleum and gas activities, while the *Offshore Electricity Infrastructure Act 2011* (OEI Act) applies to offshore electricity infrastructure projects in Commonwealth waters.

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the independent statutory regulator for health and safety in the offshore oil and gas industry. The Offshore Infrastructure Regulator, whose functions are administered by NOPSEMA, is responsible for regulating the operations of the offshore electricity industry.

The OPGGS Safety Regulations establish a safety case-based framework which requires the operator of a facility to outline how it will control risks to health and safety at or near the facility. The Regulations were amended in 2024, following a review, to include amendments supporting greater harmonisation with the Commonwealth WHS Act, covering HSRs, the definition of 'health' and discriminatory conduct provisions.

The OPGGS Act also regulates health and safety for vessels when they are near certain types of offshore facilities.

The OEI Act modifies the operation of the Commonwealth WHS Act to only apply to 'regulated offshore activities', and only during the operational phase of offshore activities. It does not apply the right of entry provisions under Part 7 of the Commonwealth WHS Act, although WHS permit holders can still access related onshore premises.⁷⁴¹

Onshore petroleum and gas

WHS for onshore petroleum and gas activities is regulated by specific safety regulations in NSW, Queensland and WA, while the relevant WHS Act applies in other jurisdictions. The NSW and WA regimes⁷⁴² are treated as part of the principal WHS Act in each state. Queensland's *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) requires the application of a safety management system to infrastructure classified as operating plant. To avoid regulatory duplication, the Queensland WHS Act⁷⁴³ does not apply to operating plant under the P&G Act, with limited exceptions. The P&G Act does not include the duties and protections required under the WHS Act.⁷⁴⁴ If the Acts conflict for a health and safety matter, the P&G Act prevails to the extent of the inconsistency.⁷⁴⁵

⁷⁴⁰ The Commonwealth also regulates Victorian coastal waters after Victoria referred its powers to the Commonwealth.

⁷⁴¹ [DCCEEW](#), Submission, pp 5–6.

⁷⁴² *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) and *Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022* (WA).

⁷⁴³ Qld WHS Act, Sch 1, Pt 2, s 2.

⁷⁴⁴ [Dr Shay Dougall, Dr Rachael Potter and Professor Maureen Dollard](#), Submission, p 2.

⁷⁴⁵ Qld WHS Act, Sch 1, Pt 2, Div 1, s 3.

Transport industries

Heavy vehicle and rail

The Heavy Vehicle National Law (HVNL) and Rail Safety National Law (RSNL) operate as mirror legislation, with one national regulator for each national law: the National Heavy Vehicle Regulator (NHVR) for the HVNL and the ONRSR for the RSNL.⁷⁴⁶ The HVNL was first enacted by Queensland in 2011 and the RSNL by SA in 2012. All states and territories except WA and the NT have adopted the HVNL,⁷⁴⁷ while the RSNL has been adopted by all jurisdictions.

The Australian Transport Safety Bureau (ATSB) is responsible for certain types of rail safety incidents.

The HVNL was amended in 2016 to better align its duties and obligations with the model WHS laws, introducing a primary duty to ensure the safety of heavy vehicle transport activities as far as reasonably practicable.⁷⁴⁸ Under the RSNL, duty holders must ensure the safety of their operations so far as is reasonably practicable, in line with the definition used in the model WHS Act.⁷⁴⁹

The HVNL and RSNL each expressly outline their relationship to WHS laws.⁷⁵⁰ Both are intended to apply concurrently, with WHS laws prevailing to the extent of any inconsistency. Evidence of a contravention of either law is admissible in any proceeding for an offence against WHS laws.

The NHVR is currently developing an MOU with WHS regulators to formalise a cooperative working relationship and information sharing on cross-jurisdictional matters.⁷⁵¹ The ONRSR has MOUs with WHS regulators to delineate responsibility between regulators.⁷⁵²

Aviation

Australia's civil aviation safety framework operates under a 3-tiered structure comprising the *Civil Aviation Act 1988*, Civil Aviation Safety Regulations 1998 and the Manuals of Standards. The Civil Aviation Safety Authority is the regulator, with responsibility to maintain, enhance and promote the safety of civil aviation. The ATSB investigates accidents and transport safety occurrences involving Australian-registered civilian aircraft (excluding recreational and sport aviation).

In *Work Health Authority v Outback Ballooning Pty Ltd* [2019] HCA 2, the High Court confirmed that Commonwealth aviation laws are not inconsistent with state and territory WHS laws, holding that the obligations under the *Civil Aviation Act 1988* do not exclude other laws which require duty holders to exercise due care in the conduct of air operations.⁷⁵³

⁷⁴⁶ Mirror legislation usually refers to a system where one jurisdiction enacts a law that is then enacted in similar terms by other jurisdictions.

⁷⁴⁷ The HVNL applies equally to vehicles from WA and NT when they cross into one of the states or territories where the HVNL applies.

⁷⁴⁸ [NHVR](#), Submission, p 6.

⁷⁴⁹ Rail Safety National Law, ss 52–56.

⁷⁵⁰ Heavy Vehicle National Law, s 18; Rail Safety National Law, s 48.

⁷⁵¹ [NHVR](#), Submission, p 6.

⁷⁵² National Transport Commission, [Rail Safety National Law Review: final report](#), National Transport Commission, 2024, p 17, accessed 11 May 2026.

⁷⁵³ H Eager and A Khouri, [The reach of work health and safety laws in civil aviation](#), Minter Ellison, 2019, accessed 25 Feb 2026.

Hazard-specific frameworks

Dangerous goods and explosives

Hazardous chemicals and dangerous goods laws focus on managing risks associated with substances that have the potential to cause harm to people, property and the environment. They are regulated separately by the Commonwealth, states and territories.

Explosives, given their nature and the magnitude of the risk they present, are subject to further specific regulations. Each state and territory has developed and administers its own explosives regime requiring different licences for the type of activity to be undertaken, commonly for manufacture, import, supply, storage, transport and use. WHS ministers agreed in principle in 2018 to consider making explosives regulations nationally consistent, although no formal framework was reached and jurisdictions have instead amended their legislation on an as-needed basis.

The transport of dangerous goods by road and rail is subject to the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, which is implemented by the adoption of a model Act in each state and territory's dangerous goods transport regulations.⁷⁵⁴ Transport of dangerous goods by air and sea is regulated by CASA and AMSA respectively.

Electrical safety

Part 4.7 of the model WHS Regulations includes provisions on general electrical safety in workplaces and energised electrical work. However, electrical safety is regulated outside the general WHS framework by Queensland, NT and Tasmania. Queensland's *Electrical Safety Act 2002* prevails over its WHS Act where the 2 may conflict.⁷⁵⁵ Tasmania' *Electricity Safety Act 2022* does not change the application of its WHS Act.⁷⁵⁶ The relationship between NT's *Electrical Safety Act 2022* and its WHS Act is not explicitly articulated in either Act.

Others

Queensland is the only state to separately regulate safety for its snorkelling and diving industry. The framework includes a range of recreational water legislation which impose specific rules on divers but with the Queensland WHS Act prevailing in the event of inconsistency.⁷⁵⁷

Accreditation

Builders wishing to tender for construction projects funded by the Commonwealth or a Commonwealth corporate entity must comply with the Australian Government WHS Accreditation Scheme, which is administered by the Office of the Federal Safety Commissioner. Accreditation requires a builder to satisfy the Federal Safety Commissioner that they have implemented and are implementing appropriate WHS policies, procedures and safe work practices.

⁷⁵⁴ National Transport Commission, [Australian Dangerous Goods Code](#), n.d., accessed 9 February 2026.

⁷⁵⁵ Qld WHS Act, Pt 2, Div 2, s 4.

⁷⁵⁶ *Electricity Safety Act 2022* (Tas), Pt 1, s 7.

⁷⁵⁷ *Safety in Recreational Water Activities Act 2011* (Qld), s 4(3).

Other relevant frameworks

Fair Work Act

The FW Act aims to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.⁷⁵⁸ It includes provisions relating to matters also covered by the model WHS framework, including:

- bullying (Part 6-4B, FW Act)
- consultation (requirements to consult with employees about significant changes in the workplace are set out in awards and enterprise agreements)
- discriminatory conduct (Part 6, model WHS Act; Part 3-1, FW Act)
- discrimination (Part 3-1, Division 5, s 351, FW Act)
- dispute resolution (Part 6-2, FW Act)
- right of entry (Part 7, model WHS Act; Part 3-4, FW Act)
- sexual harassment (Part 3-5A, FW Act).

Anti-discrimination

Sex discrimination

The *Sex Discrimination Act 1984* (Cth) was amended in 2022 to introduce a positive duty requiring organisations and businesses to take proactive meaningful action to eliminate sexual harassment and other unlawful conduct. It is similar but not identical to the primary duty in the model WHS Act. Complying with the *Sex Discrimination Act 1984* (Cth) requirements alone will not mean a PCBU has fulfilled their WHS duties.⁷⁵⁹ The amendment was a recommendation of the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report, which revealed the extent of sexual harassment in Australian workplaces and made 55 recommendations to improve the coordination, consistency and clarity between the anti-discrimination, employment and WHS legislative schemes.⁷⁶⁰

The Respect@Work Council implemented another recommendation of the Respect@Work report to establish a council with representatives from anti-discrimination, employment and WHS bodies to improve the prevention and response to sexual harassment at work. Safe Work Australia and WHS regulators are core members of the council.

Disability discrimination

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) recommended amending the *Disability Discrimination Act 1992* (Cth) to 'introduce a positive duty on all duty-holders under the Act to eliminate disability discrimination, harassment and victimisation, based on the December 2022 amendments to the *Sex Discrimination Act 1984* (Cth)'. This duty would not limit or otherwise affect a duty that a duty holder has under WHS laws.⁷⁶¹

⁷⁵⁸ FW Act, s 3.

⁷⁵⁹ Safe Work Australia, [Sexual and gender-based harassment – WHS duties](#), Safe Work Australia, n.d., accessed 12 February 2026.

⁷⁶⁰ AHRC, [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#), AHRC, 2020, accessed 13 May 2026.

⁷⁶¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [‘Executive summary: Our vision for an inclusive Australia and recommendations’](#), *Final report*, Commonwealth of Australia, 2023, p 205.

The Disability Royal Commission also found information is lacking for duty holders and that there is no consistent regulatory approach to the employment of people with disability who are subject to different regulatory regimes. It recommended the Australian Government convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment.⁷⁶²

Race discrimination

The *National Anti-Racism Framework* recommends amending the *Racial Discrimination Act 1975* (Cth) to include a positive duty to eliminate racial discrimination.⁷⁶³ It also recommends the incorporation of cultural safety Codes of Practice into WHS legislation and convening a national council of state and territory anti-discrimination and human rights bodies, WHS agencies, and relevant peak organisations to develop nationally consistent standards for employers and employees to report experiences of racism and racial discrimination in the workplace.⁷⁶⁴

⁷⁶² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final report, Volume 7, Inclusive education, employment and housing - Part B](#), 2023, pp 433–434.

⁷⁶³ AHRC, [The National Anti-Racism Framework](#), AHRC, 2024, p 16.

⁷⁶⁴ AHRC, [The National Anti-Racism Framework](#), AHRC, 2024, p 18.

Appendix D: Consultation, representation and participation

Health and safety representative elections and health and safety committee processes

1.
 - A. Qld variations ([ss 52](#) and [54](#)) providing clearer timeframes for negotiating work groups and allowing mutual timeframe extensions.
 - B. Qld variations ([ss 50A](#) and [62A](#)) prohibiting PCBUs from discouraging the election of an HSR or a request for an HSR election.
 - C. Qld variation ([s 75](#)) providing clearer timeframes for PCBUs to establish an HSC.
-

Health and safety representative powers and functions

2.
 - A. Qld, WA and Vic variations modernising the information-gathering powers of HSRs, including:
 - i. to take photographs, video or audio recordings, measurements or samples (subject to appropriate safeguards) (Vic OHS Act, [s 58\(1\)\(ab\)](#))
 - ii. HSRs may request information concerning the WHS of workers in the work group (Qld WHS Act, [s 68\(2\)\(f\)](#))
 - iii. requiring PCBUs to inform an HSR about statutory notices issued by an inspector, EPH entry notices and notifiable incidents (Qld WHS Act, [ss 70\(1\)\(ca\)\(cb\)\(cc\)](#) and [71\(8\)](#))
 - iv. requiring that a PCBU notify an HSR of a review of a PIN (WA WHS Act, [s 100\(2\)](#)).
 - B. Qld variation ([s 97A](#)) requiring PCBUs to give the WHS regulator a copy of any PIN issued to it by an HSR.
3.
 - A. Qld variation ([s 70](#)) requiring PCBUs to inform and make available an HSR for a relevant inspector or WHS EPH visit.
 - B. Qld, SA, NSW (and others) variations ([s 74](#)) requiring PCBUs to provide the regulator with a current list of HSRs and deputy HSRs for each work group.

Health and safety representative training entitlements

4.
 - A. SA, Qld and Vic variations improving HSR training arrangements by:
 - i. requiring PCBUs to facilitate HSR training upon appointment (Qld WHS Act, [s 72\(1\)](#))
 - ii. adopting minimum training entitlements of 5 days in the first year, 3 days in the second year, and 2 days in the third year (SA WHS Act, [s 72\(9\)](#))
 - iii. requiring initial training to be provided 28 days after the HSR is elected or as soon as practicable if the initial course is not reasonably available (Qld WHS [Regulation, reg 21\(2\)](#))
 - iv. where initial training has not occurred within 28 days, allowing an HSR to exercise their statutory powers (Qld WHS [Regulation, reg 21\(2\)](#); Vic OHS Act, [ss 60](#) and [74](#)⁷⁶⁵).
 - B. Qld variations ([ss 70\(3\)](#) and [72\(4\)](#)) ensuring HSRs are not financially disadvantaged by exercising their powers or attending approved training.

Unions' role in consultation and representation

5.
 - A. Qld variations ([ss 45A](#) and [45B](#)) clarifying that a reference to a 'union' means an employee organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) or relevant jurisdictional industrial laws.
 - B. Qld variation ([s 48\(3\)\(4\)\(5\)](#)) specifying that consultation must occur at times and places, or in ways, that are agreed to by all parties.
 - C. Qld variations ([ss 52\(4A\)-\(5C\)](#) and [80\(1\)\(e\)](#)) allowing a union to be a party to work group negotiations or issue resolution by notifying the PCBU in writing.

Right to cease unsafe work

6. WA variation ([s 84](#)) extending the right of workers to cease unsafe work where a serious risk is posed to someone besides themselves.

Right of entry

7.
 - A. [ACT](#), [SA](#), [NSW](#), [Vic](#) and Qld (now repealed) variations ([s 118\(1\)](#)) providing WHS EPHs with powers to take photographs, video or audio recordings, measurements or samples (subject to appropriate safeguards).
 - B. Qld variation ([s 118\(1\)\(f\)](#)) allowing WHS EPHs to remain at the workplace during usual hours long enough to achieve the purpose of entry.
 - C. [ACT](#) and [NSW](#) variations ([s 118\(5\)](#)) specifying that a WHS EPH may exercise their rights to address an additional suspected contravention, during an inquiry into an initial suspected contravention.
 - D. Qld variation ([s 119\(6\)](#)) providing that a notice of entry is not invalid because of a minor defect.

⁷⁶⁵ In Victoria an HSR may exercise their powers upon election without being trained.

