ACCESS ECONOMICS

Decision Regulation Impact Statement for a Model Occupational Health and Safety Act

9 December 2009

Report by Access Economics Pty Limited for

Safe Work Australia

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Glossary

ABS	Australian Bureau of Statistics
ASCC	Australian Safety and Compensation Council
ACCI	Australian Chamber of Commerce and Industry
ACT	Australian Capital Territory
ACTU	Australian Council of Trade Unions
Ai Group	Australian Industry Group
COAG	Council of Australian Governments
DEEWR	Department of Education. Employment and Workplace Relations
HSC	Health and Safety Committee
HSR	Health and Safety Representative
IGA	Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety
NOHSC	National Occupational Health and Safety Commission
NDS	National Dataset for Compensation Based Statistics
NSW	New South Wales
NT	Northern Territory
OBPR	Office of Best Practice Regulation
OHS	Occupational health and safety
PIN	Provisional Improvement Notice
RIS	Regulation Impact Statement
UK	United Kingdom
WRMC	Workplace Relations Ministers' Council

Executive Summary

This Regulatory Impact Statement (RIS) has been prepared in accordance with the Council of Australian Governments (COAG) best practice regulation guidelines for Ministerial Councils and National Standard Setting Bodies.

Although all Australian jurisdictions' principal OHS Acts codify the common law duty of care based on the Robens model[1], each state, territory and the Commonwealth have reflected these duties in somewhat different ways. Also, subordinate regulations and compliance policies differ significantly between jurisdictions.

This can impose substantial costs on businesses that operate in more than one state or territory. Accordingly, Australian governments are committed to harmonising OHS laws. In July 2008, this commitment was formalised by COAG with the signing of an Intergovernmental Agreement (IGA) for Regulatory and Operational Reform in OHS.

The first step in this process is the development of a model OHS Act, which all jurisdictions are to adopt by enacting mirror legislation by the end of 2011. This RIS assesses the costs and benefits of adopting that Act (Option 2) relative to retaining the status quo (Option 1). Model regulations, model codes of practice and a national compliance policy to support the model Act will follow subsequently, but are dependent upon this first step.

Costs and benefits to business

The COAG has a Business Regulation and Competition Working Group that is tasked with assessing 27 priority areas of regulation, of which OHS ranks as the highest concern among businesses.

The actual costs of OHS compliance in Australia are not known, as there have been no surveys by the Australian Bureau of Statistics or any other authority. It is generally accepted that for most OHS laws, of which there have been regular reviews, there should be at least offsetting safety benefits. These benefits comprise, for employers, largely financial gains such as higher productivity, lower staff turnover and reduced workers' compensation premiums. Most of the safety benefits are for workers, and are largely non-financial, realised through better health outcomes due to fewer incidents and lower exposure to occupational risks for disease or injury.

However, costs caused by overlaps and inconsistencies between jurisdictions are unnecessary and are unlikely to have any offsetting safety benefits. Moreover, if general OHS compliance costs are little charted, the extent of compliance costs caused by differences between jurisdictions is largely unknown.

The model Act will reduce differences across jurisdictions at the legislative level. However, it is difficult to assess the precise benefits this will bring to businesses. First, the model Act does not significantly depart from the general structure and content of existing OHS legislation, but rather consolidates existing elements in a more consistent manner. Therefore, it is expected

[1] The "Robens" model is derived from a landmark 1972 British report by Lord Robens.

that implementation of the model OHS Act will not significantly change current OHS responsibilities.

Second, as such Acts consist of general duties, they only represent part of the total compliance costs, which are also incurred in subordinate regulations and compliance policies, but are outside the scope of this RIS, which is specifically looking at the implementation of the model OHS Act.

The most significant aspect of the model Act is that it will recast the primary duty holder structure from one defined by the employment relationship (i.e. employer/employee) to one based on a broader range of work relationships. The principal duty holder under the model Act will be a person conducting a business or undertaking and the duty of care will be owed to all types of workers carrying out activities for that business or undertaking and to any other person affected by those activities.

The main costs to business of introducing the model Act will be in learning how to 'play by the new rules'. These costs are not known either, but are not likely to be significant, given that the model Act retains the general duties of care that exist in current OHS Acts. Further, these costs are unlikely to be greater than the costs of ongoing changes under disparate jurisdictional regimes were the model Act not to be introduced. Jurisdictional OHS Acts are generally reviewed every five years or so, with changes to subordinate regulation being considerably more frequent. Thus, introducing the model Act could be seen as part of an ongoing regular change process consolidated into one single change that harmonises across jurisdictions.

- Indeed, for multi-jurisdictional employers, there may even be a reduction in adjustment costs, as they will only face one set of changes once the model legislation is implemented, rather than potentially several jurisdiction-specific sets of change. Moreover, such benefits will be ongoing. Under the model Act, all future changes will be conducted on a single, nationally coordinated basis.
- For single jurisdictional employers, who will not benefit from the Act's reductions in cross-border red-tape restrictions, the picture is less clear. Some aspects of the model Act are not perceived by business as being beneficial, particularly allowing OHS-qualified union officials access to workplaces, and increased penalties. However, as measured from a pure OHS perspective, Access Economics does not consider that these aspects would impose significant costs. On balance, the outcome is probably neutral for single-state firms.

Costs and benefits to workers

It is unlikely that there will be any significant costs to workers. The cost of training (beyond that required for the normal volume of OHS changes) and of additional safety systems (if any) will be paid for by employers. However, in some labour hire or sub-contracting arrangements, self-employed persons may be workers, but also have responsibilities as persons conducting a business or undertaking.

In terms of benefits to workers, the model Act ensures that all types of workers (not only employees) are equally protected by the OHS laws. Nationally consistent OHS laws will also contribute to the ease with which workers can move between jurisdictions (particularly self

employed contractors), by allowing for regulations to be made for mutual recognition of OHS licenses across jurisdictions.

More detailed requirements in OHS regulations and practical guidance in codes of practice can bring about further improvements in worker safety. However, it is difficult to quantify any changes to incident outcomes from as yet unspecified consequent changes to regulations.

- In principle, with sufficiently detailed and lengthy statistics, such changes could be modelled. However, such data are not available (again, mainly due to jurisdictional inconsistencies). The National Review into model OHS Laws (2008) concluded: "The standardised statistics are, in our view, not reliable for reaching conclusions about the effect of particular legislative provisions."
- The survey associated with this RIS found an expected minor benefit to worker health, of around 0.4%, but this figure cannot be considered robust (see Appendix C).

Costs and benefits to governments

For similar reasons as outlined above, costs to government are also not likely to be substantial. Jurisdictions are continually rolling out changes to OHS regulations, with commensurate education and advice costs. In discussions with regulators, most saw this as just a continuation of this process. None indicated that they would require funding above their normal budget allocation. Further, states and territories are eligible for funding through the COAG National Partnership Payments under the *National Partnership Agreement to Deliver a Seamless National Economy* for implementing the model OHS laws.

Benefits to governments are likely to be more significant in the long term due to the reduction of duplication, as future legislative reviews and development of legislation and codes will be undertaken nationally. If nationally consistent legislation reduces workplace incidents, governments may benefit from increased taxes and reduced welfare payments.

Methodology

Access Economics has conducted consultations with key government, business and worker bodies, and undertaken extensive literature searches. To date, available data have not permitted robust quantitative analysis for this Decision RIS, although a survey was conducted targeting businesses across a range of sizes, industries and regions in an effort to obtain primary data on compliance costs and safety benefits.[2] However, due to a number of factors, including a low number of responses and data inconsistencies, Access Economics does not consider that the survey results are robust enough to build a quantitative analysis that could replace the qualitative analysis of the Consultation RIS. Generally speaking, however, the survey results are consistent with that analysis, and are used herein as a secondary line of evidence.

Conclusion

Costs and the benefits of the model Act are not readily quantifiable. The evidence available suggests that the model Act is expected to bring medium sized benefits for multi-jurisdictional business, principally in reduced red tape from dealing with several sets of OHS legislation.

[2] Details of the survey are at Attachment C.

These will be partially offset by a small increase in adjustment costs (relative to ongoing adjustment costs under Option 1). There will probably be some small safety benefits for workers, with no significant offsetting costs to workers. There will be a small increase in adjustment costs for government (relative to such ongoing costs in the counterfactual); partly offset by some benefits in improved compliance efficiency.

Combining these effects, Access Economics expects that the model Act will confer an overall marginal to small net benefit.

Importantly, the model Act is a necessary first step to harmonising regulations, codes of practice and compliance and enforcement policies, which do offer scope for significant national benefits. Taking account of previous attempts to harmonise OHS laws, the agreement by Australian governments to adopt a model act and regulations by 2011 represents the most significant OHS reform since the introduction of Robens style legislation in the 1980s.

Thus, from theory *a priori*, conceptual analysis, consultation, and available empirical evidence, **adoption of the model Act is the recommended outcome**.

Access Economics
December 2009

1 Background and problem statement

1.1 Introduction

Over the last 20 years there have been efforts at the national level to make OHS regulations more consistent by developing National OHS Standards and Codes of Practice. But there was no binding obligation on jurisdictions to adopt these national standards and codes. Where jurisdictions adopted National OHS Standards, they did so to varying degrees, as they often needed to rework the clauses and definitions of a national standard to align with their respective OHS Acts.

The importance of harmonised OHS laws has been recognised by the COAG, the Productivity Commission and the states and territories in their work in this area to date.

In July 2008, COAG signed an *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, which commits the state, territory and Commonwealth governments to implementing nationally uniform OHS legislation complemented with consistent approaches to enforcement and compliance. This will be achieved through the development and implementation of a model OHS Act, model OHS regulations and model OHS codes of practice.

1.2 Overview of current OHS arrangements

All states and territories have responsibility for making and enforcing their own OHS laws. Australia has nine OHS jurisdictions, with a multitude of laws relating to health and safety in the workplace. This includes ten specific OHS statutes (six state Acts, two territory Acts and two Commonwealth Acts) and over 50 other legislative instruments applying to offshore petroleum, mining, construction, public health (i.e. radiation, agriculture and veterinary chemicals), public safety (i.e. amusement equipment, electrical safety, plumbing and gas safety, machinery, scaffolding and lifts) and statutes relating to explosives, transport of dangerous goods, radioactive materials and many more.

The general Australian OHS laws in each jurisdiction are based on the 'Robens model'. The recommendations made by Robens' Committee (Robens, 1972) in the United Kingdom (UK) resulted in widespread legislative reform in OHS across the UK and other countries whereby OHS laws shifted from detailed, prescriptive standards to a more self-regulatory and performance-based approach.

While each of the jurisdictions' OHS laws follow the Robens model, significant variance in substantive matters continue to exist between jurisdictions, particularly in regard to duties of care, consultation mechanisms, compliance regimes and penalties.

The consequences of these multiple OHS regimes include the following:

- workers and others are exposed to inconsistent safety standards across jurisdictions and industry sectors;
- they cause confusion, complexity and duplication for businesses;

- they lead to duplication and inefficiencies for governments in the provision of policy, regulatory and support services;
- inconsistency and duplication causes unnecessary cost for businesses that operate in more than one jurisdiction or across sectors with different legislation; and
- similar breaches in different jurisdictions may be subjected to different enforcement activity and significantly different penalties.

Multiple OHS regimes increase the costs borne by governments, which increase the associated deadweight loss. Economies of scale and scope may be achieved through shared production of OHS policy across the jurisdictions (Quigley, 2003).

There may be incentives for industry to move to jurisdictions with less stringent or costly regulation coupled with jurisdictions competing against one another to attract business by reducing the levels of safety (Johnstone, 2008). Further, the current lack of harmonisation may act to discourage participation in multiple markets across jurisdictions, which would result in reduced competition and social welfare.

1.3 Australia's OHS performance

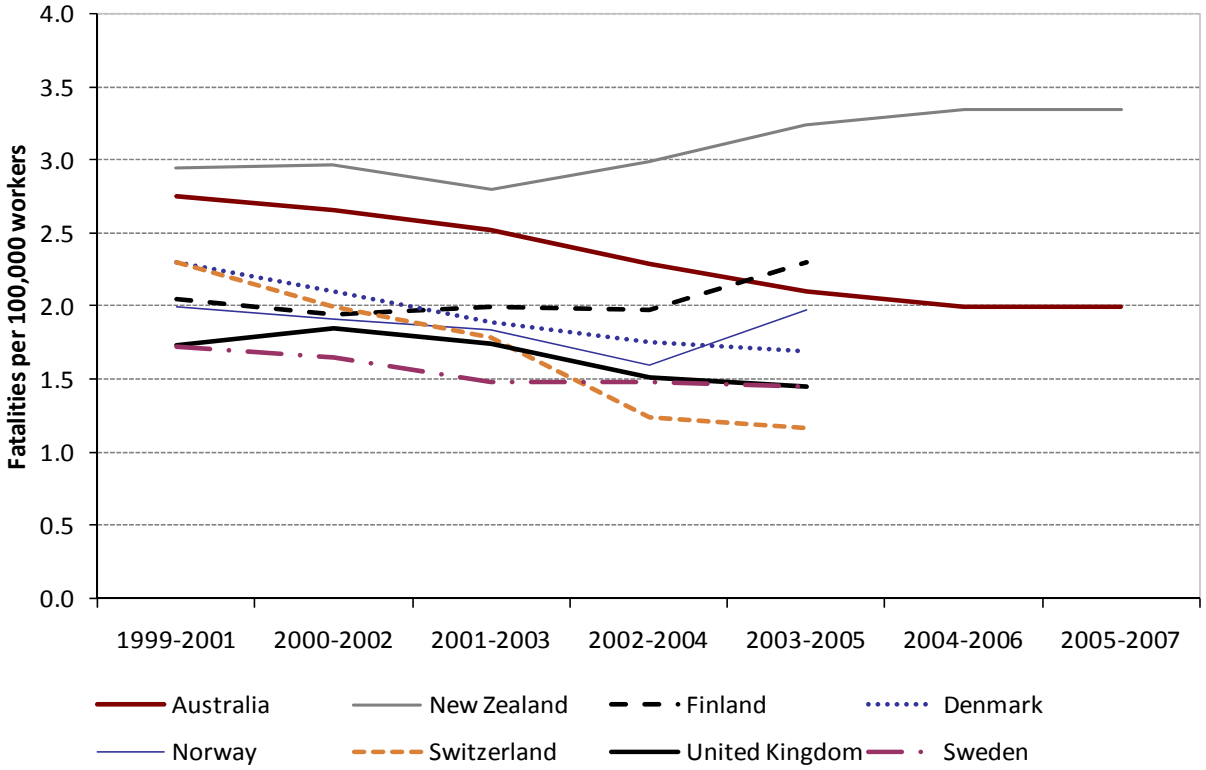
Occupational injury, illness and deaths have a significant impact on workers, employers and society. In 2006-07[3] there were 132 055 serious workers' compensation claims[4] for an injury or illness, which equates to 1.4% of the Australian workforce. It is important to note that, as not all work-related injuries and illness result in workers' compensation claims being made these figures are likely to understate the true incidence of workplace injury and illness. The Australian Bureau of Statistics (ABS, 2006) found that in 2005-06, 6.4% of workers experienced a work-related injury or illness and approximately 2% reported experiencing a work-related injury or illness resulting in one or more weeks off work.

From an international perspective, Australia's work-related fatality rates are above some of the best performing countries. However, Australia's incident rates have generally decreased at a greater rate than the best performing countries (Figure 1.1). While the gap between Australia and the better performing countries has reduced since 1999-2001, it is unlikely that Australia will meet its aspirational goal of having the lowest levels of work related traumatic fatalities in the world by 2009, as set out in the first triennial review of the National OHS Strategy unless substantial improvements are achieved.

[3] Preliminary data. See ASCC (2009) for explanatory notes.

[4] Serious claims are those lodged in the reference year and accepted for compensation by the jurisdiction by the date the data are extracted and involve a death; a permanent incapacity; or a temporary incapacity with an absence from work of one working week or more. Common law claims are included. Permanent incapacity is determined by each jurisdiction and can include a total incapacity for work or a permanent impairment which may require a change of tasks or responsibilities. See ASCC (2009) for explanatory notes.

Figure 1.1: Comparison of Australia's work-related injury fatality rate with the best performing countries



Source: WRMC (2008).

Although the costs of workplace injury and illness to the Australian economy are difficult to quantify, they are undoubtedly very high. Safe Work Australia estimates the economic cost alone of occupational injury, illness and death for 2005-06, was $57.5 billion or 5.9% of gross domestic product, of which it is estimated that 3% is borne by employers, 49% by workers and 47% by the community (ASCC, 2009). This figure does not include an estimate of the cost of suffering and early death. Table 1.1 below presents a breakdown of the economic costs associated with work-related injury and illness. An estimation of these costs is provided in Table 1.2.

Safe Work Australia did not estimate the cost of suffering and early work-related death, however, an earlier report by Access Economics (2004) estimated the cost of suffering and early death to be at least $57 billion in 2000-01. The report utilised a willingness to pay methodology and the concept of the value of a statistical life to estimate the cost of suffering and early death.

The economic costs of occupational injury, illness and death, coupled with the impacts of the quality of life of those affected, highlight the importance of OHS.

Table 1.1: Economic costs borne by the employer, worker and the community

Conceptual group	Total (T)	Employer (E)	Worker (W)	Society (S)
Production disturbance costs	Value of production (inc. overtime)	Overtime premium Employer excess payments Sick leave	Loss of income prior to RPR[a], net of compensation, welfare and tax	Compensation and welfare payments transferred to worker for temporary loss of wage; tax losses prior to RPR;
	Staff turnover costs	Staff turnover costs	Zero	Zero
Human capital costs	Present value of earnings before incident minus earnings after incident	Zero	Loss of income after RPR, net of compensation, welfare and tax	Compensation and welfare payments for lost income earning capacity; tax losses after RPR
Medical costs	Medical and rehabilitation costs incurred as a result of the injury	Threshold medical payments	Gap payments Private health insurance payments	Compensation medical payments Public health system payments
Administrative costs	Legal costs	Real legal costs incurred plus fines and penalties	Real legal costs incurred	Real legal costs incurred Deadweight costs of enforcement minus fines and penalties credit
	Investigation costs	Employer investigation costs	Zero/negligible	Real costs of running the compensation system (including investigation of claims)
	Travel costs	Zero/negligible	Travel costs net of compensation & concessions	Compensation for travel costs Travel concession
	Cost of funeral today minus present value of future cost	Zero	Net costs of bringing forward funeral	Compensation for funeral costs
Transfer costs	Real deadweight costs of transfer payments (welfare and tax)	Negligible	Zero (accounted for in netting other items)	Deadweight costs of welfare payments (Disability Support Pension, Sickness Allowance, Mobility Allowance, Rent Assistance) Deadweight costs of tax losses
Other	Carers	Zero	Carer costs net of carer payment/allowance	Payments to carers plus deadweight cost
	Aids, equipment and modifications	Zero	Aids etc (net cost after reimbursements)	Reimbursements for aids etc plus deadweight cost

[a] RPR = time to return or permanent replacement of injured worker

Source: ASCC (2009) based on Access Economics (2004).

Table 1.2: Summary of cost estimates for injury and illness, $m, 2005-2006

Total Costs	Total	Employer		Worker		Society	
Production disturbance costs (PDC)		Value of production				Welfare payments	235
		Employer excess	141			Tax revenue foregone	156
		Sick leave	277			Compensation payments [c]	562
	Value of production	2 932	VOP(E)	977		- VOP(S)	
	Staff turnover	219	Staff turnover	219		-	-
	PDC	**3 151**	**PDC(E)**	**1 615**	**PDC(W)[b]**	**583**	**PDC(S)**	**953**
Human Capital costs (HKC)						Welfare payments	7 229
						Tax revenue foregone	7 230
						Compensation payments [c]	7 138
	HKC	**46 943**	**HKC(E)**	**-**	**HKC(W)[d]**	**25 346**	**HKC(S)[c]**	**21 597**
Medical costs (MEDC)					Gap/Private	256	Medical	875
					Rehabilitation	-	Rehabilitation	2 046
	MEDC	**3 276**	**MED(E)**	**98**	**MED(W)**	**256**	**MED(S)**	**2 921**
Administration costs (ADMINC)			Legal costs	365	Legal costs	281	Legal costs	84
			Penalties	17			Penalties	-17
							Deadweight loss	2
	Legal costs	732	Legal costs	382	Legal costs	281	Legal costs	70
	Investigation costs	500	Investigation costs	111			Investigation costs	390
	Travel costs	430			Travel costs	385	Travel costs	45
	Funeral costs	5			Funeral costs	5	Funeral costs	0
	ADMINC	**1 668**	**ADMINC(E)**	**492**	**ADMINC(W)**	**670**	**ADMINC(S)**	**505**
Transfer costs (TRANSC)							Welfare deadweight loss	373
							Tax deadweight loss	753
	TRANSC	**1 126**		**-**		**-**	**TRANSC(S)**	**1 126**
Other costs (OTHERC)					Carer costs	1 042		
					Aids and modifications	327		
	OTHERC	**1 369**		**-**	**OTHERC(W)**	**1 369**		**-**
Total [e]		**57,532**		**2,206**		**28,224**		**27,102**

[a] Figures are rounded to the nearest $10 million

[b] PDC(W) = PDC - [PDC(E) + PDC(S)]

[c] Total compensation payments are estimated at $7.7 billion, of which $562 million are short term (the period up to return to work or replacement) and $7.14 billion are long term payments (following return to work or replacement).

[d] HKC(S) = Welfare(S) + Tax(S) + CompPay(S) => HKC(W) = HKC - HKC(S)

[e] Total = PDC + HKC + MEDC + ADMINC + TRANSC + OTHERC

Source: ASCC (2009).

1.4 History of OHS harmonisation in Australia

National Occupational Health and Safety Commission (NOHSC)

NOHSC was established in 1985 as a tripartite body made up of representatives from the state, territory and Commonwealth governments, and employer and trade unions.

Following a review by the Department of Industrial Relations (1990) of OHS, the Ministers of Labour Advisory Committee agreed that as far as possible standards developed and endorsed by NOHSC be accepted as minimum standards and implemented in each jurisdiction.

The primary focus of national uniformity since the early 1990s was the development and adoption of national OHS standards and codes of practice for priority areas (manual handling, plant, hazardous substances, noise, certification of occupations and major hazards) (National Uniformity Taskforce, 1992).

The process of standards development and adoption proved to be cumbersome, slow and lacked consistency across jurisdictions. Some jurisdictions implemented provisions in their OHS regulations while others implemented the same provisions in their codes of practice or in guidance material (Johnston, 2008). The implementation of national standards was slow because of extensive consultation and regulation impact requirements in some jurisdictions, and complications derived from tailoring national standards and codes of practice to meet the needs of each jurisdiction.

Industry Commission Report

In 1995 the Industry Commission released its report *Work, Health and Safety: Inquiry into Occupational Health and Safety*. The report highlighted substantial inconsistencies in OHS legislation across the jurisdictions, and also in standard development and uptake. For example, by 1995 only five of the seven priority standards had been declared by NOHSC, and none of these had been implemented in the jurisdictions at the time of its report.

The Industry Commission (1995) concluded that non-uniformity of OHS legislation may impose significant costs on the business community, stating:

> *"National employers have to work within multiple OHS jurisdictions. Multiple regimes means additional costs whenever systems of work are changed or staff are moved between regimes. They also raise the costs of compliance by their operations."*

The Industry Commission discussed options for achieving greater consistency between jurisdictions, although it did not provide any estimates of the benefits of doing so, or indicate how these estimates could be reached.

The Industry Commission also provided a brief discussion of the costs of harmonising OHS legislation. This focuses on two points:

- businesses operating in only one jurisdiction may benefit through the flexibility afforded by a non-uniform system; and
- different state and national legislation may allow greater innovation in regulation over time.

Regarding OHS legislation arrangements, the Industry Commission recommended the use of template legislation covering the core elements of OHS legislation, which all jurisdictions would agree to adopt with little or no amendment, through a process of co-operative federalism (Industry Commission, 1995).

National OHS Strategy

In 2002, NOHSC launched the *National Occupational Health and Safety Strategy: 2002-2012*, which established national targets and priorities. The development of a nationally consistent regulatory framework is one of the areas requiring national action under the strategy which has been a key driver for improving OHS performance in each jurisdiction.

Productivity Commission Report

In 2003, the Productivity Commission (successor to the Industry Commission) was again asked to conduct an inquiry into OHS arrangements in Australia. Broadly, the terms of reference were to "assess possible models for establishing national frameworks for Workers' Compensation and OHS".

The report *National Workers' Compensation and Occupational Health and Safety Frameworks* was released in 2004. The report found that all previous attempts to achieve national consistency in OHS legislation had failed. The report considered it essential that the existing broad agreement on OHS legislation should be taken further to develop, adopt and enforce uniform national OHS legislation. Nationally consistent OHS legislation would increase efficiency for multi-state employers to meet their OHS requirements as workers and employers could be trained in one set of OHS requirements. Also businesses could establish a single safety culture with common associated manuals and procedures throughout their entire organisation.

The Productivity Commission (2004) argued that national uniformity in OHS regulations should be established as a matter of priority and states that:

> *"There are no compelling arguments against a single national OHS regime, and there are significant benefits from a national approach, particularly for multi-state employers and for the increasingly mobile workforce."*

Further the Productivity Commission recommended:

> *"that a single uniform national OHS regime which is focussed on preventing workplace injury and illness should be the medium term reform objective for OHS. It would build on the initiative of the recently agreed national strategy.*
>
> *To achieve this, the Commission is proposing two broad approaches, to operate in parallel. The first approach adapts the current cooperative model by strengthening the national institutional structure based on NOHSC and the WRMC – emphasising the timely development of best-practice national OHS standards and their implementation uniformly throughout Australia. Such an approach should be commenced immediately. The second approach is to progressively open up access to the existing Australian Government OHS regime, giving businesses the choice of*

a single set of national OHS rules. The two approaches are not dependant on each other. Each has merits that would warrant their independent introduction."

The second of these proposed approaches was implemented in 2007 with amendments to the *Occupational Health and Safety Act 1991* (Cth)[5]. The amendments allowed for employers licensed to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) to be regulated by the *Occupational Health and Safety Act 1991* (Cth), instead of the state and territory OHS statutes.

The Australian Safety Compensation Council (ASCC)

In response to the Productivity Commission report, the Australian Government replaced NOHSC in 2005 with the ASCC. The ASCC, also a tripartite body, had a similar role to NOHSC in facilitating national consistency in the OHS regulatory framework, but its role was expanded to include workers' compensation policy.

Taskforce for Reducing the Regulatory Burden on Business

In 2005, the Regulation Taskforce was established to address areas of Australian Government regulation that are 'unnecessarily burdensome, complex, redundant, or duplicate regulations in other jurisdictions'. The Taskforce report, *Rethinking Regulation*, was released in April 2006. The report noted industries' concerns that inconsistency in OHS regulation across jurisdictions adds significantly to compliance costs for business nationally. Submissions to the Taskforce highlighted deficiencies with the current OHS regimes. In regard to OHS, the report made two recommendations:

- COAG should implement nationally consistent standards for OHS and apply a test whereby jurisdictions must demonstrate a net public benefit if they want to vary a national OHS standard or code to suit local conditions; and
- COAG should request the ASCC examine the duty of care provisions in principal OHS Acts as a priority area for harmonisation. In undertaking this work, the council should give weight to recent OHS reforms in Victoria.

COAG National Reform Agenda

The harmonisation of OHS legislation has become part of the COAG National Reform Agenda aiming to reduce regulatory burdens and create a seamless national economy. Since February 2006, when COAG agreed to improve the development and uptake of national OHS standards[6], the ASCC commenced work on reviewing the national OHS framework to achieve greater national consistency and on prioritising areas for harmonisation.

[5] *See amendments to Occupational Health and Safety Act 1991 (Cth)*

[6] COAG Communiqué, 10 February 2006 – see: http://www.coag.gov.au/coag_meeting_outcomes/2006-02-10/index.cfm

Safe Work Australia

Safe Work Australia replaced the ASCC in 2009 and is the principal national organisation driving OHS and workers' compensation policy development in partnership with governments, employers and employees.

One of Safe Work Australia's primary functions is to progress the harmonisation of OHS legislation across Australia.

1.5 Report structure

An outline of the structure of the remainder of this RIS is as follows, noting that Chapters 6 through 8 are likely to be expanded and modified substantially between the Consultation RIS and Final RIS phases.

- Chapter 2 describes the objectives of the OHS reforms and outlines the current process of harmonising OHS laws, the regulatory failures that exist under the current system and how the harmonisation process aims to address these failures.
- Chapter 3 presents a description of the Options, in the context of a model Act based on the May 2009 WRMC recommendations.
- Chapter 4 reviews the costs and benefits of moving to a national harmonised OHS system under the model Act, through review of literature, analysis of trends in regulatory burden and particular impacts on small businesses, and detailing of specific differences between jurisdictional OHS legislation. Some examples are provided of the problems of a non-harmonised OHS system to indicate the scale and scope of problems.
- Chapter 5 summarises the methodology agreed by Safe Work Australia and Office of Best Practice Regulation (OBPR) that Access Economics adopted in conducting the impact analysis and finalising the RIS, including a summary of data and literature sources and the rationale for the survey approach to new primary data collection.
- Chapter 6 summarises consultation process and their outcomes, including views of stakeholders and how they have been incorporated at each stage.
- Chapter 7 provides the impact analysis – the quantification of impacts through the CBA, with a summary of findings.
- Chapter 8 provides conclusions and recommendations, drawing together themes from the RIS and making recommendations.

2 Objectives of Government intervention

2.1 Current process of harmonising OHS legislation

Following the 2007 election, the current Australian Government committed to working with all states and territories to harmonise OHS legislation by the end of 2011, and to replacing the ASCC with a new independent body, Safe Work Australia.

At its meeting on 1 February 2008[7], the WRMC agreed that the use of model legislation is the most effective way to achieve harmonisation of OHS laws. Ministers supported the Australian Government's intention to initiate a review to inform the development of model legislation and agreed to settle the terms of reference for the review.

On 4 April 2008, the Minister for Employment and Workplace Relations announced a national review by an advisory panel that would report to the WRMC on the optimal structure and content of a model OHS Act that is capable of being adopted in all jurisdictions.

In July 2008, COAG signed an IGA (COAG, 2008) which commits all of the jurisdictions to adopt model OHS legislation by 2011. This sets out the principles and processes for co-operation between the states and territories and Commonwealth governments to implement uniform OHS legislation complemented by consistent approaches to compliance and enforcement.

In October 2008, the first report of the National Review into model OHS Laws (National OHS Review) was released. It made recommendations on:

- duties of care, including the identification of duty holders and the scope and limits of duties; and
- the nature and structure of offences, including defences.

The second report, which was released in January 2009, made recommendations on:

- scope and coverage, including definitions;
- workplace-based consultation, participation and representation provisions, including the appointment, powers and functions of health and safety representatives and committees;
- enforcement and compliance, including the role and powers of OHS inspectors, and the application of enforcement tools including codes of practice;
- regulation making powers and administrative processes, including mechanisms for improving cross-jurisdictional co-operation and dispute resolution;
- permits and licensing arrangements for those engaged in high risk work and the use of certain plant and hazardous substances;
- the role of OHS regulatory agencies in providing education, advice and assistance to duty holders; and

[7] WRMC Communiqué, 1 February 2008 – see: http://www.workplace.gov.au/NR/rdonlyres/31BED76B-2655-4CDF-952F-E84FE0CD3469/0/WRMC75AgreedCommunique.pdf

- other matters the *National OHS Review* panel identified as being important to health and safety that should be addressed in the model OHS Act.

The two reports from the *National OHS Review* can be found at http://www.nationalohsreview.gov.au.

On 18 May 2009, WRMC considered the recommendations of the two reports and made decisions on the structure and content of the model OHS Act. The WRMC response to the recommendations is available at www.safeworkaustralia.gov.au

Safe Work Australia is developing the model OHS Act based on the WRMC's decisions on the recommendations. Safe Work Australia will also develop model regulations and codes of practice to support the model OHS Act.

