**Attachment A - Table of Previous WHS Review Recommendations**

These tables provide the complete list of recommendations from previous WHS reviews.  Not all recommendations were adopted by the relevant jurisdictions. For more detail, refer to Chapter 2 of the Discussion Paper.

**2018 Review of the model Work Health and Safety laws**

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| **Number** | **Recommendation** |
| **1** | Review the model WHS Regulations and model Codes against agreed criteria on the purpose and content of the second and third tiers of the model WHS laws as they relate to the seven Australian Strategy priority industries. |
| **2** | Amend the model WHS Regulations to deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks. |
| **3** | Safe Work Australia develop criteria to continuously assess new and emerging business models, industries and hazards to identify if there is a need for legislative change, new model WHS Regulations or model Codes |
| **4** | Amend s 5(4) of the model WHS Act to make clear that a person can be both a worker and a PCBU, depending on the circumstances. |
| **5** | Develop a model Code to provide practical guidance on how PCBUs can meet the obligations associated with the principles contained in ss 13–17 (the Principles), including examples of: * the application of the Principles to labour hire, outsourcing, franchising, gig economy and other modern working arrangements, and
* processes for PCBUs to work co-operatively and cohesively to discharge their duties (in the context of the duty to consult, co-operate and co-ordinate with other duty holders—s 46 of the model WHS Act).
 |
| **6** | Update the model Code of Practice: W*ork health and safety consultation, co-operation and co-ordination* to include practical examples of how meaningful consultation with workers can occur in a range of traditional and non-traditional settings. |
| **7a** | Amend the model WHS Act to provide that, where the operations of a business or undertaking ordinarily involves 15 workers or fewer and an HSR is requested as per the requirements of the model WHS laws, the PCBU will only be required to form one work group for all workers represented by one HSR and a deputy HSR unless otherwise agreed between the workers and the PCBU. |
| **7b** | Amend the model WHS Act to provide that a work group is negotiated with workers who are proposed to form the work group. |
| **8** | Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the Fair Work Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws. |
| **9** | Amend the model WHS Act to provide that, if an inspector cancels a PIN for technical reasons under s 102 of the model WHS Act, the safety issue which led to the issuing of the PIN must be dealt with by the inspector under s 82 of the model WHS Act. |
| **10** | Amend the model WHS Act to make it clear that for the purposes of s 72:* the HSR is entitled to choose the course of training, and
* if the PCBU and HSR cannot reach agreement on time off for attendance or the reasonable costs of the training course that has been chosen by the HSR, either party may ask the regulator to appoint an inspector to decide the matter.
 |
| **11** | Update the model Codes and guidance with examples of HSC constitutions, agendas and minutes. |
| **12** | Update the *Worker representation and participation* guide to include:* practical examples of how the issue resolution process works, and
* a list of the various representatives entitled to be parties in relation to the issues under s 80 of the model WHS Act as well as ways of selecting a representative and informing the other parties of their involvement.
 |
| **13** | Amend the model WHS Act to provide for:1. disputes under ss 82 and 89 of the model WHS Act to be referred to the relevant court or tribunal in a jurisdiction if the dispute remains unresolved 48 hours after an inspector is requested to assist with resolving disputes under the default or agreed procedures and with cease work disputes
2. a PCBU, a worker, an HSR affected by the dispute or any party to the dispute to notify the court or tribunal of the unresolved issue they wish to be heard
3. the ability for a court or tribunal to exercise any of its powers (including arbitration, conciliation or dismissing a matter) to settle the dispute, and
4. appeal rights from decisions of the court or tribunal to apply in the normal way
 |
| **14** | Amend the model WHS Act to make it clear that courts have the power to issue declaratory orders in proceedings for discriminatory or coercive conduct. |
| **15** | Amend the model WHS Act to retain previous wording in s 117. |
| **16** | Amend the model WHS Act to align the service of notices provisions under s 155 and s 171 with those in s 209 of the model WHS Act dealing with improvement, compliance and non-disturbance notices. |
| **17** | Amend the model WHS Act to provide that, instead of being limited to the inspector who enters (or has entered) a workplace, the powers to require production of documents and answers to questions can be exercised by any inspector within 30 days following an inspector’s entry to that workplace. |
| **18** | Amend the model WHS Act to clarify that the regulator’s power to obtain information under s 155 has extraterritorial application. |
| **19** | Amend the model WHS Act to include a specific power enabling regulators to share information between jurisdictions in situations where it would aid them in performing their functions in accordance with the model WHS laws. |
| **20** | Review incident notification provisions in the model WHS Act to ensure they meet the intention outlined in the 2008 National Review, that they provide for a notification trigger for psychological injuries and that they capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements. |
| **21** | Review the NCEP to include supporting decision-making frameworks relevant to the key functions and powers of the regulator to promote a nationally consistent approach to compliance and enforcement. |
| **22** | * Amend the penalty levels in the model WHS Act to reflect increases in consumer price index and in the value of penalty units in participating jurisdictions since 2011, and
* Review the increased penalty levels as part of future reviews of the model WHS Act and model WHS Regulations to ensure they remain effective and appropriate.
 |
| **23a** | Amend s 31 of the model WHS Act to include that a duty holder commits a Category 1 offence if the duty holder is grossly negligent in exposing an individual to a risk of serious harm or death. |
| **23b** | Amend the model WHS Act to provide for a new offence of industrial manslaughter. The offence should provide for gross negligence causing death and include the following:* The offence can be committed by a PCBU and an officer as defined under s 4 of the model WHS Act.