Appendix E: Compliance and enforcement

Regulator powers and functions

1.
 - A. WA variations ([s 152\(c\)](#)) specifying that a regulator can investigate and report on WHS matters relating to particular industries or hazards.
 - B. WA variation ([s 155B](#)) enabling the regulator to require PCBUs to obtain independent expert reports.
 - C. WA variation ([s 155C](#)) permitting the regulator to retain documents for as long as it considers necessary.
 - D. Cth variation ([s 12B](#)) specifying the duty to consult includes those operating under another jurisdiction's WHS Act.
-

Inspector powers

2.
 - A. WA variation ([s 165](#)) adding 'testing' and 'examination' as permitted reasons to take and remove a sample from the workplace.
 - B. WA variation ([s 170](#)) providing that an inspector can exercise their entry powers with the consent of the person with 'apparent' management or control of residential premises.
 - C. Cth variations ([ss 165A](#) and [165B](#)) updating inspector powers in response to technological change.
 - D. WA variation ([s 171](#)) enabling inspectors to accept copies of documents they request be produced and the recording of interviews.
 - E. WA variations ([ss 174](#) and [181](#)) limiting access to original documents or seized things only by a person with written authorisation.
 - F. WA variations ([s 181](#)) providing that the regulator does not have to allow inspection of a seized item where it is evidence of an offence.
-

Enforceable undertakings

3. [Cth](#), [ACT](#), [NSW](#), [Qld](#), [SA](#), [Tas](#), [WA](#) (s 216) and [NT](#) (s 34C) variations preventing the use of enforceable undertakings for industrial manslaughter offences.

Review of decisions

4.
 - A. SA variation ([s 223](#)) providing that a PCBU's or a worker's representative can also be an eligible person for reviewable decisions.
 - B. Qld variation ([s 229A](#)) providing that, in relation to external reviews, persons are entitled to a statement of the decision and reasons.
-

Legal proceedings

5.
 - A. NSW variations ([s 260](#)) providing unions the ability to bring civil penalty proceedings.
 - B. Vic approach ([s 132](#)) to limitation periods enabling the DPP to authorise an extension of time for bringing a prosecution.
 - C. WA variations ([ss 30A](#) and [31-32](#)) permitting the use of alternative verdicts in WHS proceedings.
 - D. WA variations ([s 193](#)) requiring that a person to whom an improvement notice is issued must notify the regulator once they comply.
 - E. WA variation ([s 232A](#)) providing that the court may decide to admit evidence if it is satisfied that the benefit outweighs the harm.
-

Confidentiality of information

6.
 - A. SA variation ([s 271A](#)) enabling regulators to disclose information to certain parties with a direct connection to an incident subject to appropriate safeguards.
 - B. NSW variation ([s 271](#)) enabling PCBUs, workers and their representatives access to information about a matter they raise with the regulator.
 - C. NSW variation ([ss 271AA](#) and [271AB](#)) providing more streamlined administrative approaches to information sharing between the regulator and other agencies.

Appendix F: The model WHS Regulations: variations

Model WHS Regulations

1. Qld variations (WHS [Regulation, reg 16\(2\)](#)) specifying when an HSR is ‘readily accessible’ to workers, by reference to location, work type and shift type.
2. Amend the model WHS Regulations to adopt WA’s variation to [reg 292](#) in relation to construction projects, which sets the definition by reference to the number of people on the project.
3. Amend the model WHS Regulations to enable digital authorisation options for general construction induction training cards (white cards).
4. Amend Schedule 11, drawing on the [NSW variation](#), to introduce a requirement for PCBUs that use, handle or store 25,000 kg or more of lithium batteries at a workplace to lodge a copy of their emergency plan with the relevant fire authority.

Appendix G: The model WHS Regulations: modernisation project

This Review recommends the following issues be considered through the proposed regulation modernisation project.

Model WHS Regulations

1. Consider how to provide for mutual recognition of prescribed training completed by WHS EPHs across WHS jurisdictions, to remove unnecessary duplication of training for permit holders operating in multiple jurisdictions.
2. Review Division 1 of Part 5.3 to determine how high risk work licensing should apply when automated high risk plant is used.
3. Amend the definition of 'demolition work' to include offshore demolition work.
4.
 - A. Harmonise, with the support of jurisdictions, the registration requirements for plant and design for amusement devices; and consider (including by referring to HWSA if appropriate) how to increase the transparency and mutual recognition of these through national information sharing.
 - B. Review the competent persons framework across the model WHS Regulations, including the definition and application of 'competent person'.
5. Review definitions in the model WHS Regulations to ensure they reflect modern working environments and equipment, including those concerning carcinogens, germ cell mutagens and reproductive toxicants.

6. Ensure a consistent regulatory approach to managing hazardous chemicals and other hazards that may arise from the processing of products, including engineered stone and welding rods. Noting existing reviews underway on these matters, Safe Work Australia should:
 - i. examine whether existing duties and definitions adequately capture products that generate hazards when processed, particularly where those products are not hazards in their unprocessed state
 - ii. assess whether current labelling and safety information requirements, including safety data sheets, consistently and appropriately inform downstream users of processing-related risks
 - iii. consider how to address processing-related risks where labelling and safety information requirements are found to be inadequate.
7. Consider whether there is a legislative gap in relation to the legal capacity of inspectors to issue compliance notices where prohibited work is being done.
8. Review safety requirements for underground and overhead facilities to improve consistency across jurisdictions.
9. Review dangerous goods and Major Hazard Facilities Regulations to ensure they are current and fit for purpose, including for application to the clean energy sector.
10. Review the model WHS Regulations to consider new construction-related laser applications.
11. Consider whether updates are needed to the model WHS Regulations to accommodate emerging technologies, including grid-scale battery energy storage systems and small hydrogen facilities.

Appendix H: Key terms

Term	Description
2008 National Review	<i>National Review into Model Occupational Health and Safety Laws (2008): first report released in October 2008; second report released in January 2009.</i>
2014 COAG Review	Review of the model Work Health and Safety laws. The final report, <i>Improving the model WHS laws: Report</i> , was completed in 2014.
2017 Queensland Review	Best Practice Review of Workplace Health and Safety Queensland (2017)
2018 National Review	<i>Review of the model Work Health and Safety laws (2018)</i>
2018 They Never Came Home Report	Senate Education and Employment References Committee, <i>They never came home – The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia</i> , Australian Government, 2018.
2019 NT Review	<i>Best Practice Review of Workplace Health and Safety in the Northern Territory: Final report (2019)</i>
2022 ACT WHS Prosecutions Review	<i>Conduct of Work Health and Safety Prosecutions Review (WorkSafe ACT) (2022)</i>
2022 Queensland Review	Review of the <i>Work Health and Safety Act 2011</i> (Queensland)
2022 SA Review	<i>Independent Review of SafeWork SA (2022)</i>
2023 NSW Review	<i>Independent Review of SafeWork NSW (2023)</i>
AALARA	Australian Amusement, Leisure and Recreation Association
ACCI	Australian Chamber of Commerce and Industry
ACFA	Australian Cabinet and Furniture Association Ltd
ACT	Australian Capital Territory
ACT WHS Act	<i>Work Health and Safety Act 2011 (ACT)</i>
ACT WHS Regulations	Work Health and Safety Regulation 2011 (Act)
ACTU	Australian Council of Trade Unions
ADM	Automated decision-making is a concept focused on the process of making fully automated decisions without direct human intervention or

Term	Description
	oversight. ADM systems may use both AI and non-AI methods and techniques.
AHRC	Australian Human Rights Commission
AI	Artificial intelligence refers to the research and development of mechanisms and applications of AI systems. An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.
AIHS	Australian Institute of Health and Safety
Alternative verdicts	Alternative verdicts allow regulators to bring multiple charges for an offence so that a duty holder could be convicted of a lower penalty offence if they are acquitted of higher penalty offences.
ANMF (Vic Branch)	Australian Nursing and Midwifery Federation (Victorian Branch)
Auslan	Australian Sign Language
BCA	Business Council of Australia
Best Practice Review	Best Practice Review of the model Work Health and Safety laws (2026)
CALD	Culturally and linguistically diverse
Category 1 offence	A Category 1 offence is one of the most serious offences in the WHS Act where a duty holder, without reasonable excuse, engages in conduct that exposes the individual to whom they owe a duty to a risk of death or serious injury/illness and this duty holder was reckless or grossly negligent. If found guilty, the possible consequences for this offence in the model laws include imprisonment and monetary penalties.
Category 2 offence	A Category 2 offence is where a duty holder's failure to comply with their duty exposes an individual to a risk of death or serious injury or illness. If found guilty, the possible consequences for this offence in the model laws are monetary penalties.
Category 3 offence	A Category 3 offence is where a duty holder has failed to comply with their duty. If found guilty, the possible consequences for this offence in the model laws are monetary penalties.
CFMEU	Construction, Forestry and Maritime Employees Union
Civil penalty provisions	Civil penalty provisions are prohibitions on conduct that are not penalised by imprisonment and are dealt with according to the rules of civil proceedings.
COAG	Council of Australian Governments (succeeded by National Cabinet)
Commonwealth WHS Act	<i>Work Health and Safety Act 2011</i> (Cth)

Term	Description
CSA	Carnival Safety Australia
DCCEEW	Department of Climate Change, Energy, the Environment and Water (Commonwealth)
DEWR	Department of Employment and Workplace Relations (Commonwealth)
DPP	Director of Public Prosecutions
Duty holder	A duty holder refers to any person who has a WHS duty under the model WHS laws, including a PCBU, designer, manufacturer, importer, supplier, installer of plant or structures, officer and worker.
Enforceable undertaking (EU) / WHS undertaking	As an alternative to prosecution, a person can commit to do certain actions, and this commitment becomes enforceable following a regulator's decision to accept the undertaking.
EPH	WHS entry permit holder
FW Act	<i>Fair Work Act 2009</i> (Cth)
GDP	Gross Domestic Product
HIA	Housing Industry Association
HSC	Health and safety committee, which is a consultative body established under the model WHS Act. The committee's functions include facilitating cooperation between workers and the PCBU to ensure workers' health and safety at work; and assisting to develop WHS standards, rules and procedures for the workplace.
HSR	Health and safety representative, which is a worker who has been elected by a work group under the model WHS Act to represent them on health and safety issues.
HVNL	Heavy Vehicle National Law
HWSA	Heads of Workplace Safety Authorities is made up of representatives from work health and safety regulators across Australia and New Zealand. They work together to promote and implement best practice in work health and safety in the areas of operational policy, legislative matters, education and enforcement.
IGA	<i>Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety</i> (2008)
ILO	International Labour Organization
Improvement notices	An improvement notice is a notice that inspectors can issue that requires a person to remedy a contravention or prevent a likely contravention of the WHS laws.
Indictable offences	Indictable offences are more serious criminal offences with larger penalties. For example, for federal offences, offences that are punishable by imprisonment for more than 12 months are indictable offences. See section 4G of the <i>Crimes Act 1914</i> (Cth).

Term	Description
Industrial manslaughter	Industrial manslaughter is the most serious WHS offence. A jurisdictional note provides that each jurisdiction may create its own laws to establish an industrial manslaughter offence, thus they are not nationally uniform. The model laws recommend imprisonment and monetary penalties as consequences if found guilty.
Infringement notice	An infringement notice can be issued that requires a person to pay a fine for contravening the laws. A jurisdictional note in the model laws permits jurisdictions to enact provisions that establish an infringement notice scheme.
Inspections	Under the model laws, certain persons can enter a workplace to inspect and make inquiries about the health and safety of the workplace. These include inspectors and WHS entry permit holders. Inspectors can do reactive or proactive inspections. Proactive inspections refer to workplace visits by an inspector that did not result from a complaint or workplace incident. Reactive inspections refer to workplace visits undertaken in resolution of a workplace incident or complaint.
IRC	Industrial Relations Commission of NSW
ISO	The International Organization for Standardization is an independent, non-governmental, international standard development organisation.
Jurisdictional note	Jurisdictional notes provide further information on how the provisions in the model laws can be amended to suit the existing legislation and local mechanisms of jurisdictions.
Jurisdictions	The jurisdictions refer to the states and territories, and some Commonwealth entities, that implement and regulate the WHS laws. The Commonwealth jurisdiction includes maritime and offshore matters, Australian Government employees and employees of self-insured organisations.
KBDi	The Kitchen and Bathroom Designers Institute
Limitation period / statute of limitations	This is the maximum amount of time permitted for a regulator to bring a prosecution proceeding. In the model laws, proceedings must be brought within 2 years after the offence first came to the regulator's attention, within one year after a finding in a coronial or other official inquiry or within 6 months of a WHS undertaking being contravened or withdrawn by the regulator.
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer, intersex, asexual and other sexually or gender diverse people
Long latency diseases	These are diseases that develop slowly - for example, some cancers associated with asbestos may not have symptoms until 20 to 30 years after exposure.
Marine Safety National	<i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i>

Term	Description
Law Act	
Maxwell Review	<i>Occupational Health and Safety Act Review (2004)</i>
MBA	Master Builders Australia
MCA	Minerals Council of Australia
MHF	Major hazard facility
Model Codes	Model Codes of Practice are practical guides to achieving the standards of health and safety required under the model WHS laws and identifying and managing risks. Under the model WHS Act, courts may regard a Code of Practice as evidence of what is known about a hazard or risk, risk assessment or risk control (s 275(3)(a) of the model WHS Act) and may rely on the Code of Practice in determining what is reasonably practicable in the circumstances to which the Code relates (s 275(3)(b) of the model WHS Act).
Model WHS Act	The model WHS Act refers to the model Work Health and Safety Bill. It forms the basis of the WHS Acts that have been implemented in all jurisdictions across Australia, except Victoria.
Model WHS laws	The model WHS laws comprise the model WHS Act, model WHS Regulations, and model Codes of Practice.
Model WHS Regulations	The model WHS Regulations form the basis of the WHS Regulations that have been implemented in all jurisdictions across Australia, except Victoria. They set out detailed requirements to support the duties in the model WHS Act.
MOU	Memorandum of Understanding
Navigation Act	<i>Navigation Act 2012</i>
NCEP	National Compliance and Enforcement Policy
NCIF	National Construction Industry Forum
NDA	Non-disclosure agreement
NFF	National Farmers' Federation
NHVR	National Heavy Vehicle Regulator
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NSW	New South Wales
NSW WHS Act	<i>Work Health and Safety Act 2011 (NSW)</i>
NSW WHS Regulations	Work Health and Safety Regulation 2025 (NSW)
NT	Northern Territory
Officer	An officer is a type of duty holder under the model WHS laws. An example of an officer is a director of a corporation.