The OHS regulations to support the Act will be developed in four stages:

- Stage one are model regulations associated with administrative processes arising from the National OHS Review recommendations.
- Stage two are model regulations covering matters addressed in existing national OHS standards.
- Stage three will cover regulations that are included in the majority of jurisdictions' current regulations.
- Stage four will cover regulations that are less common across jurisdictions and are included only in a minority of current regulations.

2.2 Regulatory failures under current arrangements

The current inconsistencies in OHS legislation between jurisdictions has led to an array of problems. The significant problems are summarised below:

Red Tape - The most prominently reported cost of the current arrangements arises from the issue of red-tape. This is the cost to employers who operate in more than one jurisdiction, in complying with more than one jurisdiction's OHS legislation. Red-tape and system duplication causes an increase in the efforts to meet multiple requirements for record keeping, reporting, licensing, and documentation of risk assessments. These processes are necessary to support the OHS framework in each jurisdiction, but the differences shift an employer's OHS focus from improving safety in the workplace, to dealing with paper work.

Although multi-state businesses make up less than 1% of businesses, generally they are larger businesses and account for nearly 29% of employment[8].

The Regulation Taskforce (2006) found the most visible costs to business from over regulation generally are the paperwork burden and related compliance costs, which derive from:

- providing management and staff time to fill in forms and assist with audits and the like;

[8] The figure was obtained from the 2004 Productivity Commission report *National Workers' Compensation and Occupational Health and Safety Frameworks*, which found that in 1998, multi-state businesses accounted for nearly 29% of employment. This figure was determined from unpublished data based on the *ABS Business Register*. The ABS is not able to provide more recent data.

- recruiting and training additional staff, where needed to meet compliance burdens;
- purchasing and maintaining reporting and information technology systems;
- obtaining advice from external sources (such as accountants and lawyers) to assist with compliance; and
- obtaining licences and/or attending courses to meet regulatory requirements.

Evidence provided to the Taskforce indicates that these costs can be significant. For example:

- the New South Wales (NSW) State Chamber of Commerce submission stated that the average business in NSW spends up to 400 hours per year (or nearly $10 000), in time alone, complying with regulations or meeting its legal obligations; and
- QBE Insurance Group estimated that, in total, it spends $60 million per year on compliance matters.

The Taskforce identified OHS as a cross-jurisdictional regulation hot-spot, requiring urgent attention.

Many submissions to the Productivity Commission (2004) Inquiry into Workers' Compensation and OHS arrangements reported that the cost for multi-state employers of complying with multiple arrangements can be considerable, sometimes amounting to millions of dollars per year. Although most employers were not able to give precise estimates of the cost they faced, a few provided estimates relating to particular costs.

Government and Taxpayers - Taxpayers, via remit to State, Territory and Australian Government revenue funds, pay for the development, implementation and review of OHS legislation – a process which is currently duplicated periodically in each jurisdiction, using different schedules. These differing schedules increase inconsistency, creating an environment of perpetual change.

Community Costs - The Regulation Taskforce noted in their report (p15) that: "Where regulation increases business costs, these are often passed on to consumers in the form of higher prices for goods and services. Some regulations may also unnecessarily restrict consumer choice."

Further, regulation that increases business costs or restricts business opportunities may jeopardise not only the profits of owners, but also the job security and wages of their workers. Where unemployment results, tax receipts fall, and welfare expenditure rises.

Reduced mobility of the workforce - The necessity to be trained and certified as competent for some types of work under separate arrangements in each jurisdiction limits workforce mobility. The Regulation Taskforce (2006) noted that "the ability of Australian businesses to attract skilled workers and the mobility of skilled workers across Australian jurisdictions underpin a well-functioning labour market and productivity growth. A common theme across a range of submissions was the way various occupational licensing regimes effectively undermine these requirements. The two key areas of regulation are those governing Australia's national training system and occupational licensing regimes".

Inequity - Different safety standards across jurisdictions also create inequities for employers and employees. For example, some states require physical fall protection for workers at 2

metres, others at 3, and others do not specify a height at all (leaving it to employers to assess the risk in each situation).

Confusion, errors, and distraction - the Productivity Commission (2004) quoted a submission from Pacific Terminals which stated there was "increased risk of overlooking or misinterpreting a requirement as a result of the differences in state legislative framework. Small to medium sized enterprises are required to spend a disproportionate amount of time on OHS and workers' compensation administration."

The Productivity Commission (2004) also reported that the need to focus on complying with differences between jurisdictions was seen as a distraction for management, away from a preferable focus on developing a company-wide culture of preventing injury and illness. It quoted a submission from Pacific National that "rather than being proactive and developing better prevention and implementation strategies, internal safety management safety staff must spend time training and researching jurisdictional differences."

2.3 Objectives of harmonisation and the model Act

The IGA states that the fundamental objective of OHS reform is to produce the optimal model for a national approach to OHS regulation and operation which will:

- enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
- create efficiencies for governments in the provision of OHS regulatory and support services; and
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

The harmonisation of OHS legislation is part of the COAG National Reform Agenda aiming to reduce regulatory burdens and create a seamless national economy. These reforms aim to deliver more consistent regulation across jurisdictions and reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy, which will contribute to:

- creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions;
- enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility; and
- expanding Australia's productive capacity over the medium term through competition reform, enabling stronger economic growth.

OHS harmonisation has four components:

- harmonisation of principal OHS Acts;
- harmonisation of regulations;
- development and adoption of national codes of practice; and

- nationally consistent compliance and enforcement policies.

Using terms that are potentially measurable under a RIS (qualitatively, if not quantitatively) the objectives of harmonising OHS laws through a model Act are as follows.

- *Reducing compliance costs for business*. For multi-state businesses, nationally consistent Acts should equate to lower compliance costs, *ceteris parabus*. For single-state businesses the outcome is not clear, *a priori*.
- *Improving efficiency for regulatory agencies*. Rather than having ten regimes (including Seacare) being reviewed every five years (ie, at least one per year on average), under harmonisation, there should effectively only be one national regime reviewed every five years.
- *Improving safety outcomes*. The reduction of red tape and greater certainty for duty holders should allow business to focus more pro-actively on health and safety improvements, rather than on mere compliance. Regulatory efficiencies should also allow more scope for regulators to actively improve safety in workplaces. In addition, the model Act applies to a broader range of modern employment relationships and thus aims to protect all types of workers from hazards and risks arising from work.

3 Options for a model OHS Act

This chapter presents a description of the Options for the RIS, in the context of a model OHS Act based on the current set of WRMC recommendations.

- Option 1 is retention of the status quo (non-harmonised regulation); and
- Option 2 is adoption of all the recommendations of the WRMC for model legislation, by all jurisdictions, implemented 31 December 2011.

After reviewing the WRMC recommendations and in consultation with Safe Work Australia and OBPR, it was decided that the two options (outlined above) are satisfactory and no further sub-options are required for the analysis. This conclusion resulted largely due to the advanced nature of this process and its movement through the COAG process, such that it was considered likely that the model Act will be adopted in its entirety in all jurisdictions.

The mapping process in the following chapters presents analysis of WRMC recommendations where evaluation has found there are likely to be measurable costs and/or benefits associated with changing from the status quo (Option 1) and moving towards adopting the recommendations from the WRMC (Option 2).

- Where recommendations are not outlined in the mapping, no identifiable, or negligible, costs or benefits are likely to eventuate by the adoption of that recommendation in the model Act.
- Generally, this reflects that in practicality the recommendation already exists in all jurisdictions (i.e. the recommendation does not represent a significant enough change from the existing operation of the OHS frameworks in the states and territories).

For this analysis it is important to identify incremental changes, where incremental costs and benefits are defined as those costs or benefits considered to be unique to Option 2 (i.e. recommended changes that do not have features in common with the pre-existing OHS frameworks in states and territories).

All states and territories already enact OHS legislation based on a general duty of care owed by employers to protect the health and safety of employees and other persons in the workplace. The model legislation (Option 2) retains this principle and consolidates existing elements of OHS Acts in a more consistent manner (reflecting a process of harmonisation rather than reform). As a result there are neither substantial changes, nor large costs or benefits associated with the implementation and adoption of the model OHS Act, which is essentially based on the same principles as the status quo (Option 1) legislation currently enacted in the states and territories.

- Benefits will reflect small gains – in particular associated with businesses operating cross-jurisdictionally, as well as financial savings from greater harmonisation and safety improvements related to businesses and entities better understanding and complying with the model OHS Act, potentially reducing incidents and enhancing outcomes.
- Similarly, costs are likely to be associated with broadening the scope of some parts of the existing OHS Acts, as the model OHS Act applies to all businesses and undertakings, and all persons potentially affected by these undertakings.

Importantly though, the OHS Act is only one part of a coherent OHS framework. The Act is the first tier which describes the performance outcomes in a set of broad principles. The regulations (second tier), codes of practice (third tier) and the enforcement activity of the regulating body may have more of a bearing on the costs for businesses as they negotiate compliance with the broader OHS frameworks. However, given that the development of the model regulations is a consolidation of existing regulations, and largely based on already agreed national OHS standards, the impact may be minimal.

Training costs specifically associated with the model Act (i.e. those incremental costs that would not have occurred in the normal OHS legislation update cycle) are an even smaller component when we consider that all states and territories regularly review their OHS legislation under a continual improvement process.

- That these systems are continually being upgraded and changed implies that Option 1 and Option 2 share in common (at least part of) the costs associated with workforce training.
- The incremental costs associated with Option 2 are limited to those training costs that result from significant change to existing state legislation if new training programs are implemented – as opposed to small augmentations to existing training programs as is continually the case under the status quo in Option 1.

An extension of this thinking implies that this single review may replace like reviews in states and territories (i.e. a total of eight separate reviews over a specified time period). Therefore the introduction of Option 2 represents an incremental benefit equal to the cost saving of undertaking a single review as opposed to eight separate reviews.

Implementation of Option 2 has potential implications for governments, businesses and workers. The impact analysis attempts to address each of these perspectives and all activities covered by the proposed model legislation. The cost benefit framework and the mapping process outlined in the following chapters are primarily designed to evaluate the incremental differences between Option 1 and Option 2.

4 Identifying costs and benefits

This chapter reviews the costs and benefits of moving to a harmonised OHS system under the model Act. The first section reviews the literature to identify whether studies of the cost of regulation identify the component due to lack of OHS harmonisation. For comparison, some studies of international differences in OHS approaches are also included. Second, the trends in regulatory burden are investigated, as well as the particular impacts on small businesses. In the final section, the specific differences between jurisdictional OHS legislation are analysed and tabulated, with emphasis on the potential links between OHS regimes and safety outcomes.

4.1 Literature review

There are a number of reports produced by executive agencies and independent organisations on the burden of regulation in Australia. Aspects from these publications which concern the burden of regulation in general, the burden of OHS regulation and any costs associated with jurisdictional differences have been extracted and summarised in this section.

4.1.1 Productivity Commission (2004)

The costs of inconsistency across jurisdictions have been investigated as part of an inquiry by the Productivity Commission into jurisdictional differences between OHS and workers' compensation schemes. The Commission found that the lack of such a harmonised approach imposed costs to business and caused inequalities for workers in terms of entitlement and levels of benefits.

Although this inquiry dealt primarily with insurance arrangements – which are beyond the scope of the model OHS Act – a number of submissions were made by big business on the costs of compliance, which are useful in the current context. The submissions confirmed that compliance costs for multi-state employers were a significant issue.

Costs of complying with multiple compensation and OHS arrangements added an additional estimated 5-10% on workers' compensation premiums according to Optus. The introduction of a national self-insurance licence was expected to yield benefits of an estimated $2 million per annum of its current $6 million per annum expenditure under existing arrangements.

Insurance Australia Group estimated a one-off payment of $10.1 million and an additional annual cost to the maintenance of IT systems of $1.7 million to comply across jurisdictions. It further estimated that a national workers' compensation scheme could offer overall operating cost savings to the group of $1.2 million per annum and a reduction in its actuarial costs of $400,000 per year.

BHP Billiton estimated $50,000 to purchase a system to manage and supply information for each of the jurisdictions. And Skilled Engineering estimated that the annual cost saving from operating under a single set of national OHS and workers' compensation rules would be in excess of $2.5 million, or some 15% of its annual costs of OHS and workers' compensation.

Multi-state compliance across a number of different systems requires considerable duplication. CSR Ltd estimated the cost of maintaining and renewing five self-insurance licences at over $700,000 per annum, compared to $200,000 for a single licence.

According to CSR, the cost savings are achieved by a reduction in administration staff, reduction in administration fees and reduction in reporting costs. A component of this is removing the necessity to report at different times in different formats to different regulators. The extra cost of reporting to five different regulators is estimated for CSR Limited at more than $60,000 per annum. Cost savings to CSR of implementing an effective single-scheme licence claims management service is estimated at $150,000 pa.

Woolworths estimated it could save approximately $400,000 per annum if it could maintain a single OHS management system.

Devoting managerial time to compliance with jurisdictional difference was reported to be to the detriment of developing a company-wide culture of preventing injury and illness by Pacific National and Skilled Engineering.

4.1.2 Regulation Taskforce (2006)

A report looking at the burden of over-regulation across a number of areas, *Rethinking Regulation* (Regulation Taskforce, 2006) recommended that a rigorous program of evaluation including cost benefit analysis, targeted consultation and comprehensive RIS be undertaken for proposed regulation programs. The basis for this recommendation was that the unnecessary component of compliance in Australia – partially due to overlap and duplication – was conservatively estimated by the Taskforce as $3 billion per year.

These additional costs are borne by business in the form of:

- providing management and staff time to fill in forms and assist with audits and the like;
- recruiting and training additional staff, where needed to meet compliance burdens;
- purchasing and maintaining reporting and information technology systems;
- obtaining advice from external sources (such as accountants and lawyers) to assist with compliance; and
- obtaining licences and/or attending courses to meet regulatory requirements.

As well as the monetary cost, regulatory compliance obligations can also divert management attention – compliance issues can consume up to 25% of the time of senior management and boards of some large companies, which risks stifling innovation and creativity. Smaller companies are disproportionately hit as a result of a smaller revenue base to spread costs, no in-house regulatory team, relatively less time to keep abreast of regulatory developments and heightened concern of penalties for non-compliance.

Governments also experience costs in designing, updating, implementing and enforcing regulation. The Regulation Taskforce reported that administrative expenses of 15 dedicated Australian Government regulatory agencies approached $2 billion in 2003–04. The Australian Taxation Office accounted for a further $2.3 billion in that year. In addition, where regulation increases business costs, these are often passed on to consumers in the form of higher prices for goods and services.

4.1.3 ACIL Tasman (2006)

The positive impact of OHS legislation on the health of employees and creating cost savings has been illustrated in *Occupational Health and Safety: Economic Analysis* (ACIL Tasman, 2006). This report looked at the impact of OHS legislation in NSW and, using time series modelling, found that 2001 OHS reforms produced a reduction in workplace injuries of 9%. In addition, the mix of incidents was found to change – with a decrease in the share of high severity categories and an increase in the share of low severity categories. Annual cost savings to workers, employers and the community were estimated conservatively at $5.6 billion (derived from compensated injury claims only). This report provides valuable balance relative to the number of reports concerning the cost and burden of OHS regulations that present the negative impact on business.

4.1.4 Business Council of Australia (2008)

The detrimental effect of the imposition of red tape and regulation on the Australian economy – particularly on its international position - was identified in *Towards a Seamless Economy* (Business Council of Australia, 2008). The report suggested that Australian governments should move towards the concept of a 'seamless economy' – one where a business can operate within a single set of rules regardless of location. It was suggested that this would remove 'distortions and barriers to resource flows' that negatively impact on national economic performance due to the inconsistency and duplication of regulation. Government adopting a 'light touch' in regard to regulation was identified as particularly important for capacity-constrained economies such as Australia. The report cited an International Monetary Fund working paper which suggested that Australia's recent productivity growth was due to greater product and labour market flexibility since the 1990s.

Costs resulting from over-regulation are borne in part by taxpayers since the government has extra administration costs, while businesses largely bear compliance costs. Overall economic costs are borne by all. The major reason for these additional costs was identified as overlapping and inconsistent regulation.

- Administration costs borne by taxpayers consist of unnecessary government administration (mostly from hiring additional staff), the costs of designing, implementing and enforcing regulation in areas that duplicate or overlap with other governments.
- Compliance costs borne by businesses and consumers consist of staff and management time spent ensuring compliance and adherence to monitors and updates, maintaining and developing up-to-date regulatory information and reporting systems, regular reporting to government regulators (often at different times and in different formats), obtaining professional compliance advice (including legal advice) and the implementation of company-wide compliance programs and education of the broader workforce about OHS.
- Economic costs borne by all are the opportunity costs of foregone business activity. They include project delays due to overlapping regulatory processes and disincentives to invest, innovate or expand across jurisdictions. They also include opportunity costs for consumers. For instance, where consumer protection legislation is complex or difficult to understand, some customers might forego a purchase on the grounds that they do not feel adequately protected. To the extent that higher business costs are passed on in higher prices, consumers also beat the impact.

4.1.5 Productivity Commission (2009)

The Productivity Commission has recently undertaken an investigation which includes a focus on the costs and incentives associated with awareness of OHS requirements, implementation of measures by business and reporting and management of incidents. The *Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety Issues Paper* (Productivity Commission, 2009) is part of a continuing 'benchmark program' and considers the burdens arising from OHS regulation. When released at the end of March 2010, the outcomes of this report may well yield useful results in the ongoing examination of costs of OHS regulation in Australia.

4.1.6 Allen Consulting Group (2007)

A review by Allen Consulting (2007) found that streamlining and consolidating the existing OHS regulatory framework in Victoria would have a positive net impact on businesses. This report found that the regulatory approach prior to the review was unduly complex – thereby adding to business costs and reducing businesses' ability to comply with the OHS framework. Proposed improvements to the regulations involved, among other things:

- streamlining a set of 13 regulations into a single set;
- removing duplication between the existing regulation; and,
- aligning the regulations with the national standards.

While for the most part the new regulation framework was largely a translation exercise (as is the case with the proposed national model legislation) in many areas the Government was still able to reduce the compliance costs of red tape. In particular, removing prescriptive risk assessment requirements was estimated to lead to accrued savings of $40 per annum per business. Allens estimated that this represented a 20% reduction in the total OHS administrative burden for businesses.

In terms of costs associated with introducing the changes to the regulations it was estimated that $71 million in new costs to businesses would arise from new obligations and increases in business compliance. Thus, in order to generate a net benefit, OHS incidents would need to be reduced by 0.2% per year, which was judged to be achievable by Allens.

4.1.7 International reviews

The issue of compliance costs has also been investigated internationally. For example the OECD surveyed 8,000 small and medium-sized enterprises (SMEs) across eleven countries (including Australia) to assess efficiency for compliance costs incurred by businesses. The *Businesses' Views on Red Tape* report (OECD, 2001) used a 'top-down approach' and found the average annual cost/employee for administrative requirements for tax, employment and environmental compliance to be US$4,100. Smaller companies experienced proportionately higher costs than large SMEs.

The Lancaster et al (2003) study conducted for the Health and Safety Executive (HSE) in the United Kingdom (UK) estimated the costs of OHS compliance across industries and types of OHS regulation for thousands of businesses and by size of the business. Significantly *Costs of compliance with health and safety regulations in SMEs* (Lancaster et al, 2003) found smaller businesses incur higher costs per employee for OHS compliance than larger ones. Findings

were compiled by surveying a number of companies on costs of OHS compliance and perceptions of effectiveness.

Smaller and medium sized companies spent more per employee to meet health and safety regulations compared with larger companies. Lancaster et al (2003) found an average spend per employee of £149.38 for 'small' (0-49 employees), £166.38 for 'medium' (50-249 employees), £20.58 for 'large' (250-4999 employees) and £19.54 for 'very large' (>5000 employees) businesses.

Costs per employee were compartmentalised according to the following five regulatory areas: management of health and safety at work, pesticides, 'control of substances hazardous to health' regulations, manual handling, and noise at work. Each of these areas was divided further into sub-groups. Management of health and safety at work sub-groups are similar to a number of recommendations made in the OHS Review. These and the associated costs are shown in Table 4.1 below.

Table 4.1: Average spend per employee for OHS regulations, by business size (UK)

	Small	Medium	Large
Risk Assessments	£87.01	£34.03	£14.07
Health & Safety arrangements	£98.51	£46.63	£14.36
Implementing control measures	£278.31	£133.48	£54.79
Health surveillance	£63.92	£30.15	£16.04
Health & Safety assistance	£177.28	£93.07	£41.47
Serious & imminent danger procedures	£38.75	£27.98	£9.71
Information & training	£109.80	£57.16	£26.21
Co-operation with other employees	£84.40	£17.28	£10.13
Special arrangements for temp workers	£58.82	£8.33	£4.21
Total	**£111.59**	**£176.75**	**£20.89**

Source: Lancaster et al (2003).

The same survey instrument asked about business perception of the benefits of compliance. The majority of businesses believed the benefits of implementing health and safety systems outweighed the costs (31%), 26% did not know, 14% thought the costs outweighed the benefits, 14% thought they had 'broken even' and 16% thought it was too early to tell.

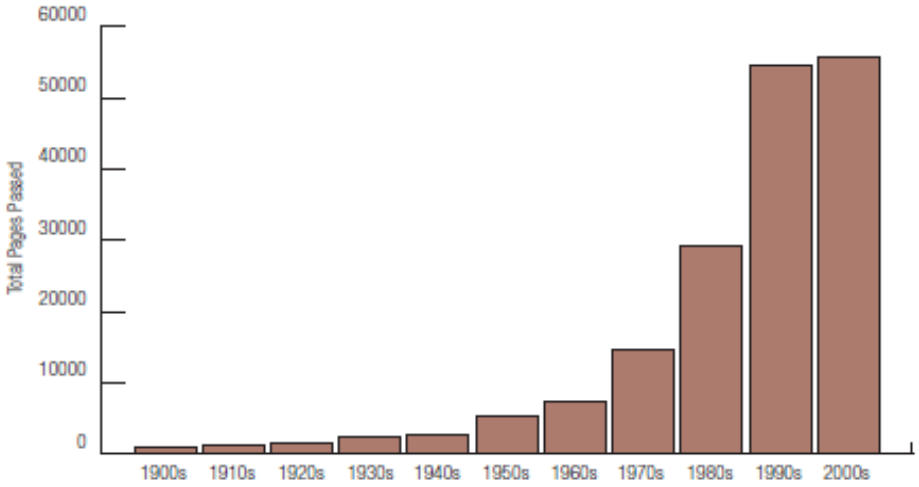
Large companies tended to think the benefits outweighed the costs (47%, compared to 34% of medium and 22% of small businesses). Businesses recording a greater number of days lost through illness and injuries were also more positive about the benefits outweighing costs: 26% or organisations with fewer than five lost days rising to 55% of those with more than 250 days lost through illness and injuries.

4.2 Impact of increasing regulation on business

The growth in the volume of OHS regulation needs to be seen in the context of a veritable explosion of business regulation in general.

The Regulation Taskforce (2006) noted that between 2000 and 2004, as many pages of Commonwealth Government legislation were passed as during the period 1901 to 1969 (Figure 4.1). Across the board, the Taskforce estimated that "the three levels of government appeared to administer more than 24,000 different types of licences for businesses and occupations."

Figure 4.1: Volume of Commonwealth legislation passed, per decade, 1901 to 2004



Source: Regulation Taskforce (2006).

The Regulation Taskforce (2006) noted that it is important to recognise the forces behind the growth in regulation if sustainable solutions are to be found. Perhaps the most fundamental of these is the changing needs and expectations of society itself. In the Taskforce's view, a major influence has been increasing 'risk aversion' in many spheres of life.

> *"Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life. Any adverse event — especially where it involves loss of life, possessions, amenity or money — is laid at government's door for a regulatory fix. The pressure on government to 'do something' is heightened by intense, if short-lived, media attention."*

In responding to such pressures, the Taskforce observed that governments are often attracted to regulatory solutions, both as a tangible demonstration of government concern and because the costs are typically 'off-budget', diffuse and hard to measure. Further, the Taskforce considered that agencies responsible for administering and enforcing regulation have tended to adopt strict and often prescriptive or legalistic approaches, to lessen their own risks of exposure to criticism. This has contributed in some areas to excessively defensive and costly actions by business to ensure compliance.

By the 2000s, the Australian Industry Group (Ai Group) (2004) found that manufacturers now spend over $680 million per year, calculated on the basis of time spent by staff managing compliance with taxes, environment management and other regulation. Results in the *Compliance Costs, Time and Money* report cover the responses of 257 companies employing almost 15,000 people, with a combined turnover of more than $2.5 billion.

4.2.2 Growth in OHS regulation

OHS regulation appears to have been increasing at much the same rate as business regulation in general.

The core of Robens' reforms was less external state regulation and more self-regulation by employers and employees. And this has indeed been adapted in state OHS Acts. For example, the Industry Commission (1995) noted that large amounts of prescriptive legislation were repealed as jurisdictions adopted Robens' principles, with the result that there were only around 90 OHS instruments[9] in Australia by the mid-1980s.

However, the Commission noted that, since then, the volume of OHS instruments had begun to increase again, up to around 150 by 1995. The Australian Chamber of Commerce and Industry (ACCI) (2009) notes that since the mid-1990s "the stock and complexity of OHS burden has grown incrementally over time, exacerbated by a lack of consistency in legislation and regulation across jurisdictions."

The result of this growth is that, according to the WRMC (2008), there are now over 400 OHS Acts, regulations and codes of practice (see Appendix A:).

ACCI (2009) argues that this is because beyond the principal Acts "the [Robens] philosophy has not translated into practice in any of Australia's OHS jurisdictions [which are] still largely operating under a prescriptive regime in the subordinate legislation."

All this disparate regulation imposes costs on business. Of all the regulations faced by business, OHS causes the most concern according to COAG. COAG has a Business Regulation and Competition Working Group that is tasked with assessing 27 priority areas of regulation. Of these, business members nominated OHS as the number one issue[10]. ACCI (2009) reports that its 2007 Pre-Election Survey found that the majority of ACCI members had moderate or major concerns regarding compliance with health and safety laws.

In South Australia (SA), Business SA (2008) stated that the volume of OHS legislation has resulted in the situation where it has "become almost impossible to comply in full with SA's OHS legislation". This complexity in turn reduces compliance, because "when regulations are easy to follow more people follow them". Business SA also notes that the majority of SA's OHS regulations contain requirements to maintain records (Table 4.2), and that the production of these records is now perceived by SafeWork SA inspectors as necessary to prove compliance: "The unfortunate outcome of this emphasis on record keeping is to create the perception that the focus of OHS&W in SA has shifted from prevention to that of record keeping."

[9] The Commission used the term instruments to cover legislation, regulations and codes collectively

[10] http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/business_regulation_competition_working_group.rtf. Accessed 9 July 2009

Figure 4.2: Sample of OHS paperwork

Source: Business SA (2008).

Table 4.2: South Australian OHS record keeping requirements

- OHS Policy Statement
- Policies and procedures for all OHS&W matters at the workplace
- Certificates of Competency
- Registration of defined plant and payment of appropriate fee
- Risk Assessments:
  - all manual handling tasks assessed
  - all hazardous substances assessed
  - all plant assessed
- Workplace injuries (first aid)
- RCD test records
- Workplace inspections
- Plant pre-use checks
- Plant Register
- Hazardous Substance Register (Material Safety Data Sheets)
- Hazard Report Forms
- Consultation
- Standard Operating Procedures
- Electrical testing and tagging
- Residual Current Devices – and testing
- First Aid – maintained
- Personal Protective Equipment – provided and maintained
- Training Records (indicative list only)
  - Responsible Officer appointed and trained
  - OH & S Policy signed and known by all staff
  - Consultative systems in place and all staff included in systems
  - All staff trained in manual handling in the last two years
  - All staff trained in standard operating procedures
  - All staff trained in emergency evacuation system in last 12 months
  - Employee induction
  - Manual handling
  - Hazardous Substances
  - Responsible officers (and depending on the size of the organisation – managers, supervisors)
  - Fire and Evacuation
  - First Aid training (and re-training)
  - Standard Operating Procedures
  - Forklift operator and other specialized equipment training.
- Documentation
  - Have copies available of OHS&W Act, Regulations and possibly Approved Codes of Practice, Australian Standards and Guidelines
- Registration with WorkCover.

Source: Business SA (2008).

It is not just the quantity of regulation that matters, but also its quality. Not all regulations create an 'incremental burden'. When a business would behave in an identical manner regardless of whether a certain regulation was in effect, that regulation could not be considered to impose an incremental burden. For example, many OHS regulations can be thought of as simply codified common sense, which rational employers would undertake anyway.

On the other hand, where regulations induce businesses to behave differently or undertake additional tasks, an incremental burden can be said to exist. For example, Australian Business Limited (2006) conducted a survey in 2005 and found that 40% of its members believed that current OHS regulations either did not work or hindered their business performance.

Business SA (2008) listed its concerns with OHS regulations in SA.

- Regulations are often expressed in complex and legalistic terms and do not allow for adequate defences where conduct has been reasonable.
- Regulation fails to account for particular circumstances of small businesses.
- Regulations are frequently developed and implemented without proper cost or economic impact assessments.
- Additions and amendments to regulation are ad hoc, with inadequate industry consultation.
- Once requirements are changed, it is often without a significant, appropriate and effective consultation or communication strategy.
- It is very difficult for businesses to keep pace with often obscure changes in scientific, technical, medical or attitudinal data affecting what they do and the way they work.
- Regulation, once introduced, is not properly reviewed.

SafeWork SA advised that in 1995, SA consolidated all of its OHS&W regulations, replacing three Acts and 12 sets of regulations with a single set of regulations. A large number of the references to Australian Standards in those regulations were either removed completely or, where they were required for guidance, given status as approved codes of practice.

Since 1995, the changes made to the regulations have generally been directed at national consistency and most recently, the further reduction in red tape requirements. Each has been subject to intensive consultation through the tripartite SafeWork SA advisory committee (or its predecessors), which includes peak industry representation, prior public consultation and appropriate regulatory impact assessment.

In regards to records and their use to prove compliance, in the 56 divisions in the SA regulations, record keeping requirements are only contained in 16 of the divisions, with the vast majority of these reflecting national requirements e.g. record keeping relating to plant, hazardous substances, manual handling and confined spaces.

All of the present state based OHS&W regulations have also recently been subject to a comprehensive review under the auspices of the SafeWork SA advisory committee and comprehensive proposals for reform are presently being finalised.

4.2.3 Impact on small business

The vast majority (95%) of Australian businesses employ less than 20 people (Table 4.3). As the National Review into model OHS Laws (2008) noted, the characteristics of small business mean that they may be vulnerable to higher rates of occupational injury and disease due to a lack of resources and OHS management expertise, as well as inadequate worker representation. Small businesses also find compliance difficult and are inspected by regulators infrequently.

Table 4.3: Distribution of Australian businesses by size, 2007

Size of business	Number	% Share
Non-employing	1,171,832	58.2%
1 to 4 employees	527,445	26.2%
5 to 19 employees	228,313	11.4%
20-199 employees	78,304	3.9%
200+ employees	5,876	0.3%
Total	**2,011,770**	

Source: ABS (2007).

4.3 Main differences in jurisdictional OHS Acts

Most of the plethora of OHS requirements imposing significant costs on business are not contained in the principal OHS Acts which are the subject of this phase of the harmonisation process. Rather, they are contained in detailed regulations and codes of practice. As discussed above, the Acts are a collection of broad principles that are basically similar across jurisdictions. This section outlines the main differences in those principles.

Most jurisdictions have additional OHS-related legislation related to regulating specific industries or hazards such as mining, dangerous goods, electrical safety, explosives, maritime, radiation and petroleum and gas. Different legislative structures and content across jurisdictions require increased resources from business to comply with OHS matters. Examples of legislative inconsistencies under current OHS Acts are outlined below.