* The conduct engaged in on behalf of a body corporate is taken to be conduct engaged in by the body corporate.
* A body corporate’s conduct includes the conduct of the body corporate when viewed as a whole by aggregating the conduct of its employees, agents or officers.
* The offence covers the death of an individual to whom a duty is owed. Safe Work Australia should work with legal experts to draft the offence and include consideration of recommendations to increase penalty levels (Recommendation 22) and develop sentencing guidelines (Recommendation 25).
 |
| **24** | Amend the model WHS Act to remove the 12-month deadline for a request under s 231 that the regulator bring a prosecution in response to a Category 1 or Category 2 offence and to ensure ongoing accountability to the person who made the request until a decision is made on whether a prosecution will be brought. |
| **25** | Safe Work Australia work with relevant experts to develop sentencing guidelines to achieve the policy intention of Recommendation 68 of the 2008 National Review. As part of this process, any unintended consequences due to the interaction of local jurisdictional criminal procedure and sentencing legislation should also be considered. (I note that the work required by Recommendation 22 (‘Increase penalty levels’), Recommendation 23a (‘Enhance Category 1 offence’) and Recommendation 23b (‘Industrial manslaughter’) could be combined with the work required by this recommendation). |
| **26** | Amend the model WHS Act to make it an offence to:* enter into a contract of insurance or other arrangement under which the person or another person is covered for liability for a monetary penalty under the model WHS Act
* provide insurance or a grant of indemnity for liability for a monetary penalty under the model WHS Act, and
* take the benefit of such insurance or such an indemnity.
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| **27** | Amend the model WHS Act to clarify the risk management process by including a hierarchy of controls (consistent with reg 36) and making any corresponding amendments necessary to the model WHS Regulations. |
| **28** | Amend reg 242 of the model WHS Regulations to ensure that details of statutory notices issued by any WHS regulator and evidence of operator training and instruction are included in the device’s log book. |
| **29a** | Amend the model WHS Regulations to prescribe a SWMS template. |
| **29b** | Safe Work Australia develop an intuitive, interactive tool to assist in the effective and efficient completion of fit-for-purpose SWMS |
| **30** | Amend the model WHS Regulations to require photographic ID on White Cards consistent with high-risk work licences. |
| **31a** | Review the references to Standards in the model WHS laws with a view to their removal and replacement with the relevant obligations prescribed within the model WHS Regulations. |
| **31b** | Amend reg 15 of the model WHS Regulations (‘Reference to Standards’) to make it clear that compliance with Standards is not mandatory under the model WHS laws unless this is specifically stated. |
| **32** | Review the model WHS Regulations dealing with MHF, with a focus on administrative or technical amendments to ensure they meet the intended policy objective. |
| **33** | Review the high-risk work licence classes for cranes to ensure that they remain relevant to contemporary work practices and equipment. |
| **34a** | Amend the model WHS Regulations to require that asbestos registers are created by a competent person and update the model Codes to provide more information on the development of asbestos registers. |
| **34b** | Review existing requirements for competent persons, including consideration of amendments to the model WHS Regulations to provide specific competencies for asbestos-related tasks or requirements for further guidance on the skills and experience required for all asbestos-related tasks. |

**Best Practice Review of Workplace Health and Safety in the Northern Territory**

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| **Number** | **Recommendation** |
| **1** | NT WorkSafe re-balance its priorities in favour of “hard” compliance work with a view to increasing on the ground visibility and activity of the inspectorate |
| **2** | That, over time, NT WorkSafe move resources from management and administration and into frontline inspectorate activity. |
| **3** | It is appropriate for some structural separation of NT WorkSafe’s operations into three streams: 1. Prosecutions and Investigations;
2. Inspectorate; and
3. Capacity Building and Engagement.
 |
| **4** | That an Injured Workers and Families Forum be established, actively supported, and consulted by both NT WorkSafe and the Work Health and Safety Advisory Council. |
| **5** | That NT WorkSafe develop a more effective system to ensure that the families of victims of fatalities are supported, modelled on best practice used by police services. |
| **6** | NT WorkSafe develop a plan to increase inspector visibility, especially outside of Darwin and Palmerston, and seek stakeholder feedback after implementation. |
| **7** | That inspectorate activity in remote communities be increased, and a properly resourced annual program of visits to remote communities be established, including increased support for indigenous social enterprises in managing WHS risks for employees and Community Development Employment Project (CDEP) participants. |
| **8** | NT WorkSafe take additional steps to ensure all inspectors have a clear understanding of the availability of directed compliance as tool and of the systems used to track and support its use. |
| **9** | Given the size of the jurisdiction’s Domestic Commercial Vessels fleet, NT WorkSafe, with the support of the Northern Territory Government, should work with the Australian Maritime Safety Authority to ensure that a larger number of inspectors exercising functions under both the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth) and the Occupational Health and Safety (Maritime Industry) Act 1993 (Cth) are located in the Northern Territory. |
| **10** | While recognising that as a small jurisdiction there is a requirement for inspectors to be generalists, NT WorkSafe should ensure: 1. That inspectors with industry specific experience are appropriately used in both general compliance and investigations;
2. That greater Continuing Professional Development (CPD) opportunities are made available to inspectors;
3. Identify industry experience gaps in the inspectorate and target that experience in future recruitment and CPD of existing inspectors; and
4. Consider reaching an agreement with a larger jurisdiction to access specialist inspectors in high risk sectors (including mining and construction) for both general compliance and investigations.