Term	Description
OHS	Occupational health and safety
OHS(MI) Act	<i>Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)</i>
ONRSR	Office of the National Rail Safety Regulator
OPGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
OPGGS Safety Regulations	Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024
PCBU	A person conducting a business or undertaking is defined under s 5 of the model WHS Act. A PCBU can be a company; an unincorporated body or association; a sole trader or self-employed person; a not-for-profit organisation; a local council; a government department or agency; a school; a franchise; or in some circumstances a volunteer organisation. Individuals who are in a partnership that is conducting a business will individually and collectively be a PCBU.
PIN	A provisional improvement notice is a written notice from an HSR to a duty holder requiring the duty holder to remedy a contravention, prevent a likely contravention, or remedy the things or operations causing the contravention or likely contravention (see Division 7 of Part 5 of the model WHS Act).
PPE	Personal protective equipment is equipment used or worn by a person to minimise risk to the person's health and safety.
Prohibition notice	This is a type of notice that inspectors can issue to stop or prevent an activity at a workplace or modify the way the activity is carried out if they reasonably believe that it will involve a serious risk to the health and safety of a person emanating from immediate or imminent exposure to a hazard.
Psychological injury	This is a disorder diagnosed by a medical practitioner which includes a range of recognised cognitive, emotional, physical and behavioural symptoms. These may be short-term or occur over many months or years and can significantly affect how a person feels, thinks, behaves and interacts with others. These are sometimes also known as mental health conditions or disorders.
Psychosocial hazard	Psychosocial hazards are hazards that arise from or relate to the design or management of work; or a work environment; or plant at a workplace; or workplace interactions or behaviours; and may cause psychological harm (whether or not it may also cause physical harm).
Qld	Queensland
Queensland WHS Act	<i>Work Health and Safety Act 2011 (Queensland)</i>
Queensland WHS Regulations	Work Health and Safety Regulation 2011 (Queensland)

Term	Description
Regulator	This is the relevant WHS regulator for each jurisdiction. The regulator manages compliance and enforcement of WHS laws and has enforcement and arbitration powers. The regulators are Comcare (Commonwealth), WorkSafe ACT, SafeWork NSW, NT WorkSafe, Workplace Health and Safety Queensland, SafeWork SA, WorkSafe Tasmania, WorkSafe Victoria, and WorkSafe WA.
Reviewable decisions	The model laws set out how decisions made under WHS laws can be reviewed. Generally, decisions made by inspectors can be reviewed by the regulator internally at the first instance (internal review) and then go on to be reviewed by an external review body (external review). Decisions made by a regulator must be reviewed externally. A jurisdictional note allows jurisdictions to decide who the external review body is.
Risk-based offending	WHS offences are primarily risk-based, meaning that it is a contravention of the laws where the alleged breach of the duty exposed an individual to a <i>risk</i> of harm, but no harm actually occurred.
Robens model	This is a common term used to describe an approach to regulating WHS established under Lord Robens' <i>Report of the Committee on Safety and Health at Work</i> , HSMO, London, 1972. Key features of the Robens model include a unified and integrated system of general duties and self-regulation through greater consultation between workers and PCBU's.
RSNL	Rail Safety National Law
SA	South Australia
SA WHS Act	<i>Work Health and Safety Act 2012 (SA)</i>
SA WHS Regulations	Work Health and Safety Regulations 2012 (SA)
Safe Work Australia Act	The <i>Safe Work Australia Act 2008</i> (Cth) establishes Safe Work Australia to improve work health and safety outcomes and workers' compensation arrangements in Australia. The Act includes Safe Work Australia's functions and sets out its membership - voting members represent the Commonwealth, states, territories, workers and employers.
SDS	A safety data sheet is a document that provides detailed information about a hazardous chemical, including the identity of the chemical product and ingredients, hazards, physical properties, workplace exposure standards, safe handling and storage, transport information, emergency procedures, and first aid information.
SIG	Strategic Issues Group
Summary offences	These offences are less serious criminal offences with smaller penalties - for example, for federal offences, offences that are punishable by less than 12 months of imprisonment or are not punishable by imprisonment are summary offences. See section 4H of the <i>Crimes Act 1914</i> (Cth).

Term	Description
Tas	Tasmania
Tas WHS Act	<i>Work Health and Safety Act 2012 (Tas)</i>
Tas WHS Regulations	Work Health and Safety Regulations 2012 (Tas)
Tripartite	Shared by or involving 3 parties. In the Safe Work Australia membership context, this means government, worker and employer representatives.
VET	Vocational education and training
Vic	Victoria
Vic OHS Act	<i>Occupational Health and Safety Act 2004 (Vic)</i>
Vic OHS Regulations	Occupational Health and Safety Regulations 2017 (Vic)
Victorian Review Interim Report	<i>Independent Review of Employee Representatives interim report (2025)</i>
Victorian Sentencing Advisory Council Review / VSAC Report	<i>Sentencing occupational health and safety offences in Victoria (2025)</i>
WA	Western Australia
WA WHS Act	<i>Work Health and Safety Act 2020 (WA)</i>
WA WHS Regulations	Work Health and Safety (General) Regulations 2022 (WA)
WEL	The Workplace Exposure Limits relate to the level of airborne contaminants present in the air, for mixtures and substances that can cause harm to health.
White cards	General construction induction training cards
WHS	Work health and safety
WHS ministers	Commonwealth, state, and territory ministers with responsibility for WHS
Worker	A worker is any person who carries out work in any capacity for a PCBU, as defined under s 7 of the model WHS Act. This includes work as an employee, contractor, subcontractor, self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' and volunteer.
Workplace	A workplace is any place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work, as defined under s 8 of the model WHS Act. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water.

Appendix I: Data insights

This appendix summarises key insights from different evidence sources relevant to this Review.

Harmonisation

The analysis in this section compares:

- how harmonised each part of the legislation is to the model WHS laws overall across jurisdictions
- how harmonised each jurisdiction is to the model WHS laws.

The analysis is drawn from the WHS Act cross-comparison table, which is developed by Safe Work Australia and published on its website. The table summarises the similarities and differences between the model WHS Act and the WHS Acts of each model law jurisdiction.

A colour scale has been applied to illustrate the relative differences in harmonisation.

Please note the information in this section is for illustrative purposes only. Assessing the level of harmonisation across the model WHS Act and jurisdictions is complex. For example, a minor variation to an administrative process may not be as significant as a variation to a general duty. A jurisdiction may adopt a provision of the model Act with different wording but reflect the same policy intent. These nuances are difficult to reflect in quantitative data.

The analysis does, however, provide a general sense of which parts of the Act are relatively more or less harmonised across the jurisdictions.

Please also note the information in the cross-comparison table was last updated on 30 June 2025. While we make every effort to capture all jurisdictional variations, the information in the table should be treated as a general overview only.

Analysis

Data table 1 Harmonisation of the model WHS laws, by Parts

Key	
More harmonised	
	
Less harmonised	

Model WHS Law Parts	Relative harmonisation level
<i>Part 1 Introduction</i>	
<i>Part 2 Health and safety duties</i>	
<i>Part 3 Incident notification</i>	
<i>Part 4 Authorisations</i>	
<i>Part 5 Consultation, co-operation and co-ordination</i> ⁷⁶⁶	
<i>Part 6 Discriminatory, coercive and misleading conduct</i>	
<i>Part 7 Workplace entry by WHS entry permit holders</i>	
<i>Part 8 The Regulator</i>	
<i>Part 9 Securing compliance</i>	
<i>Part 10 Enforcement measures</i>	
<i>Part 11 Enforceable undertakings</i>	
<i>Part 12 Review of decisions</i>	
<i>Part 13 Legal proceedings</i>	
<i>Part 14 General</i>	
<i>Schedules</i>	

Data table 1 shows the overall level of harmonisation across each section of the model WHS Act.

It indicates that, overall, there is sound alignment with the model WHS laws across all jurisdictions, with some parts of the model WHS Act varied more frequently than others:

- ‘Part 2 Health and safety duties’, ‘Part 3 Incident notification’, ‘Part 5 Consultation, co-operation and co-ordination’ and ‘Part 11 Enforceable undertakings’ had the strongest level of alignment across jurisdictions.
- ‘Part 10 Enforcement measures’ and ‘Part 14 General’ had the lowest level of alignment across jurisdictions.

⁷⁶⁶ Note: this Part includes a number of unique additional provisions in some states (rather than variations to model WHS Act provisions).

Data table 2 Harmonisation of jurisdictions with the model WHS laws

	Cth	NSW	Tas	NT	SA	ACT	Qld	WA
Part of the Model WHS Act	More harmonised ← → Less harmonised							
<i>Part 1 Introduction</i>								
<i>Part 2 Health and safety duties</i>								
<i>Part 3 Incident notification</i>								
<i>Part 4 Authorisations</i>								
<i>Part 5 Consultation, co-operation and co-ordination⁷⁶⁷</i>								
<i>Part 6 Discriminatory, coercive and misleading conduct</i>								
<i>Part 7 Workplace entry by WHS entry permit holders</i>								
<i>Part 8 The Regulator</i>								
<i>Part 9 Securing compliance</i>								
<i>Part 10 Enforcement measures</i>								
<i>Part 11 Enforceable undertakings</i>								
<i>Part 12 Review of decisions</i>								
<i>Part 13 Legal proceedings</i>								
<i>Part 14 General</i>								
<i>Schedules</i>								

Data table 2 compares harmonisation across both the parts of the model WHS Act and each jurisdiction.

The jurisdiction with the highest overall level of harmonisation across all parts of the legislation is the Commonwealth, followed by NSW, Tasmania, NT and SA.

The number of provisions that deviate from the model WHS laws across jurisdictions varies, with Queensland and WA having a larger number than other jurisdictions.

⁷⁶⁷ Note: this Part includes a number of unique additional provisions in some states (rather than variations to model WHS Act provisions).

Traumatic injury fatalities

The analysis in this section compares traumatic injury fatalities across jurisdictions.

Safe Work Australia compiles the Work-related Traumatic Injury Fatalities dataset,⁷⁶⁸ which provides national statistics on all workers and bystanders fatally injured at work.

This dataset draws on a range of information sources, including:

- reporting of fatalities in the media or on relevant authority websites such as police, road authorities and the Australian Transport Safety Bureau
- notifications to Safe Work Australia from jurisdictional authorities
- the National Coronial Information System, which contains coroners', police and other investigative reports.

Work-related fatalities resulting from diseases, natural causes and suicides are excluded.

Tragically, 188 workers lost their lives due to traumatic injuries in 2024 (the most recent year for which data is available). The national frequency rate of worker fatalities was 1.3 deaths per 100,000 workers.

Both figures were slightly lower than the 5-year average of 191 deaths per year, and 1.4 deaths per 100,000 workers, from 2020 to 2024. Since 2014, the fatality rate has decreased 24% (from 1.7 fatalities per 100,000 workers); however, this has remained relatively steady in recent years.

The frequency rate of injury fatalities varies significantly by jurisdiction.

Figure 1 Worker fatalities by jurisdiction 2024

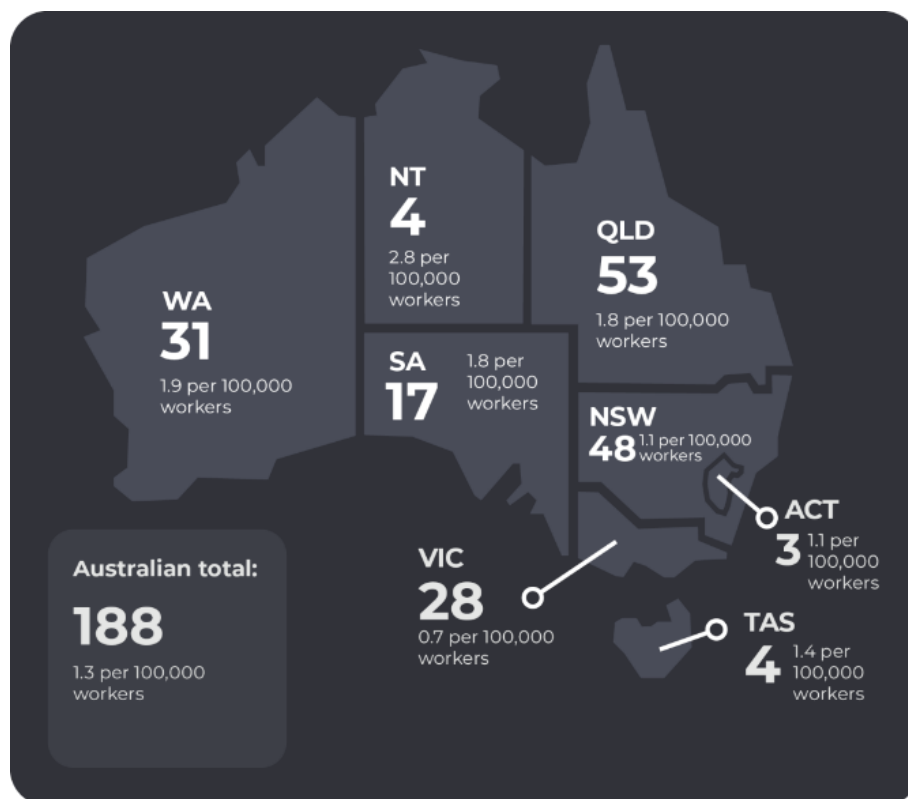


Figure 1 shows worker fatalities by state or territory for 2024. Queensland recorded the highest number of fatalities (53 workers) followed by NSW (48 workers).

⁷⁶⁸ Safe Work Australia, [Our data. Your stories: Work-related fatalities](#), SWA website, 2026, accessed 26 May 2026.

NT recorded the highest fatality rate (2.8 fatalities per 100,000 workers), followed by WA (1.9 fatalities per 100,000 workers). Note that fatalities are presented according to the geographical place where the fatality occurred, not the jurisdiction under which the fatality fell.

Note that this data should be interpreted with caution due to differences in industry mixes, and other factors, across jurisdictions. Injury fatalities have a stronger association with mechanism of incident and industry of employer than the state or territory in which they occur.

In 2024, the industries with the highest number of fatalities were Transport, postal and warehousing (54 fatalities or 29%), Agriculture, forestry and fishing (44 fatalities or 23%) and Construction (37 fatalities or 20%).

The industries with the highest fatality rates were Agriculture, forestry and fishing (13.7 fatalities per 100,000 workers), Transport, postal and warehousing (7.4) and Mining (3.4). The industry composition of labour markets needs to be considered when interpreting injury fatalities data at a jurisdictional level.

The economic benefits of improved WHS arrangements

This section provides a summary of key estimates of the costs associated with work-related fatalities, injuries and disease, drawing on (and comparing) 2 different analyses by Safe Work Australia.

Safer, healthier, wealthier

In 2022, Safe Work Australia published research exploring the economic value of reducing work-related injuries and illnesses.⁷⁶⁹

Safer, healthier, wealthier found that, when a worker experiences a work-related injury or illness, it is not only those directly affected that suffer – including the individual, their families and community – it is also the wider Australian workforce that loses the opportunity to access more, and better, jobs with higher wages.

The report found that without work-related injuries and illnesses Australia's economy would have been \$28.6 billion larger each year from 2008 to 2018, and there would have been an additional 185,500 Full Time Equivalent (FTE) jobs every year. This impact would have translated to a 1.6% increase in GDP every year, which was comparable to the direct contribution of the Australian agriculture industry at the time of the study.

⁷⁶⁹ Safe Work Australia and Deloitte Access Economics, [*Safer, healthier, wealthier: The economic value of reducing work related injuries and illnesses*](#), 2022, accessed 26 May 2026.

Data table 3 Summary of costs of work-related harms in Australia

Component	Description	Total impact
Absenteeism	Short-term productivity losses from time off work	835,770 FTE
Presenteeism	Reduced productivity upon returning to work	331,000 FTE
Reduced employment	Permanent withdrawal from labour force following work-related injury or illness	605,789 FTE*
Premature mortality	Loss of labour due to work-related injury or illness resulting in death	63,568 FTE*
Informal care	Productivity losses from informal carers taking additional time off of work to care for a person with work-related injury or illness	408,061 FTE*
Health system costs	Costs incurred by the health system following work-related injury or illness	\$37.6 billion
Efficiency costs	Costs incurred by the employer following work-related injury or illness	\$49.5 billion ⁷⁷⁰

*Note: Total impact is measured from 2008 to 2065.

Data table 3 summarises some of the key costs of work-related harms in Australia, as published in *Safer, healthier, wealthier*.

Estimate drawing on *Australian burden of disease study*

According to the 2024 *Australian burden of disease study*, the average number of years of healthy life lost due to occupational exposures and hazards is 3.2 years per 1,000 people.⁷⁷¹ This estimate reflects the amount that could have been avoided if all people in Australia were not exposed to occupational exposures and hazards including injuries, loud noise, carcinogens, particulate matter, gas and fumes, asthmagens and ergonomic factors.

Given the value of a statistical life year, which is an estimate of the value society places on a year of life, is \$253,000 in 2025 dollars,⁷⁷² then taken together, occupational exposures and hazards cost the economy \$809,600 per 1,000 people. Across the labour force, as at March 2026, this equates to \$12.0 billion per year, since there are roughly 14,762,800 employed people in Australia.