Mining safety is regulated separately in Queensland and WA, whereas in other jurisdictions it is regulated under the OHS Act. Dangerous goods are regulated under the OHS Act in NSW, but have separate legislation in other jurisdictions.

There are differences in defining the primary duty holder in OHS Acts. While all OHS Acts assign the primary duty of care to employers, the Queensland and the new ACT OHS Acts apply the duties more broadly on 'persons conducting a business or undertaking' whether as employers, self-employed or otherwise.

There are also differences in the specific duties of care for designers of buildings and structures. Victoria only requires the design of buildings and structures to be safe for persons using them as a workplace whereas, in addition to this, SA and WA require designers to ensure safety for those constructing or maintaining the building.

Currently, Victoria requires employers, so far as it is reasonably practicable, to engage or employ a person to provide OHS advice. In Queensland, larger employers are required to employ a Workplace Health and Safety Officer for this purpose.

All but Queensland and WA have duties imposed on employers to monitor the health of employees and monitor conditions at any workplace under their control and management.

All jurisdictions have some form of worker representation, most commonly elected Health and Safety Representatives (HSRs). However, the powers of HSRs vary from jurisdiction to jurisdiction, for example, the power to issue Provisional Improvement Notices (PINs), is currently not available in NSW.

Victoria, Queensland, NSW, the NT and the ACT make provisions for an authorised representative of an industrial organisation for employees to enter for OHS purposes. Moreover, NSW and Victoria allow an authorised representative to request the assistance of an inspector.

In NSW and Queensland, employers hold the burden of proof of defence in OHS breach prosecutions.

The maximum penalties for OHS breaches for individuals vary from $66,000 in Tasmania to $400,000 in SA and for corporations from $180,000 in Tasmania to over $1.5 million in NSW. Other penalties include requiring a corporation to publish details of conviction as is the case in NSW, WA, SA and ACT.

Changes for jurisdictions under the model Act are outlined in Appendix B:.

4.4 OHS regimes and safety outcomes

It is encouraging that, across the nation, the incidence rate of serious occupational injuries, as measured by workers' compensation claims, is steadily declining (Figure 4.3).

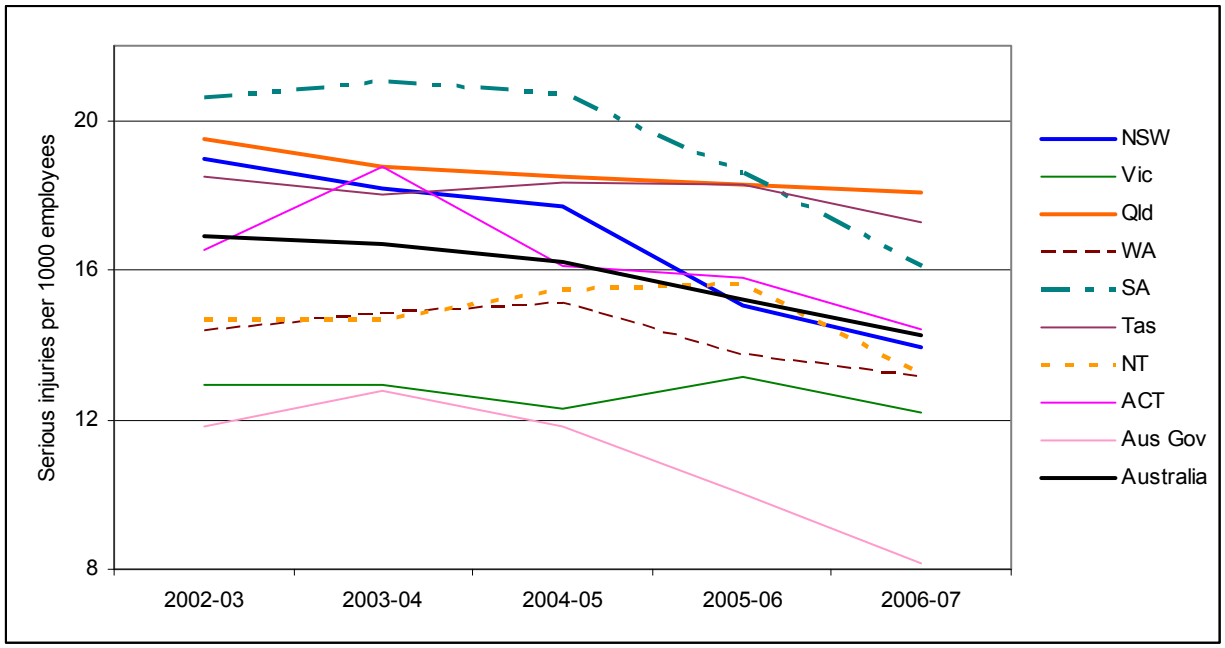
Each jurisdiction has a different OHS regime and different workers' compensation schemes. While there is some causation between OHS regimes and safety outcomes, there are a large number of other factors that may influence OHS outcomes in each state as measured by workers' compensation claims, for example differing industry composition and the nature of the workers' compensation schemes themselves.

Workers' compensation data remain the main data source for examining trends over time and for comparing performance between jurisdictions and industries. Incidence rates (or claims per 1000 employees) are used to compare performance and the Australian Bureau of Statistics provides estimates of the number of employees (those covered by workers' compensation claims) for each jurisdiction and industry.

To ensure that the jurisdictional data are not influenced by the different excess periods that exist, Safe Work Australia uses a standard definition of serious injury which includes only those workers' compensation claims where the duration of absence from work is one week or more, or where a permanent incapacity or death has occurred. Data from workers' compensation schemes with an excess period greater than one week have been factored to allow comparison.

Figure 4.3 shows the incidence rates of the jurisdictions since 2002-03. While New South Wales and South Australia showed the greatest improvements in incidence rates in the four years between 2002-03 and 2006-07, both started the period with relatively high rates. Queensland which also started the period with a high rate, has shown less improvement and now has the highest incidence rate of the jurisdictions. The Commonwealth and Victoria started the period with the lowest and second lowest rates and have maintained this position over the four years.

Figure 4.3: Incidence rates of serious injury by jurisdiction



Source: Comparative Performance Monitoring Report: 10th Edition. August 2008

The Commonwealth jurisdiction is unique in that its OHS regime and workers' compensation scheme predominantly cover a single industry, Government administration. In order to account for the different industry mix amongst jurisdictions, we can examine the OHS performance of selected high risk industries in each jurisdiction: Agriculture, forestry and fishing; Mining; Manufacturing; Construction and Transport and Storage. The Commonwealth jurisdiction is not included in the following analysis.

Not surprisingly, this analysis (Table 4.4) shows that Queensland, which has the highest overall incidence rate, experienced the highest incidence rates in three of the industries (Agriculture, Forestry and Fishing, Manufacturing and Transport and storage) and the second highest incidence rates in two (Mining and Construction). On the other hand, Victoria with second lowest overall incidence rate after the Commonwealth, experienced the lowest incidence rate in three of the industries (Agriculture, Forestry and Fishing; Mining and Construction) and the second lowest (after the ACT) in Manufacturing. Only in the Transport and Storage industry, where it had the second highest incidence rate, did Victoria experience an incidence rate higher than the national average.

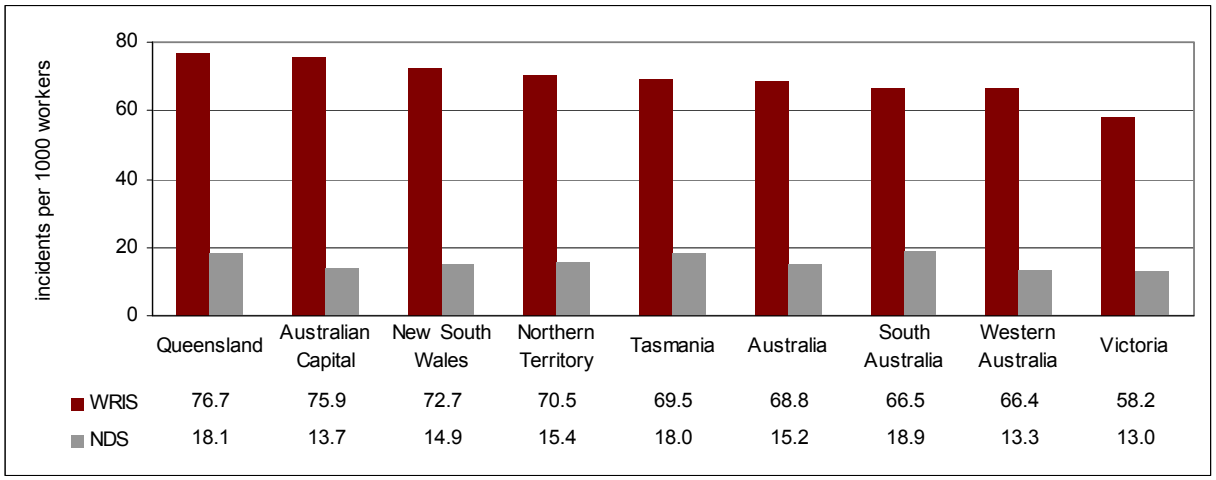
Table 4.4: High risk industries by jurisdiction. Serious claims per 1000 employees.

	Agriculture, forestry & fishing	Mining	Manufacturing	Construction	Transport & Storage
NSW	27.5	28.7	25.7	21.1	25.6
Victoria	14.4	9.5	23.1	16.8	28.2
Queensland	32.1	20.9	40.6	26.6	29.2
WA	27.9	16.1	25.9	25.2	21.6
SA	23.7	12.8	27.9	24.4	26.9
Tasmania	28.8	18.2	33.2	30.4	19.1
NT			26.1	19.0	22.2
ACT			18.8	24.2	
Australia	25.3	19.0	27.6	22.1	25.7

Source: Safe Work Australia: Industry Fact Sheets at:
http://www.safeworkaustralia.gov.au/swa/IndustryInformation/

While workers' compensation claims are an important measure for OHS performance, they are limited in that data reflect the injury experience of employees only. Measurements of OHS outcomes using only workers' compensation claims can be affected by changes to scheme structure or differences in schemes operating across Australia. An alternative source of information is the Work-related injuries survey (WRIS) conducted by the Australian Bureau of Statistics for the 2005-06 year. These data (Figure 4.4) show a similar pattern to the workers' compensation data but include all work-related injuries not just serious injuries[11] or those incurred only by employees. Queensland experienced the highest rate with 76.7 reported injuries per 1000 workers and Victoria the lowest rate, with 58.2 reported injuries per 1000 workers.

Figure 4.4: Injury incidence rates by state (2005-06)

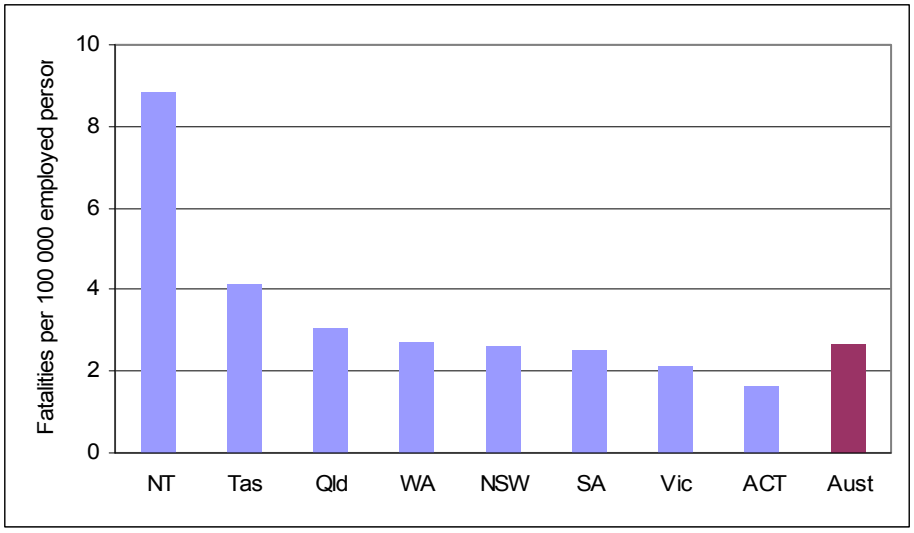


[11] Injuries resulting in a fatality, a permanent incapacity, or a temporary incapacity requiring one week or more off work.

Source: National Dataset of Compensation based Statistics and Australian Bureau of Statistics Work-related Injuries Survey

Another measure of OHS outcomes that does not depend on workers' compensation data alone is the rate of occupational injury fatalities. The data from Figure 4.5 combine information from workers' compensation claims, injury fatalities notified to OHS jurisdictions and the National Coronial Information System. Due to the relatively small number of fatalities, fatality rates can be volatile and to smooth out some of this volatility rates have been calculated for the three year period from 2004-2006.The Northern Territory and Tasmania recorded the highest rates of injury fatalities, and the ACT and Victoria the lowest rates.

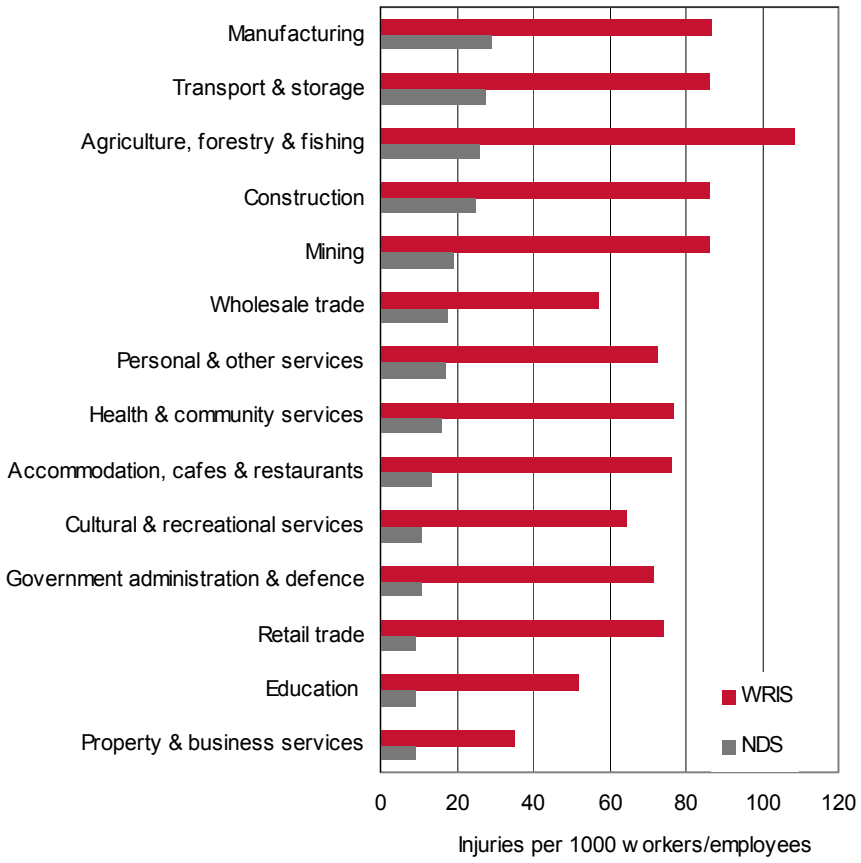
Figure 4.5: Traumatic injury fatalities: incidence rate by state, 2004 – 2006



Source: Safe Work Australia. Work-related Traumatic Injury Fatalities, 2005-06.

A major determinant of serious injury is industry of employment (Figure 4.6). The variation in injury incidence rates across industries is far greater than that across jurisdictions.

Figure 4.6: Incidence rates by industry (2005-06), all injuries in the Work-related injuries survey compared to serious claims in the National dataset for compensation based statistics (NDS)



Source: Safe Work Australia data and data from the ABS Work-related Injuries Survey.

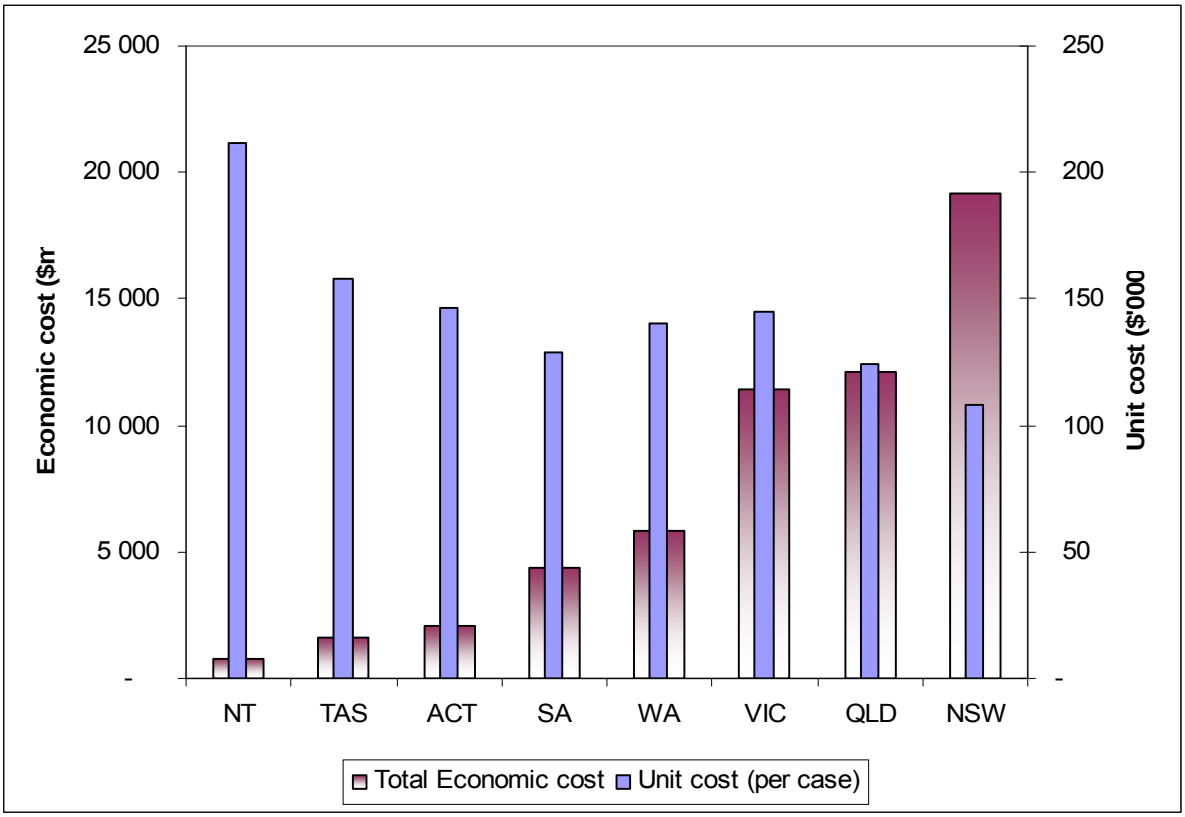
Cost of work-related injuries and illness

The direct cost of work-related injuries and illness in terms of compensation cost is affected by the operation of the different workers' compensation schemes across the jurisdictions.

In terms of total economic cost[12], the Australian Capital Territory (ACT), Northern Territory (NT) and Tasmania had the highest levels of average economic cost per claim (Figure 4.7). The economic cost is a measure of the lifetime cost of a workplace injury or disease, by considering and estimating typical costs incurred by the worker, employee and the community. These include such costs as lost productivity and additional health system costs created by workplace injury or illness.

[12] Australian Safety and Compensation Council. The Cost of work-related injury and illness for Australian employers, workers and the community:2005-06. March 2009.

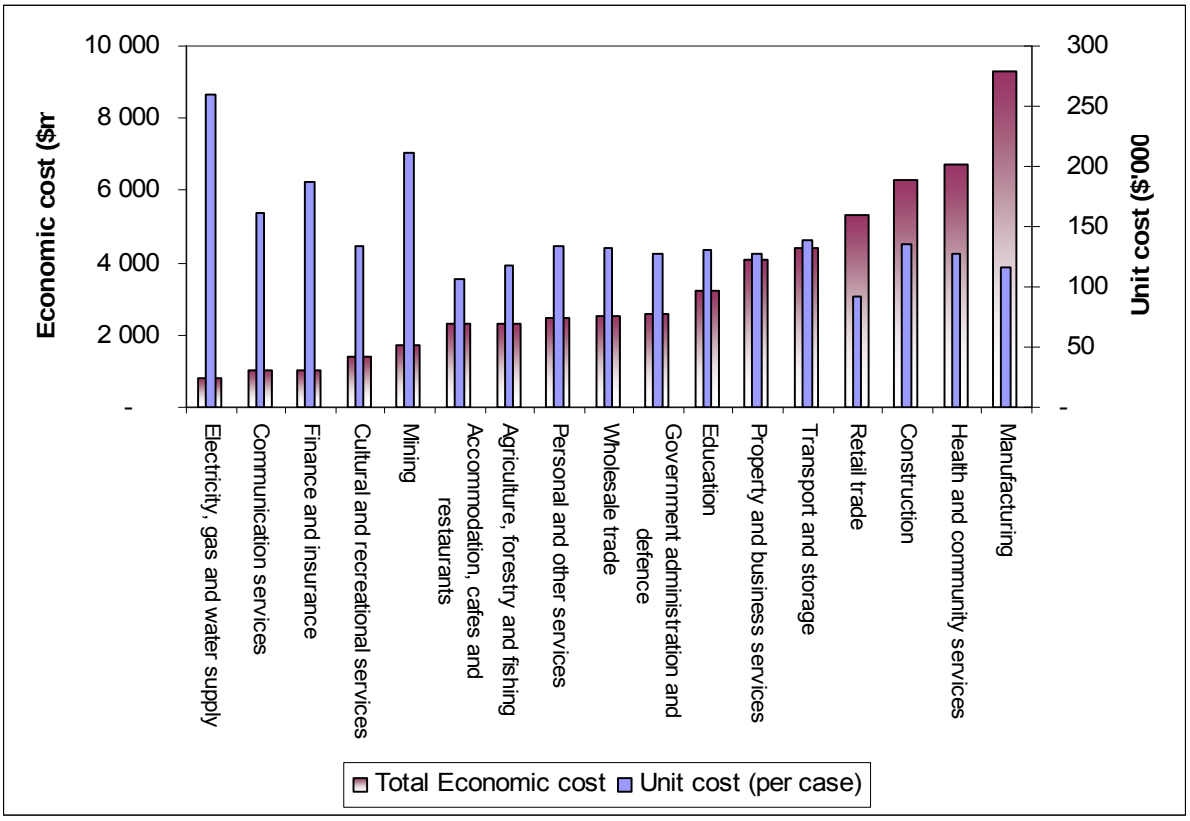
Figure 4.7: Total economic cost and unit cost by jurisdiction (2005-06)



Source: Safe Work Australia data.

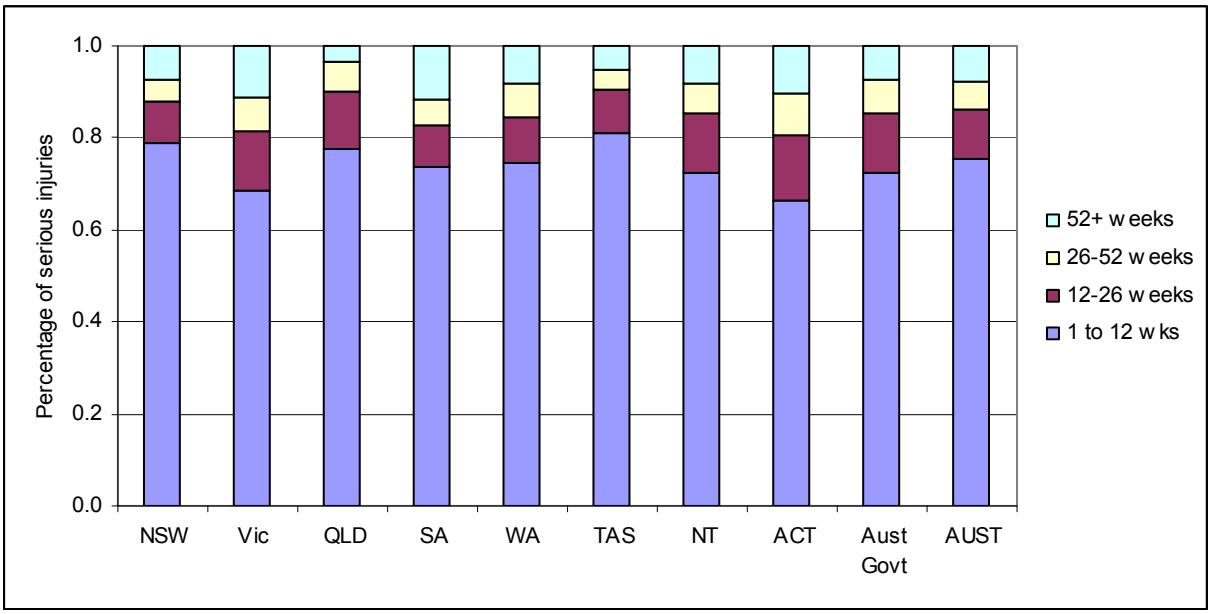
Factors that affect the average cost of claims include industry composition (Figure 4.8). Jurisdictions that have a lot of mining and construction (such as WA) could be expected to have more expensive claims than jurisdictions that have a lot of government administration (such as the Commonwealth) or retail, accommodation/restaurants and finance/insurance (such as NSW).

Figure 4.8: Total economic costs and unit cost, by industry (2005-06)



Similarly, the design of the workers' compensation system can affect average payments for a given severity of injury. For example, some systems have 'long tails' with injured workers being paid compensation for extended periods off work; others are focused as much on rehabilitation as compensation; while private schemes recoup capital costs but public ones do not. Figure 4.9 shows the jurisdictional differences.

Figure 4.9: Duration of absence from work by jurisdictions (2004-05)



Source: Safe Work Australia NDS

In summary, while there would be some link between OHS regimes and safety outcomes, as the National Review (2008) noted, presently available data are not sufficient to enable this link to be robustly estimated. Differences in incident rates may be influenced by OHS laws as well as industry of employment, while differences in incident severity are strongly influenced by workers' compensation regimes. Accordingly, the data supports the view that good enabling legislation standardised across jurisdiction may, along with other factors, impact positively on safety performance. However, it may be the case that the impacts on safety are not readily amenable to quantification.

5 Methodology

In May 2009, Safe Work Australia and OBPR agreed a methodology proposed by Access Economics to conduct analysis and consultation for this RIS. This followed from review (Access Economics 2008a) of three potential methodological approaches to measuring the economic benefits of a harmonised system.

- The first two options measured the cost of the current lack of harmonisation (Option 1 was 'top-down' while Option 2 was 'bottom-up') and, as such, conceptually were 'potential gains' approaches. Option 3 also considered the cost of introducing the model Act as well as of eliminating the differences between jurisdictional practices. Option 3 recognised the costs and benefits of the change itself and was essentially a cost benefit analysis (CBA) over a period of time, such as is relevant for this RIS.

Table 5.1: Summary of the three options in Access Economics (2008a)

Option	Descriptor
Option 1	Cost of current lack of harmonisation (top-down approach) by measuring (1) the total cost of OHS regulation by entity, and (2) estimating a fraction of that cost which is due to the lack of harmonisation between systems.
Option 2	Cost of current lack of harmonisation (bottom-up approach), by estimating the costs associated with the major problems in a non-harmonised system, involving (1) identifying the major problems in a non-harmonised system, and (2) estimating the costs due to lack of harmonisation associated with each problem and aggregating them
Option 3	Net benefit of moving to national harmonisation, relative to the implementation costs of such a move (ie, a cost benefit approach), involving: (1) identifying the major problems in a non-harmonised system, and (2) conducting a RIS on the new model Act

Source: Access Economics (2008a).

For the reasons outlined in Chapter 3, it was decided to limit the RIS Options to retention of the status quo (Option 1) measured against the adoption of all the recommendations of the WRMC, implemented by 31 December 2011 (Option 2), with no need for further options.

A preliminary step was to summarise national and international literature sources concerning OHS regulation, jurisdictional differences and associated costs. However, there was scant discussion found quantifying the benefits of harmonising OHS legislation (as opposed to the impact of specific changes to regulations that directly change compliance practices). The key literature is summarised in Section 4.1 of this report.

A data audit was also conducted but again, coverage of the costs of complying with OHS regulations in general, and of additional costs from complying with multiple jurisdictions' regulation, was found not to be reported in Australia. Access Economics (2008a) concluded that:

> *"As well as there being no existing data able to be used to reliably estimate the total cost of OHS compliance in Australia, in addition there is nothing in current*

data or literature that would be able to be used as an 'attributable fraction' in relation to the cost due to lack of harmonisation."

As such, it was concluded that new data would have to be gathered, via careful surveying, in order to measure the costs of OHS harmonisation.

The methods for this RIS essentially follow those developed in Appendix C 'Example of a RIS Cost Benefit Analysis' in Access Economics (2008):

1. Identify options, costs and benefits conceptually expected to be associated with each option and the timeframes over which these are likely to occur.
2. Establish methodological processes to quantify the costs and benefits, including who bears the costs.
3. Estimate the costs and benefits using modelling techniques.
4. Report the findings and perform sensitivity testing.

The mapping process analyses each WRMC recommendation and evaluates those for which there are likely to be measurable costs and/or benefits. The nature of the costs and benefits associated with each recommendation are listed in Section 7.1.

Consultation with stakeholders is an important part of the mapping process. A first round consultation process with pre-agreed stakeholders was conducted in an initial phase (April-June 2009), to elicit responses on the proposed methods for estimating impacts of the model OHS Act to feed into the design of the draft survey instrument. This first round led to the development of the Consultation RIS (see in particular Chapter 6), and further consultation (including through surveying) and comment on the Consultation RIS was gathered prior to finalisation of this Decision RIS.

Consultation and surveying was considered necessary to try to accurately estimate costs and benefits of OHS harmonisation in Australia. Recruitment of company respondents for the survey adopted the following criteria:

- a mix of small, medium and large companies;
- a mix of companies across industries and jurisdictions;
- companies that are across the issues (e.g. on the basis of their submissions) in order to optimise (completed) response rates and contribute to accuracy of results; and
- particular recommendations from stakeholders (e.g. AIG) will be taken into account.

To estimate government costs and benefits, consultations with the jurisdictions in relation to prevention and enforcement activity was also conducted.

Using such data as were obtained from the survey, other consultation feedback, and the first-principles arguments from the Consultation RIS, the impact analysis section of the Decision RIS determines if the full adoption of the OHS Act recommendations relative to the retention of the status quo will be cost-neutral, cost-saving or an additional cost.

Access Economics had originally intended that the level of safety and any loss of healthy life will be considered in the impact analysis. Healthy life can be estimated in terms of Disability Adjusted Life Years (DALYs) or converted into a monetary equivalent using the Value of a Statistical Life Year (VSLY). However, the survey data - a handful of responses stating that

expected health benefits were “minor” or “significant”[13] – was not sufficiently robust to allow such calculations.

A summary of findings regarding costs/benefits to businesses, workers, government and society is included in Chapter 7. However, considering the views from the consultation process, the lack of available cost data and problems associated with accuracy of obtaining new cost data, the analysis in this Decision RIS is mainly qualitative.

[13] There were five possible options, the others being ‘no change’ ‘minor cost’ and ‘significant cost’.

6 Consultation

Key stakeholders were consulted in the development of the Consultation RIS, which was released for public comment on 28 September 2009 together with the exposure draft of the model OHS Act and a discussion paper. In addition, prior to and during the public comment period, officers of Safe Work Australia attended various events around the country to discuss the proposed model OHS Act. A list of the major events attended is shown in Table 6.1. At these events, stakeholders were asked to review the consultation RIS and provide information that could be used to better determine the costs and benefits of the impacts associated with the proposed model OHS Act. They were also encouraged to participate in the survey being conducted by Access Economics.