 |
| **11** | That the employee engagement survey be carefully monitored for evidence of improved morale and job satisfaction amongst the inspectorate in particular. |
| **12** | That NT WorkSafe work to upgrade systems and processes to meet best practice standards, including by consolidating IT platforms to avoid duplication, and by providing inspectors with tablet-based auditing and compliance tools. |
| **13** | That skills development program be developed with a view to bringing inspector qualifications and competencies up to a level of leading regulators such as the Health and Safety Executive in the United Kingdom. The program should aim to move the qualifications of inspectors to Diploma level, up from Certificate 4. |
| **14** | Consistent with recommendation to functionally separate the compliance and business engagement functions of NT WorkSafe, a Complex Investigations Unit (of 2-3FTE) led by an experienced senior investigator should be established to report to the Director of Work Health and Safety Prosecutions. Consideration should also be given to using the expertise of the Major Crime unit of NT Police. |
| **15** | NT WorkSafe, with the support of the Northern Territory Government, should takes steps to ensure the Australian Maritime Safety Authority properly performs its agency duties contained in the Memoranda of Understanding. |
| **16** | A new independent statutory office be created to exercise all functions in relation to work health and safety prosecutions under the Work Health and Safety (National Uniform Legislation) Act 2011 (NT) (WHS Act). The new independent statutory office should: 1. be headed by a part-time Director of Workplace Health and Safety Prosecutions to be appointed by the Administrator-in-Council for a five year renewable term and be supported by existing staff reporting to the Director; and
2. not affect the current powers held by the Director of Public Prosecutions under section 230 of the WHS Act to bring proceedings.
 |
| **17** | That the Work Health and Safety Advisory Council monitor trends in relation to prosecutions in relation to the number of proceedings, success rate and penalties awarded. |
| **18** | In relation to the enforceable undertakings framework: 1. The WHS Act be amended to require judicial oversight and approval to permit enforceable undertakings being accepted for contraventions, or alleged contraventions, of the WHS Act that relate to circumstances involving a fatality.
2. Enforceable undertakings not be accepted (unless exceptional circumstances exist) where:
	1. the applicant has a recent prior conviction connected to a work-related fatality
	2. the applicant has more than two prior convictions arising from separate investigations; or
	3. the application relates to an incident involving a very serious injury.
3. For consistency, ‘very serious injury’ should be defined as stated in the WorkCover New South Wales Enforceable undertakings: Guidelines for proposing an enforceable undertaking.
 |
| **19** | That two new offences be created in the WHS Act to be called ‘Industrial Manslaughter’ in line with the following objectives: 1. create a ‘senior officer’ offence and an ‘employer offence’ where conduct negligently or recklessly causes death of a worker;
2. apply the existing standard in NT law for criminal negligence;
3. ensure that prosecution decisions in relation to these offences by the new Director of Work Health and Safety Prosecutions is subject to DPP approval as for Category 1 offences and that the DPP may take over any prosecutions under these sections; and
4. provide for the same maximum custodial sentence for an individual as available for manslaughter under the Criminal Code (life imprisonment) and a fine of up to 65,000 penalty units ($10,075,000) for a body corporate.
 |
| **20** | The new Director of Work Health and Safety Prosecutions advocate to seek to increase the penalties ordered by the courts in appropriate cases over time. |
| **21** | NT WorkSafe develop a comprehensive plan to support Health and Safety Representatives (HSRs) and Health and Safety Committees, and encourage uptake in industry, particularly within priority industry sectors. |
| **22** | The WHS Act be amended to: 1. require mandatory training for HSRs within six months of an HSR being elected to the role and refreshed at three yearly intervals; and
2. require persons conducting a business or undertaking to forward to the regulator a copy of all Provisional Improvement Notices (PINs) issued by HSRs.
 |
| **23** | The WHS Act be amended to provide a framework for the appointment of Work Health and Safety Officers. The appointment of Work Health and Safety Officers should not be mandatory. |
| **24** | As per the current arrangements for codes of practice under the WHS Act, the appointment of a Work Health and Safety Officer should be permissible as evidence that a duty holder has taken action to mitigate health and safety risks at a workplace. This should also apply to duty holders whose workplaces have an elected and trained Health and safety representative. |
| **25** | In relation to NT WorkSafe’s response to, and notification to industry of, serious incidents: 1. NT WorkSafe refocus the content of incident alerts to address the public interest and stakeholder desire for information by providing information about the investigation process, communicating how further information about incident causation and preventative action will be provided (i.e. incident updates, eSAFE articles, safety alerts) and providing information about previous incidents similar in scope that might offer a relevant safety learning;
2. NT WorkSafe expand the scope of incident alerts to include all matters required to be notified to the regulator under the WHS Act and publish the refocussed incident alerts on its website.
 |
| **26** | That the status of Codes of Practice that existed under the Work Health Act 1995 (NT) be restored and that Codes of Practice in operation in the Northern Territory be regularly reviewed. |
| **27** | That WorkSafe, in collaboration with WHS regulators in other Australian jurisdiction develop and implement an action plan to assist workers and employers to eliminate psychosocial hazards in workplaces. |

Review of the Work Health and Safety Act 2011 (QLD)

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| **Number** | **Recommendation** |
| **1** | A. That the Minister consider amending Part 5 of the WHS Act to impose an obligation on PCBUs to, at least annually, advise workers in the business or undertaking:1. about Part 5 of the WHS Act, in particular the capacity for workers to request the establishment of a work group, the election of an HSR, and the role, functions and powers of an HSR, and
2. that the PCBU invites a request for the establishment of a work group or work groups and the election of HSRs and deputy HSRs.
 |
| B. That the Minister consider the manner and form of the advice by the PCBU to its workers should depend on the size of the business or undertaking. For PCBUs with less than 10 workers, the obligation could be discharged by the provision of a written form or other suitable means of prescribed information. |
| C. That the Minister consider any necessary action, including amending the WHS Act, that should be taken to prevent PCBUs from discouraging or hindering worker(s) from: a. requesting the establishment of a work group, and/or b. nominating for election as an HSR or deputy HSR.  |
| **2** | That the Minister consider amending Part 5 of the WHS Act to provide that:1. negotiations for a work group be completed within 14 days of the request to establish a work group. This period may be extended by mutual agreement between the parties to the negotiations.