⁷⁷⁰ Safe Work Australia and Deloitte Access Economics, [Safer, healthier, wealthier: the economic value of reducing work-related injuries and illnesses](#), 2022, p 13, accessed 26 May 2026.

⁷⁷¹ Australian Institute of Health and Welfare, [Australian burden of disease study 2024](#), Australian Government, 2024, accessed 20 May 2026.

⁷⁷² Office of Impact Assessment, Department of the Prime Minister and Cabinet, [Value of statistical life](#), Guidance note, January 2026, accessed 20 May 2026.

This estimate differs from the economic benefits established in the *Safer, healthier, wealthier* study because each approach measures different concepts associated with WHS and its impact on population health and economic costs. *Safer, healthier, wealthier* uses observed outcomes from WHS incidents to estimate the economic growth that was foregone as a result from work-related injuries and illnesses. The estimate drawing on the *Australian burden of disease study* estimates the impacts from exposures and hazards associated with working life.

Both of these figures should be interpreted with caution, as they are statistical models based on incomplete datasets and are likely to underestimate the costs of WHS impacts.

However, they illustrate clearly that:

- the costs of WHS risks go beyond straightforward business impacts
- the cost of regulating WHS represents a fraction of the broader costs to society of work-related fatalities, injuries and illnesses.

Who bears these costs?

According to previous cost-of-injury analysis published by Safe Work Australia, employers bear just 5% to 10% of the costs of work-related injuries and illnesses, with injured workers bearing up to 74%.⁷⁷³

Compliance and enforcement actions

This section provides analysis of jurisdictional compliance and enforcement data across 3 areas:

- sanctions
- directing compliance
- encouraging and assisting compliance.

To explore the data further, please visit Safe Work Australia's interactive data website.⁷⁷⁴

Sanctions

Sanctions represent the most serious compliance and enforcement response available to WHS regulators and are generally used where there is serious non-compliance or where other compliance and enforcement tools have not been effective.

Sanctions include infringement notices, legal proceedings and EUs, with additional context provided by data on WHS prosecutions.

Nationally, the number of infringement notices issued increased by 55% over the 4 years from 2019–20 to 2023–24, rising from 1,797 to 2,777. Five of 7 jurisdictions recorded increases, with NSW recording the largest increase (+1,029). Changes varied substantially across jurisdictions, with the next largest increase recorded in the ACT (+88). However, in most jurisdictions the number of notices issued remained low, with fewer than 50 notices overall.

By contrast, the use of EUs remained low and relatively stable over the period, with 24 undertakings accepted nationally in 2023–24. These were largely concentrated in a small number of jurisdictions.

⁷⁷³ S O'Neill, A Cheung and S Holley, Macquarie University International Governance and Performance Research Centre, Safe Work Australia, sponsoring body and CPA Australia sponsoring body, *The business case for safe, healthy & productive work: implications for resource allocation: procurement, contracting and infrastructure decisions*, Macquarie University, NSW, 2014, accessed 20 May 2026.

⁷⁷⁴ Safe Work Australia, *Our data. Your stories: Jurisdictional comparison*, SWA website, 2026, accessed 26 May 2026.

Data table 4 Infringement notices and enforceable undertakings – 2023–24*N/A – not available.*

Jurisdiction	Infringement notices		Enforceable undertakings	
	Number	Notices per 1,000 employees	Number	Undertakings per 100,000 employees
NSW	1,590	0.4	8	0.2
Queensland	899	0.3	4	0.2
ACT	164	0.9	0	0.0
Victoria	41	<0.1	7	0.2
SA	41	<0.1	3	0.4
NT	31	0.2	1	0.8
Tasmania	11	<0.1	0	0.0
WA	N/A ⁷⁷⁵	N/A	1	0.1
Commonwealth	N/A	N/A	0	0.0
Seacare	N/A	N/A	0	0.0
All jurisdictions	2,777	0.2	24	0.2

For sanctions imposed through the courts, the number of legal proceedings finalised also increased over the same period, increasing by 51% between 2019–20 and 2023–24. Six of 9 jurisdictions recorded increases, with most recording increases of 40% or more. In 2023–24, 348 legal proceedings resulted in a conviction, order or agreement – an increase of 14% compared with 2019–20.

WHS prosecutions provide additional insight into the use of sanctions for serious breaches of WHS laws. Safe Work Australia’s WHS prosecutions dataset, which captures information on criminal prosecutions since 1 January 2020, shows that prosecutions have increased over time. In 2024, there were 317 WHS prosecutions – an increase of 55% compared with 2020. An increase in prosecutions was recorded in most jurisdictions, with Victoria and Queensland recording the most prosecutions in 2024 (107 and 106 respectively). Where information was available, 67% of prosecutions in 2024 involved incidents where a person had a serious or fatal injury or disease.

⁷⁷⁵ N/A means ‘not applicable’.

Data table 5 Legal proceedings and WHS prosecutions – 2023–24

Jurisdiction	Legal proceedings		WHS prosecutions	
	Number	Proceedings per 10,000 employees	Number	Prosecutions per 10,000 employees
Victoria	165	0.5	107	0.3
NSW	136	0.4	61	0.2
Queensland	85	0.3	106	0.4
SA	11	0.1	13	0.2
WA	9	0.1	12	0.1
NT	7	0.5	9	0.7
Tasmania	4	0.2	6	0.2
ACT	3	0.2	3	0.2
Commonwealth	1	0.0	0	0.0
Seacare	0	0.0	0	0.0
All jurisdictions	421	0.3	317	0.2

Taken together, these data suggest an increase in the overall use of sanctions in recent years, but from a low base in many jurisdictions.

Direct compliance

Direct compliance activities are reflected in the use of statutory notices that compel duty holders to remedy identified breaches of WHS laws.

Nationally, the number of improvement notices issued increased by 9% over the 4 years from 2019–20 to 2023–24, rising to 51,916. Trends varied across jurisdictions, with 6 recording increases, 2 remaining relatively stable and 2 recording decreases. In 2023–24, Victoria (13,390) and NSW (13,362) issued the highest number of improvement notices, with the largest increases over the period recorded in NSW (+4,059 notices) and SA (+2,049).

The number of prohibition notices issued increased by 26% over the same period, to 7,720 in 2023–24. Consistent with improvement notices, 6 jurisdictions recorded increases, 2 remained relatively stable and 2 recorded decreases. NSW (3,454) and Queensland (1,636) issued the highest number of prohibition notices, with NSW recording the largest increase over the period (+1,300 notices), followed by SA (+411).

When adjusted for workforce size, the ACT recorded the highest rates of compliance notice activities, issuing 8.7 improvement notices per 1,000 employees and 3.6 prohibition notices per 1,000 employees, compared with the national averages of 3.9 and 0.6 respectively.

Data table 6 Direct compliance notices – 2023–24

Improvement notices			Prohibition notices	
Jurisdiction	Number	Notices per 1,000 employees	Number	Notices per 1,000 employees
Victoria	13,390	3.9	515	0.1
NSW	13,362	3.5	3,454	0.9
Queensland	11,708	4.5	1,636	0.6
WA	6,229	4.8	148	0.1
SA	4,455	5.4	995	1.2
ACT	1,620	8.7	665	3.6
Tasmania	741	3.0	185	0.7
NT	396	3.0	118	0.9
Commonwealth	14	0.0	4	0.0
Seacare	1	N/A	0	N/A
All jurisdictions	51,916	3.9	7,720	0.6

Encouraging and assisting compliance

Nationally, proactive compliance and enforcement activities declined over the 4 years from 2019–20 to 2023–24.⁷⁷⁶

Over this period, the number of workshops, presentations and seminars delivering educational advice or information declined by 45%, to 2,841. Activity levels varied substantially across jurisdictions, with NSW maintaining the highest number of proactive visits (23,366 visits, a 3% increase), while Queensland and WA recorded sustained reductions since 2019-20 (53% and 50%, respectively).

By contrast, reactive workplace visits (those undertaken in response to a workplace incident or complaint) increased by 20% to 74,726, while the number of other reactive interventions (such as desk-based audits, meetings, advice or correspondence directly related to incident or complaint resolution) increased by 73% to 156,669. Growth in these activities was most pronounced between 2021-22 and 2022-23, driven primarily by increases in the Commonwealth, NSW and Queensland, and may in part reflect responses to COVID-19 restrictions.

For proactive activities, NSW recorded the highest number of proactive workplace visits (23,366) and proactive workshops, presentations and seminars (781); however, on a rate basis, NSW was broadly in line with national averages (around 5.1 proactive visits per 1,000 employees and 0.2 proactive workshops per 1,000 employees).

Victoria also recorded higher volumes of proactive and reactive workplace visits; however, direct comparability is limited, as Victoria reports interventions differently and does not provide data for some sub-categories (including proactive workshops/presentations/seminars and other reactive interventions).

⁷⁷⁶ Proactive workplace visits are those not resulting from a complaint or workplace incident.

By contrast, Queensland recorded the highest levels of reactive activity, with 15,242 reactive workplace visits and 87,404 other reactive interventions in 2023–24. This was substantially higher than other jurisdictions (with WA next highest at 26,736). When adjusted for workforce size, Queensland recorded 33.6 other reactive interventions per 1,000 employees, almost 3 times the Australian average of 11.9; this category may include activities such as desk-based audits, meetings, telephone advice or correspondence, and variation in systems and scope across jurisdictions may contribute to these differences.

The NT recorded the highest rates of workplace visits when accounting for workforce size, with 16.3 proactive workplace visits per 1,000 employees and 25.2 reactive workplace visits per 1,000 employees, alongside a comparatively high inspector rate.

The Commonwealth recorded the highest rate of proactive workshops, presentations and seminars, at 1.3 interventions per 1,000 employees, compared with a national average of 0.2.

Data table 7 Interventions (combined) – 2023–24

Jurisdiction	Activities (all)			
	Number	Activities per inspector	Activities per 1,000 employees	% proactive
Queensland	114,694	425	44.1	11%
NSW	57,792	156	14.9	42%
WA	31,865	245	24.4	7%
Commonwealth	19,435	259	33.6	11%
SA	13,032	134	15.8	24%
NT	5,506	167	42.3	40%
Tasmania	4,009	84	16.2	51%
ACT	3,177	65	17.2	63%
Seacare	92	46	N/A	100%
Victoria	N/A	N/A	N/A	N/A
All jurisdictions	301,040	208 (average)	22.8 (average)	23%

Together, these trends suggest a shift in how regulators deliver encouraging and assisting compliance activities, with greater emphasis on advisory, desk-based and incident-driven responses linked to complaint and incident resolution, rather than routine preventative engagement at workplaces.

These changes occurred alongside an increase of 19% in the number of field active inspectors, to 1,447 nationally (1.1 inspectors per 10,000 employers). The increase in inspector numbers alongside declining proactive activity suggest that changes in compliance and enforcement approach, rather than resourcing constraints alone, may be influencing how encouraging and assisting compliance activities are undertaken.

Victoria and NSW recorded the highest numbers of field active inspectors in 2023–24 (around 373 and 370 respectively); when adjusted for workforce size, both were broadly in line with the national average (around 1.1 inspectors per 10,000 employees).

The NT and ACT recorded higher numbers of inspectors when adjusted for workforce size, at 2.5 and 2.6 inspectors per 10,000 employees (respectively), and also recorded the highest number of proactive workplace visits per 1,000 employers. These jurisdictional differences indicate variation in the emphasis placed on proactive, preventative engagement as part of encouraging compliance.

Data table 8 Inspectors – 2023–24

Jurisdiction	Field inspectors	
	Number	Inspectors per 10,000 employees
Victoria	373	1.1
NSW	370	1.0
Queensland	270	1.0
WA	130	1.0
SA	97	1.2
Commonwealth	75	1.3
ACT	49	2.6
Tasmania	48	1.9
NT	33	2.5
Seacare	2	N/A
All jurisdictions	1,447	1.1

Appendix J: Best Practice Review survey responses

Worker and HSR survey

Methodology

Safe Work Australia circulated a survey to gather input from workers and HSRs. The survey was published on the Safe Work Australia Consultation Hub as part of the consultation period for this Review and to inform the final report. The survey was promoted through social media with support from the ACTU to ensure broad awareness. The questions were developed in consultation with the relevant Safe Work Australia Members. The survey received 778 responses between 1 September and 30 November 2025. It included multiple choice and free-text questions, with responses analysed to identify emerging issues. Free-text responses were grouped into similar themes.

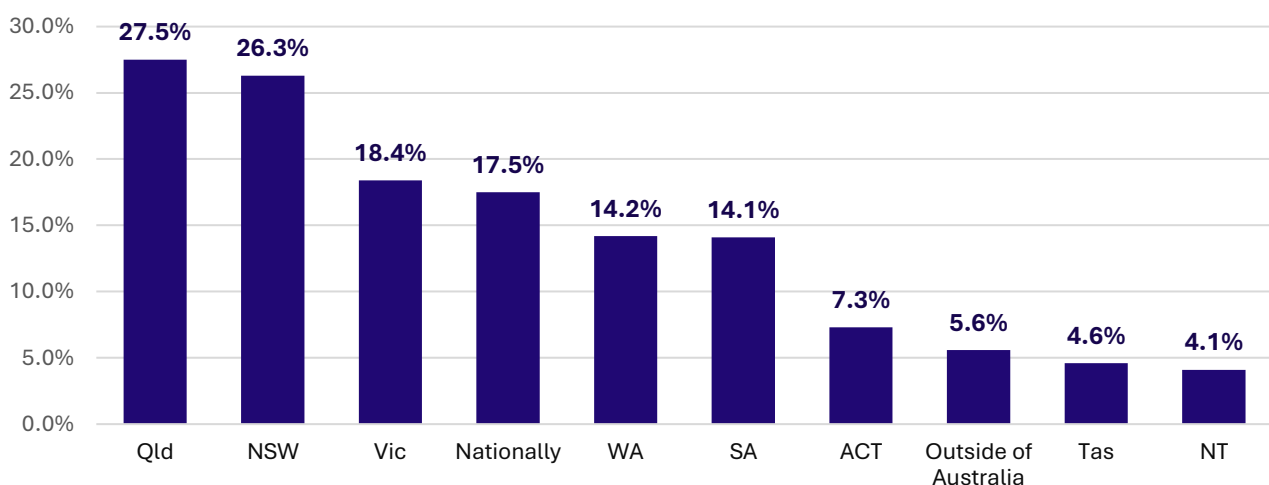
Snapshot of survey respondents

Industry

Most survey respondents worked in Education and Training (22.9%), Public Administration and Safety (18.2%) and Health Care and Social Assistance (17.3%). The lowest number of responses came from the Rental, Hiring and Real Estate Services sector (0.7%).⁷⁷⁷

Jurisdiction

Figure 2 Proportion of responses by jurisdiction



⁷⁷⁷ Industry refers to the range of economic activities undertaken by a business to produce goods and services – and is categorised using the Australian Bureau of Statistics' [Australian and New Zealand Standard Industrial Classification \(ANZSIC\)](#).

** Note: Respondents were able to select more than one option; percentages therefore do not sum to 100%.*

Figure 2: Responses from Queensland and NSW together accounted for just over half of all responses. Victoria and national respondents contributed a moderate share, while all other jurisdictions accounted for relatively small proportions.

Business size

Most responses were from large businesses, which accounted for almost two-thirds of the total (64.3%), followed by medium-sized businesses (29.0%), and small businesses (6.7%).

Survey results

Free-text feedback

Workers and HSRs were asked, 'Do you have any additional comments about being an HSR or WHS laws? What is working well? What needs improvement?' The responses below reflect a cross-section of the feedback received.