Table 6.1: List of major events attended

Event	Location	Date
Australian Chamber of Commerce and Industry Workshop	Melbourne	10 July 2009
Association of Consulting Engineers Australia	Sydney	18 August 2009
Comcare National Conference	Canberra	24 September 2009
TMF Risk Management Conference	Sydney	1 October 2009
ACT Safety Seminar	Canberra	6 October 2009
WorkSafe NT Information Session	Darwin	8 October 2009
WorkSafe WA Information Session	Perth	13 October 2009
Industry Reference Group Presentation	Sydney	16 October 2009
17th Annual SIA OHS Visions Conference	Townsville	23 October 2009
SafeWork SA Information Session	Adelaide	23 October 2009
Sydney Safety Show	Sydney	27-28 October 2009
Workforce Strategies Forum	Sydney	30 October 2009

The model OHS Act has been developed in close consultation with a tripartite sub-committee of Safe Work Australia (the Strategic Issues Group) consisting of representatives from each jurisdiction, the Australian Council of Trade Unions (ACTU), the ACCI and Ai Group.

6.1 First phase of consultation

Consultations on the RIS were held with a number of stakeholders pre-agreed with Safe Work Australia which included each of the OHS authorities, ACTU, ACCI, Ai Group and OBPR.

These consultations were initiated by email, where the Methodology Report was circulated for comment. Telephone interviews were then scheduled to discuss the proposed RIS methodology, structure and timelines with each stakeholder.

These initial consultations informed the final methodology of the RIS and gathered information on early expected impacts of the model OHS Act, taking into account the WRMC's recommendations.

WorkCover NSW considered that there are obvious benefits in harmonisation but the possible widening of the scope of the legislation may have cost implications. NSW is keen to ensure the focus of the legislative framework remains on occupational health and safety.

WorkSafe Victoria believe the changes proposed will decrease the regulatory burden for a majority of large businesses. Small businesses with interstate operations are expected to also benefit, including a likely reduction in red tape costs.

WorkSafe Victoria suggest that one set of laws for all businesses will increase clarity, simplify compliance, reduce business costs, increase compliance rates and produce better safety outcomes. To the extent the proposal imposes new costs they will likely be relatively minor in nature for Victorian business.

WorkSafe Victoria also see benefits for the mobile workforce. Given the transferability of labour between jurisdictions, the delivery of a model Act may be expected to produce improvements in OHS outcomes given workers will be working to the same OHS regime wherever they work.

WorkSafe Victoria commented that the proposal to have the primary duty of care apply to any person conducting a business or undertaking will be a legislative change for Victoria, but that this will not impose an appreciable cost on Victorian businesses as a whole. This is because the current regime in the Victorian Act is largely commensurate to the person conducting a business or undertaking regime – notably section 21(3) of the Victorian OHS Act which provides coverage of 'deemed employees'; section 26 which imposes a general duty on persons who manage or control workplaces; and sections 23 and 24 which, respectively, impose duties on employers and self-employed persons in respect of other persons. Therefore, it would appear that there will be no extra costs for the majority of Victorian business associated with the move to person conducting a business or undertaking. There may be some impact on organisations without employers (eg some volunteer groups).

The Queensland Government considered that compliance and enforcement policies (which will be harmonised down the track) have a bigger impact than regulations and codes, which in turn have more effect than legislation. The introduction of enforceable undertakings under the model Act may have some beneficial impact on safety standards.

Queensland stated that from its experience, multi-jurisdiction companies were not able to quantify the costs of dealing with multiple OHS laws. While companies that could get Commonwealth OHS coverage favoured it, resultant issues of overlapping jurisdictions on worksites caused large administrative workloads for jurisdictional regulators.

SafeWork SA (part of the Department for Premier and Cabinet) highlighted the small number of larger companies which work – or at least are based in – SA and that care should be taken to make sure the jurisdiction is represented in the survey and the findings.

The Department for Justice in Tasmania had concerns about the applicability of incremental costs data at a jurisdictional level.

WA's Department of Commerce commented that the model OHS Act recommendations may improve understanding of the regulations but did not foresee much overall impact. It was also suggested that the increase in fines for breaches of regulation may result in an increased number of challenges and thus a greater legal burden.

NT WorkSafe advised that the NT has recently implemented a new jurisdictional Act which is similar to the model OHS Act and therefore there will be a small additional measurable benefit in terms of increased compliance and better OHS outcomes from the model OHS Act.

The ACT has just substantially remodelled its own Act, which will be in force for less than two years before the model Act is introduced. However, the ACT's new Act is very similar to the model Act, so adjustment costs should be low.

Mental health claims, particularly for stress, are very expensive. While the ACT doesn't have many 'dangerous' mines or heavy industry, it has a lot of stress claims, and thus expensive workers' compensation premiums. While mental health is part of OHS regulations, it is very difficult for inspectors to police.

The Commonwealth noted that there will be adjustment costs for the jurisdictions initially. In the long run adjustment costs will be far fewer, as – instead of jurisdiction regulations being in a constant state of flux as at present – there will be one centralised national process coordinated by WRMC.

Companies that compete with current or former Commonwealth owned businesses are eligible to apply to become a Commonwealth OHS licensee. The Australian Government has now committed to returning companies who currently have Commonwealth OHS coverage back to state/territory jurisdiction - but only once the whole harmonisation process is complete.

The ACTU recommended that the health benefits lost as a result of changes to union prosecution for OHS breaches be addressed in the report. The 'knock on' effects across industry for successful prosecutions by unions should also be recognised. The Finance Sector Union prosecutions in NSW against banks for lapses in employee protection which improved safety in the industry as a whole were cited as evidence.

Ai Group commented that one of the biggest costs for companies which operate across borders is on consultancy services specifically to understand and comply with differing OHS legislation. We were advised to survey companies with a head office in one jurisdiction and satellite operations across the others and also to survey cross-border organisations.

The size and composition of the survey sample was a concern to the ACCI, particularly if response rates proved to be low. As far as possible a representative sample of businesses by jurisdiction, industry and size should be achieved. ACCI considered that any increase or decrease in the cost of legal burden for OHS breaches should be included in the analysis.

6.2 Public submissions

The public comment period for the exposure draft of the model OHS Act commenced on 28 September 2009 and closed on 9 November 2009. The exposure draft of the model Act was released as part of a consultation package which included the draft model OHS Act, draft key administrative regulations, a discussion paper and a draft RIS. 480 submissions were received, which can be found at the Safe Work Australia website (unless the submission is confidential). The majority of the submissions were supportive of the need for harmonisation of OHS laws. For example, the submission of the Australian Bankers' Association noted that:

> *"Disparity between the OHS laws and lack of harmonisation of OHS standards (including lack of uniformity of key definitions and duties, unreasonable offences and defences, inconsistent legal and regulatory procedures) continues to undermine a fair and safe workplace culture across Australia and contributes to unnecessary compliance costs for businesses. Banks generally operate throughout Australia and as a result of the different OHS laws across the jurisdictions, the development of proactive OHS management systems is impeded and business is exposed to significant costs in terms of compliance and administration. Employees are also prejudiced as a result of the lack of national consistency."*

Key matters raised in submissions from businesses and employer associations include:

- the scope of the Act is too broad and could apply to public safety and product liability;
- some duties, such as the duty to consult, are also to broad i.e. extends the duty to consult beyond immediate workers etc;
- scope of the duty imposed on officers is unclear and there should be definition of due diligence;
- types of incidents that need to be notified require further clarification to improve certainty;
- union right of entry and concern for potential for misuse, officials should provide notice before or immediately upon entering the workplace, not after entry to inquire into a suspected contravention, extent of powers to make copies, or access computers when inquiring into a suspected contravention, OHS entry permit holder to hold appropriate OHS qualifications;
- no cap on the requirement to establish health and safety committees;
- persons assisting health and safety representatives and concern for potential for misuse: i.e. allowing for 'back door' right of entry;
- penalty levels too high (not a concern raised by all employer groups) and allowing for compensation orders as a sentencing option (not appropriate for an OHS Act); and
- jurisdictional notes may undermine harmonisation and uniform enforcement.

The key concerns raised in submissions from unions and their members include:

- concern there may be a lowering of standards of safety with the implementation of the model OHS Act;
- not providing for victims' right to initiate litigation;
- requiring the prosecutor to carry the burden of proof in a prosecution matter ie: no reverse onus of proof;
- not having an unconditional obligation for 'employers' to consult with their workers on OHS i.e. not subject to the qualifier of 'as far as reasonably practicable';
- health and safety representatives (HSRs) not being able to effectively perform their role by placing a 'range of barriers' in their way - for e.g., requiring a HSR to undertake training before being able to issue PINS and direct unsafe work to cease and also allowing for HSR to be disqualified;

- 'complicated and heavily process driven' right of entry for union officials to workplaces; and
- not providing for the involvement by unions and employers in setting standards and monitoring the effectiveness of the laws (consistent with ILO Convention 155).

The exposure draft of the model OHS Act has been amended to take into account public comment, following consultation with Safe Work Australia representatives and members of the Parliamentary Counsel's Committee (PCC) who are responsible for drafting the model laws.

The Strategic Issues Group met in November 2009 and agreed to various amendments to clarify provisions (such as including a definition of 'due diligence' to clarify an officer's duty), to remove overlap and unnecessary prescription (such as removing requirements for union right of entry which are already prescribed under the *Fair Work Act 2009*) as well as to remove any unintended consequences.

It should be noted that the development of the model OHS Act is based on decisions of the WRMC on the recommendations of the *National Review into Model Occupational Health and Safety Laws*. The findings of the Review were informed by the 243 submissions received during the extensive public consultation conducted as part of the Review.

7 Impact analysis

This chapter undertakes a qualitative analysis of the effects of key recommendations of the National Review into model OHS Laws and WRMC's subsequent decisions. These are then summarised by impact group – single and multi-jurisdiction businesses, workers and government. Access Economics prefers to conduct quantitative analysis where possible, but there are currently insufficient data on the costs of multiple OHS regimes to be able to assess the impact of the model Act on such costs. Access Economics conducted a survey to attempt to gather more data, but with somewhat mixed results (see Section 7.5).

The harmonisation process essentially has four stages. Harmonising principal OHS Acts through the model Act (this phase) is the first. The next stage is harmonising subordinate regulations. This will be followed by harmonising codes of practice. The last stage is harmonising compliance and enforcement policies.

- Work is proceeding on all stages concurrently.
- This first stage is the least likely to have large consequences for how businesses operate in the OHS environment. This largely reflects the fact that the model Act represents relatively small changes to existing state and territory legislation; and that such Acts do not have significant direct effects on operating practices. Instead, these Acts provide the basis for the regulations, codes and enforcement policies that affect business practices. (Actual impacts will vary by jurisdiction and industry, and may not follow this order in specific instances.)

Expressing duties clearly and consistently is expected to provide certainty for duty holders.

- Evidence presented in 'Occupational Health and Safety: Economic Analysis' (2006)[14] suggests a positive relationship exists between better OHS legislation (i.e. that facilitates comprehension and access) and improved worker safety outcomes based on econometric analysis of NSW WorkCover data.
- While this relationship is generally interpreted as being associated with large positive changes in legislation (not small incremental changes) we can interpret the findings as implying that better legislative frameworks can reduce the incidence of injury – quantifying this relationship within the context of the model Act is not possible at this stage.

The costs and benefits associated with implementing the model Act are likely to be as follows:

- Business costs: wording, definitional and some broadening of scope and coverage implies that additional training (over and above normal OHS training schedules) will be required, as well as costs relating to information dissemination.
- Business benefits: reduced uncertainty – the model Act has responded to submissions outlining uncertainty around interpretation of some key definitional issues and principles of existing legislation. There will also be benefits from less red tape operating across jurisdictional boundaries – easier interpretation and compliance costs for (primarily) multi-jurisdictional business operations.

[14] ACIL Tasman (2006), Occupational Health and Safety: Economic Analysis, prepared for NSW Workcover.

- Government costs: regulators will also see some increased costs (over and above business as usual in Option 1) associated with development of education programs and guidance material to adequately interpret and apply the changes to the principles as written into the model Act.
- Government benefits: increased compliance / reduced incidents.
- Worker benefits: improved understanding (interpretation of the Act) should lead to greater application of OHS principles in the workplace which would benefit workers, who avoid injury as a result, and government (less enforcement and administrative costs).
- Implications by jurisdiction: All jurisdictions broadly speaking have a similar OHS system bound by similar principles; the model Act (Option 2) extends the principles in some cases in a broader context than is currently the case for the states and territories. However, this is not considered to amount to a significant change that would see any large incremental costs burden for any state or territory.

7.1 Impact of specific recommendations

This section examines key outcomes from the National OHS Review that may have discernible impacts on businesses, workers and governments.

- The main benefit of harmonisation for businesses is reduced red tape. The main cost in the short term involves understanding any changes and what is needed to comply.
- Workers generally will not bear any costs from harmonisation, but will benefit from extra safety. While some sub-contractors and self-employed workers may incur training costs, for the purpose of this exercise, these people are treated as (self) employers.
- The clearest cost to governments is educating businesses about the new changes. If safety is improved, governments benefit from the higher productivity and better health through higher taxation revenue and lower payments (compensation, welfare, health, disability etc). While in a strict economic sense, taxes and payments are transfers, from the governments perspective they are benefits.

General types of costs and benefits from harmonisation include the following.

- Reduced **incidents** primarily benefit workers. Businesses also benefit from less down-time, lower fines and reduced compensation premiums. Governments benefit from higher tax revenues and lower payments.
- Increased **compliance** leads to reduced incidents, which in turn benefits workers, businesses and governments.
- Reduced **uncertainty** is a benefit to businesses, as it reduces the effort required to understand regulations. In turn, reduced uncertainty should increase compliance, and thus reduce incidents.
- Reduced **red tape** is a benefit to businesses.
- **Accreditation/education** is a cost to governments as they have to inform businesses and workers about changes and accredit new training courses.
- **Training** workers about changes is a cost to businesses.

- Increased **scope** is a cost to businesses, in that all persons conducting a business or undertaking and all types of workers will be covered by the model Act.
- **Penalties/legal fees** are a cost to businesses. Athough penalties are associated with non-compliance, they may act as a deterrent which could improve compliance, and naturally if they are reduced, they are a benefit to businesses.
- **Enforcement/administration** is a cost to government.

Recommendation 3 (who owes a duty of care)

The Act will adopt an approach where the coverage of duty of care is broad-based, encompassing all businesses and undertakings, and all persons potentially affected by these undertakings. Specific duty holders under the Act will be:

- persons conducting a business or undertaking;
- persons with management or control of workplace areas;
- designers of plant, substances and structures;
- manufacturers of plant, substances and structures;
- builders, erectors and installers of structures;
- suppliers and importers of plant, substances and structures;
- officers;
- workers; and
- other persons at the workplace.

This in some cases will extend the coverage of OHS legislation.

- Benefits (businesses, workers and governments): reduced uncertainty and improved safety outcomes from greater understanding and compliance.
- Business costs: a wider scope of coverage and thus increased overall costs of compliance.
- Government costs: new training programs need to be developed (i.e. in relation to the broader coverage of duties of care for duty holders).
- Implications by jurisdiction: All jurisdictions broadly have a similar OHS system bound by similar duties of care. In most cases the model Act extends the duties of care and specifies duty holders in a broader context than is currently the case for the states and territories. However, this is not considered to amount to a significant change that would see any large incremental costs for any state or territory.

Recommendations 4-9 ('reasonably practicable' and risk management)

The concept of what is "reasonably practicable" will be used to qualify the duties of care. The principles of risk management will be identified in a part of the model Act setting out the fundamental principles applicable to the model Act. Potential implications are listed below.

- Businesses, workers and governments will benefit from reduced uncertainty; clearer understanding; better and cost effective compliance; improved safety outcomes due to greater compliance and understanding.

- Business costs: training.
- Government costs: education - preparing and dissemination relevant material to ensure a clear understanding and interpretation (in plain language) of this model Act.
- Implications by jurisdiction: Only Victoria, NT, WA and the ACT define "reasonably practicable" in their OHS Act. NSW and Queensland apply this qualification as a defence to a prosecution.

Recommendations 10-22 (the primary duty of care)

The model Act will provide a primary duty of care owed by a person conducting a business or undertaking to a broad category of 'workers' including specific obligations:

- the provision and maintenance of plant and systems of work as are necessary for the work to be performed without risk to the health or safety of any person;
- the provision and maintenance of arrangements for the safe use, handling, storage and transport of plant and substances;
- each workplace under the control or management of the business operator is maintained in a condition that is safe and without risks to health;
- the provision of adequate welfare facilities; and
- the provision of such information, training, instruction and supervision as necessary to protect all persons from health and safety risks arising the conduct of the business or undertaking.

This will have the following impacts.

- Businesses, workers and governments will benefit from reduced uncertainty; potentially lower costs associated with a greater level of compliance (reflecting better understanding); flow-on effects are anticipated to include lower injury and disease incident rates.
- Business costs: training (including only incremental costs). Also, broadening scope of OHS legislation may add additional workers / others to the pool covered by existing jurisdictional legislation.
- Government costs: compliance and education costs
- Implications by jurisdiction: The model OHS Act will recast the primary duty holder structure from one defined solely by the employment relationship (e.g. employer/employee) to one based on a broader range of work relationships. The change of duty structure allows the coverage of the broad range of work relationships not covered by the employer/employee relationship and that are often problematic under existing structures. Examples of arrangements that will be covered under the new duty structure include labour hire arrangements, franchises, bailment arrangements, profit share arrangements and volunteer organisations. This model is based on that currently used in the Queensland OHS legislation. The broader scope of worker under this duty structure also allows for a greater range of relationships to be captured, including sub-contractors and volunteers. This is a similar approach to that used in the NT's OHS legislation. These changes are effectively a progression of existing provisions, rather than completely new concepts, therefore few incremental costs are expected to be specifically generated by these changes to the duty structure.

Recommendations 23-39 (obligations of persons with control of workplaces)

Most OHS Acts in Australia have incorporated duties for persons in control of a workplace.[15] Those that do not have such a duty for persons in control of a workplace instead place duties on occupiers and owners of a workplace. However framed, the duty requires persons with actual or (in the case of the owner) assumed control over the condition of the workplace to ensure that the workplace, including the means of entering and exiting, are safe and without risks to health.

Recommendations 40-43 (duties of 'officers')

The model Act creates a positive a duty of care for "officers" to ensure that the business complies with health and safety requirements (although volunteer officers will not be liable to prosecution). The provision applies to officers of a corporation, unincorporated association, partnership or equivalent persons representing the Crown.

- Business/worker benefits: reduced uncertainty; greater OHS compliance.
- Government benefits: greater compliance so less enforcement/administration cost.
- Business costs: training.
- Government costs: compliance costs; education programs.
- Implications by jurisdiction: Introducing positive duties of officers represents a change from existing legislation in each jurisdiction to some extent, but again the anticipated incremental cost impact is minimal.

Recommendations 44-49 (duties of care owed by workers and others)

The model Act includes duties of care on workers; a broader definition of workers applies than is the case under Option 1, potentially increasing the OHS net.

- Businesses, workers and governments may benefit from increased compliance leading to reduced incidents.
- Business costs: training; broader coverage.
- Government costs: compliance costs; accrediting of training programs.
- Implications by jurisdiction: Only Queensland applies these duties to 'workers' more broadly to also cover "anyone else at the workplace".

Recommendations 50-52 (breaches of duties of care)

Under the model Act, most breaches will be criminal offences, with civil penalties applying only to contraventions associated with union right of entry. Only the Commonwealth currently allows for criminal and civil penalties.

- The threat of criminal prosecution has a deterrent effect, which could result in some improvements in worker safety.

[15] The Commonwealth does not include any duties for persons in control or occupier/owners. Instead, the employer has a duty to ensure any workplace under the employers control is safe and without risks to health. This approach is consistent with the limited coverage of the Cwth Act.

- Implications by jurisdiction: The introduction of a civil penalty regime under the OHS Act will be a change for all jurisdictions, except for the Commonwealth. As standards of proof are lower in civil matters, court procedures will be less expensive, which will reduce costs for businesses and government (prosecutors).

Recommendations 55-61 (penalties)

The maximum penalties for duty of care offences under the model Act include $3 million (for a corporation) for the most serious breaches involving recklessness (Category 1), $1,5 million (for a corporation) for serious breaches not involving recklessness (Category 2) and $500,000 (for a corporation) for less serious breaches (Category 3). A custodial sentence of up to five years can also be imposed for Category 1 breaches under the model Act.

- Technically penalties are a cost of non-compliance, not of compliance, as they are only levied once a breach has occurred.
- However, businesses, workers and government may benefit from greater compliance and thus lower incidents, if the threat of higher fines have a deterrent effect that induces higher compliance effort ex ante.
- Business costs: if applied to breaches, businesses could face higher costs, noting that the maximum fine has never been applied in an OHS case and an individual has never been jailed.
- Government costs: compliance costs; education programs.
- Implications by jurisdiction: Significant increases in maximum fines for each jurisdiction. All jurisdictions, except the Commonwealth, have custodial sentences in place for very serious breaches and cases of gross negligence. Some will have maximums increase (WA and Queensland) while in the ACT there will be a decrease.

Recommendation 62 (burden of proof)

Due to the criminal nature of offences under the model Act and the heavy penalties that could be imposed, the model Act places the onus of proof on the prosecution.

- Business benefits: this may reduce court costs in NSW and Queensland, may improve efficiency of complying with OHS legislation in these jurisdictions.
- Government costs: in NSW and Queensland, the regulator will now have to prove the offence beyond reasonable doubt, which may increase prosecution costs of the regulator.

Recommendation 65 - 66 (no crown immunity)

Most jurisdictions already effectively remove Crown immunity. The exception is the Commonwealth – which can be prosecuted for OHS breaches, but only as a civil matter. The main effect of this change is that the Commonwealth will now be prosecuted under criminal proceedings. As these can be longer and more complex than civil proceedings, the cost to the Commonwealth government of prosecuting Government departments and agencies may increase. However, efficiencies may be obtained through the proposal for an infringement notice scheme. The Commonwealth jurisdiction currently does not have an infringement notice scheme under its OHS Act and such a scheme would considerably simplify enforcement of a range of minor offences.

Recommendations 96-99 (consultation rights and obligations)

There will be a duty for persons conducting a business undertaking to consult with other duty holders and workers on OHS matters.

- Business benefits: reduced uncertainty.
- Workers, businesses and government may benefit from greater compliance causing improved safety outcomes.
- Business costs: training, more time involved in consulting a broader range of persons.
- Government costs: compliance costs and education programs for consultation duties.
- Implications by jurisdiction: WA, SA, Queensland, Tasmania and the Commonwealth do not currently have this type or scope of consultation in legislation.

Recommendations 100-115 – Health and Safety Representatives (HSRs) and Committees

The Act covers the election of HSRs, HSR training, issuance of PINs, the HSR's ability to direct unsafe work to cease, and health and safety committee establishment.

- Business benefits: reduced uncertainty
- Governments, businesses and workers may benefit from greater compliance and improved safety outcomes.
- Business costs: training.
- Government costs: compliance costs and approval of training programs for HSRs.
- Implications by jurisdiction: All jurisdictions will have some form of change associated with this set of recommendations. However, incremental costs associated with Option 2 are likely to be minimal in practice relative to Option 1.

Recommendations 116-120 (issue resolution)

The model Act encourages workers and those conducting a business or undertaking to agree on issue resolution procedures. Default issue resolution procedures will be specified in regulations and will apply where the parties have not agreed on such procedures. The model Act also specifies who should be involved in the resolution of OHS issues. This is an improvement on the current situation, where individual jurisdictions' require different processes.

- Business benefits: reduced uncertainty.
- Business costs: training/compliance.
- Implications by jurisdiction: the provisions for issue resolution in the model Act will be most closely aligned to those requirements in Victoria.

Recommendations 121-122 (right to cease unsafe work)

The model Act explicitly includes a provision that allows a worker to cease work where the worker has reasonable grounds to believe that to continue to work would expose the worker to a serious risk arising from the immediate or imminent exposure to a hazard. This permits a work cessation to prevent, for example, exposure to a substance which may cause a disease of long latency, correcting a gap in current cease work provisions in OHS laws. Similarly, a HSR

can direct workers to cease work (but only after consulting with the person conducting the business or undertaking and attempting to resolve the issue in accordance with the Act's issue resolution procedures).

- Workers, businesses and governments benefits: possible improved safety through clearer understanding of rights to cease unsafe work.
- Business costs: Training/compliance.
- Implications by jurisdiction: This represents a change for SA, NSW, Queensland and the Commonwealth.

Recommendations 123-135 (discrimination victimisation and coercion)

The model Act protects persons who have an OHS right, a role or responsibility under the Act from discrimination, victimisation and coercion.

- Workers, businesses and governments may benefit if workers and their representatives are able to do their jobs more effectively, and thus improve compliance and safety.
- Business costs: Training/compliance.
- Implications by jurisdiction: Represents an increase in scope to include coercion for all jurisdictions except SA and Victoria. Minimal actual costs associated with this change to the wording.

Recommendations 140-146 (incident notification: requirement to preserve an incident site)

The model Act will place an obligation on the person conducting a business or undertaking to ensure that the regulator is notified immediately and by the quickest means of a fatality, serious injury or illness, as well as dangerous incidents arising out of the conduct of the business or undertaking. Persons who have management or control of a workplace will be required to preserve an incident site until an inspector attends the incident site, or the regulator directs otherwise, whichever occurs first.

- Business benefits: requirements to only report serious incidents and consistent reporting processes will reduce red-tape and result in potential cost savings for businesses.
- Business costs: training.
- Government costs: compliance costs and education programs.
- Implications by jurisdiction: The wording does represent a change in some jurisdictions but this is anticipated to be an insignificant change. For example, NSW currently has to preserve a site for one and a half days. The ACT must currently preserve a site for three days, unless notified otherwise.

Recommendation 152 (enforceable undertakings)

The model Act will authorise a regulator to be able to accept, at the regulator's discretion, a written enforceable undertaking as an alternative to prosecution. This may essentially require the business to remedy the current deficiency as an alternative to paying a fine. Access Economics' discussions with regulators have indicated that, while large businesses are not overly concerned by the size of the average fine, they are very keen to avoid the damage to their reputation caused by a guilty finding.

- Business benefits: greater compliance (the enforceable undertaking may enhance safety) and lower costs (assuming compliance is less costly than fines / reputational damage).
- Worker/government benefits: greater compliance so potential enhanced safety and lower costs for government.
- Implications by jurisdiction: This represents a change for WA, SA, NSW and the NT.

Recommendations 205-223 (authorised right of entry)

- The majority of Australian OHS Acts confer powers on authorised representatives of unions to enter workplaces for OHS purposes. The National Review noted that there was considerable evidence of benefits from trade unions being able to enter workplaces to assist in securing improved OHS performance and effective outcomes, particularly with respect to the provision of support to workers elected as HSRs. Thus, the Act grants appropriately qualified union officials the right of access to workplaces for OHS purposes. Some employer groups expressed concern to the National Review about the potential for union officials to link OHS issues to other industrial issues. However, other employer groups noted that this had not been their experience.
- Worker benefits: improved safety.
- Business benefits: improved safety.
- Business costs: training.
- Implications by jurisdiction: This represents a change for the Commonwealth, Tasmania and SA.

Recommendation 224 (who can prosecute)

The Act will only allow prosecutions to be undertaken by public officials.

- Business benefits: greater certainty.
- Government costs: compliance costs.
- Implications by jurisdiction: This represents a change for NSW, where unions will no longer be allowed to conduct OHS prosecutions.

7.1.1 Summary of impacts

Overall, the model Act is expected to bring medium sized benefits for business, principally in reduced red tape for multi-jurisdiction operations. These will be partially offset by a small increase in adjustment costs (relative to ongoing adjustment costs under Option 1).

There will probably be some small safety benefits for workers, with no significant offsetting costs to workers.

There will be a small increase in adjustment costs for government (relative to such ongoing costs in the counterfactual), partly offset by some marginal benefits in improved compliance efficiency.

Combining these effects, Access Economics expects that the model Act will confer an overall small net benefit.

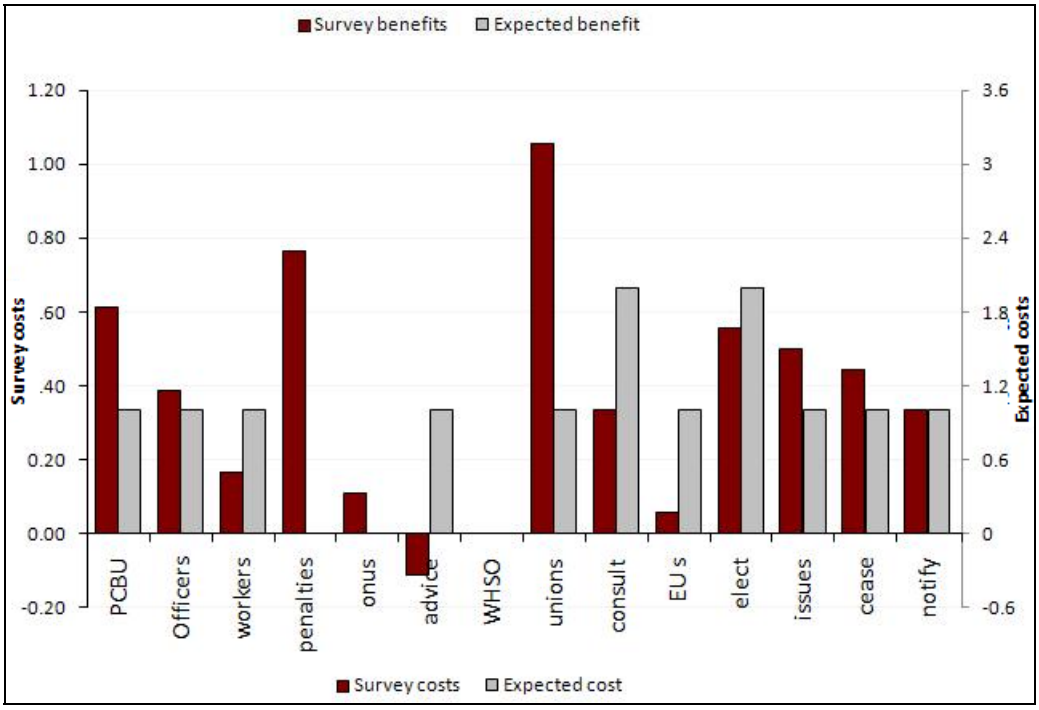
Table 7.1: Summary of qualitative cost benefit analysis

Nature of change	Recommendation. No.	Govt Benefits	Business Benefits	Worker Benefits	Govt Costs	Business Costs	Worker Costs	Jurisdictions affected
Principles	1	Marginal	Medium	Marginal	Small	Small	Nil	all, marginally
Duty of care	3	Marginal	Small	Small	Small	Small	Nil	all, marginally
Reasonably Practicable'	4-9	Marginal	Medium	Small	Small	Small	Nil	NSW, Qld
The primary duty of care	10-22	Marginal	Small	Small	Small	Small	Nil	All but ACT, Qld
Specific classes of Duty Holders	23-39	Marginal	Medium	Small	Small	Small	Nil	All
Duties of 'Officers'	40-43	Small	Medium	Small	Small	Small	Nil	All
Duties of care owed by workers and others	44-49	Small	Medium	Small	Small	Small	Nil	All, marginal
OHS breaches criminal only	50-52	Marginal	Marginal	Small	Small	Small	Nil	Cwth only
Increased penalties	55-56	Marginal	Marginal	Small	Small	Marginal	Nil	All
Sentences for breaches of duties of care	57-61	Marginal	Marginal	Marginal	Marginal	Marginal	Nil	All
Burden of proof	62	Nil	Small	Marginal	Small	Marginal	Nil	NSW, Qld
Crown Immunity	65-66	Marginal	Marginal	Marginal	Small	Marginal	Nil	Cwth only
Consultation	96-99	Marginal	Medium	Small	Small	Medium	Nil	WA, SA, Qld, Tas, Cwth
HSRs	100-113	Marginal	Medium	Small	Small	Medium	Nil	All
Issue resolution	116-120	Marginal	Small	Marginal	Marginal	Small	Nil	All bar Vic
Rights to cease unsafe work	121-122	Marginal	Marginal	Small	Small	Small	Nil	SA, NSW, Qld, CW
Discrimination, victimisation, coercion	123-135	Marginal	Marginal	Small	Small	Small	Nil	All bar Vic & SA

Nature of change	Recommendation. No.	Govt Benefits	Business Benefits	Worker Benefits	Govt Costs	Business Costs	Worker Costs	Jurisdictions affected
Obtaining OHS advice	139	Marginal	Medium	Marginal	Small	Small	Nil	Vic
Preserve incident site	140-146	Marginal	Medium	Marginal	Small	Small	Nil	NSW, ACT, NT, Cwth
Enforceable undertakings	152	Small	Medium	Small	Small	Small	Nil	WA, SA, NSW, NT
Authorised right of entry	205-223	Small	Small	Medium	Small	Small	Nil	Cwth, Tas, SA
Who may prosecute	224	Nil	Medium	Nil	Marginal	Marginal	Nil	NSW
Total impact		**Marginal**	**Medium**	**Small**	**Small**	**Small**	**Nil**	

The costs and benefits to business from Table 7.1 were largely supported by the results from the follow-up survey (Figure 7.1, Figure 7.2), with notable exceptions being the safety benefits for union access and compliance costs for penalties.