2. a party to failed negotiations may request the regulator to appoint an inspector to resolve the dispute.
3. any inspector appointed to resolve the dispute must first attempt to assist the parties to resolve the dispute on their own and if such resolution is not possible, make a decision as to the constitution of the work groups within seven days. This decision would be excluded from the internal and external review process.
4. the parties to the negotiations have the capacity to refer a dispute about the inspector’s decision to the QIRC for conciliation and/or arbitration, but that subject to any order of the QIRC, the decision of the inspector will stand and be implemented until the matter is heard and determined by the QIRC. Specific legislative provisions will need to be added granting the QIRC power to deal with such matters. These provisions should be based on the usual powers provided to the QIRC to resolve disputes.
 |
| B. That the Minister consider amending section 16(b) of the WHS Regulation so the phrase ‘readily accessible’ expressly incorporates reference to the geographical locations in which work is performed, the work stream or work type, and shift arrangements. |
| C. That the Minister consider amending section 52(1) of the WHS Act to: a. add a relevant union as a party principal to the negotiations. The phrase ‘relevant union’ should be defined to mean a union who is entitled to represent the industrial interests of the workers who are a party to the negotiation, and b. provide that the parties are to agree on the details of when and where the negotiations will occur. |
| **3** | A. That the Minister consider amending the WHS Act to impose an obligation on PCBUs, so far as is reasonably practicable, to inform an HSR, and where the HSR is present on site make them available, when an inspector or WHS entry permit holder is on site and the visit is relevant to their work group. |
| B. That the Minister consider amending the WHS Act to impose an obligation on PCBUs to provide HSRs with copies of any: 1. statutory notices issued by an inspector
2. entry notices issued by WHS entry permit holders, or c. mandatory incident notifications made to the regulator by the PCBU.
 |
| C. That the Minister consider amending section 68 of the WHS Act to make clear that: 1. HSRs have the capacity to request the provision of information from a PCBU about a safety issue, and
2. the PCBU is obliged to comply with such a request.
 |
| D. That the Minister consider amending section 68 of the WHS Act to clarify that HSRs are permitted to take photographs, make videos, and take measurements and/or samples in the performance of their role. |
| E. That the Minster consider introducing a regulation which provides that the resources, facilities, and assistance to be provided to an HSR by a PCBU are consistent with the relevant SWA Guidance. |
| **4** | A. That the Minister consider, consistent with recommendation 10 of the Boland Review, HSRs be permitted to choose their training provider. |
| B. That the Minster consider amending section 21(2) of the WHS Regulation so the requirement for an HSR to complete their initial training in three months be shortened to 28 days, save for any circumstances where training is not available in the 28 day period, or where there is some pressing necessity at the business or undertaking which renders it impractical for the HSR to attend the training in that period. |
| C. That the Minister consider amending section 21(1) of the WHS Regulation to reduce the requirement that HSRs conduct refresher training every three years to every 12 months |
| D. That the Minister consider amending section 72(4) of the WHS Act to reflect that during a period of training, HSRs are entitled to receive payment of the usual remuneration they would have received if they had been at work instead of at training. |
| **5** | That the Minister consider amending section 85 of the WHS Act to provide that: 1. any direction to cease work by an HSR be issued to the PCBU, and
2. the PCBU has an obligation to cease work that is the subject of the direction until such time as the issue is resolved or the direction is set aside in accordance with the dispute resolution process.

Section 85 of the WHS Act should still maintain the capacity for an HSR to issue a directive to a worker in circumstances where there is an immediate exposure to risk. |
| **6** | A. That the Minister consider amending the WHS Act to reduce the time for compliance with a PIN from eight days to four days, except in circumstances where all parties agree to extend the timeframe. |
| B. That the Minister consider reducing the period for when a person can ask the regulator to review a PIN to three days to align with the proposed timeframe in recommendation 6A. |
| **7** | A. That the Minister consider amending the definition of ‘discriminatory conduct’ in section 105 of the WHS Act to reflect the definition of ‘adverse action’ in the IR Act. |
| B. That the Minister consider amending section 112 of the WHS Act to enable proceedings to be conducted in the QIRC and clarify that a relevant union has standing to commence the proceeding. Relevant union should be defined to mean a union who is entitled to represent the industrial interests of the worker/s affected by the contravention. |
| **8** | That the Minister consider amending section 47 of the WHS Act to require: 1. PCBUs to consult with a representative of a worker, where requested by the worker, and
2. provide that, where a representative is requested by a worker, the parties agree on the details of when and where the consultation will occur.
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| **9** | A. That the Minister consider amending section 75 of the WHS Act to provide that an HSC be established as soon as practicable but no later than 28 days after a request is made. |
|  | B. That the Minister consider whether section 75 of the WHS Act should permit the making of regulations which identify a definition of high risk work and provide that in the case of such high risk work, an HSC must be established before the commencement of the high risk work. |
| **10** | That the Minister consider amending Part 5, Division 4 of the WHS Act to provide that in the event there is a dispute about the formation or composition of an HSC: 1. A party is entitled, at any time during the 28 day period proposed in recommendation 9A, to request that the regulator appoint an inspector to resolve the dispute.