Duty to consult with workers

- 'Employers are already required to consult HSRs at the start of decision making but it is not happening, so we need accountability and consequences when they ignore it'.
- 'Management does not always share the information as required by legislation despite being requested to'.
- 'It doesn't help when WorkSafe comes out to the workplace and doesn't involve the HSRs in the process'.
- 'HSRs are not employed by the PCBU, they have another job. PCBU officers do not understand their responsibilities'.
- 'The way consultation is conducted needs to be improved. There is always confusion between consultation and communication and degree to how much, and what information needs to be shared'.
- 'While I am regularly consulted about changes that affect me, I don't always see evidence that the consultation has any impact on departmental policies'.

HSR elections, work groups and HSCs

- 'I applied to be a HSR and it took 5 months for the organisation to acknowledge my application. There was no election or discussion, my application was accepted and now I'm to do training but I'm not sure where to start as I work part time and I'm not allowed to attend the training on work days'.
- 'We have an issue getting people to nominate as HSR's or Deputy HSR's, meaning some areas do not have a HSR and a Deputy HSR. Some crews are happy to be represented by other crew members'.
- 'It should be even easier/more clearly defined in the WHS Act for a HSR to be able to help out another workgroup, when they don't have a HSR themselves'.

HSR powers and functions

- 'Need a hub for HSRs with clear, concise guidance about our powers and how to handle situations, developed in consultation with Australian Unions'.

- ‘Need faster regulator support when HSRs escalate issues and consequences when PCBU ignore PINs’.

Supporting and facilitating the role of HSRs

- ‘Acquiring time off to focus on WHS is difficult, as many tasks require person to person contact to follow up with issues. Still need to perform work tasks.’
- ‘What needs to be improved is gaining company support to give time off for training in my role.’
- ‘I have resigned as HSR as I had no support from any leadership groups, even excluded from workshops and information sessions’.
- ‘Mandatory training for PCBU and managers when an HSR is elected, so they actually understand the role and do not undermine it through ignorance or hostility’.
- ‘Genuine action is only taken when the Regulator steps-in; however, this is a rarity’.
- ‘Not enough management training on the role of HSR’s and how to properly consult. Feels like we constantly have to fight for information’.

HSR training

- ‘Guaranteed training rights beyond the 5 day and refresher, and training that works for low literacy and CALD workers’.
- ‘The course itself provides no training on what is required of a HSR or powers a HSR has, what we can do and hard to understand the laws’.

Role of unions

- ‘Workers feel safer when they have union support in WHS’.

Discriminatory conduct

- ‘Anti-victimisation rules exist but no one is being prosecuted. We need real enforcement so HSRs are not punished or frozen out’.
- ‘As a HSR, I did not expect this level of resistance from the PCBU’.

HSC and HSR presence

Figure 3 Distribution of respondents reporting no HSC and no HSR, by business size

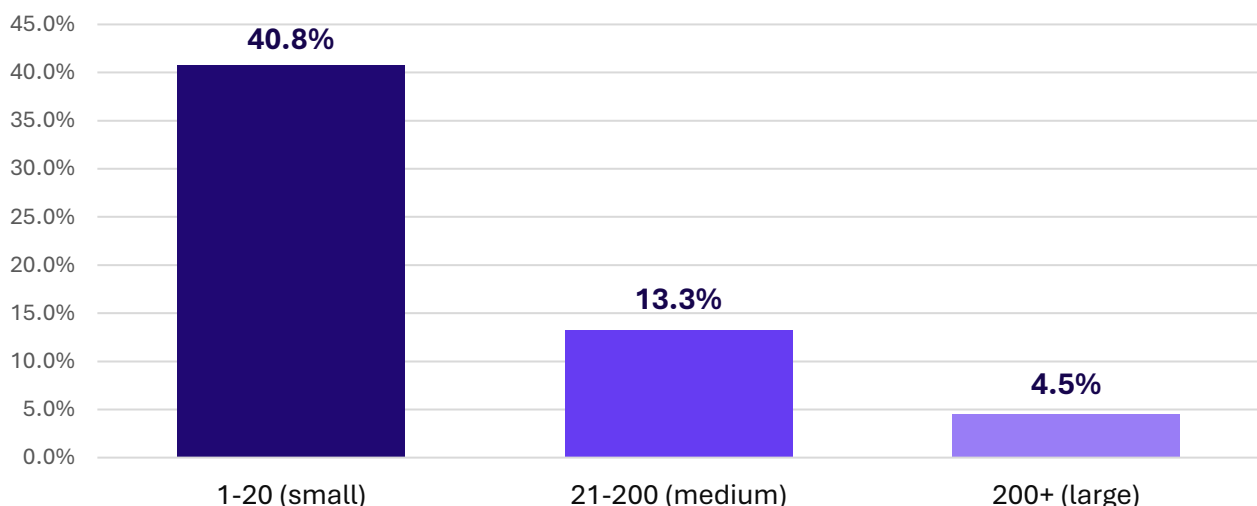
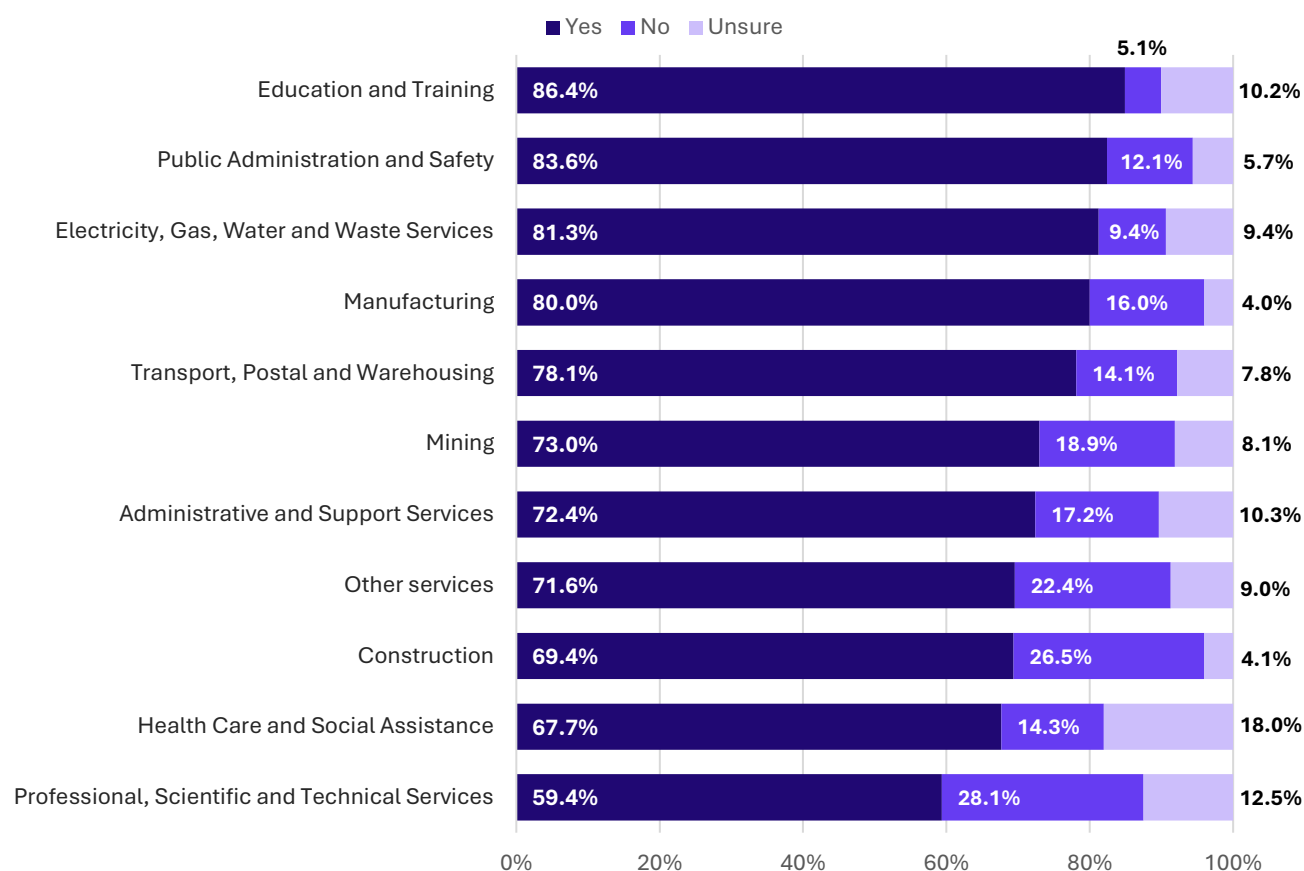


Figure 3: Respondents indicated that smaller and medium-sized businesses were less likely to have an HSR and HSC.

Figure 4 Distribution of HSR presence by industry



* Note: Free-text responses were recategorised into existing industry categories. Figure 4 uses data from industries with 30 responses or more. Respondents were able to select more than one industry if applicable.

Figure 4: Across industries, 'Yes' responses accounted for the largest proportion of responses regarding the presence of an HSR, although the distribution varied by industry. Education and Training, Public Administration and Safety, and Electricity, Gas, Water and Waste Services had the highest numbers. Fewer respondents said 'No' or were unsure, though these responses were more common in industries like Construction and Professional, Scientific and Technical Services. Results should be interpreted in the context of the respondent profile, noting that respondents were predominantly from medium and large organisations.

Psychological safety

Data Table 9 Worker responses on the importance of psychological health and safety

Workers were asked whether they agreed, disagreed, or were unsure about the statement: 'My workplace views psychological health and safety as being as important as physical health and safety'.

Response	Percentage of worker responses (%)
No	46.3%
Unsure	13.8%

Yes	40.0%
Total	100.0%

HSR elections

Data Table 10 Worker responses on how HSR was appointed

Workers were asked to indicate how their HSR was appointed, using the prompt: 'My HSR is someone who was ...'

Response	Percentage of worker responses (%)
Elected by workers	46.8%
I do not know	36.4%
Asked to do the role by a manager	16.8%
Total	100.0%

Establishing an HSC

Data Table 11 Worker responses on establishing an HSC

Workers were asked whether they agreed, disagreed, or were unsure about the statement: 'My workplace has an HSC with elected members and members of the committee'.

Response	Percentage of worker responses (%)
No	27.0%
Unsure	24.4%
Yes	49.2%
Total	100.0%

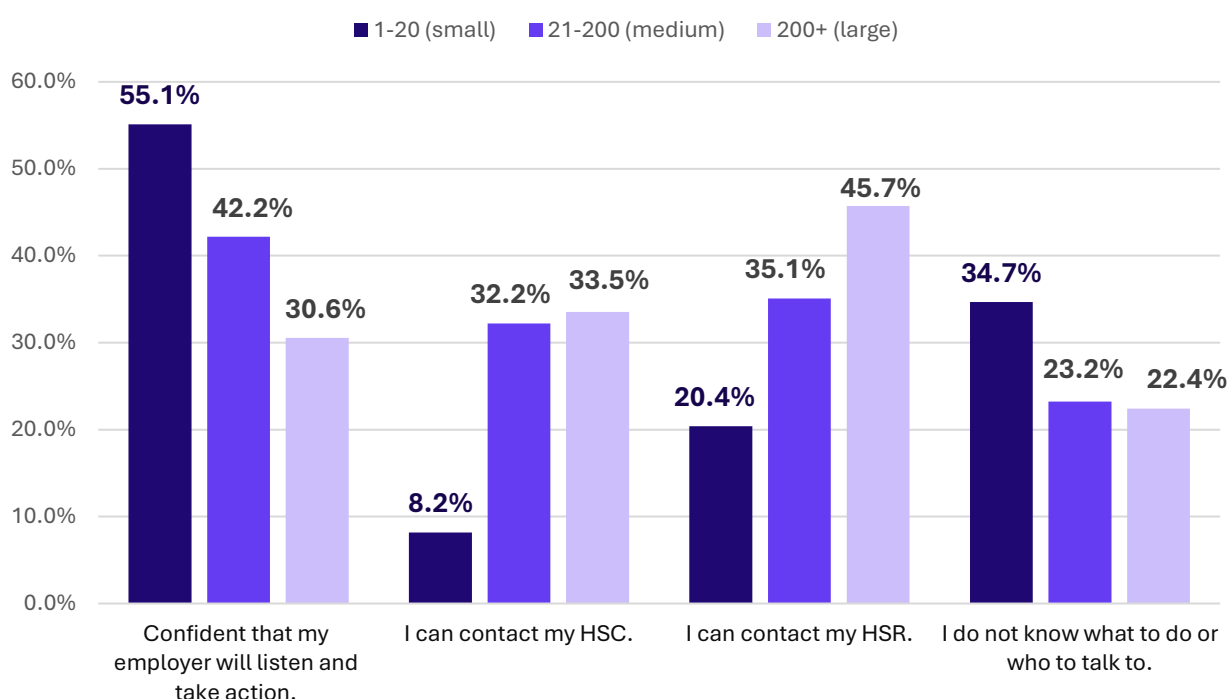
Consultation

Workers were asked to respond to the statement: 'I am always consulted on WHS matters that are likely to directly affect me', with results disaggregated by business size.

Consultation on WHS matters was most commonly reported by workers in medium-sized businesses (41.7%), followed by small businesses (38.8%) and large businesses (26.3%). In contrast, workers in large businesses most frequently reported that they are not always consulted (66.5%).

Figure 5 Worker responses to raising WHS issues, by business size

Workers were asked to select the statements that apply to them, in response to the prompt (with responses disaggregated by business size): 'If I have a concern or issue about WHS in my workplace, I feel ...'



**Note: Respondents were able to select more than one response.*

Figure 5: Workers in small businesses are most confident that their employer will listen and take action on safety issues (55.1%). Workers in large businesses are more likely to say they can contact an HSR (45.7%). Workers in medium and large businesses more commonly report access to an HSC (32.2% and 33.5% respectively). Across all business sizes, there is a substantial proportion of workers that still say they do not know what to do or who to talk to about safety concerns.

Figure 6 Distribution of worker responses by HSR presence to managerial WHS awareness

Workers were asked to indicate their level of agreement with the statement, with responses disaggregated by presence of an HSR: 'I feel that my manager is aware of their WHS responsibilities, and the necessary actions required to maintain WHS'.

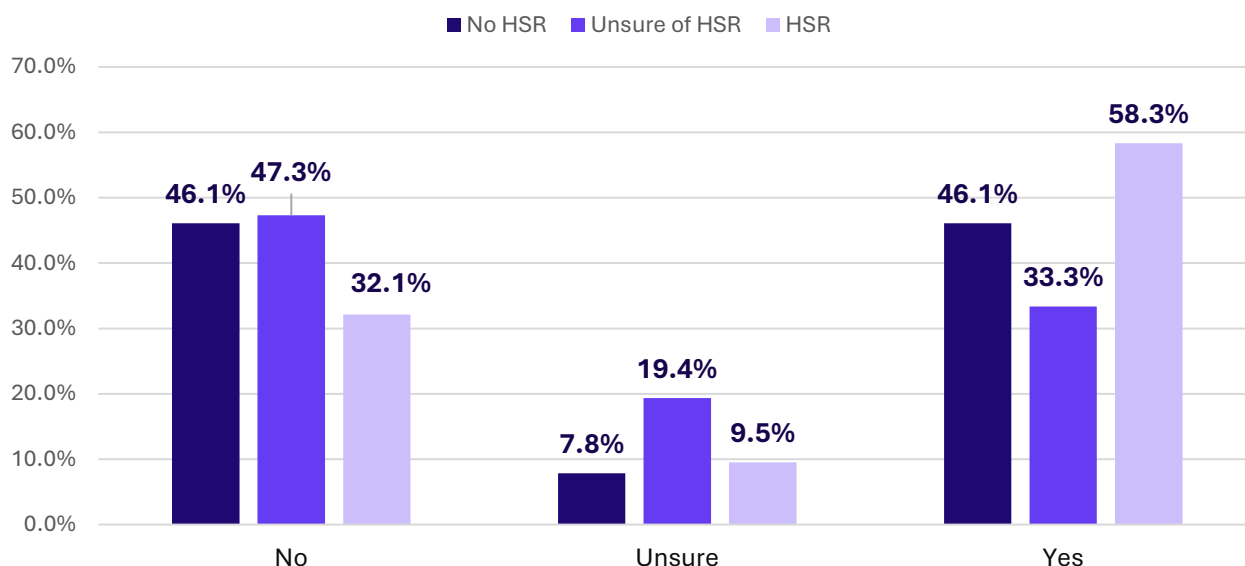


Figure 6: Workers who reported having an HSR showed the highest level of agreement that their manager is aware of WHS responsibilities, with 58.3% responding 'Yes'. This compares with 46.1% of workers who said they do not have an HSR, and 33.3% of workers who were unsure if they have an HSR. Workers who were unsure whether an HSR was present reported poorer perceptions of managerial WHS awareness, with nearly half (47.5%) indicating that their manager is not aware of WHS responsibilities and 19.4% reporting they were unsure.