Figure 7.1: Comparison of costs, by source

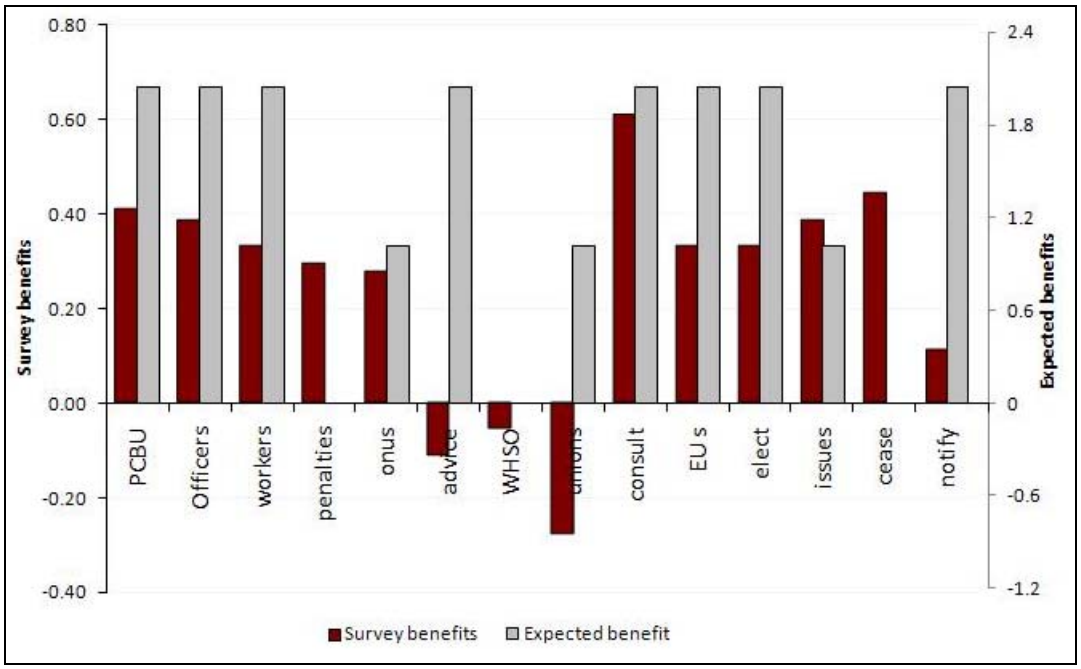


Legend:

"PCBU" = primary duty of care for persons conducting a business or undertaking (question 2.1)
"Officers" = positive duty of care for officers (question 2.2)
"Workers" = duties of care for workers (question 2.3)
"Penalties"= significant increase in penalties for non-compliance (question 2.4)
"Onus" = removal of reverse onus of proof in NSW and QLD (question 2.5)
"Advice" = Victorian requirement to engage qualified OHS advice (question 2.6)
"WHSO" = Queensland requirement for Workplace Health and Safety Officers (question 2.7)
"EU" = enforceable undertakings (question 2.8)
"Unions" = right of OHS-qualified union officials to enter workplace (question 2.9)
"Consult" = requirement to consult with HSRs (question 2.10)
"Elect" = entitlement of workers in all businesses to elect HSRs (question 2.11)
"Issues" = default issue regulation procedures (question 2.12)
"Cease" = ability to cease work where considered unsafe (question 2.13)
"Notify" = requirement no notify regulator of serious incidents

Scale: no change =0, minor change =1, significant change =2
(as per weights assigned in survey analysis, Appendix C)

Figure 7.2: Comparison of benefits, by source



Legend and scale as per Figure 7.1

7.2 Impact on business

While dealing with multiple OHS regimes does impose significant costs on a number of businesses, only a small proportion of businesses are affected.

Not only are the vast majority of Australian businesses small, but the Productivity Commission (2004) estimated that 99% of Australian businesses only operated within one jurisdiction in 1998.

- Of the businesses that do operate in multiple jurisdictions, nearly two-thirds (65%) only operate in one other jurisdiction than their home one (ABS, 2007).
- Even for large businesses with over 200 employees, the Productivity Commission (2004) reported that the majority (58%) still only operate within one jurisdiction[16]. However, of the remaining large businesses that operate across jurisdictions, they tend to have operations in around five jurisdictions on average (ABS, 2007).
  - On average, multi-state firms in the survey also operated in five jurisdictions.

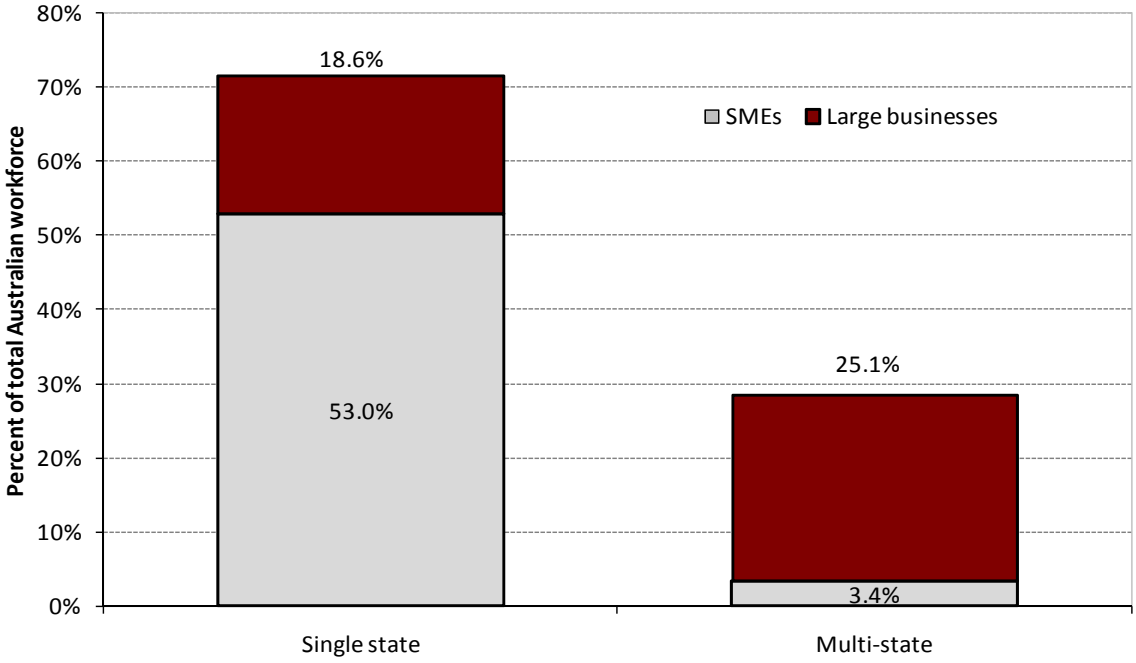
These ratios are somewhat different if weighted by employees. While only 0.3% of businesses have more than 200 employees, according to the Productivity Commission, these businesses accounted for 44% of private sector employment[17]. Because of large businesses' higher propensity to operate across borders, and large employment share, this means that an estimated 28.5% of private sector workers are employed in businesses that operate in multiple

[16] ABS (2007)

[17] ABS (2002)

jurisdictions (Productivity Commission, 2004). While most employees of multi-state businesses work for large firms, a significant number of single-state workers are also employed by large firms (Figure 7.3).

Figure 7.3: Distribution of employment by size of business and jurisdictions of operation



Source: Productivity Commission (2004).

7.2.1 Impact on multi-jurisdiction businesses

For the impact analysis, the key issue is quantifying the impacts summarised qualitatively in Section 7.1, which mainly affect multi-jurisdiction businesses due to the lack of uniformity. The National Research Centre for OHS Regulation (2008) states that: "The most notable conclusion that emerges from an overview of the Australian OHS legislation is its lack of uniformity. The lack of uniformity is even greater if the analysis is extended to inspection and enforcement practices." Telstra (2008) succinctly described the complexity of the differing regulations across the country as a "morass"[18]

Attempts by Safe Work Australia's predecessors to reduce this disparity by implementing agreed National Standards have not been overly successful. The Industry Commission (1995) noted "as governments have been unable to agree on how to implement the national standards, significant differences in OHS law remain between the jurisdictions. Furthermore, there has been little coordination between implementation of national standards and reform of OHS regulation." The Queensland Farmers Federation (2006) echoed similar sentiments: "Too many times COAG agree on principles, but then state government departments develop

[18] Telstra itself is only subject to the Commonwealth OHS regime, but has to deal with state systems in relation to contractors, service providers and infrastructure

inefficient, inconsistent regulatory approaches in each state, adding to the costs of running business".

Apart from imposing costs on business, the increasing diversity of jurisdiction regulations may impose safety costs.

- The Regulation Taskforce (2006) supported some of its conclusions with a citation from the Institute of Public Affairs that "the chief feature of Australia's [OHS] schemes is their inconsistency [which] works against the national objective of safe work environments".
- The Productivity Commission (2004) cites Pacific National as saying that: "Rather than being proactive and developing better prevention and implementation strategies, internal safety management staff must spend time training and researching jurisdictional differences".
- Similarly, the Industry Commission (1995) cited BHP: "While the costs of complying with a plethora of confusing and often contradictory cross-jurisdictional OHS requirements are large, the extent of those extra costs is irrelevant - the fact that there are extra costs at all just adds a restrictive burden to industry - without promoting safer performance."
- Results from the survey indicate that operating under a nationally consistent set of OHS rules will lead to a minor increase in safety (Appendix C).

The most prominently reported cost of the current arrangements is the volume of red-tape faced by multi-jurisdiction employers. Red-tape and system duplication causes an increase in the efforts to meet multiple requirements for record keeping, reporting, licensing, and documentation of risk assessments. These processes are necessary to support the OHS framework in each jurisdiction, but the differences shift an employer's OHS focus from improving safety in the workplace to dealing with paperwork.

A possible indication of the benefits to multi-state businesses can be inferred from the handful of businesses which were able to provide quantitative estimates to the Productivity Commission (2004) of the costs they incurred from working in multiple jurisdictions. Dividing these costs by their employment numbers yields an average cost of $25.78 per worker (Table 7.2). Assuming the Commission's estimate that 28.5% of Australian private sector employees worked for multi-state businesses in 1998 still holds, then there would currently be 2.1 million such workers (ABS, 2008). Adjusting for inflation since 2004, this yields an estimated total cost to private companies of working across multiple OHS jurisdictions of $61.8 million per annum. However, given the small sample size, this figure cannot be considered robust, and should only be treated as illustrative.

- This estimate of $61.8 million per year accords with the estimate of direct costs imposed on firms of $73.0 million derived from the survey (Appendix C).
- The above figures only include the direct costs to firms. Once the indirect benefits of harmonisation are also included (including reduced incidents and higher productivity) the survey indicates total benefits of around $268 million per year for multi-state firms.
- However, there are some specific aspects of the model Act that firms considered costly (particularly union access). Once these are netted out, the implied benefit of the model Act (that is the benefits of harmonisation in general, minus specific costs from the Act

that achieves the harmonisation) was $82.12 per worker for multi-state firms. This is equivalent to around $179 million net benefit for such firms[19].

- Multi-state firms were also asked what they would have been willing to pay to operate under a single national OHS regime. The average answer was $75.49 per worker (which is close to the derived net benefit per multi-state worker of $82.12 above).

Table 7.2: Estimated costs of multiple OHS regimes, selected large companies

Company name	No. Employees	Estimated cost of multiple regimes	Cost per person
Optus	~10,000[a]	$225,000	$22.50
Insurance Australia Group	~10,000[a]	$600,000	$60.00
BlueScope Steel	21,000[b]	$175,000	$8.33
Skilled Engineering	28,000[c]	$1,250,000	$44.64
CSR	14,626	$250,000	$17.09
Woolworths	190,000	$400,000[d]	$2.11
Average			**$25.78**

Notes: Employment figures sourced from annual reports. Figures quoted in original source were joint for OHS and workers' compensation: both factors assumed to be 50% of total. (a) Employment sourced from LinkedIn.com. (b) Not all employees work in Australia. (c) Employment figures are labour-hire placements per annum. (d) Costs are specifically OHS (not derived from a joint cost).

The main costs to business of introducing the model Act will be learning how to 'play by the new rules'. Further, these costs are unlikely to be greater than the costs of ongoing changes under disparate jurisdictional regimes were the model Act not to be introduced. Jurisdictional OHS Acts are generally reviewed every five years or so, with changes to subordinate regulation being considerably more frequent. Thus, introducing the model Act could be seen as part of an ongoing regular change process consolidated into one single change that harmonises across jurisdictions.

- Indeed, for multi-jurisdictional employers, there may even be a reduction in adjustment costs, as they will only face one set of changes over 2009–2011, rather than potentially several jurisdiction-specific sets of change.
- Moreover, such benefits will be ongoing. Under the model Act, all future changes will be conducted on a single, nationally coordinated basis.
- In the survey, firms estimated that it would cost an average of $25 per employee to train them for the model Act.

7.2.2 Impact on single-jurisdiction businesses

The model OHS Act will provide a common understanding of duties and requirements regarding OHS matters and harmonise regulations across the country. While the inputs

[19] For reasons outlined in Section 7.2.2, Access Economics does not consider firms concerns about union entry to be valid; in which case the higher benefit figure of $268 million is more appropriate. However, in the interests of conservatism, the lower figure here is adopted.

required to make these changes are expected to be minimal, the end result will mean changes in practice for some jurisdictions for specific regulatory areas.

Under the model OHS Act (as per current WRMC recommendations) the following changes will occur (examples of the changes detailed in Section 7.1).

- In NSW and Queensland, if a business is prosecuted for an OHS breach, the State will have to prove the breach, rather than the business proving its innocence (Recommendation 62).
- In Victoria, employers are currently required, so far as reasonably practicable, to engage or employ qualified persons to provide OHS advice. However, the model Act does not contain this requirement (Recommendation 139), as the WRMC considered such a requirement might encourage managers to delegate their responsibilities.
- In Queensland, if a business employs more than 30 people it is currently required to appoint a qualified person as a health and safety officer. Under the model Act, this will no longer be a requirement (Recommendation 139).
- In SA, the model Act will provide for enforceable undertakings as an alternative for punitive fines for many offences (Recommendation 152). The aim is to redirect businesses' costs away from fines and towards preventive actions which, in the long term, may reduce incidents and costs.
- In SA, Tasmania, WA and the Commonwealth, union officials with appropriate OHS qualifications will gain right of entry to workplaces for OHS purposes (Recommendation 204). This will enable them to inquire into suspected OHS contraventions, or consult with and advise workers on OHS matters.
- In Tasmania and the NT, workers in businesses with less than 10 employees will be entitled to elect a HSR (who the employer should train) (Recommendation 101). This may increase training costs but should also reduce the cost of occupational incidents.
- In the ACT, a new OHS Act will come in to force later in 2009, with subsequent potential transition to the harmonised regime in 2011. The two regimes are very similar, but there are some differences, for example the ACT *Work Safety Act 2008* will allow union prosecution, but the model Act regime will not.
- Under Commonwealth jurisdiction, OHS breaches for duties of care will now only be criminal liabilities (rather than civil) which may entail longer proceedings (Recommendation 50).

As has been noted, the principal OHS Acts of each jurisdiction have a degree of commonality. The above list represents those changes which appear to be the most significant adjustments that businesses in specific jurisdictions will face in adopting the model Act. With the exception of the entitlement of workers in micro businesses in Tasmania and the NT to elect HSRs; none of the above recommendations would appear to add directly to businesses' safety costs.

- Businesses under the Commonwealth's jurisdiction may potentially face longer court proceedings; but would probably see this as a reasonable trade off for the higher standards of proof entailed in criminal matters. However, efficiencies may be obtained through the proposal for an infringement notice scheme, which would considerably simplify enforcement of a range of minor offences.

Survey results implied that single-state firms believed that the model Act would impose significant net costs on them. However, this was primarily predicated on the belief that union access would both drive up compliance costs and drive down safety benefits, which is highly questionable. It is also inconsistent with the experiences of NSW and Victoria, where such access is allowed (Maxwell 2004, Stensholt 2007). Data provided by WorkSafe Victoria shows that the level of disputes regarding union right of entry are comparatively low. In the past three years, inspectors dealt with only 16 right of entry disputes, representing less than 1 per cent of the total number of total service requests for the same period.

Another questionable belief that had a small negative impact concerned the Act's increased penalties. While firms believed that both enforceable undertakings and penalties would have similar positive safety benefits, they believed the costs of penalties would be far larger than those of undertakings. In practice, however, maximum penalties almost never applied, and enforceable undertakings are several times larger than penalties.

Thus, if OHS-qualified union officials were not allowed access, and penalties had similar costs to undertakings, then single-state firms would consider the Act to be beneficial.

7.2.3 Small businesses

The main component of the Act that would appear to impact on small business is Recommendation 101 that allows businesses of any size to elect HSRs. In Tasmania and the NT, the relevant legislation currently only provides for HSRs in businesses with more than ten people. It is not clear how many Tasmanian and NT micro-businesses (less than ten people) will comply with the new requirement to train an HSR. Small businesses have low rates of knowledge of government regulations. Mayhew (1997) observed that only around a third of small businesses are members of an employer organisation. He also noted that even when they were members, and thus could avail themselves of information provided: "small business owners don't read, they hate reading, they hate paperwork - that's why they are in a trade". They also have low compliance with OHS regulations in general (Industry Commission, 1997). They also have very low training rates. The National Centre for Vocational Education Research (2003) found that 82% of small businesses had not expended money on any form of staff training. Finally as the National Review notes, workers may not be aware of this entitlement, nor feel the need to have an HSR, nor necessarily want to volunteer to be the HSR.

- According to the ABS (2007) there were 17,520 small businesses (employing <20 workers) in Tasmania and the NT in 2006. Assuming half of these have less than ten workers yields 8,760 businesses. Assume further that all of the 18% of small businesses which do any training at all will now take on an HSR (as their workers all know about and want HSRs). There will then be 1,576 new HSRs trained. The average price from businesses advertising HSR training online is around $800. Thus the cost of training these new HSRs would be around $1.26 million. Follow up training may be around 1/10th of this figure per annum.

Currently, many small businesses are overwhelmed by the complexity of OHS requirements– which is at least partly due to the inability of (national) standards to 'fit' into (state) OHS Acts. The Small Business Deregulation Taskforce (1996) found that:

> *"The complexity, size and detail of OH&S regulations and codes of practice can in part be attributed to the institutional arrangements and processes for their development. Outcomes of the National Occupational Health and Safety*

Commission, Worksafe Australia and individual State OH&S authorities are not effectively coordinated and lines of responsibility and accountability are unclear."

Given that under harmonisation, all future standards will be coordinated by the WRMC and incorporated into the same set of laws, current levels of complexity and confusion should be reduced in the future, for all businesses. The creation of a harmonised OHS legislative framework will also mean that, for the first time, it will be possible for industry bodies, union groups, academic, technical and OHS specialists as well as governments to develop instruction, guidance and training material that readily transfers from one jurisdiction to another.

- While the survey had no responses from small businesses, it did show a weak inverse link between firm size and OHS costs per employee. This indicates the probable existence of a fixed cost component to OHS costs. Thus, while the average for the large businesses who responded was $945 per worker per year, it may cost more than this for small businesses. The HSE (Lancaster et al, 2003) reported that OHS costs per employee were significantly higher for small businesses than large ones, which is consistent with a fixed cost aspect.

While most small businesses do not operate in multiple jurisdictions, a significant number still do (Figure 7.3). Presumably, while their operations would be small in each state, they would still incur a relatively large fixed cost component for each state they trade in. To the extent that this is the case, by ameliorating these differences, the model Act may bring in proportionately larger benefits for multi-state small businesses than multi-state large businesses.

Again, for single-state small businesses, the situation is less clear. The qualitative assessment in this RIS of individual aspects of the model Act indicates a net benefit to single-state businesses. As does a reasoned interpretation of the survey results. As small business' OHS costs are proportionately larger than their big business counterparts, any such increase in benefits from the Act may have a proportionately larger impact on small businesses.

7.3 Impact on workers

It is unlikely that there will be any significant costs to workers. The costs of training (beyond that required for the normal volume of OHS changes) and additional safety equipment (if any) will be paid for by employers. However, in some labour hire or sub-contracting arrangements, self-employed persons may be workers, but also have responsibilities as persons conducting a business or undertaking.

The benefits to workers are primarily from cumulative marginal safety enhancements (Table 7.1). Safety enhancements also benefit businesses, governments and society since the costs of injuries include workers' compensation payments, lost productivity, medical, hospital and carer costs to the economy as a whole. The economic cost of years of healthy lost life due to injuries and deaths can be significant, as noted earlier, so altogether the potential benefits from better OHS regulation can be very substantial. ACIL Tasman (2006) estimated that the benefits of NSW's OHS regulations introduced in 2001 were over $5 billion.

The ACTU (2008) has claimed that two aspects of the model Act may reduce worker safety: removal of the reverse onus of proof in NSW and Queensland and removal of union rights to prosecute in NSW.

The provisions in the NSW legislation relating to reverse onus of proof and union prosecution are only relevant where there has been a breach of the legislation and apply to how a breach is dealt with. The mechanisms around how prosecutions are conducted do not determine the level or standard of workplace safety required to be provided to workers or others – those requirements are set through the duties on persons with responsibilities under the Act and through the regulations.

While the reversal of onus of proof in NSW has been highly contentious, its practical impact appears not to have been significant. The National Review (2008) observed:

> *"We have not been helped in analysing this matter by the apparent lack of substantive evidence about the effect of a reverse onus on OHS outcomes. We were unable to identify objectively whether the legislative approach taken in Queensland and NSW to the reverse onus results in a materially different culture of compliance or OHS performance generally than in the jurisdictions where it does not exist."*

The Review also cited the opinion of the High Court to the effect that in other states "in practical terms, the onus of proof may shift to the defendant once the prosecution has made its case". In consultations NSW regulators considered that while the onus of proof was an equity issue, it was not an issue of practical significance. Similarly, Queensland regulators had undertaken a study of prosecution rates between the two regimes and had not observed any distinct differences.

The right of unions to prosecute for OHS breaches in NSW has also been highly contentious. Employer groups are strongly opposed, and unions strongly support it. However, again, the practical impact may be minimal. The National Review cited Unions NSW that in the 12 years between 1997 and 2009, ten successful prosecutions had been launched by unions. In contrast, in the four years between 2002-03 and 2006-07, regulators launched 1,866 successful prosecutions in NSW (WRMC 2008). The National Review (2009) concluded that:

> *"We were not able to discover any meaningful evidence about whether private prosecutions resulted in better OHS overall compared with the jurisdictions in which they were not available."*

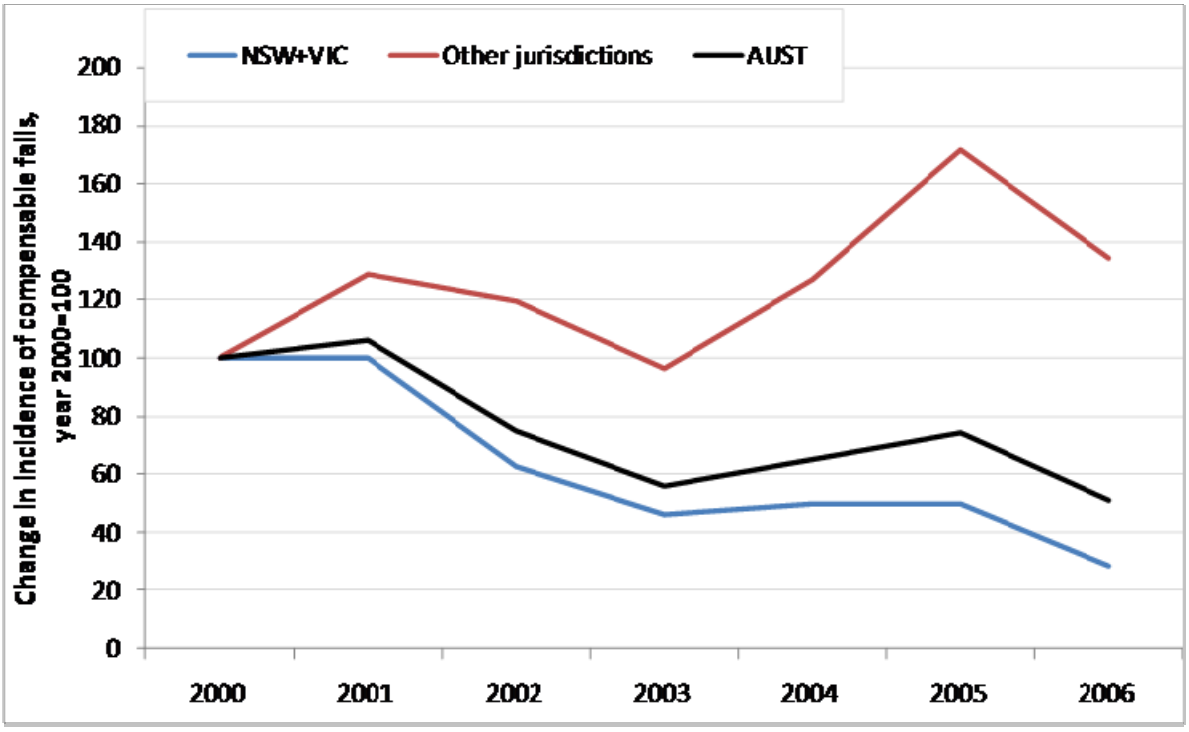
One of the reasons that there have been few union prosecutions is that it is expensive to prosecute. Unions do receive a "moiety" in NSW for successful prosecutions, but this does not cover all the costs of prosecuting. Arguably, the threat of enforcement action may influence whether a person does comply or not with the OHS requirements. Prosecution action is just one way of dealing with situations where the standards or levels of safety have not been reached and where workers or others have been put at risk. The majority of breaches of OHS standards are dealt with by means other than prosecution. Therefore, differences in the mechanism of prosecution are unlikely to have any impact on the level of safety in a workplace.

WRMC accepted the National Review recommendations that allow third parties to request a regulator to prosecute a suspected breach and, should the regulator decline, the party could directly request the public prosecutor to do so. Both of these provisions would facilitate third parties to indirectly instigate – at no cost to themselves - prosecutions of breaches that might have otherwise slipped under the radar.

While the net safety effects of the model Act are positive, the costs of changing regulations (mainly borne by businesses and governments) are immediate, but the benefits (to workers) may only arise some years into the future, as incidents that would have otherwise happened now do not. Trend analysis can be used to project forward both the number of incidents that would have been expected to occur under the old regulation, and those expected to occur under the new regulation. The benefits of improved safety can then be discounted back to net present value terms, and compared against the costs of implementing the new regulations.

Using such trend analysis, the effects of changes in OHS regulations on worker safety can be assessed. Previous reports by Access Economics and other consultants have shown that significant changes in OHS regulations and codes of practice can bring about improvements in worker safety. For example, a large number of serious falls in housing construction occur at heights between two and three metres. Between 2001 and 2003, NSW and Victoria changed their regulations to require physical fall protection for employees working at heights of two metres or more. Thereafter, injuries from falls in those jurisdictions began to decline, whereas fall injuries kept increasing in other jurisdictions (Figure 7.4). Other jurisdictions should soon follow suit, in which case, their safety record should improve too, reflecting a considerable gain against the counterfactual of fall levels that would probably would have continued to increase otherwise.

Figure 7.4: Impact of changed regulation (NSW, VIC) on falls in housing construction



Note: 'Incidence' is falls per 1,000 workers.

Source: Safe Work Australia data.

Unlike this example of specific jurisdictional practical differences, there are unlikely to be any significant benefits to workers from the changes proposed under the model Act. The model Act does not significantly depart from the general structure and content of existing OHS

legislation, but rather consolidates existing elements in a more consistent manner. Therefore, it is unlikely to change safety outcomes substantially and would not be practicable to model.

- The changes that will take effect due to implementation of the model Act are, for the most part, quite minor, whereas more significant differences exist in the regulations and codes of practice. The examples of beneficial regulation noted above involved large scale changes in subordinate practice.
- In order to quantify the effects of a change, it is usually necessary to either examine the impact retrospectively, or those of a similar change (also retrospectively). Access Economics is not aware of any OHS precedent that would serve that purpose for this exercise.
- The National Review (2008) reached a similar conclusion "The standardised statistics are, in our view, not reliable for reaching conclusions about the effect of particular legislative provisions."

Accordingly, Access Economics has not attempted to quantify safety benefits from the model Act, while noting that marginal benefits may arise.

- The survey indicated that there would be minor health benefits for workers in multi-state firms, reducing claims by around 0.4% per year. However, this cannot be considered to be anything more than indicative.
- The survey did not ask single-state firms about expected changes in incidents.

7.4 Impact on government

For similar reasons as outlined above, costs to government are not likely to be significant. Jurisdictions are continually implementing changes to OHS regulations, with commensurate education and advice costs. In discussions with regulators, most saw this as just a continuation of this process. None indicated that they would require funding above their normal budget allocation[20].

Maxwell (2004) lamented "There is considerable inefficiency and duplication of effort as individual jurisdictions take it in turns to review and update their legislation".

Given there are ten sets of jurisdictional OHS legislation[21], which are each reviewed approximately every five years, this implies at least one major review every year somewhere in the country. On this basis, instead of at least two reviews over 2009 to 2011, there should only be one (the model Act), yielding a net saving of the costs of one review over this period for government collectively.

If the Act reduces workplace incidents, governments may benefit from increased taxes and reduced welfare payments. As noted above for workers, safety benefits are viewed at present as a small benefit difficult to quantify – with even smaller potential gains for governments than for workers.

[20] Access Economics has asked regulators for estimates of the costs of introducing the model Act.

[21] Including SeaCare.

While there may be upfront costs relating to adjusting current processes and systems to the new legislation, there are likely to be savings in the long run from decreased costs related to the development of regulations, codes of practice and compliance and enforcement policies, as these will henceforth be undertaken at a national level. Similar future economies of scale and scope can be expected for education and training processes.

7.5 Access Economics survey

The data and literature review revealed there are no official or robust data in Australia on the costs of dealing with multiple OHS regimes, or even of complying with OHS regulations in general, which could serve as a baseline against which to measure the impact of harmonisation. Accordingly, as part of the Consultation RIS phase, Access Economics conducted a survey to attempt to establish what such costs currently are, and how they could potentially be affected by harmonisation.

The Industry Commission (1995) recommended that data be collected on the general costs of OHS regulations on business: "From an economy-wide perspective it is important to determine the impact of workplace health and safety regulations on the economy. To undertake this task, accurate compliance cost data is required".

However, as ACCI (2009) observes 14 years later, this never happened. "It is very difficult for employers to quantify the overall OHS regulatory burden given that no official statistics are collected on this matter."

The Industry Commission (1995) also attempted to gain information specifically pertaining to the costs of complying with multiple OHS regimes. It surveyed around 90 large members of the Business Council of Australia, and all the Commonwealth's then owned Government Business Enterprises. While two–thirds of respondents considered that non–uniformity imposed costs on their operations, only three indicated they would be able to quantify the costs.