2. Within seven days of being appointed, the inspector must first attempt to assist the parties to resolve the dispute on their own and if such resolution is not possible, make a determination about the formation or composition of the HSC. This decision would be excluded from the internal and external review process.
3. The parties to the dispute may notify the QIRC about a dispute over that determination. However, pending any order of the QIRC, the determination of the inspector will remain in force until the matter is heard and determined by the QIRC. Specific legislative provisions will need to be added granting the QIRC power to deal with such matters.
 |
| **11** | That the Minister consider amending section 118 of the WHS Act to: 1. provide that WHS entry permit holders are permitted to remain at the premises for so long as is necessary to complete the exercise of their statutory powers, subject to the limitation imposed by section 126 of the WHS Act
2. confirm that a WHS entry permit holder is entitled to gain access to employee records that relate to the suspected contravention without needing to wait the 24 hours provided for in section 120 of the WHS Act. This would also require changes to allow WHS permit holders to consult with workers about the resolution and finalisation of any suspected contraventions without the need to give 24 hours’ notice as required by section 122 of the WHS Act, and
3. provide that WHS entry permit holders may take photographs, take videos, or make measurements and/or samples while at the premises.
 |
| **12** | That the Minister consider amending section 148(a) of the WHS Act to make clear that the risk of injury or danger to public safety referred to is not related to the suspected contravention, but a risk of injury or danger to public safety at large. |
| **13** | That the Minister consider amending section 119 of the WHS Act to clarify that the provision of the notice is not a pre-condition to entry and that any defects or invalidity in the notice issued does not affect the validity of an entry pursuant to section 117 of the WHS Act. |
| **14** | That the Minister consider amending section 128 of the WHS Act to clarify that a PCBU cannot require a WHS entry permit holder to comply with an occupational health and safety requirement at the site if compliance with that requirement would unreasonably hinder or delay the exercise of the statutory rights conferred by sections 117 and 118 of the WHS Act or would otherwise defeat the exercise of those rights. |
| **15** | That the Minister consider requesting OIR to explore all mechanisms available to ensure the anonymity of the worker and prevention of any adverse action including any necessary amendments to clarify section 130 of the WHS Act. |
| **16** | A. That the Minister consider amending the WHS Act to give registered unions, WHS entry permit holders, and persons affected standing to commence civil penalty proceedings for contraventions of sections 126 and 144 to 147 of the WHS Act. Further, in consultation with OIR, consideration be given to whether it is desirable for the persons identified to be given standing to commence civil penalty proceedings for the balance of civil penalty offences contained in Part 7 of the WHS Act. |
| B. That the Minister consider amending the WHS Act to transfer civil penalty proceedings for a contravention of a WHS civil penalty provision to the QIRC. |
| **17** | That the Minister consider amending the WHS Act to provide that, in the case of an application for external review, the costs of the hearing follow the event and that no other order for costs may be made. |
| **18** | A. That the Minister consider amending section 80(1) of the WHS Act to include a relevant union as a party principal to the dispute. Relevant union should be defined as: a. a union who is entitled to represent the industrial interests of the workers who are affected by the dispute, and b. which has sought to be involved in the resolution of the issue. |
| B. That the Minister consider amending section 80(1) of the WHS Act to clarify that where a worker(s) is in a work group where an HSR has not yet been elected, the worker(s) may appoint a representative. |
| **19** | A. That the Minister consider amending the definition of a ‘union’ in Schedule 5 of the WHS Act to delete sub-paragraph (c) which includes “an association of employees or independent contractors, or both, that is registered or recognised as an association”. |
| B. That the Minister consider amending the definition of ‘representative’ in Schedule 5 of the WHS Act to exclude an employee or officer of, or acting for, an entity (other than a union as defined in Schedule 5) that purports to represent the industrial interests of employees or employers. |
| C. That the Minister consider clarifying, to the extent possible, any other circumstances in the WHS Act where ambiguity may persist in relation to the use of terms such as ‘union’, ‘representative', 'person assisting' and the like. |
| **20** | A. That the Minister consider amending section 102B(1) of the WHS Act to delete the requirement that the parties first seek to have an inspector appointed to resolve a WHS dispute before notifying a dispute to the QIRC. |
| B. That the Minister consider requesting the inspectorate to undertake a comprehensive internal review of procedures and conduct an education program to ensure that inspectors are aware that when they are appointed to assist in resolving a dispute, they still retain their compliance powers and that they should exercise those powers if they consider that the circumstances warrant the exercise of a compliance power. |
| **21** | That the Minister consider elevating the hierarchy of controls from Part 3.1 of the WHS Regulation to the WHS Act. |
| **22** | A. That the Minister consider amending the definition of ‘serious injury' to refer to where an employee has been absent from work for four consecutive days, or a more beneficial definition if one is identified through the considerations of incident notification that are occurring nationally in response to the Boland Review. |
| B. That the Minister consider amending the WHS Act to introduce a new obligation for a PCBU to notify an incident which did not result in a serious injury or illness but had the capacity to do so. |
| C. That the Minister consider requesting OIR to confer with DJAG as to whether non-compliance with the notifiable incident reporting requirements should be an infringeable offence. |
| **23** | That the Minister consider requesting OIR to assess what administrative arrangements may be necessary to ensure that the inspectorate is bringing cases where a PCBU has multiple statutory notices issued to them to the attention of the WHSP. The purpose of this would be to ascertain whether the history of non-compliance reveals a systemic failure to comply with the duties imposed by the WHS Act and whether a prosecution is appropriate. |
| **24** | That the Minister consider ensuring effective enforcement action can be taken against an accredited assessor for providing false and misleading information in the context of conducting assessments. |