Figure 7 Worker responses to consultation, by manager awareness of WHS responsibilities

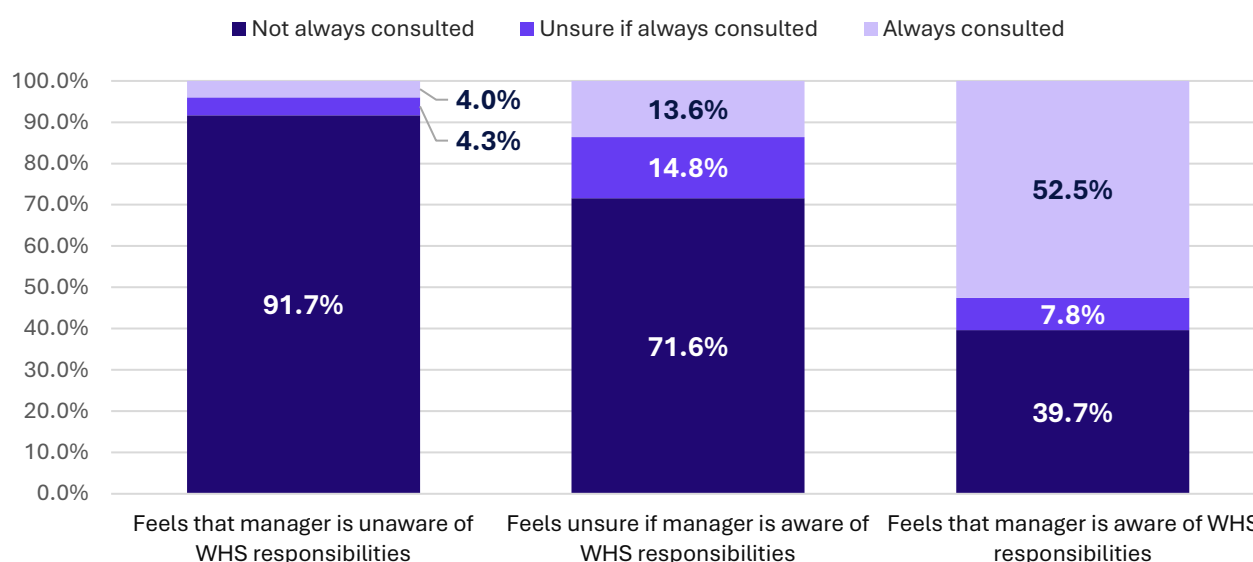


Figure 7: Among workers who felt their manager is unaware of WHS responsibilities, 91.7% reported not always being consulted. Where workers were unsure about manager awareness, 71.6% reported not always being consulted. Among workers who said their manager is aware, 52.5% reported always being consulted, while 39.7% reported not always being consulted.

Jurisdictional variations

Workers were asked to select responses that applied to them in relation to the statement: 'There are slightly different WHS laws in each state and territory across Australia'. Note: respondents could select more than one answer.

A total of 38.0% of respondents indicated that they were aware of the differences and can navigate them, while 28.4% did not know there were different laws. A further 25.3% find the differences difficult to navigate, and 17.0% said the differences do not impact them.

Feedback from HSRs

Data Table 12 HSR responses: understanding HSR role and functions

HSRs were asked to indicate their level of agreement with the statement 'My role and functions as an HSR are clear and easy to understand'.

Response	Percentage of HSR responses (%)
Disagree	6.1%
Neutral	16.0%
Agree	77.9%
Total	100.0%

Data Table 13 HSR responses: encouraging HSR elections

HSRs were asked whether they agree, disagree or are unsure in response to the statement: 'My workplace encourages the election of HSRs'.

Response	Percentage of HSR responses (%)
No	25.1%
Unsure	8.7%
Yes	66.2%
Total	100.0%

Data Table 14 HSR responses: reminders for HSR elections

HSRs were asked whether they agree, disagree or are unsure in response to the statement: 'My workplace regularly reminds workers that an HSR can be elected'.

Response	Percentage of HSR responses (%)
No	44.6%
Unsure	10.8%
Yes	44.6%
Total	100.0%

Data Table 15 HSR responses: PCBU awareness, by business size

HSRs were asked whether they agree, disagree or are unsure in response to the statement (with results disaggregated to business size): 'My manager and employer/PCBU understand the powers and functions of an HSR and their obligations to HSRs (such as to consult, allow access to information, provide resources, facilities and assistance to the HSR)'.

Business size	Percentage of HSR responses (%)			Total
	No	Unsure	Yes	
1-20 (small)	15.4%	7.7%	76.9%	100.0%
21-200 (medium)	27.7%	13.8%	58.5%	100.0%
200+ (large)	39.9%	12.8%	47.3%	100.0%

Table 15: Most respondents from small business answered 'Yes' (76.9%), compared with 58.5% in medium-sized businesses and 47.3% in large businesses. 'No' responses increased as business size increased, from 15.4% in small organisations to 27.7% in medium and 39.9% in large organisations. 'Unsure' responses remain low across all business sizes.

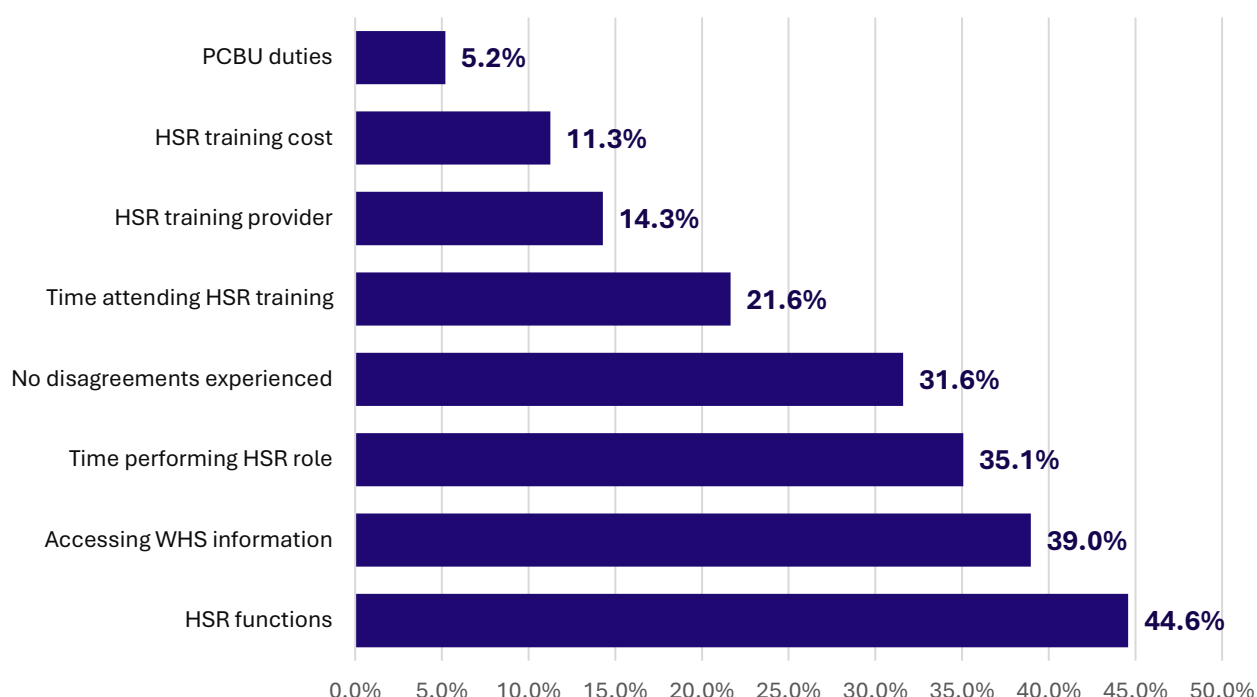
Data Table 16 HSR responses: resourcing

HSRs were asked whether they agree, disagree or were unsure in response to the statement (with results disaggregated by business size): 'I and other HSRs are given adequate paid time and resources to fulfil our roles to represent workers and improve safety'.

Business size	Percentage of HSR responses (%)			Total
	No	Unsure	Yes	
1-20 (small)	38.5%	15.4%	46.2%	100.0%
21-200 (medium)	44.6%	3.1%	52.3%	100.0%
200+ (large)	41.2%	12.8%	45.9%	100.0%

Figure 8 HSR responses: nature of disagreements

HSRs were asked to respond to the prompt ‘As an HSR, I have experienced disagreements within my workplace about ...’



* Note: free-text responses were recategorised into existing/new categories.

Figure 8: HSRs most often had experienced disagreements with their workplace about the functions of their role and access to WHS information. Around a third reported disagreements about the time needed to do HSR duties and about training. Fewer disagreements were reported about training providers, training costs, or involvement in PCBU duties.

Employer survey

Methodology

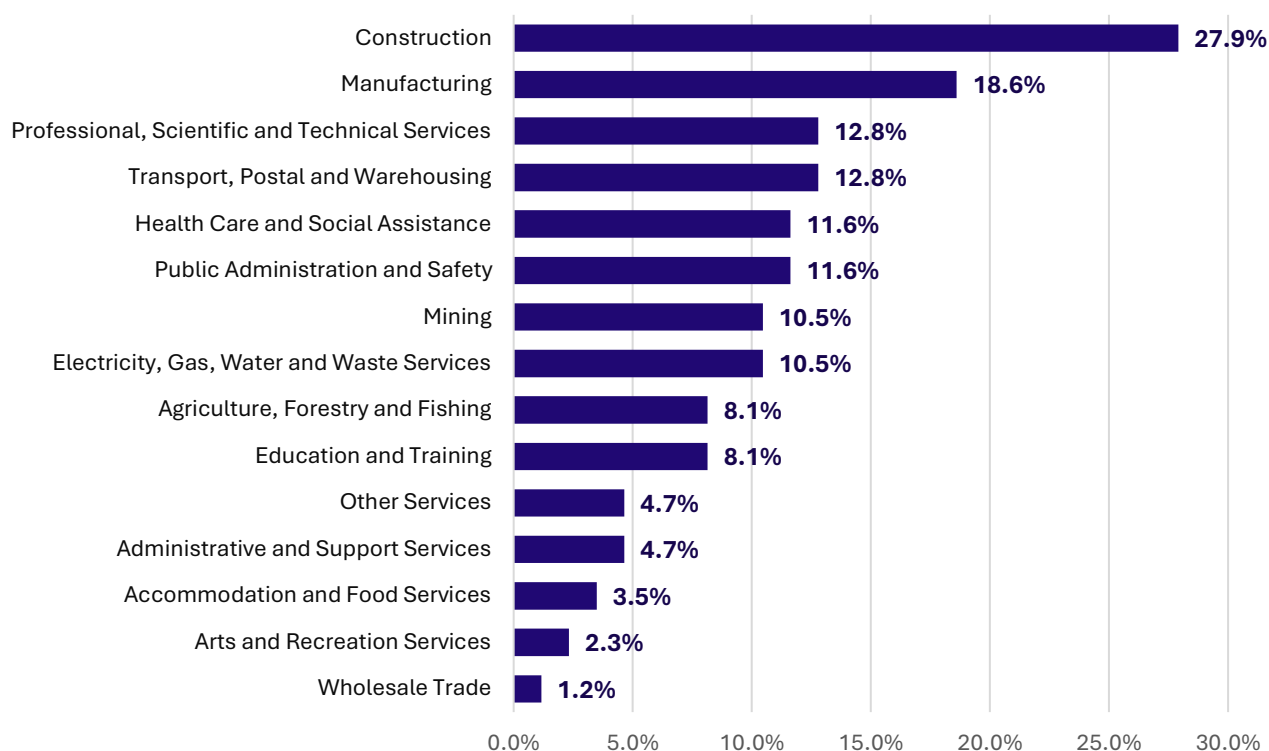
Safe Work Australia circulated a survey through to gather input from employers. The survey was published on the Safe Work Australia Consultation Hub as part of the consultation period for this Review and to inform the final report. It was promoted on social media, with support from Australian Industry Group and ACCI to increase participation. The survey questions were developed in consultation with the relevant Safe Work Australia Members. The survey received 87 responses between 1 September and 30 November 2025. It included multiple choice and free-text questions, with responses analysed to identify emerging issues. Free-text responses were grouped into similar themes.

Snapshot of survey respondents

Industry

Most survey respondents reported their company operated in the Construction (27.9%), Manufacturing (18.6%), Professional, Scientific and Technical Services (12.8%) and/or the Transport, Postal and Warehousing (12.8%) industries.

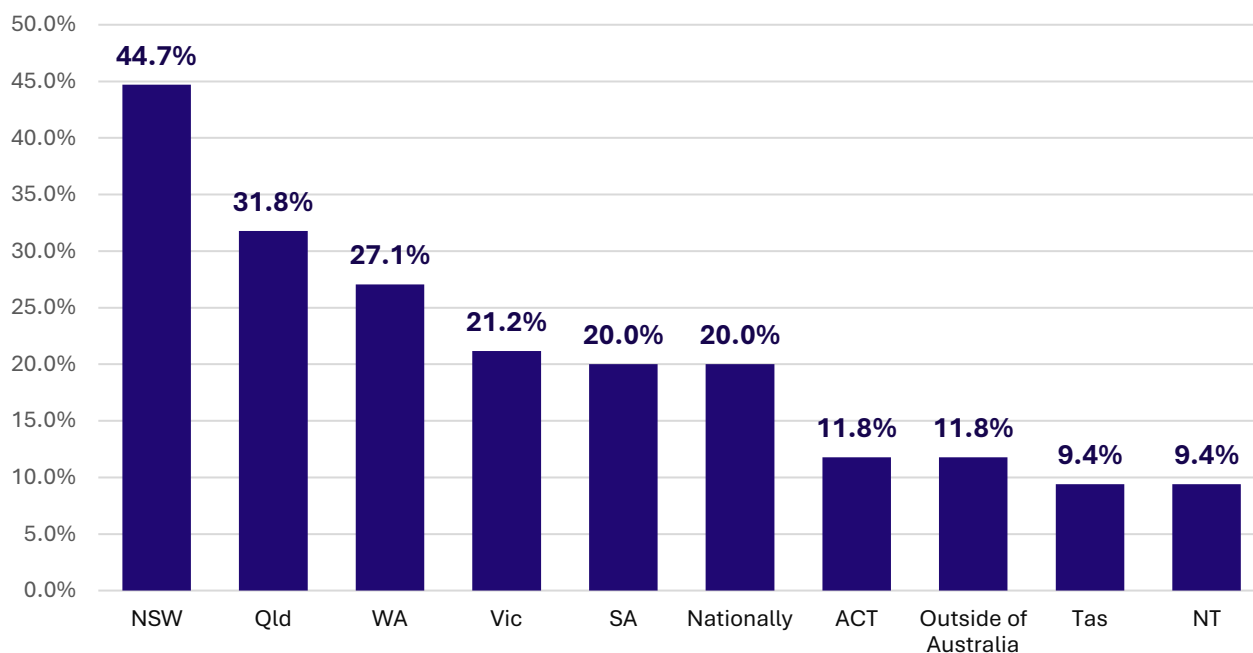
Figure 9 Proportion of respondents by industry



* Note: Respondents were able to select more than one option; percentages therefore do not sum to 100%.