Accordingly, a survey was always going to be necessary to obtain primary data for this RIS. However, any such unofficial survey on OHS costs would have to operate under a number of constraints.

- Usually, only the largest of businesses will have the specialised personnel and systems in place to be able to answer such questions at little time or effort costs to themselves, which is important for voluntary surveys. This more or less precluded a strong response rate from the small business sector.
- The ABS has a detailed and lengthy survey clearance process which is mandatory for large surveys (over 50 invitees) conducted by, or on behalf of, government bodies. The timeframe available for this RIS did not allow for such a delay. The ABS provided permission for this survey to have up to 200 invitees without requiring clearance.
- However, with a sample of 200 and an expected low response rate, it was problematic whether there would be enough participation to generate statistically significant representative data.

Access Economics selected 200 invitees from the Business Review Weekly Top 500 firms, who represented a fair spread of industries and across regions. A pilot survey was also conducted.

- Small business associations in cross-border areas (Coolangatta-Tweed Heads and Albury-Wodonga), and jurisdictions with few large firms (Tasmania, NT and ACT) were also contacted and asked if they could invite members to participate. However, not unexpectedly, there were no responses from small businesses.

The total response from large businesses was 30. This is a reasonable response rate (15%) for such a survey.

- The UK Health and Safety Executive (2003) survey of general OHS costs achieved a similar response rate (17%).
- The Industry Commission (1995) surveyed over 100 large businesses, of which only three said that they could quantify the amount of additional OHS spend caused by having to deal with multiple jurisdictions.

However, a response size of 30 with no small business response is not considered ideal for valuable information. Under the Central Limit Theorem, a response of 30 can potentially be considered a representative sample - but only if the invitees are chosen on a purely random basis, which these were not.

- Also four responses were not completed properly, which left only 26 useable responses.

Due to the low response rate, some internal inconsistencies in responses, the necessarily subjective nature of some questions, and some methodological issues only apparent in hindsight, Access Economics does not consider the survey results sufficiently robust to enable the qualitative arguments of the Consultation RIS to be replaced by quantitative arguments in the Decision RIS.

That said, the survey can be interpreted to show a net benefit to society from harmonisation, and in many areas the results concur with the first-principles results in the Consultation RIS.

The survey implies that single-state firms would lose from harmonisation, while multi-state firms would benefit. Overall, at first glance the results suggest firms would incur net costs overall. This does not sit well with business' often-expressed belief that OHS harmonisation would be a good thing.

- However, most of this expected negative outcome is due to the fact that surveyed business thought that allowing OHS-qualified union officials workplace access would be highly damaging to safety outcomes. Access Economics considers such an outcome to be implausible. If the contribution to safety from allowing OHS-qualified union officials access to workplaces was increased to zero (leaving the negative effect on compliance costs unchanged) the net costs to firms would virtually disappear.
- There would still be a small net negative benefit to business. This residual is due to respondents assigning a large cost to increased fines under the model Act. However, a fine is a cost of failing to comply with OHS requirements. That is, fines are only incurred after a breach has been committed.
- If the perceived safety benefits of union access was increased to zero (holding the compliance costs constant) and the perceived costs of penalties reduced to those of

enforceable undertakings[22] (holding safety benefits constant), there would be a net benefit to firms of $83.6 million.

Taking into account these factors, the net costs to firms is outweighed by the estimated benefits of $225 million per year to workers and the rest of society[23]. Overall, there would be an annual net benefit to the nation of $181 million per annum[24]. (However, as noted above, these results can only be held to be indicative, at best.)

- For the first year, however, this would be outweighed by the one-off training costs of around $192 million.

Table 7.3: Estimated national benefits of OHS harmonisation (per annum)

Class	Net benefit ($m)
single state firms	*-223.5*
multi-state firms	*179.3*
Total firms	-44.3
Workers	114.8
Rest of Society	110.2
Total	**180.7**

Note: benefits from reduced incidents are included for both workers and firms.

Had the survey, or other feedback from the Consultation RIS provided sufficiently robust data, key parameter assumptions would have been tested in order to account for uncertainties, with findings presented in this chapter.

Full details of the survey can be found at Attachment C.

[22] Consultations revealed that, in reality, enforceable undertakings costs are far larger than penalties.

[23] Under a broader view of the firm that includes both workers and the owners of capital, there is an expected net benefit to firms.

[24] As these figures are based on current data, they could be expected to be slightly larger when the national regime commences in 2011, due to wage and price inflation, and labour force and GDP growth.

8 Conclusions and recommendations

All Australian jurisdictions' OHS legislation is based on the same set of principles (the Robens principles)[25]. However, each state and territory interprets those principles in somewhat different ways. Subordinate regulations and compliance policies also differ between jurisdictions.

This can impose substantial costs on businesses that operate in more than one state or territory. Accordingly, Australian governments are committed to harmonising OHS laws. The first step in this process is a model Act, which all jurisdictions will adopt by 2011. This RIS assesses the costs and benefits of adopting that Act (Option 2) relative to retaining the status quo (Option 1). Reform of OHS regulations, codes of practice and compliance policies will follow subsequently, but is dependent upon this first step.

Costs and benefits to business

COAG has a Business Regulation and Competition Working Group that is tasked with assessing 27 priority areas of regulation. Of the 27 types of regulation that this council covers, OHS ranks as the highest concern among businesses.

The actual costs of OHS compliance in Australia are not known, as there have been no surveys by the ABS or any other authority. For most of these regulations - given the large number of reviews which have been conducted - there should be at least offsetting safety benefits. These benefits comprise, for employers, largely financial gains such as higher productivity, lower staff turnover and reduced workers' compensation premiums. Most of the safety benefits are for workers, and are largely non-financial, realised through better health outcomes due to fewer incidents and lower exposure to occupational risks for disease or injury.

However, costs caused by overlaps and inconsistencies between jurisdictions are unnecessary and are unlikely to have any offsetting safety benefits. Moreover, if general OHS compliance costs are little charted, the extent of compliance costs caused by differences between jurisdictions is largely unknown.

First, the model Act does not significantly depart from the general structure and content of existing OHS legislation, but rather consolidates existing elements in a more consistent manner. Therefore, it is expected that implementation of the model OHS Act will not significantly change current OHS responsibilities.

Second, as such Acts consist of general duties, they only represent part of the total compliance costs, which are also incurred in subordinate regulations and compliance policies, but are outside the scope of this RIS, which is specifically looking at the implementation of the model OHS Act.

The most significant aspect of the model Act is that it will recast the primary duty holder structure from one defined by the employment relationship (i.e. employer/employee) to one based on a broader range of work relationships. The principal duty holder under the model Act

[25] The "Robens" principles from a landmark 1972 British report by Lord Robens.

will be a person conducting a business or undertaking and the duty of care will be owed to workers carrying out activities for that business or undertaking and to any other person affected by those activities.

The main costs to business of introducing the model Act will be in learning how to 'play by the new rules'. These costs are not known either, but are not likely to be significant, given that the model Act retains the general duties of care that exist in current OHS Acts. Further, these costs are unlikely to be greater than the costs of ongoing changes under disparate jurisdictional regimes were the model Act not to be introduced. Jurisdictional OHS Acts are generally reviewed every five years or so, with changes to subordinate regulation being considerably more frequent. Thus, introducing the model Act could be seen as part of an ongoing regular change process consolidated into one single change that harmonises across jurisdictions.

- Indeed, for multi-jurisdictional employers, there may even be a reduction in adjustment costs, as they will only face one set of changes once the model legislation is implemented, rather than potentially several jurisdiction-specific sets of change. Moreover, such benefits will be ongoing. Under the model Act, all future changes will be conducted on a single, nationally coordinated basis.
- For single jurisdictional employers, who will not benefit from the Act's reductions in cross-border red-tape restrictions, the picture is less clear. Some aspects of the model Act are not perceived by business as being beneficial, particularly allowing OHS-qualified union officials access to workplaces, and increased penalties.
- However, as measured from a pure OHS perspective, Access Economics does not consider that these aspects would impose significant costs. If anything, site visits by OHS-qualified union officials should increase – not decrease – safety outcomes. Also, if historical precedent continues, average penalties are likely to be several times smaller than average enforceable undertakings – not several times larger. Both the survey and the reasoning outlined in Table 7.1 indicate that the remaining aspects of the model Act which affect single-state firms have a positive sum. Erring on the side of caution, Access Economics assumes a neutral for single-state firms.

Costs and benefits to workers

There are unlikely to be any significant costs to workers. The cost of training (beyond that required for the normal volume of OHS changes) and of additional safety equipment (if any) will be paid for by employers.

- There may be exceptions for individual subcontractors and persons supplying their services through labour hire businesses. However, in this context, such people may be better thought of as self-employed businesses rather than workers.

In terms of benefits, the model Act ensures that all types of workers (not only employees) are equally protected by the OHS laws. Nationally consistent OHS laws will also contribute to the ease with which workers can move between jurisdictions (particularly self employed contractors), by allowing for regulations to be made for mutual recognition of OHS licenses across jurisdictions.

More detailed requirements in OHS regulations and practical guidance in codes of practice can bring about further improvements in worker safety. However, it is difficult to quantify any changes to incident outcomes from as yet unspecified consequent changes to regulations.

- In principle, with sufficiently detailed and lengthy statistics, such changes could be modelled. However, such data are not available (again, mainly due to jurisdictional inconsistencies). The National Review (2008) concluded: "The standardised statistics are, in our view, not reliable for reaching conclusions about the effect of particular legislative provisions."
- The survey associated with this RIS found an expected minor benefit to worker health, of around 0.4%, but this figure cannot be considered robust (see Appendix C).

Costs and benefits to governments

For similar reasons as outlined above, costs to government are also not likely to be substantial. Jurisdictions are continually rolling out changes to OHS regulations, with commensurate education and advice costs. In discussions with regulators, most saw this as just a continuation of this process. None indicated that they would require funding above their normal budget allocation[26].

Benefits to governments are likely to be more significant in the long term due to the reduction of duplication, as future legislative reviews and development of legislation and codes will be undertaken nationally. If the Act reduces industrial incidents, governments may benefit from increased taxes and reduced welfare payments.

Methodology

Access Economics has conducted consultations with key government, business and worker bodies, and undertaken extensive literature searches. Unfortunately, to date, available data have not permitted robust qualitative analysis for this Decision RIS.

Access Economics surveyed businesses across a range of sizes, industries and regions in an effort to obtain primary data on compliance costs and safety benefits. However, due to a number of factors, including a low number of responses and data inconsistencies, Access Economics does not consider that the survey results are robust enough to build a quantitative analysis that could replace the qualitative analysis of the Consultation RIS. Generally speaking, however, the survey results are consistent with that analysis, and are used herein as a secondary line of evidence.

Conclusion

Costs and the benefits of the model Act are small and not readily quantifiable. The qualitative and quantitative evidence available suggests that the model Act is expected to bring medium sized benefits for multi-state business, principally in reduced red tape for multi-jurisdiction operations. These will be partially offset by a small increase in adjustment costs (relative to ongoing adjustment costs under Option 1). The impact on single-state businesses is unclear, but probably neutral overall. There will probably be some small safety benefits for workers, with no significant offsetting costs to workers. There will be a small increase in adjustment

[26] Although some indicated that they thought the Commonwealth should give them supplemental funding.

costs for government (relative to such ongoing costs in the counterfactual); partly offset by some marginal benefits in improved compliance efficiency.

Combining these effects, Access Economics expects that the model Act will confer an overall marginal to small net benefit (Table 8.1)

- Results from the survey indicate medium benefits to multi-state businesses, a small net cost to single-state businesses, and small benefits to workers and society.

Table 8.1: Relative benefits of model Act over no change scenario

Category	Benefit	Cost	Net
Business	Medium	Small	Small gain
Workers	Small	Nil-Marginal	Small gain
Governments	Marginal	Small	Marginal cost
Society	Small	Marginal	Marginal-Small gain

Access Economics' findings against the objectives of the model Act (as defined in section 2.3) are summarised below.

- **Reducing compliance costs for business**. For multi-state businesses, the model Act possibly confers benefits in the order of around $179 million per annum (see discussion around Table 7.2). For single-state businesses, most jurisdiction-specific changes are neutral or cost-saving. Those which may increase costs are small. Furthermore, all businesses, including single-state ones, will benefit from increased clarity and more integrated ongoing reforms.
- **Improving efficiency for regulatory agencies**. COAG (2008) also requires that after the model Act is adopted, all further changes to OHS legislation and subordinate instruments will be coordinated nationally through the WRMC. This will improve regulatory efficiency. Consistency in principle OHS Acts will also facilitate the consistent adoption of model regulations and national codes of practice, which has previously been problematic.
- **Improving safety outcomes.** The reduction of red tape and greater certainty for duty holders should allow business to focus more pro-actively on health and safety improvements, rather than on mere compliance. Regulatory efficiencies should also allow more scope for regulators to actively improve safety in workplaces. In addition, the model Act applies to a broader range of modern employment relationships and thus aims to protect all types of workers, irrespective of their employment relationship. The synergies and simplification of systems that will be obtained from common legislation should enable a higher standard of compliance with safety requirements. From the survey, it is possible that implementation of the model Act may reduce claims by around half a percent.

Importantly, the Act is a necessary first step to harmonising regulations, codes of practice and compliance and enforcement policies, which do offer scope for significant national benefits. Thus, from conceptual analysis, empirical evidence and consultations, **adoption of the model Act is the recommended outcome**.

Appendix A: Australian OHS legislation

WRMC (2008) contains the following lists of Australian OHS legislation in its appendices.

Principal OHS Acts

New South Wales.	*Occupational Health and Safety Act 2000*
Victoria.	*Occupational Health and Safety Act 2004*
Queensland.	*Workplace Health and Safety Act 1995*
Western Australia.	*Occupational Safety and Health Act 1984*
South Australia.	*Occupational Health, Safety and Welfare Act 1986*
Tasmania.	*Workplace Health and Safety Act 1995*
Northern Territory.	*Workplace Health and Safety Act 2007*
Australian Capital Territory.	*Occupational Health and Safety Act 1989*
Seacare.	*Occupational Health and Safety (Maritime Industry) Act 1993*
Commonwealth.	*Occupational Health and Safety Act 1991*

Other Acts covering OHS

New South Wales .

Workers' compensation Act 1987
Workplace Injury Management and Workers' compensation Act 1998
Workers' compensation (Bush Fire, Emergency and Rescue Services) Act 1987
Workers' Compensation (Dust Diseases) Act 1942
Sporting Injuries Insurance Act 1978
Explosives Act 2003

Victoria.

Dangerous Goods Act 1985
Equipment (Public Safety) Act 1994

Queensland.

Electrical Safety Act 2002
Dangerous Goods Safety Management Act 2001
Explosives Act 1999
Radiation Safety Act 1999
Transport Operations (Marine Safety) Act 1994
Transport Operations (Road Use Management) Act 1995
Mining and Quarrying Safety and Health Act 1999
Coal Mining Safety and Health Act 1999
Petroleum and Gas (Production and Safety) Act 2004

Western Australia

Mines Safety and Inspection Act 1994
Dangerous Goods Safety Act 2004

South Australia

Explosives Act 1936
Dangerous Substances Act 1979
Mines and Works Inspection Act 1920
Petroleum Products Regulation Act 1995
Workers Rehabilitation and Compensation Act 1986

Tasmania

Dangerous Goods Act 1998
Dangerous Substances (Safe Handling) Act 2005
Electricity Industry Safety and Administration Act 1997
Gas Act 2000
Gas Pipelines Act 2000

Occupational Licensing Act 2005
Plumber and Gas-fitters Act 1951
Security-sensitive Dangerous Substances Act 2005
Workers Rehabilitation and Compensation Act 1988

Northern Territory

Dangerous Goods Act 1998
Dangerous Goods (Road and Rail Transport) Act 2003
Radioactive Ores and Concentrates (Packaging and Transport) Act 1980
Workers Rehabilitation and Compensation Act 2007
Electricity Reform Act 2000
Electrical Workers and Contractors Amendment Act 2008

Australian Capital Territory

Public Sector Management Act 1994
Scaffolding and Lifts Act 1912
Machinery Act 1949
Dangerous Substances Act 2004
Clinical Waste Act 1990
Road Transport Reform (Dangerous Goods) Act 1995

Seacare

Seafarers Rehabilitation and Compensation Act 1992
Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992
Seafarers Rehabilitation and Compensation Levy Act 1992
Seafarers Rehabilitation and Compensation Levy Collection Act 1992

OHS regulations

New South Wales

Occupational Health and Safety Regulation 2001

Victoria

Occupational Health and Safety Regulations 2007

Queensland

Workplace Health and Safety Regulation 1997

Western Australia

Occupational Safety and Health Regulations 1996

South Australia

Occupational Health, Safety and Welfare Regulations 1995

Tasmania

Workplace Health and Safety Regulations 1998

Northern Territory

Workplace Health and Safety Regulations 2008

Australian Capital Territory

Occupational Health and Safety Regulation 1991
Occupational Health and Safety (General) Regulation 2007
Occupational Health and Safety (Manual Handling) Regulation 1997
Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000
Magistrates Court (Occupational Health and Safety Infringement Notices) Regulation 2004

Seacare

Occupational Health and Safety (Maritime Industry) Regulations 1995
Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003

Commonwealth

Occupational Health and Safety (Safety Arrangements) Regulations 1991
Occupational Health and Safety (Safety Standards) Regulations 1994

Other regulations covering OHS

Western Australia

Mines Safety and Inspection Regulations 1995
Dangerous Goods Safety (Explosives) Regulations 2007
Dangerous Goods Safety (General) Regulations 2007
Dangerous Goods Safety (Goods in Port) Regulations 2007
Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007
Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007
Dangerous Goods Safety (Security Risk Substances) Regulations 2007
Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007

South Australia

Dangerous Substances Regulations 2002
Explosives Regulations 1996
Explosives (Fireworks) Regulations 2001
Mines and Works Inspection Regulations 1998
Petroleum Products Regulations 2008

Tasmania

Dangerous Goods (General) Regulations 1998
Dangerous Goods (Road and Rail Transport) Regulations 1998
Electricity Industry Safety and Administration Regulations 1999
Gas (safety) regulations 2002
Gas Pipelines Regulations 2000
Security-sensitive Dangerous Substances Regulations 2005

Northern Territory

Dangerous Goods Regulations 2003
Dangerous Goods (Road and Rail Transport) Regulations 2003
Radioactive Ores and Concentrates (Packaging and Transport) Regulations 1980
Workers Rehabilitation and Compensation Regulations 2008
Electricity Reform (Safety and Technical) Regulations 2000
Electrical Workers and Contractors Regulations 1984

Australian Capital Territory

Scaffolding and Lifts Regulation 1950
Machinery Regulation 1950
Dangerous Substances (General) Regulation 2004
Dangerous Substances (Explosives) Regulation 2004

Seacare

Seafarers Rehabilitation and Compensation Regulations 1993
Seafarers Rehabilitation and Compensation Levy Regulations 2002
Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002

Approved codes of practice

Note: Many of these codes of practice are Australian Standards or National codes of practice declared by NOHSC or the ASCC.

New South Wales

Accommodation for Rural Agricultural Work
Workplace Amenities
Amenities for Construction Work
Amenity Tree Industry
Collection of Domestic Waste Compactors
Construction Testing Concrete Pumps
Control of Workplace Hazardous Substances
Control of Work-related Exposure to Hepatitis and HIV (Blood-Borne) Viruses
Cutting and drilling concrete and other masonry products
Electrical Practices for Construction Work Excavation

Façade Retention
Formwork
Labelling of Workplace Substances
Low Voltage Electrical Work
Manual Handling
Mono-strand Post-tensioning of Concrete Buildings
Moving Plant on Construction Sites
Noise Management and Protection of Hearing at Work
OHS Consultation
OHS Induction Training for Construction Work
Overhead Protective Structures
Preparation of Material Safety Data Sheets
Prevention of Occupational Overuse Syndrome
Pumping Concrete
Risk Assessment
Safe Handling Storage of Enzymatic Detergent Powders and Liquids
Safe Handling of Timber Preservatives and Treated Timber
Safe Use of Bulk Solids Containers and Flatbed Storage including Silos, Field Bins and Chaser Bins
Safe Use and Storage of Chemicals (including Herbicides and Pesticides) in Agriculture
Safe Use of Pesticides Including Herbicides in Non-Agricultural Workplaces
Safe Use of Synthetic Mineral Fibres
Safe Use of Vinyl Chloride
Safe Work on Roofs Part 1 Commercial and Industrial Buildings
Safe Work on Roofs Part 2 Residential building
Safety Aspects in the Design of Bulk Solids Containers including Silos, Field Bins and Chaser Bins
Safety in Forest Harvesting Operations
Safety Line Systems
Sawmilling Industry
Storage and Handling of Dangerous Goods
Technical Guidance
Transport and Deliver of Cash in Transit Industry
Tunnels Under Construction
Work in Hot or Cold Environments
Work Near Overhead Power Lines
Workplace Injury and Disease Recording

Victoria

Building and Construction in Workplaces
Confined Spaces
Dangerous Goods Storage and Handling
Demolition
Demolition (Amendment No1)
First Aid in the Workplace
Foundries
Hazardous Substances
Lead
Manual Handling
Plant
Plant (Amendment No1)
Prevention of Falls in General Construction
Prevention of Falls in Housing Construction
Provision of Occupational Health and Safety Information in Languages Other than English
Safe use of cranes in the building and construction industry
Safety in Forest Operations Workplaces

Queensland

Abrasive Blasting
Cash in Transit
Children and Young Workers
Compressed Air Recreational Diving and Recreational Snorkelling
Concrete Pumping
First Aid
Forest Harvesting
Formwork
Foundry
Hazardous Substances
Horse Riding Schools, Trail Riding Establishments and Horse Hiring Establishments Industry
Manual Tasks
Manual Tasks Involving the Handling of People
Mobile Crane
Noise
Occupational Diving Work
Plant
Prevention of Workplace Harassment
Recreational Technical Diving
Risk Management
Rural Plant
Safe Design and Operation of Tractors
Scaffolding
Steel Construction
Storage and Use of Chemicals at Rural Workplaces
Sugar Industry
Tilt-up and Pre-cast Construction
Tower Crane
Traffic Management for Construction or Maintenance Work
Tunnelling
Codes of practice made under the Electrical Safety Act 2002
Works (Protective earthing, underground cable systems and maintenance of supporting structures for powerlines)
Electrical Work
Working Near Exposed Live Parts
Electrical Equipment—Rural Industry

Western Australia

Abrasive blasting
Scaffolding
Formwork for Concrete
Management and Control of Asbestos in the Workplace
Safe Removal of Asbestos
Control of Scheduled Carcinogenic Substances
Concrete and masonry cutting and drilling
Safe use of Ethylene Oxide in Sterilisation/Fumigation Processes
Excavation
Fatigue management of commercial drivers
First Aid, Workplace Amenities and Personal Protective Equipment
Control of Workplace Hazardous Substances
Safe Design of Buildings and Structures
High pressure water jetting
Ferry and charter boat industry
Safety and Health within Waste Management and Recycling
Health and Safety in Welding

Labelling of Workplace Substances
Control and Safe use of Inorganic Lead at Work
Management of HIV/AIDS and Hepatitis at Workplaces
Manual Handling
Preparation of Material Safety Data Sheets
Managing Noise at Workplaces
Control of Noise in the Music Entertainment Industry
Prevention of Occupational Overuse Syndrome
Occupational Safety and Health in Call Centres
Occupational Safety and Health in the WA Public Sector
Prevention and Control of Legionnaire's Disease
Prevention of Falls at Workplaces
Spray Painting
Styrene
Surface Rock Support for Underground Mines
Safe Use of Synthetic Mineral Fibres
Tilt up and Pre-cast Concrete Construction
Safe Use of Vinyl Chloride
Violence, Aggression and Bullying at Work
Working Hours

South Australia

Miniature Boiler Safety AMBSC Part 1 Copper Boilers
Miniature Boiler Safety AMBSC Part 2 Steel Boilers
Electrical Installations—Construction and Demolition Sites
Guards for Agricultural Tractor PTO Drives
Boilers and Pressure Vessels—In service Inspection
Power Presses
Fire Hose Reels
Acoustics-Hearing Protectors
Recommended Practices for Eye Protection in the Industrial Environment
Part 1—Filters for Protection Against Radiation Generated in Welding and Allied Operations
Part 2—Filters for Protection Against Ultraviolet Radiation
Part 3—Filters for Protection Against Infrared Radiation
Cranes (including hoists and winches)
Guarding and Safe Use of Woodworking Machinery
Scaffolding Parts 1–4
Scaffolding Planks
Agricultural Wheeled Tractors-Rollover Protective Structures
Fixed Platforms, Walkways, Stairways and Ladders—Design, Construction and Installation
Safety in Welding and Allied Processes
Interior Lighting and Visual Equipment
Selection, Use and Maintenance of Respiratory Protective Devices
Respiratory Protective Devices
Lifts, Escalators and Moving Walkways—SAA lift code
Conveyors: Design, construction, installation and operation—safety requirements
Abrasive Wheels Parts 1 & 2
Selection Care and Use of Industrial Safety Helmets
Industrial Safety Helmets
Maintenance of Fire Protection Equipment Parts 1,2,3 and 4
Workplace Injury and Disease Recording Standard
Industrial Safety Belts and Harnesses
Portable Ladders
Guarding and Safe Use of Metal and Paper Cutting Guillotines
SAS Gas Cylinders
Industrial Safety Gloves and Mittens

Explosives
Safety Footwear
Laser Safety
Earthmoving Machinery—Protective Structures
Safe Use of Lasers in the Construction Industry
Plastic Building Sheets—General Installation Requirements and Design of Roofing Systems
Classification of Hazardous Areas
Cranes Safe Use
Boilers—Unattended and Limited Attendance
Industrial Safety Belts and Harnesses—Selection, Use and Maintenance
Demolition of Structures
Chainsaws—Safety requirements
Chainsaws—Guide to safe working practices
Safe Working in a Confined Space
Serially Produced Pressure Vessels
SAA Wiring Rules
Health and Safety in Welding
Approval and Test Specifications for Current-Operated (Core-Balance)
Earth-Leakage Devices
Amusement Rides and Devices Part 1: Design and construction
Amusement Rides and Devices Part 2: Operation and maintenance
Amusement Rides and Devices Part 3: In service inspection
Brushcutters—Safety requirements
Brushcutters—Guide to safe working practices
Safe Removal of Asbestos
Management and Control of Asbestos in the Workplace
Safe Erection of Structural Steelwork
Occupational Health and First Aid
Safe Handling of Timber Preservatives and Treated Timber
Control of Workplace Hazardous Substances
Labelling of Workplace Hazardous Substances
Logging Stanchions and Bulkheads
Manual Handling
Preparation of Material Safety Data Sheets
Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Fibres
Noise Management and Protection of Hearing at Work
Safe Use of Synthetic Mineral Fibres
Tuna Farm Diving

Tasmania

Risk Management of Agricultural Shows and Carnivals
Tasmanian Abalone Industry
Forest Safety (Tasmania)
Hairdressing Industry
Managing the Risk of Falling in Housing Construction
Noise Management and Protection of Hearing at Work
Safe Use of Reinforced Plastics
Working at Heights in Commercial Construction
Safe Removal of Asbestos
Preparation of Material Safety Data Sheets
Labelling of Workplace Substances

Northern Territory

Safe Use of Ethylene Oxide in Sterilisation/Fumigation Processes
Fatigue Management
Control of Workplace Hazardous Substances
Control of Work-related Exposure to Hepatitis and HIV (Blood-borne) Viruses

Control and Safe Use of Inorganic Lead at Work
Labelling of Workplace Substances
Control of Major Hazard Facilities
Management and Control of Asbestos in Workplaces
Manual Handling
Preparation of Material Safety Data Sheets
Noise Management and Protection of Hearing at Work
Prevention of Occupational Overuse Syndrome
Safe Removal of Asbestos
Storage and Handling of Workplace Dangerous Goods
Safe Use of Synthetic Mineral Fibres
Safe Handling of Timber Preservatives and Treated Timber

Australian Capital Territory

Safe Working in a Confined Space
ACT Construction Industry Amenities
Control and Safe Use of Inorganic Lead at Work
Safe Demolition Work
Exposure Standards for Atmospheric Contaminants in the Occupational Environment
Limiting Occupational Exposure to Ionising Radiation
ACT First Aid in the Workplace
Human Immunodeficiency Virus and Hepatitis B
Manual Handling
Noise
Plant
Prevention of Occupational Overuse Syndrome
Sexual Services Industry
Smoke Free Workplaces
Steel Construction
Synthetic Mineral Fibres
Transport and Delivery of Cash
Safe Working on Roofs Part 1
Safe Working on Roofs Part 2
Dangerous Substances—Control of Workplace Hazardous Substances
Dangerous Substances—Preparation of Material Safety Data Sheets
Dangerous Substances—Labelling of Workplace Substances
Safe Removal of Asbestos
Storage and Handling of Workplace Dangerous Goods
Construction Work
Prevention of Musculoskeletal Disorders from the Performing of Manual Tasks at Work
Manual Tasks

Commonwealth

Risk Management
First Aid
Noise
Vibration
Human Immunodeficiency Virus and Hepatitis B and C
Confined Spaces
Indoor Air Quality
Safety in Laboratories
Storage and Handling of Dangerous Goods
Hazardous Substances
Synthetic Mineral Fibres
Vinyl Chloride
Carcinogenic Substances

Timber Preservatives
Inorganic Lead
Ethylene Oxide
Ultraviolet Radiation in Sunlight
Occupational Diving
Spray Painting
Abrasive Blasting
Cash in Transit

Seacare

Seacare Authority Code of Practice 1/2000 (incorporates Australian Offshore Support Vessel and Australian Seafarers)
Manual Handling (Maritime Industry)

Appendix B: Jurisdiction-specific changes under the model act

Note: this is a simplified table provided for illustrative purposes.

Subject	Current arrangements	Model laws	Impact
Duties of care Primary duty of care	All OHS Acts assign the primary duty of care to employers. Duties are also assigned to the self-employed (except in the Cwth). Only Qld and the ACT (when its new OHS Act commences in October) apply the primary duty to persons who conduct a business or undertaking. The NT provides for a broader definition of employer as 'a person who carries on a business' (whether or not workers engaged in the business are or include employees). In all other jurisdictions, the primary duty of care is primarily based on the traditional employer/employee relationship.	The model OHS Act will broaden the duty of care provisions beyond the traditional employer/employee relationship so that all persons who conduct a business or undertaking will owe a duty of care to all persons who may be put at risk from the conduct of the business or undertaking. The broader primary duty of care will ensure that protection is extended to persons other than traditional employees with the OHS legislation to apply to all hazards and risks arising from the conduct of work. The model OHS Act will address the incomplete coverage of workers that currently exists in OHS legislation. By encompassing atypical forms of employment, the model OHS laws will be able to keep pace with changes to work organisation and work relationships.	This aspect of the model OHS laws will result in a key change in six of the nine jurisdictions (NSW, Vic, SA, WA, Tas and the Cwth). Only Qld, the ACT and the NT take similar approaches to the model OHS laws.
Duties of care Definition of worker	Most OHS Acts use the term 'employee' with its usual legal meaning. While some Acts extend 'employee' to include contractors, a broader defined term of 'worker' is only currently found in the OHS Acts of Qld, NT and ACT. Deeming provisions are often used to provide a duty of care to cover a range of work	The model OHS Act will adopt a broad definition of 'worker' in recognition of the changing nature of work relationships. The definition of worker will extend beyond the employment relationship to include any person who works, in any capacity, in or as part of the business or undertaking.	This will be a change for six of the nine jurisdictions (NSW, Vic, SA, WA, Tas and Cwth).