| **25** | That the Minister consider amending the WHS Act to remove the automatic expiry of codes of practice after five years and instead provide for a review of codes of practice at least every five years with the level of review to be determined by OIR. |
| **26** | A. That the Minister consider amending the definition of ’high risk plant’ in Schedule 1, Part 1 of the WHS Act to reflect Schedule 1, section 6 of the model WHS Act, that high risk plant means plant prescribed as high risk plant. |
| B. That the Minister consider requesting OIR to assess the definition of plant items included in ‘high risk plant’ to ensure it is current and achieving intended public health and safety benefits. |
| C. That the Minister consider whether inspectors should have the ability to issue prohibition notices for plant items that present a risk of catastrophic failure if inspection, maintenance and testing requirements are not evidenced (e.g., amusement devices, cranes and concrete pumping plant). |
| **27** | That the Minister consider conducting an annual review for a period of three years, following the introduction of any requirement to report near misses. The purpose of such a review will be to establish the extent of incidents involving mobile plant and whether licensing for mobile plant should be reintroduced. |
| **28** | A. That the Minister consider clarifying the role of the WHS Board and the interaction between the WHS Board and OIR to ensure a singular focus on improving WHS outcomes. |
| B. That the Minister consider reviewing the current ISSCs to ensure appropriate coverage of relevant industries, and that specific consideration given to the size and complexity of the ISSCs. The Minister could consider subsequent legislative or administrative changes. |
| **29** | That the Minister consider amending Schedule 2, section 23B of the WHS Act so that the Affected Persons Committee is renamed the Consultative Committee for Work-related Fatalities and Serious Incidents. |
| **30** | That the Minister consider elevating existing requirements for toilets in the code of practice into the WHS Regulation and harmonising the language used in the new provisions. Consideration should also be given to, consistent with the Guidelines for the prescription of penalty infringement notice offences under the State Penalties Enforcement Regulation 2014, prescribing non-compliance with toilet requirements (including the requirements specific to construction workplaces in Schedule 5A of the WHS Regulation) as a penalty infringement notice offence. |
| **31** | That the Minister consider establishing a review to examine the scope and application of the industrial manslaughter provisions to determine if amendments are warranted. |

Independent Review of SafeWork SA

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| **Number** | **Recommendation** |
| **1** | SafeWork SA should adopt a new Vision which matches the objects of the WHS Act, “securing the safety of workers and workplaces”, and a Mission to “protect workers and other persons against harm to their health, safety and welfare”. |
| **2** | SafeWork SA should adopt the fatality and injury data provided by ReturnToWorkSA as the measure of its performance in achieving its Vision and Mission. |
| **3** | The performance of SafeWork SA leadership should be measured against improvements in fatalities and injuries. |
| **4** | The Minister should establish a SafeWork SA Oversight and Advisory Council (SWOAC). The Council should receive a detailed quarterly report on SafeWork SA activities and performance, including the following: 1. South Australia’s injury performance for the preceding quarter, injury performance year-to-date, comparisons with five-year averages, and comparisons against the strategy targets.
2. Reports on fatalities that have occurred in the previous quarter, including follow-up regulatory and education actions, and engagement with deceased workers’ families.
3. Regulatory actions for the preceding quarter. The number of visits, both response and targeted, the number of notices, both improvement and prohibition that have been issued, the number of referrals for investigation, the number of investigations completed, enforceable undertakings, and prosecutions completed. This data should be presented against prior periods and the strategy targets.
4. Activities to improve the management of psychosocial hazards at work, and support for the recently released code of practice
5. A report on all s 231 requests, including the tracking of each individual matter against the statutory time limits.
6. A report on all internal review applications and the outcomes of those applications.
7. Feedback on inspections, including outcomes (notices and corrective actions), and a report on all contact with HSRs from inspection reports.
8. Data on serious incident reports and notifications received by SafeWork SA and the follow up actions the agency has taken.
9. Data on complaints received by SafeWork SA, including the outcomes of those complaints and the feedback to complainants. Also, any reports on any misuse of complaints.
10. Exercise of entry permits, including incidences where entry has not been achieved, and follow up inspections to entry reports.
11. Activities with social partner organisations to “promote the provision of advice, information, education and training in relation to work health and safety”.
12. Communications and media activity completed and planned.
 |
| **5** | The report should be forwarded on behalf of the Council to the Minister, and the Chief Executive of the Attorney-General’s Department, before being published online. |
| **6** | SafeWork SA’s annual activity report should be expanded to include the activity and performance data in the quarterly reports. |
| **7** | The SWOAC should work with SafeWork SA to enhance its strategic plan. The expanded plan should include the following: 1. Targets for injury and fatality reduction.
2. Targeted injuries, industries and employers, based on the ReturnToWorkSA injury data.
3. Targets for regulatory activity.
4. Targets for delivery of advice, information, education, and training by the social partner organisations supported by SafeWork SA.
5. Targets for supporting and increasing the numbers of HSRs.
 |
| **8** | SafeWork SA should publicly and internally commit to encouraging and supporting employee associations and employer organisations to play their vital role in promoting improvements in workplace health and safety, in accordance with the WHS Act. |
| **9** | SafeWork SA should publicly and internally promote fair and effective workplace representation, consultation, cooperation, and issue resolution in relation to work health and safety. |
| **10** | The SWOAC terms of reference should reflect the following objectives: 1. To give practical effect to the tripartite mechanisms in the WHS Act and support the social partner organisations to play their critical role in securing the health and safety of workers and workplaces.