Jurisdiction

Figure 10 Proportion of respondents by jurisdiction(s) of operation



* Note: Respondents were able to select more than one option; percentages therefore do not sum to 100%.

Figure 10: NSW had the highest proportion of responses (44.7%), followed by Queensland (31.8%) and

WA (27.1%). Tasmania and NT have the lowest response levels, both at 9.4%.

Business size

Most respondents were from medium-sized businesses (44.0%), followed by large businesses (41.7%). Only 14.3% of respondents were from small businesses.

Data Table 17 Respondents by business size

Response	Percentage of responses (%)
1–20 (small)	14.3%
21–200 (medium)	44.0%
200+ (large)	41.7%
Total	100.0%

Survey results

Free-text feedback

Employers were asked, ‘Do you have any additional comments about WHS as an employer?’ The responses below reflect a cross-section of the feedback received.

Complexities in complying with WHS laws

- ‘As an employer, I find WHS laws to be grey, interpretive, and inconsistently applied. While the goal of safety is universally shared, the language used – such as “so far as is reasonably practicable” – creates uncertainty rather than clarity. Two auditors or inspectors can interpret the same scenario differently, which erodes confidence and drives up compliance costs without improving safety outcomes’.
- ‘Businesses genuinely wanting to do the right thing are forced to second-guess whether their systems are “enough”, not because they’re unsafe, but because the rules are written in a way that invites subjective judgment.’
- ‘It can be hard to protect against worker negligence or what can appear to be “arrive at work; turn off my brain; let the system take care of me”’.
- ‘Too much focus on punishing companies and people rather than making sure we have the help needed to get it right’.
- ‘I wish all the WHS government teams had better resources to visit and assist high-risk operations, guiding them in the right direction’.
- ‘The compliance costs can be reduced by providing appropriate access to the industry guidance material in plain English and the use of fact sheets for specific topics either provided by Safe Work Australia or through relevant regulators’.
- ‘Current additional expenses is becoming prohibitive for small businesses to be compliant’.

Harmonisation

- ‘Simplification and unification reduces the complexity of establishing and communicating requirements across multiple jurisdictions’.
- ‘Working across multiple jurisdictions ... that do not abide by the harmonised WHS laws makes it very challenging to create a unified approach to documentation for our business’.
- ‘Ensuring the WHS legislation is regularly reviewed to ensure it remains current and effective in the face of rapid change is super important’.
- ‘Having one website for all states would make our responsibilities so much better’.

Other safety schemes

- ‘Seeking to harmonise or at least streamline WHS requirements from other legislation would be beneficial (petroleum and gas, mining, electrical safety)’.

Industry focus

- ‘Aged care is a massive gap. It differs to health care yet is lumped under the same banner.’
- ‘The building industry needs a lot of work’.

Psychosocial risks

- ‘The expansion of psychosocial risk factors beyond that of the ILO is overcomplicating risk management planning. The current state of play is putting both employers and employees at privacy risks around medical conditions (especially mental health ailments and diagnoses). Employees are forced to disclose private mental health information to prevent claims for psychological harm’.

Employer understanding of WHS

Data Table 18 Employer responses on understanding WHS

Employers were asked to indicate their level of agreement with the statement: ‘I understand my WHS obligations and responsibilities’.

Responses	Percentage of responses (%)
Strongly disagree	0%
Disagree	0%
Neutral	6.9%
Agree	19.5%
Strongly agree	73.6%
Total	100.0%

Data Table 19 Employer responses on WHS information

Employers were asked to indicate their level of agreement with the statement: 'I find it easy to find the right information about how to comply with my WHS obligations and responsibilities'.

Response	Percentage of responses (%)
Strongly disagree	1.1%
Disagree	9.2%
Neutral	19.5%
Agree	35.6%
Strongly agree	34.5%
Total	100.0%

Data Table 20 Employer responses on accessibility of model WHS Regulations

Employers were asked to indicate their level of agreement with the statement: 'The model WHS Regulations are clear and easy to understand'.

Response	Percentage of responses (%)
Strongly disagree	4.6%
Disagree	14.9%
Neutral	27.6%
Agree	37.9%
Strongly agree	14.9%
Total	100.0%

Data Table 21 Employer responses on improving understanding of WHS obligations

Employers were asked to respond to the question 'If there was one thing that could be done to help you understand WHS obligations, what would it be?'

Theme	Percentage of responses (%)
Make WHS information more accessible	18.4%
Harmonise	12.2%
Practical guidance on how to meet WHS obligations	12.2%
Education, training and capability building	12.2%
Guidance tailored to industry and business size	10.2%
Digital tools to support WHS compliance	8.2%
Regulator capability and consistency	8.2%
Increase legislative certainty	6.1%
Access to Australian Standards	6.1%
Information on jurisdictional variations	4.1%
No issues	2.0%
Total	100.0%

Penalties

Data Table 22 Employer responses on appropriateness of penalties for breaching WHS laws

Employers were asked to indicate their response to the statement: 'The penalties for breaching WHS laws are appropriate'.

Response	Percentage of responses (%)
Too low	4.6%
Somewhat low	13.8%
About right	46.0%
Somewhat high	20.7%
Too high	14.9%
Total	100.0%

Nearly half of employers (46.0%) considered the penalties to be about right. Around one-third believed the penalties are too high (20.7% somewhat high and 14.9% too high), while a smaller proportion considered them too low (13.8% somewhat low and 4.6% too low).

Variations

Data Table 23 Employer responses on benefits of consistent WHS laws

Employers were asked to respond 'Yes', 'No', or 'Unsure' to the statement: 'More consistent WHS laws across Australia would benefit me and my organisation'.

Response	Percentage of responses (%)
No	4.6%
Unsure	6.9%
Yes	88.5%
Total	100.0%

Other WHS schemes

Data Table 24 Employer responses on aligning other WHS schemes with model WHS laws, by business size

Employers were asked to respond 'Yes', 'No', or 'Unsure' to the statement, with results disaggregated by business size: 'Other WHS schemes (for example, offshore or mining safety laws) should more closely align with the model WHS laws'.

Responses	Percentage of responses (%)		
	1–20 (small)	21–200 (medium)	200+ (large)
No	16.7%	13.5%	5.7%
Unsure	33.3%	27.0%	25.7%
Yes	50.0%	59.5%	68.6%
Total	100.0%	100.0%	100.0%

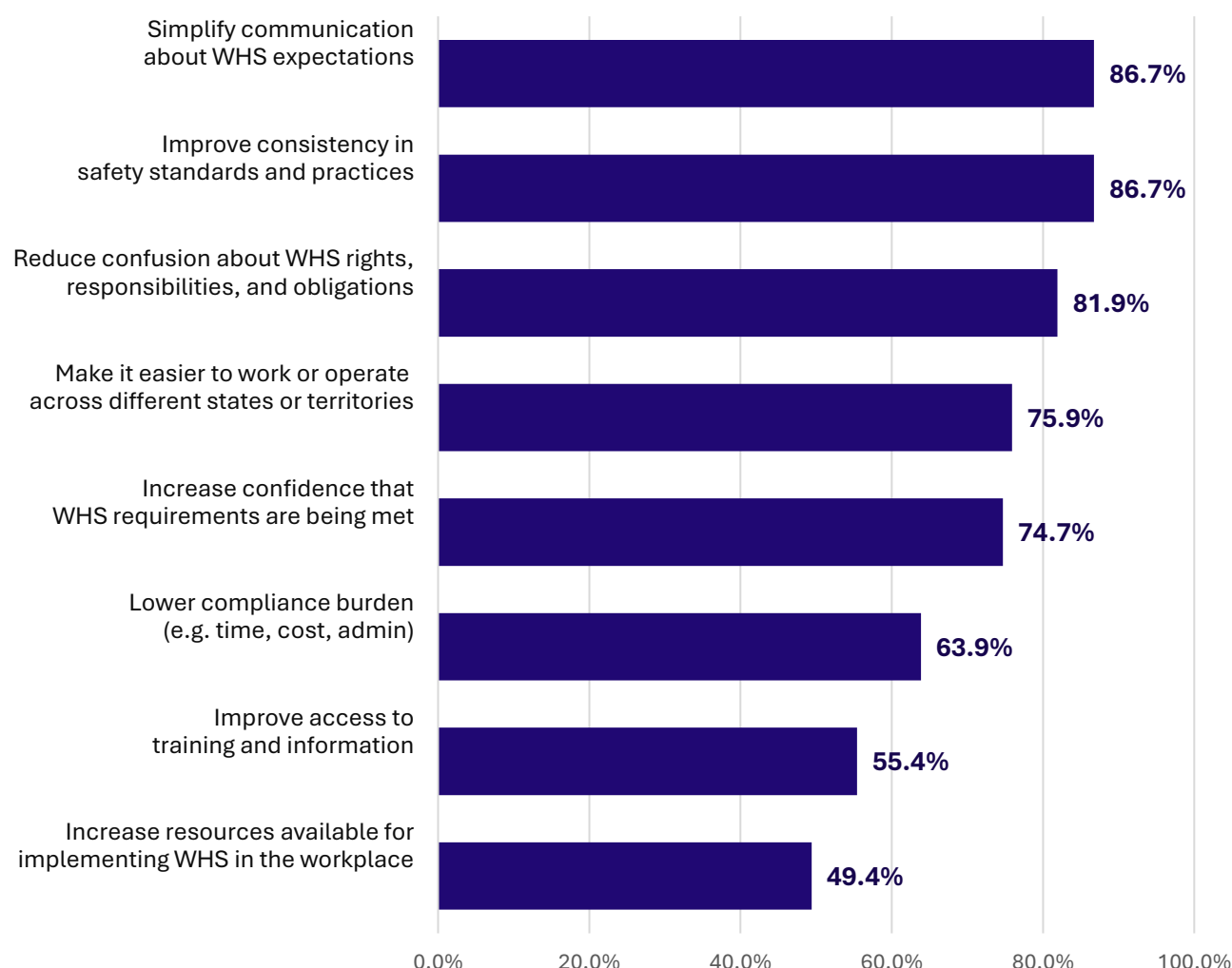
** Note: Percentages represent the proportion of responses within each business size.*

Table 24: Across all business sizes, employers tended to agree that other WHS schemes should more closely align with the model WHS laws. Support increased by business size, with 50% of small, 59.9% of medium and 68.8% of large businesses responding 'Yes'. Small businesses were more likely than medium and large businesses to report uncertainty, while disagreement remained relatively low across all groups.

Harmonisation

Figure 11 Proportion of employer responses by impact of harmonisation

Employers were asked to select all the responses that apply to the following question: ‘If the WHS laws were more closely harmonised (i.e. consistent across states and territories), what impact would that have for you or your organisation?’



** Note: Respondents were able to select more than one option; therefore, percentages do not sum to 100%.*

Figure 11: Employers most often reported that greater WHS harmonisation would improve clarity and consistency, particularly by simplifying communication about WHS expectations (86.7%) and improving consistency in safety standards (86.7%). Many employers also expected reduced confusion about WHS obligations (81.9%), easier operation across states and territories (75.9%), and increased confidence that WHS requirements are being met (74.7%). Fewer employers identified impacts related to reducing compliance burden (63.9%), improving access to training and information (55.4%), or increasing resources for WHS implementation (49.4%).

Figure 12 Employer responses on improving the model WHS laws

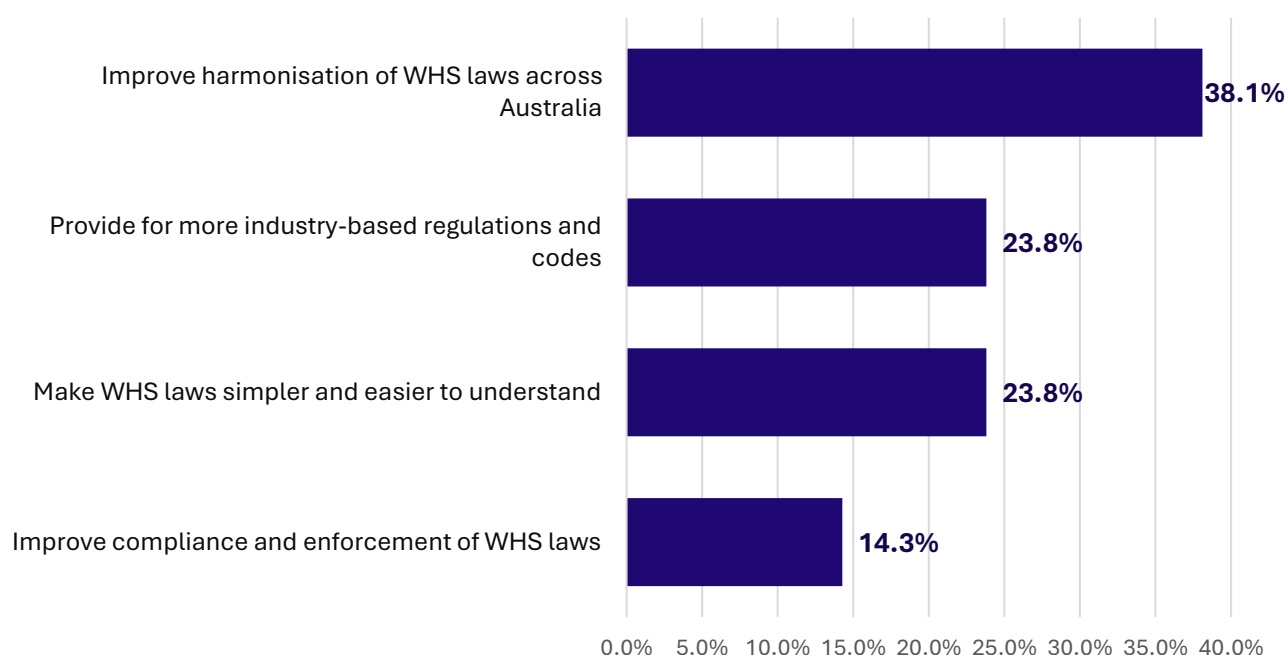


Figure 12: When employers were asked ‘If you could improve one aspect of the model WHS laws, which one of the following would you prioritise?’, employers prioritised greater harmonisation of WHS laws across Australia (38.1%) over more industry-based regulations and codes (23.8%) or simpler and easier to understand WHS laws (23.8%). Improving compliance and enforcement was the least prioritised by employers (14.3%).

This Review also conducted a general questionnaire for completion, but due to low response rate the results were not considered sufficiently representative and have not been relied upon in this analysis.

Appendix K: Case Law

Catholic Healthcare Limited v SafeWork NSW [2025] NSWIRComm 1046

SafeWork NSW issued an improvement notice to Catholic Healthcare, alleging a contravention of its duty of care and obligation to workers to fit test respiratory equipment. Catholic Healthcare applied for an internal review, and ultimately an external review by the NSW IRC. The Commissioner set aside the notice, finding that the relevant clause of the NSW WHS Regulations did not apply to Catholic Healthcare's operations. The improvement notice had relied on the PPE provisions of the regulations; however, those provisions only apply where the risk controls required by a risk assessment specify PPE.