Subject	Current arrangements	Model laws	Impact
	relationships and arrangements, however, the successful operation of such provisions are subject to the way in which the courts interpret and apply them, unless they are clearly defined in the legislation.		
Duties of care Non-delegable and concurrent	The principle that duties of care are non-delegable and that more than one person may concurrently have the same duty applies in all jurisdictions although may not be explicitly stated in the OHS Acts.	The model OHS Act will not allow duty holders to relinquish or delegate their duties to anyone else and will provide that more than one person may concurrently have the same duty.	No significant change will be required for any jurisdiction. While the model OHS laws may deal with this issue in a manner that is more specific and clearly stated than the provisions of existing OHS Acts, the approach is consistent with decided OHS cases across all jurisdictions.
Duties of care Officers	Currently, a breach of a duty of care by an organisation is usually attributed to officers without any positive duty placed on them. SA is the only jurisdiction to use a positive duty although this is restricted to 'specified' officers.	The model OHS Act will place a positive duty on an officer to be proactive in taking steps to ensure compliance by the company.	This will be a key change for all jurisdictions. While SA currently provides a positive duty, the model OHS laws will be an expansion of the SA provision.
Duties of care Risk management	All OHS legislation in Australia currently deals with the process of risk management, albeit in different ways. The objects in the OHS Acts of NSW, NT, Qld, Vic and WA currently refer to the process of risk management.	The model OHS Act will incorporate the principle of risk management with the risk management process to be established in supporting regulations.	No significant change will be required for any jurisdiction.
OHS offences Criminal offences	Breaches of duties of care under all Australian OHS laws are currently criminal offences. The Cwth is the only jurisdiction in which both civil and criminal sanctions are available.	The model OHS Act will maintain that breaches of duties of care are criminal offences to reflect the seriousness of breaches of duty of care obligations.	This will only be a change for the Commonwealth.
OHS offences Penalties	Currently, there is significant disparity in the penalties provided for in Australian OHS Acts.	The model OHS Act will provide for significant penalties in OHS legislation, above and beyond	The level of penalties will be a significant change for all jurisdictions.

Subject	Current arrangements	Model laws	Impact
	NSW has a maximum penalty of $1,650,000 and provides for imprisonment up to 5 years. Vic has a maximum penalty of $1,020,780 and provides for imprisonment up to 5 years. Qld has a maximum penalty of $750,000 and provides for imprisonment up to 2 years. WA has a maximum penalty of $625,000 and provides for imprisonment up to 2 years. SA has a maximum penalty of $1,200,000 and provides for imprisonment up to 5 years. Tas has a maximum penalty of $150,000 and has no imprisonment. The ACT will have a maximum penalty of $1,000,000 and will provide for imprisonment up to 7 years. The Cwth has a maximum penalty of $495,000 and no imprisonment.	the penalties that currently exist in any Australian jurisdiction, as well as imprisonment of up to five years for the most serious breaches. Currently, the highest maximum fine for a corporation is $1.65 million with the maximum fines in some jurisdictions significantly less than this. This will be almost doubled under the new OHS laws to $3 million which reflects the importance placed on workers safety. The new laws will also ensure that penalties operate as a meaningful deterrent and encourage greater levels of compliance.	The imprisonment terms will be: greater than that currently provided for in Tas, the Cwth, Qld and WA; the same as those presently provided for in NSW, Vic and SA; and a reduction for the ACT.
OHS offences Sentencing options	Remedial orders and corporate probation orders apply in NSW, Vic, NT, ACT and Cwth. Adverse publicity orders apply in NSW, Vic, SA, NT and ACT. Community service orders apply in NSW, Vic and SA. Training orders apply in SA and NT. Injunctions apply in Vic, Qld, Tas, NT, ACT and Cwth.	The model OHS Act will provide for a wider range of sentencing options than currently exists in any one jurisdiction in Australia. The model OHS Act will provide for the following sentencing options in addition to fines and custodial sentences: remedial orders, adverse publicity orders, training orders, injunctions, compensation orders, community service orders and corporate probation.	The range of sentencing options will be a change for all jurisdictions as no jurisdiction in Australia currently has all of the sentencing options that will be available under the model OHS Act.
OHS offences Burden of proof	Only the NSW and Qld Acts provide for a 'reverse onus of proof' for offences relating to duties of care.	The model OHS Act will provide that the burden of proof for OHS offences will rest with the prosecutor. This approach reflects that all	This will be a significant change for NSW and Qld.

Subject	Current arrangements	Model laws	Impact
	NSW places the burden of proof in a prosecution on the defendant to show that they have done everything reasonably practicable to ensure safety. Qld has a similar defence provision. In all other jurisdictions, the burden of proof for duty of care offences is placed entirely on the prosecution.	duty of care offences will be criminal offences and is supported by substantial increases in the size and range of penalties for OHS breaches, including imprisonment.	
OHS offences Crown immunity	Under all the State and Territory OHS Acts, although expressed in different ways, provision is made so that liability exists for the Crown. However, the ACT does not consider prosecution to be appropriate for the ACT public sector. The Cwth has Crown immunity.	Crown immunity will not be provided for in the model OHS Act ensuring that all persons with responsibility for the health and safety of workers and others will be accountable and subject to the same legal consequences for failing to meet duty of care obligations.	This will be a change for the Cwth and ACT.
OHS offences Right to prosecute	Only NSW and the ACT (when its new Act commences) provide for unions to prosecute for OHS breaches. The ACT will also provide for employer associations to initiate prosecutions.	The model OHS Act will provide that only public officials will have the right to bring prosecutions on the basis that regulators bring the accountability and transparency of the Crown to prosecutions including the application of prosecution policies and review of decisions. Allowing only the regulator to prosecute also improves the consistency of enforcement processes and facilitates the process of graduated enforcement. This approach is complemented by the provision of strong and wide ranging investigatory powers for the regulator.	This will be a significant change for NSW and the ACT.
Consultation, participation, representation and	All Australian OHS Acts require employers to consult with their employees, workers, health and safety representatives and/or committees	The model OHS Act will recognise the importance of consultation in contributing to health and safety by imposing a general	A key difference in the consultation provisions in the model OHS laws is that the consultation duty is on the

Subject	Current arrangements	Model laws	Impact
protection Duty to consult	about certain aspects of health and safety at work.	obligation on all duty holders to consult. The model OHS Act will provide a specific obligation on duty holders to consult with other concurrent duty holders, something which has not been specifically covered in existing OHS Acts in Australia. The model OHS Act will provide for flexibility in consultation arrangements to accommodate the atypical employment relationships that will be covered and reflect the significance of OHS issues.	person conducting the business or undertaking (this concept does not exist in six of the jurisdictions) and the duty applies to an expanded definition of worker. In the model OHS laws, the consultation duty on the primary duty holder is also qualified by 'reasonably practicable'. Only Vic, Tas, Cwth and the ACT have such a qualifier currently.
Consultation, participation, representation and protection Health and Safety Representatives	All jurisdictions currently have provisions that allow for employees to elect Health and Safety Representatives (HSRs). Existing functions, rights and powers of HSRs are in both Acts and regulations and are generally similar across all the jurisdictions. Existing consultation obligations on employers or persons conducting a business to HSRs are also provided in both Acts and regulations and there are similarities in the obligations they impose.	The model OHS Act will maintain existing provisions for workers to elect HSRs to represent them in health and safety matters. The model OHS legislation will provide for HSRs to be sufficiently empowered to effectively represent the workers in their work group and provide for the contribution of workers into OHS matters at the workplace. The model OHS Act will provide that a person conducting a business or undertaking has clear obligations to facilitate the HSRs' exercise of their functions. These obligations will include a requirement to consult with HSRs on OHS matters and allowing access to information relating to OHS hazards at the workplace and the health and safety of workers.	Although there will be some changes for all jurisdictions in relation to the functions, rights and powers of HSRs and the consultation obligations on duty holders to HSRs, these changes are not likely to be significant.
Consultation, participation, representation and protection	Under existing arrangements, there are a number of issues that must be agreed between the employer or person conducting a business or undertaking and the workers	The model OHS legislation will provide for the establishment of work groups that best and most conveniently enable the workers' OHS interests to be represented and safeguarded.	This will be a key change for three of the nine jurisdictions (NSW, WA and Tas).

Subject	Current arrangements	Model laws	Impact
Establishment of work groups	employed or engaged by them, in relation to work groups. These matters vary between the jurisdictions. Three jurisdictions make no provision for workgroups (NSW, WA, Tas).		
Consultation, participation, representation and protection Provisional Improvement Notices and cessation of unsafe work	All jurisdictions, except NSW and Tas, have provisions for the issuing of Provisional Improvement Notices by HSRs. Four jurisdictions provide for HSRs to direct that unsafe work cease (Vic, SA, NT and Cwth). Four jurisdictions provide for workers to cease unsafe work (WA, Tas, NT and ACT). Qld and NSW do not provide this right for either workers or HSRs, although the right for a worker to cease unsafe work exists at common law.	The model OHS Act will provide HSRs with the power to issue Provisional Improvement Notices and direct the cessation of unsafe work. These combined powers are only presently available in three jurisdictions. The model OHS Act will also extend the right to cease unsafe work to workers. Under current OHS laws, only four jurisdictions allow workers to stop unsafe work which represents approximately 14.5% of Australian workers. The new OHS laws will extend this right to all Australian workers. Only one jurisdiction (NT) currently extends the right to cease unsafe work to both HSRs and workers.	The ability of an HSR to issue a Provisional Improvement Notice will be a change for NSW and Tas. The ability of an HSR to direct that unsafe work cease will be a change for five of the nine jurisdictions (NSW, Qld, WA, Tas and ACT). The ability of a worker to cease unsafe work will be a change for five of the nine jurisdictions (NSW, Vic, Qld, SA and Cwth).
Consultation, participation, representation and protection Discrimination, victimisation and coercion	All OHS Acts deal with discrimination by a person against another by reason of that other person being involved in specified OHS activities or roles. However, most OHS Acts deal only with discrimination or victimisation, where an employee has suffered a specified detriment or has been threatened with a detriment. Only the SA Act also prohibits coercion, where a person is threatened or intimidated to take or not take action related to OHS.	The model OHS Act will prohibit discrimination, victimisation and coercion over OHS matters which will go beyond what is currently available through anti-discrimination and other laws.	The prohibition of coercion will be a change for eight of the nine jurisdictions (all but SA). However, there are likely to be some changes for SA in relation to the detail that will be provided for in the model OHS Act on this matter.
Consultation,	The Qld, ACT, NT, NSW and Vic Acts confer	The model OHS Act will confer powers on	This will be a significant change for

Subject	Current arrangements	Model laws	Impact
participation, representation and protection Union right of entry	powers on authorised representatives of unions to enter workplaces. In WA, right of entry for OHS purposes is provided for under the *Industrial Relations Act 1979* (the WA IR Act). Tas and SA are considering amendments to include right of entry provisions.	authorised representatives of unions to enter workplaces for OHS purposes in recognition of the important role that unions can play by being involved in OHS issues at the workplace. For the first time, unions will be able to enter all Australian workplaces for OHS purposes for the purpose of contributing in a positive manner to OHS compliance at a workplace level.	three of the nine jurisdictions (Tas, SA and Cwth). The only change for WA would be in respect of the Act in which right of entry provisions sit (ie. OHS Act rather than IR Act).
Issue resolution	Most jurisdictions have requirements to resolve OHS issues within the workplace, however the processes for doing so differ. None of the OHS Acts define what an 'issue' is	The model Act will define an 'issue' as being a dispute or concern about OHS that remains unresolved after consultation between the affected worker(s) and the representative of the person conducting the relevant business or undertaking most directly involved in the engagement or direction of the affected worker(s). The process for resolution of an issue can be found in Recommendation 120 of the National OHS Review	This will be a change for all of the jurisdictions
Requirement to employ or engage a person for OHS advice	The Vic Act requires an employer, so far as is reasonably practicable, to employ or engage a person with suitable qualifications in relation to OHS to provide advice to the employer concerning the health and safety of employees. The Qld Act, an employer (but not other persons conducting a business or undertaking) must appoint a qualified person as a workplace health and safety officer if the employer has, or is likely to have, thirty or	There will <u>not</u> be an explicit provision in the model Act for a person conducting a business or undertaking to employ or engage someone for advice. However, it will imply that a person conducting a business or undertaking will need to ensure that they have resources, or access to them, to be able to meet their responsibilities. This may include obtaining OHS advice.	This will be a change for Victoria and Queensland

Subject	Current arrangements	Model laws	Impact
	more workers at the workplace for a total of any forty days during the year. A similar requirement is placed on principal contractors, but the threshold for appointment is different from that of employers.		
Notification	All Australian OHS laws currently require that certain workplace incidents, deaths, illnesses and injuries are reported to a relevant authority. There are differences in the type of incidents that must be notified, as well as differences in reporting procedures.	The model Act will place an obligation on the person conducting the business or undertaking to ensure that the regulator is notified immediately and by the quickest means, of a: fatality of any person; 'serious injury' to any person; 'serious illness' of any person; a 'dangerous incident', arising out of the conduct of the business or undertaking.	Although there will be some changes for all jurisdictions in incident notification, these changes are not likely to be significant.
Preserve incident site	Most OHS Acts place a duty on the employer, person in control or occupier to preserve an incident site, though some have limited this duty to preservation of plant or other items. Qld and SA, have placed these provisions in their regulations. WA, NT and Cwth rely on provisions which empower inspectors to direct that an incident site is left undisturbed instead of placing a duty on the person with control of the site. However, some jurisdictions have both a duty on persons at a workplace and inspector powers to quarantine an incident site	Under the model OHS Act, persons with management and control of the workplace should have an obligation to ensure an incident site, including any plant, substance or other item associated with the incident, is not disturbed until an inspector attends the incident site, or the regulator directs otherwise, which ever occurs first. The obligation to preserve an incident site does not preclude any activity: to assist an injured person; to remove a deceased person; considered essential to make the site safe or to prevent a further incident; associated with a police investigation; or for which an inspector has given permission.	This will be a change for NSW and ACT who place time frames for which a site must be preserved. This will be an insignificant change for SA and Qld who currently have this provision in regulations. This will be a change for WA who currently have no apparent duty for employers to preserve an incident site in the Act or regulations. However, an inspector has the power to require that a workplace, or any part of it, be left undisturbed for as long as is specified

Subject	Current arrangements	Model laws	Impact
Enforceable undertakings	Currently five of the nine (Vic, Qld, Tas, ACT and the Cwth) jurisdictions have provisions allowing enforceable undertakings.	The model Act will authorise a regulator to be able to accept, at the regulator's discretion, a written enforceable undertaking as an alternative to prosecution, other than in relation to a Category 1 breach of a duty of care.	This will be a change for four of the nine jurisdictions (WA, SA, NSW and NT)

Appendix C: Survey results

The Productivity Commission, in both its recent reports on OHS, noted the dearth of available information, and called for official surveys to be undertaken. However, so far this has not happened, and the availability of data is no better than it was in the mid 1990s.

Accordingly, a survey was always going to be necessary to obtain primary data for this RIS. However, any such unofficial survey on OHS costs would have to operate under a number of constraints, as outlined in Section 7.5. That section also outlines the methods for selecting firms to participate, response rates and associated issues, and the overall findings (shown in Table 7.3) of an annual net benefit to the nation of $181 million dollars per annum.

However, due to the low response rate, some internal inconsistencies in responses, the necessarily subjective nature of some questions, and some methodological issues only apparent in hindsight, Access Economics does not consider the survey results sufficiently robust to enable the qualitative arguments of the Consultation RIS to be replaced by quantitative arguments in the Decision RIS.

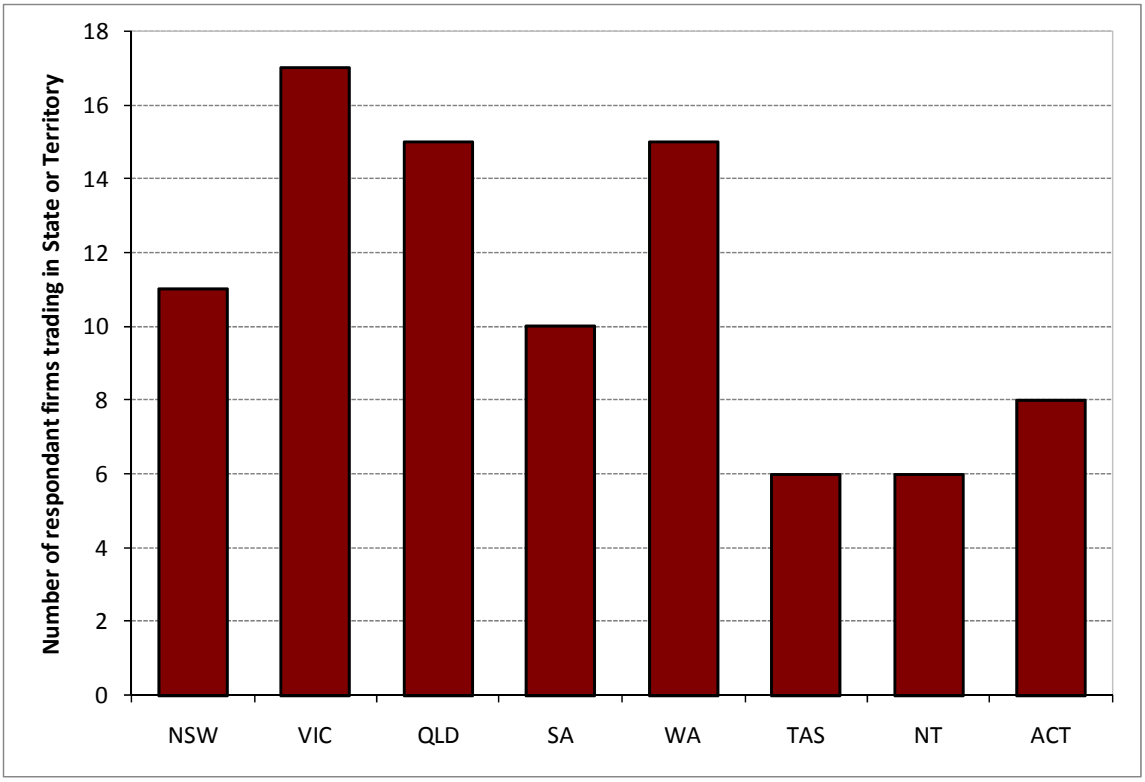
The final response size of 30 is not considered ideal for valuable information. Under the Central Limit Theorem, a response of 30 can potentially be considered a representative sample - but only if the invitees are chosen on a purely random basis, which these were not.

- Also four responses were not completed properly, which left only 26 useable responses.

Characteristics of respondents

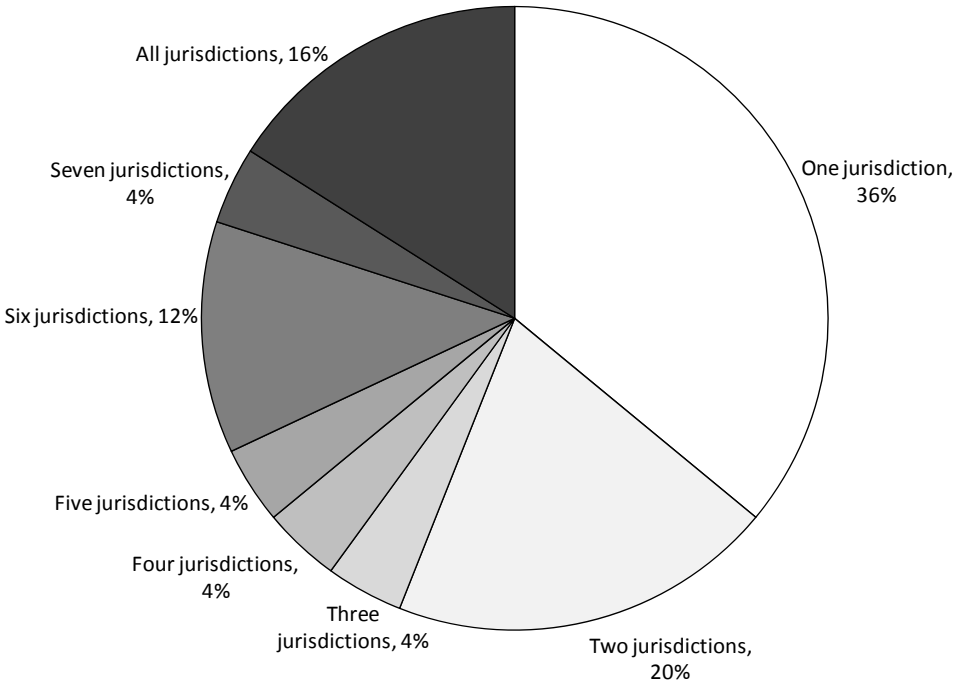
The survey had a reasonable geographic coverage. While there were not many respondents, they did have operations in a wide range of regions.

Chart C.1: Jurisdictions operated in by survey respondents



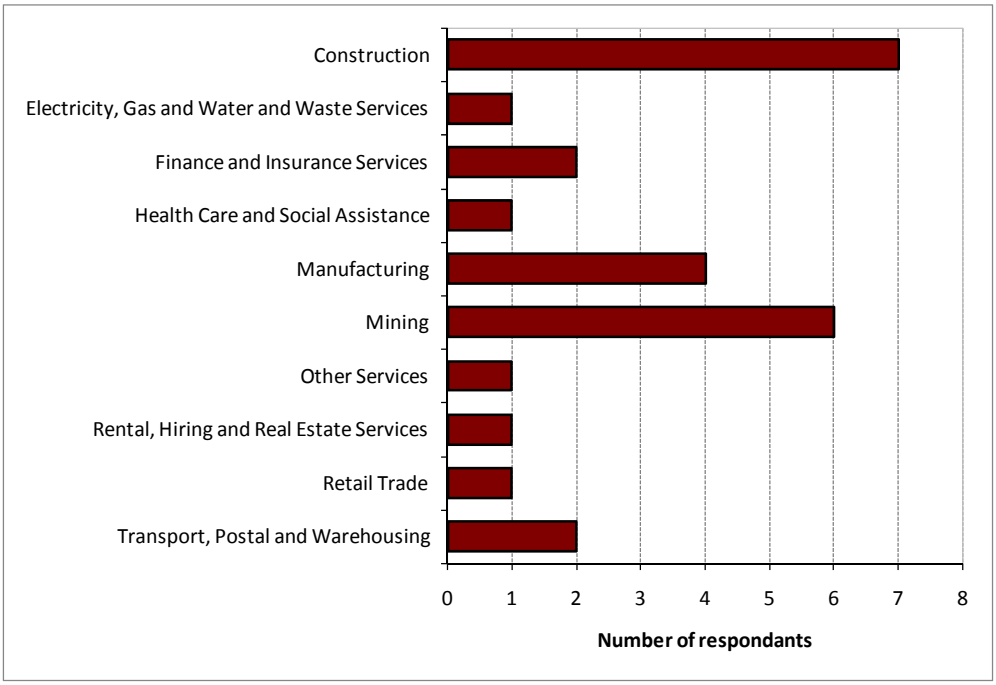
While over a third (36%) of respondents were single-state operators, those who were multi-state had operations in an average of five states. Overall, the average respondent operated in 3.5 states.

Chart C.2 Number of jurisdictions operated in by respondents



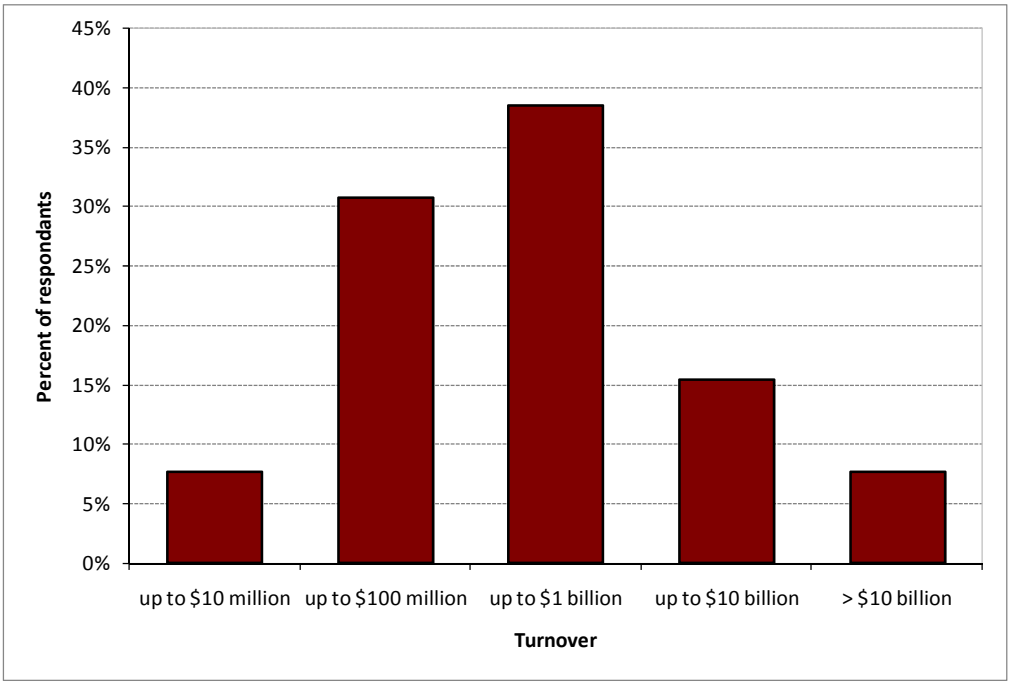
Again, while the number of respondents was low, most sectors of the economy were at least represented. Construction and Mining were the most represented sectors.

Chart C.3 Industry representation of respondents



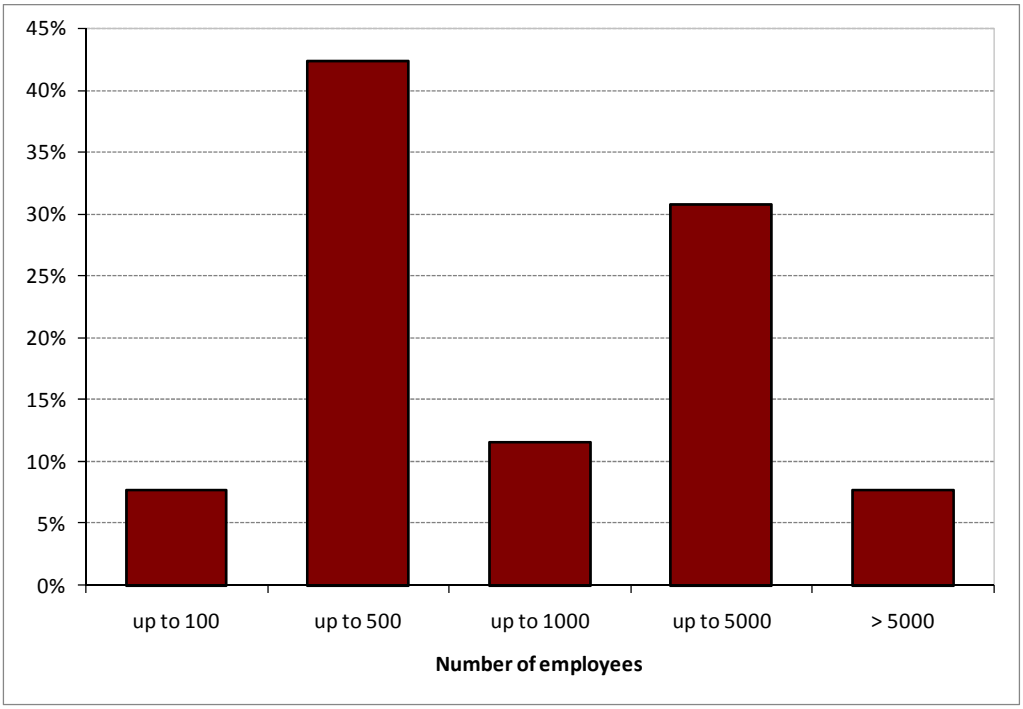
The average firm had a turnover of $3.0 billion, although this was skewed by the presence of some very large firms, with the median being only $450 million.

Chart C.4: Respondent turnover



The average firm had 2,376 workers (1,660 permanent employees and 717 contractors). However, again, the median figure was only 600 workers.

Chart C.5 Distribution of firms by employment size



The median firm spent $0.5 million per year on OHS. (The average was $0.9 million, but given the distortion from large firms, the median is preferable.)

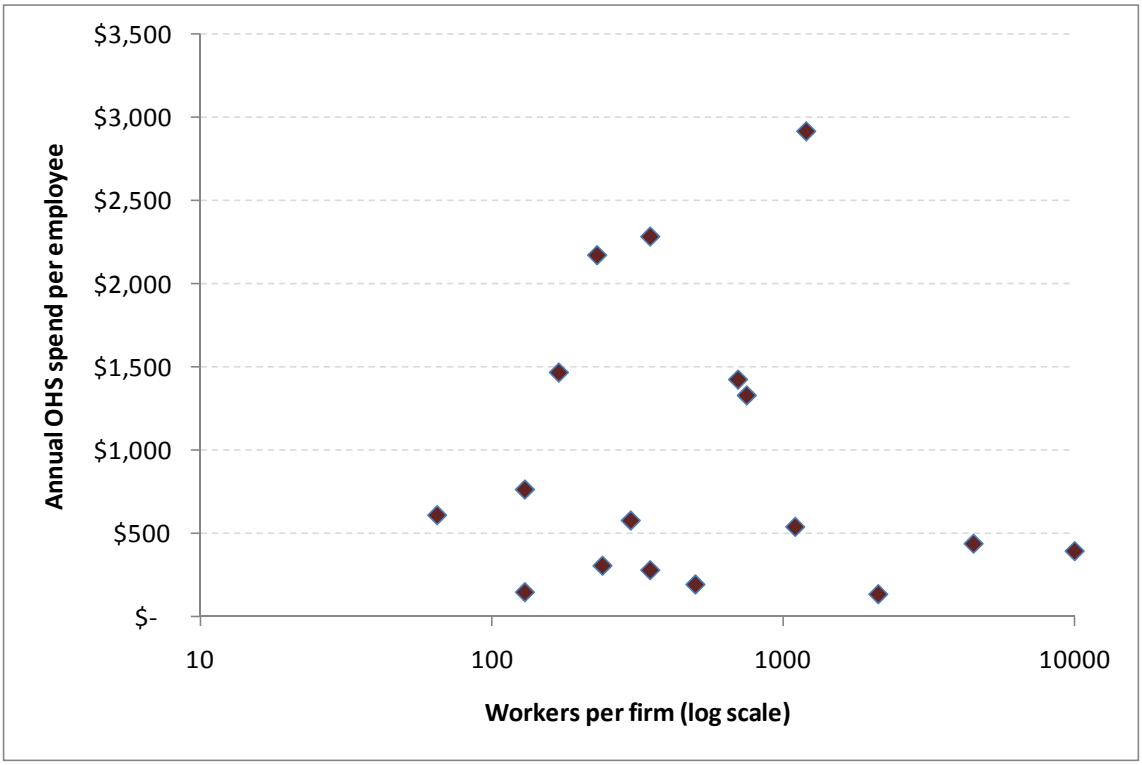
- This compares reasonably closely with Health and Safety Executive (HSE) (Lancaster et al, 2003) survey figure of £0.43 million for large companies (250 to 5,000 employees) in the UK.

The median OHS spend per employee was reported as $833 per year. This correlated reasonably closely with the (unweighted) average OHS spend per employee, across firms which reported both details, of $945. The latter figure is preferred, due to internal consistency.

- This does not correlate well with HSE figure of £20 per person per year for large firms. Possibly, given fixed effects, this indicates that the average UK respondent was considerably larger than the average Australian respondent.
- Conversely, the median spend is close to HSE's figure of £571 per person for manual handling for small firms. This large disparity across firms and categories may simply indicate that firms in neither the UK nor Australia have a good handle on their OHS expenditures.

There was little correlation between firm size and OHS spend per worker. In contrast, the HSE survey showed a strong correlation between firm size and OHS spend per person. OHS expenditure per worker diminished significantly as firms got bigger.

Chart C.6: Distribution of OHS spending by firm size



Respondents indicated that complying with OHS regulations required approximately half an FTE position per 100 employees. (This was the median figure; the average was 0.75 FTE per 100 workers.) Most firms (63%) indicated that this figure would not be changed by OHS harmonisation.