2. To build confidence in SafeWork SA through transparency.
3. To enable workers, employers and families of deceased workers to hold SafeWork SA to account for its strategic choices and regulatory actions, and its performance in securing the safety of workers and workplaces.
4. To improve SafeWork SA’s strategic choices in targeted injuries, industries and employers, and strengthen its capacity and confidence to use its regulatory powers.
5. To support the Minister for Industrial Relations and Public Sector, and the Attorney-General’s Department in the delivery of the Government’s agenda for workplace safety.
 |
| **11** | The Minister should seek the advice of the SWOAC regarding SafeWork SA’s preparedness to support any Industrial Manslaughter provisions in the WHS Act. |
| **12** | Members of the SWOAC should be appointed by the Minister. All members should be the senior leaders of their organisations, with sufficient authority to contribute at a strategic level. There should be no provision for proxies in the event a member cannot attend a meeting. Membership should comprise the following: 1. An independent chair with sufficient experience and qualifications to earn the respect and confidence of the major parties
2. Five representatives of employee associations
3. Five representatives of employer organisations
4. A representative of the Chief Executive of the Attorney-General’s Department
5. The Victims of Crime Commissioner
6. A representative of the Australian Institute of Health and Safety
7. A representative of ReturnToWorkSA
 |
| **13** | The Council should meet quarterly. For the first year it should meet monthly. The Minister and the Chief Executive of the Attorney-General’s Department should attend the Council annually. The agenda for that meeting should include feedback from the Council on the performance of the Executive Director of SafeWork SA. Two representatives of the Council should be on the interview panel when appointing the Executive Director of SafeWork SA. Council members should accompany a SafeWork SA inspector for a day within a month of their appointment, and thereafter this should be an annual activity. SafeWork SA should brief the Council on the skills and experience in each inspector intake. |
| **14** | The SWOAC should receive an annual report from SafeWork SA confirming that all documents and standards called up by the WHS Act are updated. |
| **15** | SafeWork SA should develop a new strategy to support HSRs. The strategy should include the following: 1. Actions to identify how many HSRs there are, where they are, and how to communicate with them. These actions should have regard to promoting and enforcing s 74(2) which requires a person conducting a business or undertaking (PCBU) to provide SafeWork SA with a list of HSR’s.
2. Initiatives to encourage more people to take on the HSR role.
3. Regular reviews of HSR training and training providers, including feedback from trainers and HSRs.
4. Initiatives to enforce the prohibition of discriminatory conduct against HSRs.
5. Mechanisms to help SafeWork SA inspectors support HSRs, including the strict application of s 164(2)(c) and a system of monitoring and reporting on SafeWork SA’s adherence to this provision.
6. Opportunities to increase engagement with HSRs, including improving the portal and regular forums between HSRs and SafeWork SA inspectors for their industry.
7. An annual survey of HSRs to ascertain the support they are receiving and their needs to fulfill their role under the WHS Act.
 |
| **16** | SafeWork SA should convene an annual conference of HSRs. The conference should be addressed by the Executive Director, who will report on progress against the strategy, and the broader strategic plan, and take questions from HSRs. |
| **17** | SafeWork SA should run an award for HSR of the Year. The prize should be a scholarship for professional development in workplace health and safety and be presented by the Minister at the annual HSR’s conference. |
| **18** | The Minister should support the recommendation in the Model Laws Review that provision be made for an employee association official to visit a workplace to provide assistance to an HSR without the need to hold an entry permit. |
| **19** | The Minister should support the recommendation in the Model Laws Review to provide for disputes under ss 82 and 89 to be capable of being referred to a relevant tribunal (in this case, the South Australian Employment Tribunal) if the dispute remains unresolved 48 hours after an inspector is requested to assist with resolving disputes under the default or agreed procedures and with cease work disputes. |
| **20** | The Victims of Crime Commissioner should be appointed to the SWOAC to ensure that SafeWork SA is held to account and supported in respecting the rights and needs of families of deceased workers. |
| **21** | The Government should commence consultation with employer organisations to amend the WHS Act such that the Workplace Entry by WHS Entry Permit Holder’s regime created within the Act is consistent with the model laws. Those provisions that require notification to SafeWork SA about proposed entries to workplaces, and the requirements to furnish reports after entry has been achieved to SafeWork SA should be removed. |
| **22** | SafeWork SA should report quarterly to the SWOAC on the number of times it has been requested to intervene where entry to a worksite has not been achieved by an Entry Permit Holder, and the outcome of its interventions. Its report should contain an analysis of any patterns within these incidents, and its actions to resolve these matters. Requests from Entry Permit Holders and employers for an inspector to attend a site to resolve a dispute should be included in the quarterly report along with the outcome of the request. The report should also record where voluntary reports have been lodged by Entry Permit Holders and the response to those reports. |
| **23** | The Government should commence consultation with employer organisations to amend the WHS Act to allow Entry Permit Holders to take photographs, video, voice recordings, measurements and tests relevant to their investigations, in terms similar to the provision added to the Victorian Occupational Health and Safety Act 2004. |
| **24** | Section 271 should be amended to enable a person who has been seriously hurt, and the families of a person who has been killed at work to be kept abreast of the findings of SafeWork SA’s investigation into the circumstances of the incident, including the materials that are being considered in deciding on whether or not to prosecute. |
| **25** | Section 271 should be amended to expressly allow SafeWork SA to keep an applicant under s 231 abreast of the progress of their application. |