Boland v Safe is Safe Pty Ltd & Munro [2017] SAIRC 17

This case concerned a young girl dying when she was ejected from an amusement ride at the Royal Adelaide Show in 2014. The case arose regarding the certification of an amusement device, with the certifier unsuccessfully arguing that the health and safety duty imposed by section 19(2) of the SA WHS Act only exists whilst work is being carried out by the relevant business or undertaking and that it does not extend to the consequences or product of work. The SA Industrial Court held that the proper meaning of section 19(2) is to protect members of the public from work performed as opposed to being limited to the exact time when work was performed. A wider duty is created to protect the public at large from the health and safety consequences of work.

Safe Work NSW v Wagga Motors Pty Ltd [2018] NSWDC 242

This case relates to the application of 'other persons' in section 19(2) of the NSW WHS Act. The defendant, a vehicle repairer, serviced a horse float and returned it to the owner without properly checking the hydraulic system controlling the tailgate. Consequently, an employee of the owner was later fatally crushed when the tailgate collapsed. The District Court held that the defendant was responsible for the safety of the employee, confirming that 'other persons' in section 19(2) extends beyond non-workers in the workplace and covers anyone who is likely to be affected by the work of the business.

Dial A Tow Australia Pty Ltd v Campbell [2023] SAET 49

In 2022, a towing company Dial A Tow was found guilty of breaches of the SA WHS Act that led to the death of an employee in 2018. The employee was killed in the crush zone between a modified tow truck's retracting tilt tray and the vehicle's headboard. SafeWork SA alleged that Dial A Tow failed to ensure the crush zone was fitted with a pressure sensor that prevented the tilt tray from moving if any person or object was within the zone. Dial A Tow appealed against its conviction, and the matter was eventually remitted to the South Australian Employment Court (SAET) full bench. On appeal, the SAET found the failings of Dial A Tow were insufficient for a finding of guilt to the specific charge laid, before ruling that SafeWork SA failed to prove beyond reasonable doubt that Dial A Tow would have been advised to install a pressure sensor had it sought an expert opinion. Dial A Tow's conviction was set aside and the company was acquitted.

Prime Marble & Granite Pty Ltd v SafeWork NSW [2024] NSWCCA 105

In this case, the Court of Criminal Appeal heard an appeal from the District Court's decision which allowed a prosecution to proceed against Prime Marble for the deaths of 2 workers who were exposed to unsafe levels of respirable crystalline silica between 2017 and 2018. The prosecution against Prime Marble commenced in March 2023, less than 2 years after SafeWork NSW became aware of the workers' deaths in early 2021. After the proceedings against Prime Marble commenced in 2023, Prime Marble successfully had the prosecutions dismissed by the Court of Criminal Appeal on the basis that SafeWork NSW became aware of the offence in (at least) 2018 and so were statute barred by section 232(1)(a) of the NSW WHS Act, which provides that a prosecution cannot be commenced more than 2 years after the offence first comes to the notice of the regulator. The Court found that an offence first comes to the regulator's notice when it has sufficient information to reasonably believe that the offence has been committed. The Court also found that it is not necessary for the regulator to know the identity of any particular worker at risk of serious illness because of a breach of the duty. Instead, the regulator must have material or information capable of establishing objectively a reasonable belief that all elements of the offence could be established. In the Court's view, the regulator had that information following its visits in 2017 and 2018.

Chevron Australia Pty Ltd v The Maritime Union of Australia (No 2) [2016] FCA 768

This Federal Court case concerned unprotected industrial action organised by the Maritime Union of Australia during the term of an enterprise agreement covering stevedoring work associated with Chevron's Gorgon Liquefied Natural Gas project. In June 2012, union members employed by Patrick Projects Pty Ltd delayed work citing safety concerns. The Court accepted evidence showing the action was not authorised by the employer and was not based on a reasonable concern about imminent safety risks. The Court dismissed proceedings against the individual employees but declared that the Maritime Union of Australia contravened section 417 of the FW Act by organising the unprotected industrial action, finding that the asserted safety issues were a pretext for a broader industrial campaign against Chevron's use of foreign labour.

Australian Building and Construction Commissioner v Holl [2021] FCA 1480 (The Wheeler Cranes Case)

This Federal Court case concerned an unlawful industrial campaign by the Construction, Forestry, Maritime, Mining and Energy Union and 2 union officials directed at Wheeler Cranes – a company that did not have an enterprise agreement with the union. The union organised protests and site actions against Wheeler Cranes with the intention of pressuring principals not to engage the company. The Federal Court found that the conduct was intended to coerce third parties in contravention of the FW Act and the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth). Significant penalties were imposed on the union and officials involved.

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (No 2) [2022] FCA 19 (Kiama Aged Care Centre Case)

This Federal Court case concerned contraventions of right of entry provisions by CFMMEU officials during construction works at the Kiama Aged Care Centre in November 2018. This involved a union organiser interfering and delaying concrete works and 2 union officials entering the site without complying with reasonable site safety requirements. The Federal Court found that the conduct exceeded the officials' authority and unlawfully interfered with work activities. Significant penalties were imposed on the union and the officials.

R v Brisbane Auto Recycling Pty Ltd & Ors [2020] QDC 113

This case was the first industrial manslaughter sentence handed down in Queensland. It involves the death of a worker at an auto recycling yard in 2019. Both the corporate entity and its 2 directors were prosecuted for the fatality and pleaded guilty to offences. The company, charged as the PCBU, pleaded guilty to one charge of industrial manslaughter contrary to section 34C of the Queensland WHS Act. The company was fined \$3 million. The company's directors both pleaded guilty to one charge of reckless conduct – Category 1 in contravention of section 31. Both were sentenced to 10 months' imprisonment.

R v Jeffrey Owen [2022] QDCSR 168

This case involved the first conviction of an individual for industrial manslaughter in Queensland. The defendant operated a business involving the repair and maintenance of electrical items. While the defendant was using a forklift to move a generator, the generator fell and landed on another worker, resulting in his death. The defendant's conduct was found to be negligent and caused the death of the worker, and the defendant was convicted for an offence of industrial manslaughter, contrary to section 34C of the Queensland WHS Act. The defendant was sentenced to 5 years' imprisonment.

Director of Public Prosecutions v LH Holding Management Pty Ltd (2025) 77 VR 377

This case was Victoria's first successful prosecution under workplace manslaughter laws, following the death of a worker who was fatally crushed by a forklift in 2021. LH Holding Management Pty Ltd pleaded guilty to a single charge of workplace manslaughter, involving negligent conduct that breached a duty owed to another person and caused their death. The company's sole director was convicted after pleading guilty to a single charge of being an officer of a company that committed workplace manslaughter. On appeal, Victoria's Court of Appeal increased the penalty from \$1.3 million to \$3 million after the Office of Public Prosecutions argued that the initial fine was manifestly inadequate.

On appeal, Victoria's Court of Appeal increased the penalty from \$1.3 million to \$3 million after the Office of Public Prosecutions argued that the initial fine was manifestly inadequate.

Director of Public Prosecutions v Yarra Valley Park Lane [2024] VCC 1863

Yarra Valley Park Lane Holiday Park Pty Ltd was convicted in the County Court of Victoria of a single charge of failing to ensure that the workplace was safe and without risks to health. The case involves the death of a camper who died after a large tree branch fell on his tent overnight, causing fatal head injuries. The jury found it was reasonably practicable for the caravan park to reduce the risk of falling branches by engaging an arborist to complete annual tree assessments and following recommendations. The caravan park was fined \$475,000. The court also issued an adverse publicity order requiring the company to publicise the offence, its consequences and the penalty imposed in an industry publication.

SafeWork NSW v Calibre Construction Group Pty Ltd [2020] NSWDC 603

This case concerned a breach of a WHS duty arising from the collapse of an unbraced wall which seriously injured a worker on an adjacent site. The offender pleaded guilty to a charge that, as a person who had a health and safety duty under section 19(2) of the NSW WHS Act, it failed to comply with that duty, and thereby exposed a worker to a risk of death or serious injury contrary to section 32. The Court imposed a fine and a training order. The offender was required to arrange and pay for its employees to undertake WHS training, with at least 40% of the training courses to be related to high risk construction work.

Aaron Guilfoyle v Ardent Leisure Limited [2020] QMC 13

Ardent Leisure Limited operated the Dreamworld Theme Park on the Gold Coast, where 4 guests were fatally injured in 2016 on the Thunder River Rapids Ride. The defendant pleaded guilty and was sentenced in the Southport Magistrates Court in relation to 3 charges pursuant to section 32 of the Queensland WHS Act, each concerning a failure to comply with its primary safety duty under section 19(2) of the Act. The defendant failed to ensure, so far as is reasonably practicable, the provision and maintenance of safe systems of work, and the provision of training, instruction and supervision necessary to protect all persons against risks to their health and safety arising from work carried out as part of its business; and exposed persons to a risk of serious injury or death. The defendant was convicted and fined \$3.6 million.

Appendix L: Commencing a prosecution

Jurisdiction	Who can commence a prosecution for an offence against the Act?
Model	The regulator, an inspector with written authorisation and the DPP (section 230).
ACT	The regulator, an inspector with written authorisation and the DPP (section 230).
Commonwealth	The regulator, an inspector with written authorisation and the DPP (section 230).
NSW	The regulator, an inspector with written authorisation and the DPP, a registered organisation that has a member(s) concerned in the matter provided it has consulted with the regulator and the regulator has declined to bring the proceedings (section 230).
NT	The regulator, an inspector with written authorisation, the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate (but only for Category 1 and 2 offences where the regulator has (after referral of the matter to the regulator and DPP under section 231) declined to follow the advice of the DPP to bring the proceedings) and the Attorney-General or DPP (section 230). ⁷⁷⁸
Queensland	The Work Health and Safety Prosecutor (WHSP), an appropriately qualified and authorised member of the WHSP's staff, an inspector with written authorisation of the WHSP (for Category 3 offences only) and the DPP (section 230).
SA	The regulator, an inspector with written authorisation and the DPP (section 230).
Tasmania	The regulator, an inspector with written authorisation and the DPP (section 230).
Victoria	The regulator, an inspector with written authorisation and the DPP (for indictable offences against the Act or regulations) (section 130).
WA	The regulator, a public service officer working in the WHS department (with written authorisation), an authorised officer (as defined in the <i>Criminal Procedure Act 2004</i> (WA) section 80(1)) and the DPP (section 230).

⁷⁷⁸ In the NT, the regulator requires the consent of the DPP to bring proceedings for a Category 1, Category 2 or Category 3 offence in respect of a death or for industrial manslaughter.

Appendix M: Review submissions and consultations

Individuals and organisations that Safe Work Australia consulted with or had permission to publish submissions from are listed below.

2025 Safe Work Australia Research Summit attendees

Acran Sound Control

AER Environmental

Affected Families and Workers Advisory Committee (WA)

Andrew Watt

ASIS International (NSW Chapter)

Associate Professor Lindsay Carey

Associate Professor Sarah Moulds with Associate Professor Kirsten Way and Professor Michelle Tuckey on behalf of BRIDGES at Work project team

Australasian Amusement, Leisure and Recreation Association

Australasian Institute for Maritime Archaeology

Australia & New Zealand Scientific Diving Association

Australian Archaeological Association

Australian Business Industrial

Australian Cabinet and Furniture Association Ltd

Australian Cabinet and Furniture Association / The Kitchen and Bathroom Designers Institute

Australian Chamber of Commerce and Industry

Australian Constructors Association

Australian Council of Trade Unions

Australian Education Union (ACT Branch)

Australian Federation of Disability Organisations

Australian Human Rights Commission

Australian Industry Group

Australian Institute of Company Directors

Australian Institute of Health & Safety

Australian Institute of Occupational Hygienists

Australian Manufacturing Workers' Union

Australian Maritime Safety Authority

Australian Medical Association

Australian Nursing and Midwifery Federation (various branches)

Australian Public Service Commission

Australian Retailers Association and National Retail Association

Australian Small Business & Family Enterprise Ombudsman

Before You Dig Australia

Behavioural Insights Team (NSW)

Business Chamber Queensland

Business Council of Australia

Business NSW

Cancer Council Australia

Carnival Safety Australia

Centre for Future Work

Chamber of Commerce NT

Chamber of Minerals and Energy WA

Comcare

Commonwealth Director of Public Prosecutions

Community and Public Sector Union

Construction Forestry Mining and Energy Union

Consultative Committee for Work-Related Fatalities and Serious Incidents (Queensland)

ConsultMine Pty Ltd

Council of Small Business Organisation Australia

Curran Risk Management

Dean Yates

Department of Climate Change, Energy, the Environment and Water

Department of Employment and Workplace Relations

Department of Industry, Science and Resources

Department of Primary Industries and Regional Development (NSW)

Department of Treasury

Diversity Australia

Dr Anna Cody, Sex Discrimination Commissioner, Australian Human Rights Commission

Dr John McCarthy, Australasian Institute for Maritime Archaeology

Dr Kay Wilson

Dr Leon Moussa

Dr Nikki Jamieson

Dr Rachael Potter

Dr Shay Dougall

Electrical Trades Union of Australia

Emeritus Professor Michael Quinlan

Eugene White as reviewer for the Independent Review of Employee Representatives (Victoria)

Energy Queensland

Fair Work Ombudsman

Family and Injured Workers Advisory Committee (Commonwealth)

Family and Injured Workers Support and Advisory Group (NSW)

Flight Attendants' Association of Australia

Giridharan Sivaraman, Race Discrimination Commissioner, Australian Human Rights Commission

Griefwork, Uniting (Victoria)

Head of Workplace Safety Authorities

Housing Industry Association

Individual Health and Safety Representatives (HSRs) across multiple state and territories

James Miller

Johnson Winter Slattery

Jon Collins

Kate Spurr-Driver

Kay Catanzariti

Kevin Jones

Leon Moussa

Mable

Maritime Union of Australia

Master Builders NT

Master Builders Queensland

Master Builders SA

Master Builders Australia

Master Builders Tasmania

Master Electricians Australia

Maurice Blackburn Lawyers

Melbourne Market Authority

Minerals Council of Australia

Molliwell

Multicultural Council of Tasmania

Natalie Stephens

National Disability Services

National Farmers' Federation

National Heavy Vehicle Regulator

National Joint Submission - Safety Regulation
for Primary Prevention of Gendered Violence

National Poisons Register

NT WorkSafe

NT Working Women's Centre

Occupational Therapy Australia

Office for Women

Office of Industrial Relations (Queensland)

Office of the Work Health and Safety
Commissioner (ACT)

Office of the Work Health and Safety
Prosecutor (Queensland)

Paul Stevens

Peter MacCallum Cancer Centre

Peter Thorning

Power to Prevent Coalition

Powering Skills Organisation

Professor Andrew Stewart

Professor Nareen Young

Professor Maureen Dollard

Queensland Council of Unions

R2A Due Diligence Engineers

Reconciliation Australia

Rev Dr Mark Layson

SA Unions

Safety Forward

SafeWork NSW

SafeWork SA

SafeWorkPro Pty Ltd

Scuba Diving International

Shop, Distributive and Allied Employees'
Association (various branches)

Small Business Development Corporation WA

South Australian Business Chamber

South Australian Wine Industry Association

Southside Justice

Standards Australia

Tasmanian Chamber of Commerce and
Industry

Terry Flanders

The Reckoning Room

Unions NSW

Unions Tasmania

Unions NT

UnionsACT

UnionsWA

University of Tasmania

Veyter Pty Ltd

Victorian Chamber of Commerce and Industry

Victorian Small Business Council

Victorian Trades Hall Council

Vince Pannell

Water Services Association of Australia

Work Safety Group (ACT)

Working with Women Alliance

Workplace Health and Safety Queensland

Workplace Incident Consultative Committee
(Victoria)

WorkSafe Tasmania

WorkSafe Victoria

WorkSafe WA

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