- Of the 19% of respondents who indicated that the model Act would have an impact, opinion was evenly divided as to whether the Act would cause an increase, or a decrease, in compliance time requirements.

Impact of specific aspects of the Model Act

Respondents were asked, for each of a number of aspects of the Act, whether they considered that aspect would increase or decrease their compliance costs and safety benefits. They were also asked whether the magnitude of this change would be "significant" (more than 5% change) or "minor" (less than 5%).

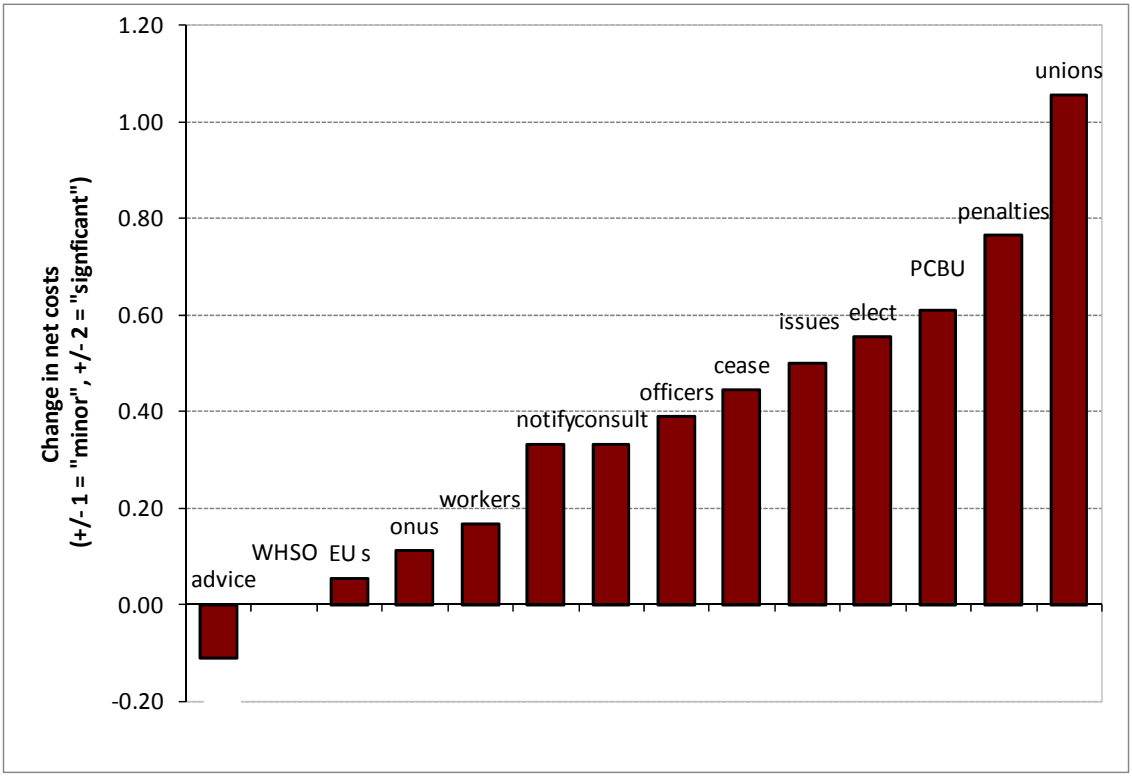
In order to analyse these responses, Access Economics assigned a weight of zero to "no change" and "don't know"; a weight of +/-1 one for insignificant change; and a weight of +/-2 for minor change.

Respondents considered that nearly all aspects of the Act would increase their compliance costs (Chart C.7). Allowing OHS-qualified union officials workplace access was considered the most costly change, by a significant margin. The next most expensive change was increased penalties.

- Union access should only lead to increased OHS costs if it caused increased compliance effort, which in turn should lead to improved safety. However, firms considered that union access would *decrease* safety outcomes (see discussion around Chart C.8).
- Also, fines are not a cost of compliance, but of non-compliance. That is, fines are only incurred once there has already been a breach of regulations. However, the threat of possibly incurring higher fines may motivate increased compliance efforts *ex ante*.

Dropping the requirement to have Workplace Health and Safety Officers (WHSOs) was considered to have no effect, although this may be due to the fact that only Queensland has this requirement. Conversely, dropping the requirement to engage qualified OHS advice was considered cost saving, even though it is only a requirement in Victoria. Possibly this reflects that WHSO training is a one-off cost, while engaging consultants is an ongoing cost.

Chart C.7 Impact of model Act changes on changes in compliance costs



"PCBU" = primary duty of care for persons conducting a business or undertaking (question 2.1)
"Officers" = positive duty of care for officers (question 2.2)
"Workers" = duties of care for workers (question 2.3)
"Penalties"= significant increase in penalties for non-compliance (question 2.4)
"Onus" = removal of reverse onus of proof in NSW and QLD (question 2.5)
"Advice" = Victorian requirement to engage qualified OHS advice (question 2.6)
"WHSO" = Queensland requirement for Workplace Health and Safety Officers (question 2.7)
"EU" = enforceable undertakings (question 2.8)
"Unions" = right of OHS-qualified union officials to enter workplace (question 2.9)
"Consult" = requirement to consult with HSRs (question 2.10)
"Elect" = entitlement of workers in all businesses to elect HSRs (question 2.11)
"Issues" = default issue regulation procedures (question 2.12)
"Cease" = ability to cease work where considered unsafe (question 2.13)
"Notify" = requirement no notify regulator of serious incidents

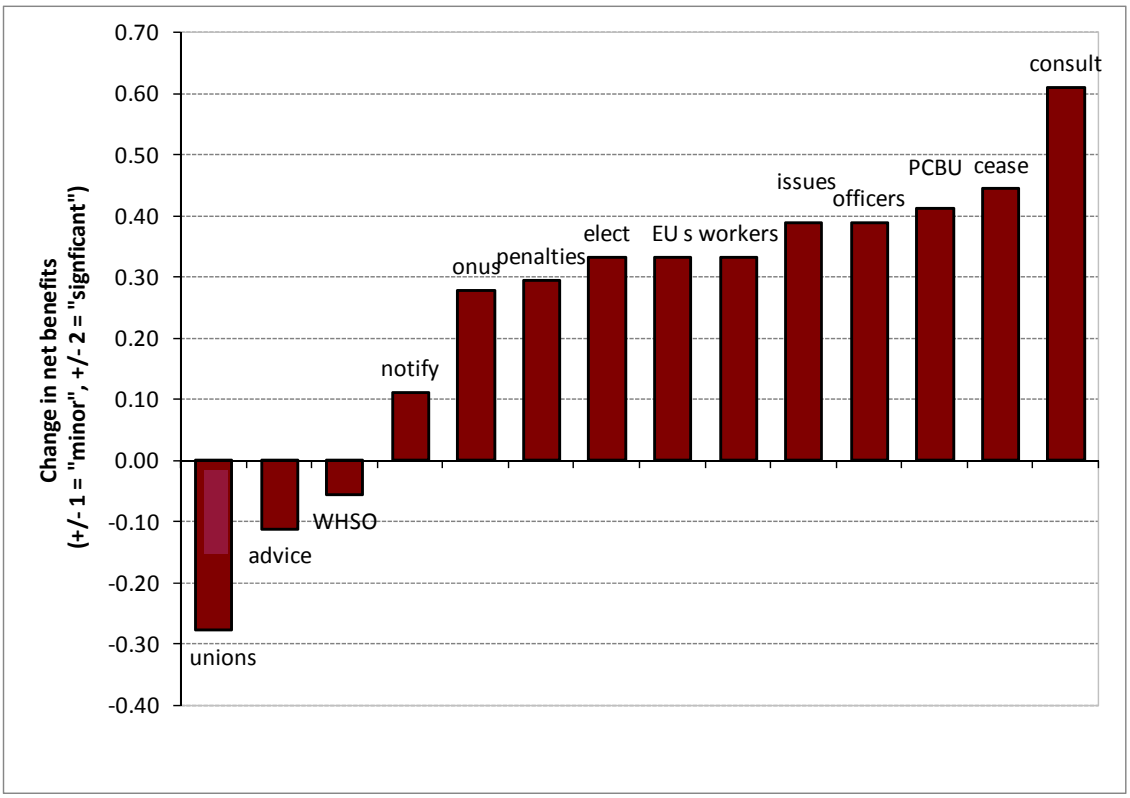
While most reform aspects were considered cost-increasing, they were also nearly all considered to be benefit increasing as well (Chart C.8). Interestingly, the aspect considered to be most beneficial was the requirement to consult with workers and HSRs on safety matters. Comments indicated that firms believed this would increase a sense of ownership among workers. Similarly, allowing HSRs to give cease work orders was considered to be the second most beneficial change. Comments indicated that where external inspectors may be familiar with OHS regulations but not a given firm's practices, HSRs would be familiar with both and thus aware of both the costs and benefits of causing work to cease.

Counter-intuitively, allowing OHS-qualified union officials access was considered to significantly decrease safety outcomes. Firms believed unions would use this access to pursue industrial relations agendas - but even if this were to be the case - it would be difficult to see how that would reduce safety outcomes.

It also appears to be inconsistent with historical evidence. Maxwell (2004) found that in the preceding four years since a similar right had been introduced in NSW in 2000, only four applications had been made to the NSW Industrial Relations Commission for revocation of such an authority. Maxwell assumed that if unions had been abusing this right, there would have been far higher number of such applications. Similarly, Stensholt (2007) reviewing Victoria's experience two years after OHS-qualified union officials had been allowed access in that State, found that there had been no applications for revocation there.

- Dropping the requirement to utilize WHSO and qualified OHS advice were also seen to worsen safety outcomes, which is intuitive.

Chart C.8 Impact of model Act changes on changes in safety benefits



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A possible indication of net effects can be extracted, if we assume that compliance costs are equal to safety benefits to firms. Economic theory would indicate that this should be the case, at least for fully informed and rational managers. Firms would spend their first compliance dollars in areas that would yield the largest net benefits. They would then continue their spending on equipment and practices that yielded smaller – but still positive – benefits. Such expenditure would only be undertaken up to the point where the last few dollars were just breaking even; but no further.

- This would appear to be loosely borne out by the HSE survey. When asked if safety benefits exceeded compliance costs, the largest response (42%) was "don't know". However, of the rest, 31% considered the benefits did outweigh costs, 14% considered they were about the same, and 14% believed the costs outweighed the benefits.

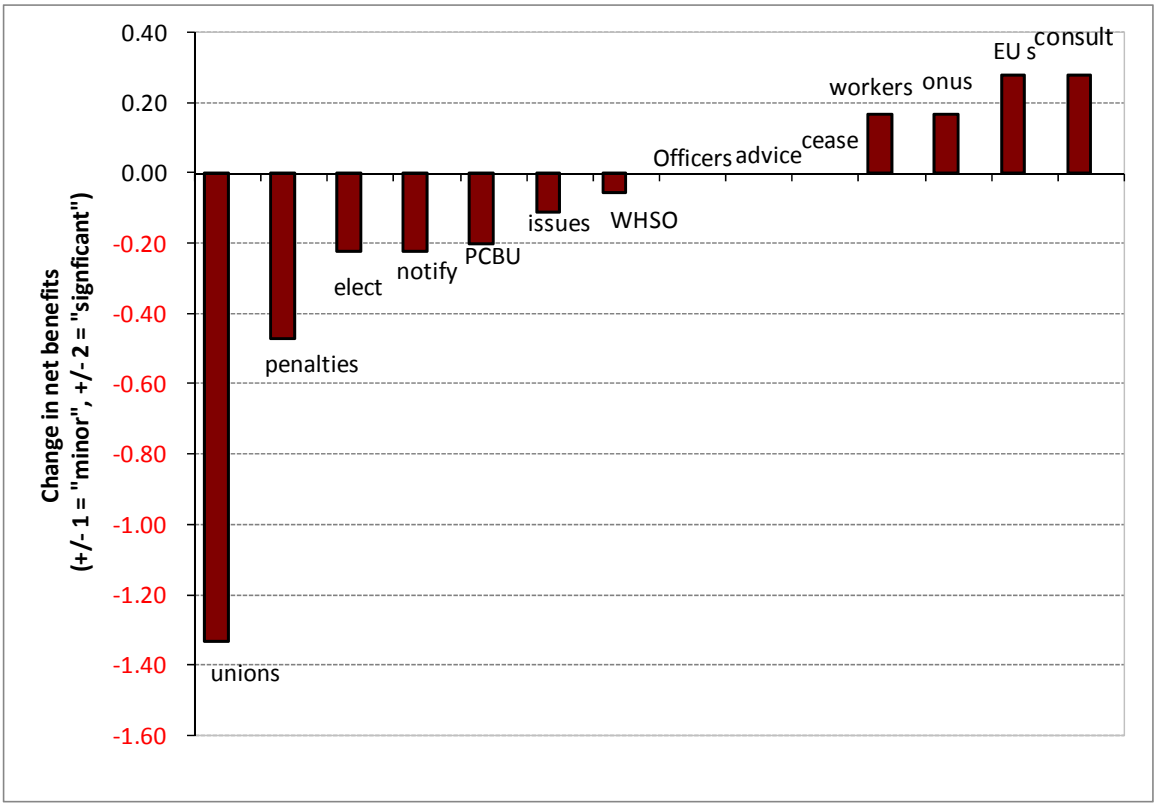
On this basis (assuming equal weights) half the reform aspects (seven out of fourteen) do not confer net benefits (Chart C.9).

Given that union access is considered to both increase costs and to reduce benefits; the net effect is of union access is strongly negative. While increased penalties are believed to confer some safety benefits, the net effect is still significantly negative.

Positive duties of care for officers, dropping requirements to seek qualified advice, and introducing cease-work provisions are all considered to be neutral.

The requirement to consult with workers and HSRs on safety issues is seen as having the largest net benefit. Adding a duty of care to workers, and removing the reverse onus of proof in NSW and Queensland are considered beneficial. Interestingly, enforceable undertakings are considered beneficial overall, where increased penalties are not.

Chart C.9 Impact of model Act changes on changes in net OHS benefits



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As well as comparing net benefits vertically (for each aspect); it may be possible to add net benefits horizontally. To do so would require assuming that each aspect has equal weighting in the firm's total OHS costs and benefits.

- This may not be realistic. HSE (2003) compared the costs of nine different types of compliance activity. While most activities accounted for between 1% and 10% of costs, one category alone ("implementing control measures") accounted for 62% of total costs.
- However, HSE's categories do not correlate with those in this RIS survey; and Access Economics has no information in relation to how to apply cost weightings. Thus, the null hypothesis is adopted that all cost categories all equal.

Using the above assumptions, the net impact of these specific aspects of the model Act is negative. On the scale where one represents minor change, and two represents significant change, the net result (-1.73) is verging on significantly negative.

- Most of this reported negative impact is due to allowing OHS-qualified union officials workplace access. In turn, most of this negative impact is due to the belief that such union officials would reduce workplace safety (as well as increasing compliance costs).
- Access Economics does not share this belief, and considers that such results may be indicative of the subjective judgments on which survey answers are based.
- Similarly, increased penalties also make a large negative contribution. This is counter-intuitive, given the disparity with enforceable undertakings (which have significant positive benefits) when both are expensive remedies applied only after a breach has been committed. Firms believed the benefits of both measures were about the same, but that the cost of penalties would be substantially greater than those of enforceable undertakings. However, in practice, maximum penalties are almost never levied, and the average undertaking is around three times as costly as the average penalty.
- If penalties had the same costs as undertakings (holding benefits constant) and union officials were not allowed access, then the model Act would be perceived as being beneficial to single-state firms.

Table C.1: Estimated percentage changes in net benefits

Survey question	Short title	Net impact	Implied percentage change
2.09	unions	-1.33	-3.3%
2.04	penalties	-0.47	-1.2%
2.11	elect	-0.22	-0.6%
2.14	notify	-0.22	-0.6%
2.01	PCBU	-0.20	-0.5%
2.12	issues	-0.11	-0.3%
2.07	WHSO	-0.06	-0.1%
2.02	Officers	0.00	0.0%
2.06	advice	0.00	0.0%
2.13	cease	0.00	0.0%
2.03	workers	0.17	0.4%
2.05	onus	0.17	0.4%
2.08	EU s	0.28	0.7%
2.10	consult	0.28	0.7%
	Total	**-1.73**	**-4.3%**

Finally, with some further assumptions, it is possible to draw some inferences about the dollar value of these net benefits. The first assumption is that a result of "significant change" is equivalent to a 5% change. (The survey was worded as "5% or more".) The second assumption is that "minor change" is then equivalent to a 2.5% change. This can be used to infer a linear relationship between the "Net impact" column in Table C.1 and the "Implied percentage change" column (to the right in the same table).

On this basis, the inferred net change from the model Act is equivalent to a 4.3% increase in compliance costs. To convert this change into a dollar value, it is also necessary to assume that the 14 categories covered in the survey sum to the total of OHS expenditure. If so, then using the reported $945 average OHS expenditure per person per year, the model Act would result

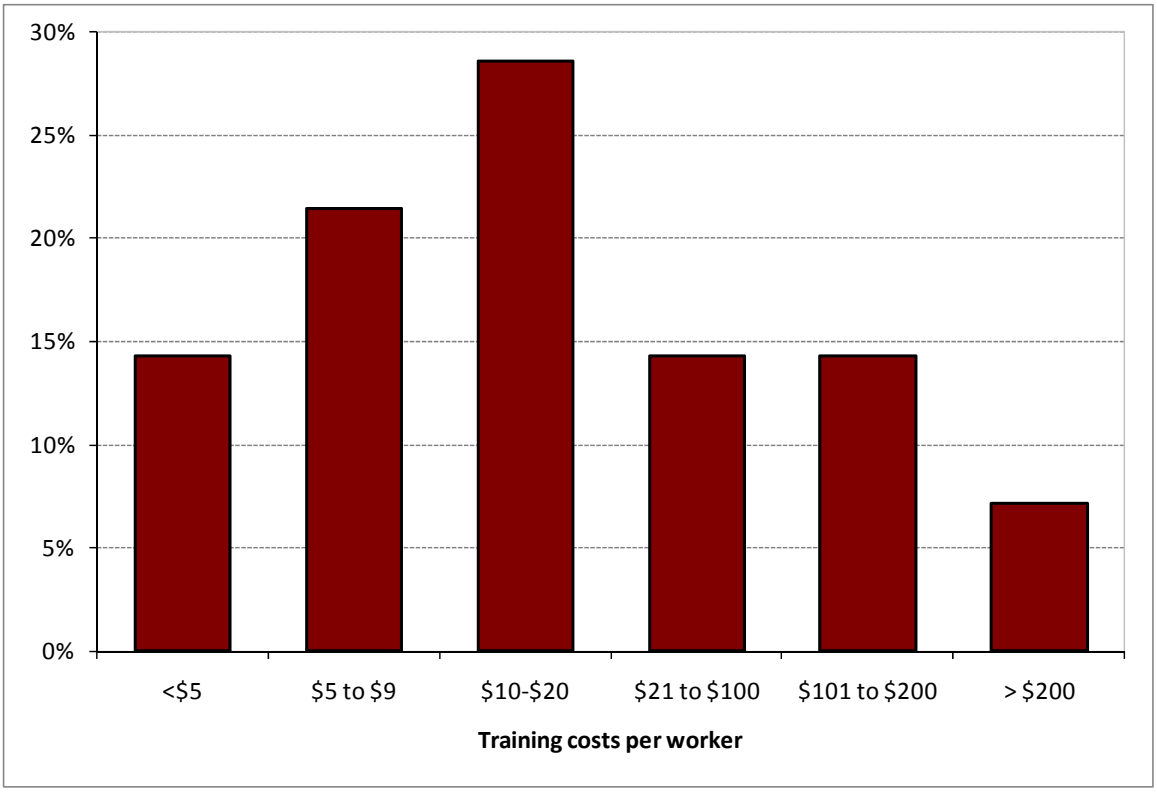
in an increased net cost to firms of $40.75 per worker per year (i.e. $945.72 multiplied by 4.3%.)

- However, there are also benefits for firms that trade across state boundaries, and benefits for workers, that need to be taken into account. These are discussed in the next section.

In addition to the above ongoing costs, firms were also asked what they thought it would cost to train their workers for the new regime. The median answer was $25 per person.

- This is difficult to reconcile with the response from multi-state firms that harmonisation would not increase their training costs (see discussion around Chart C.11)

Chart C.10 : Costs of training workers for the model Act



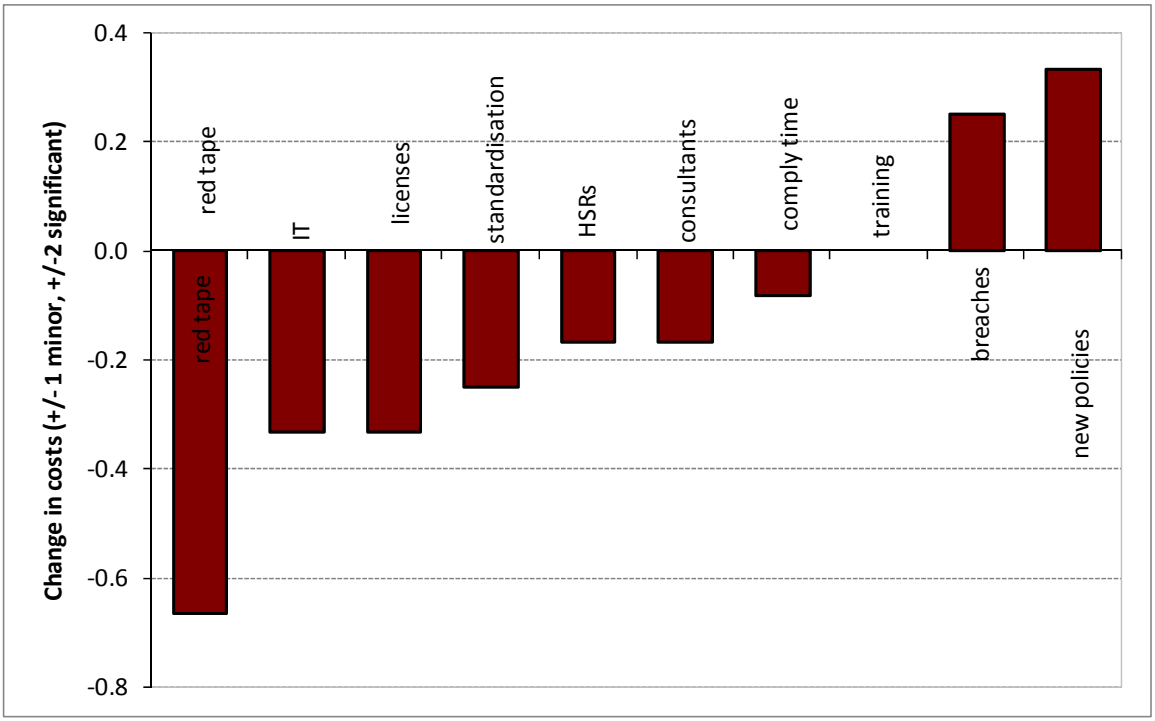
Multi-state firms

Firms that operated across multiple states were asked what impact harmonisation would have on a range of costs. Only two cost types (breaches for penalties, and the need to implement new policies) had increases recorded against them.

Notably, no impact was reported for training. This is difficult to reconcile with the findings discussed around Chart C.10, that training would cost some $25 per worker. There are a number of possible explanations, discussed below.

- Respondents may have fixed training budgets, in which case, more training on harmonisation would mean less training on other matters.
- Firms that operate across states may be used to coping with multiple regime changes, and harmonisation would be seen as just one more of these.
- Multi-state firms have increased training costs when the Act is introduced, but may have factored in long-run reductions in training costs (as all future changes will be nationally-coordinated). This appears to be the most likely explanation, as several firms said both that they would incur costs making the change, but also that the change would reduce their costs.[27]

Chart C.11: Impact of harmonisation on compliance costs of multi-state firms

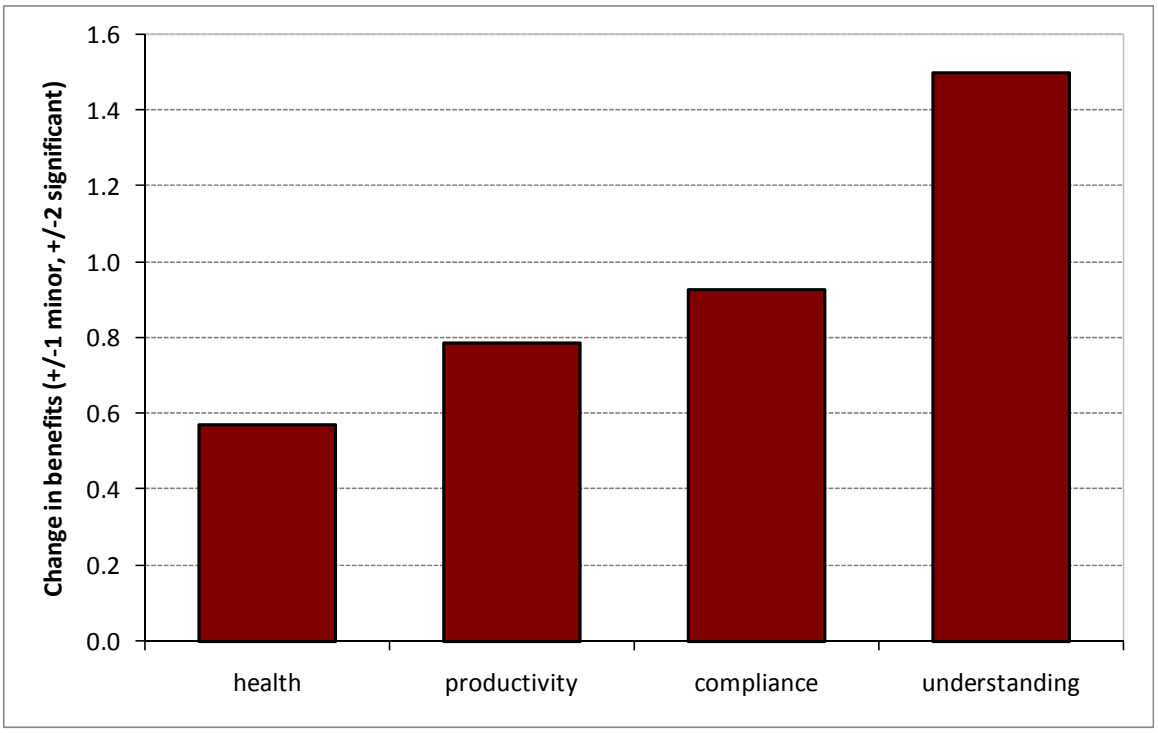


The largest reduction in costs is reported for "red tape", followed by IT costs (keeping abreast of multiple jurisdictions regulations is a complex activity). Firms clearly expect time spent dealing with compliance to decrease. (This contrasts with firms' responses to earlier questions, where they were not sure if the model Act would case compliance FTE requirements to change, and if so, in what direction – see discussion around Chart C.6).

[27] Ideally, it would have been preferable to compile results separately for single-state and multi-state firms. But the numbers in each category are really too small to draw valid inferences from. Moreover, data cleansing would further reduce these numbers, as some single state firms filled out the multi-state questions, while some multistate firms did not.

Again, multi-state firms were asked about the impact of harmonisation on a range of benefits. In this instance, the results were uniformly positive.

Chart C.12 Impact of harmonisation on safety benefits of multi-state firms



Employing the same methodology and assumption sets as used in Table C.1, the relative impacts of these changes can be calculated. Compliance costs are expected to fall by 3.5% for multi-state firms (Table C.2), and safety benefits to increase by 9.5% (Table C.3) as a result of harmonisation.

Table C.2: Implied percentage change in costs for multi-state firms

Question no.	Short title	Weight	Implied percentage change
3.19	red tape	-0.67	-1.7%
3.13	IT	-0.33	-0.8%
3.14	licenses	-0.33	-0.8%
3.18	standardisation	-0.25	-0.6%
3.11	HSRs	-0.17	-0.4%
3.12	consultants	-0.17	-0.4%
3.16	comply time	-0.08	-0.2%
3.10	training	0.00	0.0%
3.15	breaches	0.25	0.6%
3.17	new policies	0.33	0.8%
	Total	**-1.42**	**-3.5%**

Table C.3: Implied percentage change in benefits for multi-state firms

Question no.	Short title	Weight	Implied percentage change
3.24	health	0.57	1.4%
3.23	productivity	0.79	2.0%
3.22	compliance	0.93	2.3%
3.21	understanding	1.50	3.8%
	Total	**3.79**	**9.5%**

Again using the same assumptions as employed in the previous section, for costs of $944 per worker per year, this translates into a cost reduction of $33.46 per worker year, and an increase in benefits of $89.41 per worker year, for multi-state firms. In total that is a net benefit of $122.37 per worker year, from harmonisation.

- The inferred direct cost of multiple OHS regimes ($33.46 per worker) is similar to that of $25.78 per worker, as calculated in Section 7.2.1.
- Given there are an estimated 2.1 million workers in multistate firms (Section 7.2.1), this implies a total direct cost of $73.0 million from multiple OHS regimes. This is not dissimilar to the figure of $61.8 million, as calculated in Section 7.2.1.
- More importantly, the total national benefit of harmonisation for multi-state firms of $268 million per year (2.1 million workers times $122.37 per head).

However, these are only the benefits of harmonisation per se. Multi-state firms would still also to incur the costs of the specific aspects of the model Act (see discussion around Chart C.10). Thus, those costs (-$40.75 per worker) need to be netted out from the benefits of harmonisation ($122.87 per worker). This yields a total net benefit of $82.12 annually for each worker in multi-state firms.

- Firms that traded across several states were also asked what they would be willing to pay in order to only have to trade under a single OHS jurisdiction. The average answer was $75.49 per worker, which is reasonably close to the net benefit figure of $82.12 above.[28]

Benefits to workers and others in society

At a very broad level, it is possible to draw some inferences about benefits to workers and the rest of society. (That is, other than firms, whose costs and benefits have been calculated from the survey.) ASSC (2009) estimated that the total cost to workers of OHS incidents was $28.2 billion per annum, and to the rest of society, $27.1 billion, for a total of $55.3 billion. The improvement in health outcomes from harmonisation for multi-state firms is estimated at 1.41% (Table C.3). As 28.5% of workers are employed by multi-state firms (Section 7.2.1), this is equivalent to a 0.41% improvement across all workers (=28.5% x 1.41%). This then, would translate into an annual improvement for workers of $114.8 million annually (=$28.2 billion x

[28] However, not too much weight should be placed on this, as only four firms were willing to make such an estimate.

0.41%). Assuming that benefits to the rest of society increased proportionately to those of workers, then society would gain by $225.0 million per year (=$27.1 billion x 0.41%).

Combining the above estimates, single-state firms would lose from harmonisation, while multi-state firms would benefit. Overall, firms would incur net costs.

- This is somewhat incongruous given the effort business organisations have been making for OHS harmonisation. However, if the contribution to safety from allowing OHS-qualified union officials access to workplaces was increased to zero - leaving the effect on compliance costs unchanged - the net costs to firms would be reduced by over 80% (albeit, still slightly negative).

The costs to firms, however, are comprehensively outweighed by the estimated benefits of $225 million per year to workers and the rest of society.[29] Overall, there would be a net benefit to the nation of $181 million dollars per year.

For the first year, this would be outweighed by one-off training costs of some $192 million (7.7 million private sector workers with an average training cost of $25.)[30]

Table C.4: Estimated national benefits of OHS harmonisation

Class	Net benefit ($m)
single state firms	*-223.5*
multi-state firms	*179.3*
Total firms	-44.3
Workers	114.8
Rest of Society	110.2
Total	**180.7**

[29] This does not include any allowance for the value of healthy life years saved. As there is a large subjective component in such calculations, Access Economics does not consider they would be valid to construct without at least some objective basis to calculate changes to the nature and severity of occupational illnesses and injuries.

[30] This training cost does not include public sector workers, as the survey was only for businesses.

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