| **26** | Section 271 should be amended to support an “informal release of information policy” that allows for inspection reports, appropriately redacted, to be provided to employee association and employer organisation officers, and HSR’s who notify issues to SafeWork SA. |
| **27** | The SafeWork SA Workplace Education Team should develop a strategy to transition from direct delivery of education and training, to coordinating and supporting education and training by employer organisations and employee associations. The team to work in partnership with the ReturnToWorkSA Employer Risk Services to improve the targeting of education and training. |
| **28** | The Mining and Quarrying Occupational Health and Safety Committee should sit within ReturnToWorkSA. |
| **29** | The SafeWork SA complaints system should be modified to allow tracking of responses to complainants, with non-compliances to be included in the quarterly report to the SWOAC. |
| **30** | SafeWork SA should replace its three online complaints processes with a single process based on that used by WorkSafe Victoria. |
| **31** | SafeWork SA should accelerate the streamlining and refining of the administrative procedures and processes that apply to worksite visits, with the goal of enabling inspectors to conduct an average of six to eight visits per week. This work to be done in consultation with inspectors, and with the oversight of SWOAC. |
| **32** | SafeWork SA should set a target of 50% of visits by inspectors to be proactively initiated, based on the ReturnToWorkSA data and the revised strategy, and work with the SWOAC to achieve this. |
| **33** | SafeWork SA should review its investigation processes and investigator resources, including supporting inspectors to do some investigations, with the objective of creating the capacity to complete thirty prosecutions a year. |
| **34** | SafeWork SA should aim for 90% success in its prosecutions, and SafeWork SA have the flexibility to engage the DPP to support specific prosecutions where its skillset will benefit the outcome. |
| **35** | The WHS Act should be amended to allow SafeWork SA to seek a Court extension of time in limited circumstances. |
| **36** | The SWOAC should be provided with a briefing by Counsel on the advice relied on by SafeWork SA in its decision not to bring a prosecution following the tragic death of Gayle Woodford. |
| **37** | SafeWork SA should develop a new Compliance and Enforcement policy to supplement the National Compliance and Enforcement Policy (NCEP), based on the policies of the Queensland and Victorian regulators. |
| **38** | SafeWork SA should engage an independent consultant to conduct a survey of its culture, and use the results to engage with staff to design the culture necessary to achieve their potential and the full contribution of its partners. |
| **39** | The Government should commence consultation with employer organisations to amend the WHS Act to extend the existing civil penalty provisions to cover the primary duty at s 19 and the offences in Part 2 Division 5 of the WHS Act, and that standing for bringing applications in civil penalty provisions be extended to workers, families of injured workers, and employee associations. |

The Independent Review of SafeWork NSW

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| **Number** | **Recommendation** |
| **1** | SafeWork should ensure triage documentation is more user friendly. |
| **2** | SafeWork should better embed its regulatory priorities into the triage process each year |
| **3** | SafeWork should formalise the oversight and review of triage decisions, as well as responses to challenges and issues identified as part of that review and oversight process |
| **4** | SafeWork should give careful consideration to consolidating the three groups involved in triage under one directorate. |
| **5** | SafeWork should formalise training to equip staff with the skills they need for effective triage. |
| **6** | SafeWork should give consideration to establishing a policy that wherever possible, the membership of the IDMP should include at least one legal practitioner with relevant experience in the area of workplace health and safety law and in prosecutions for breach of obligations under that law. |
| **7** | SafeWork should simplify documentation supporting the IDMP process. |
| **8** | When the IDMP process documentation is reviewed by SafeWork in accordance with recommendation 7, SafeWork should ensure that that documentation directs the attention of staff preparing submissions to the IDMP to consider the strategic regulatory priorities established from time to time by SafeWork, and to state expressly how the submission supports (to the extent that it does) those priorities. |
| **9** | SafeWork should formalise the oversight and review of the IDMP decision making process and improve the analysis of insights. |
| **10** | SafeWork should incorporate a greater strategic focus into the IDMP process. |
| **11** | SafeWork should develop tailored IDMP process training, including content with a specific focus on strategic decision-making |
| **12** | SafeWork should improve communications with staff following decisions. |
| **13** | The legislature should give consideration to amending section 219 of the 2011 Act so that it provides that: 1. a person must not without reasonable excuse contravene, or fail to comply with or perform, a provision of a WHS undertaking; and
2. the person alleging the existence of a reasonable excuse must prove it on the balance of probabilities.
 |
| **14** | When recommendation 9 is put into practice, SafeWork should institute a formal process to use the data collected to enable, among other things, a regular and continuing sampling of IDMP decisions for the purpose of re-examining the decision reached on each of the selected files to evaluate its correctness at the time it was made, and to see if there were alternative decisions that could be and should have been made on the evidence originally available to the IDMP. |
| **15** | SafeWork should train more of its inspectors specifically in dealing with psychosocial hazards, or alternatively, employ additional personnel to be trained as inspectors with specific training in dealing with psychosocial hazards. |
| **16** | SafeWork should work with employer groups, unions and HSRs in individual industries to create industry forums whose role is to identify psychosocial hazards in the relevant industry, to educate PCBUs and workers about those hazards, and to develop and implement strategies to minimise them. |
| **17** | SafeWork should establish a system to enable SafeWork to have access to claims data held by workers insurance insurers for the purpose of identifying at-risk industries, PCBUs and workers and targeting programs of education and inspection accordingly. |
| **18** | To the extent that there may be legislative prohibitions or restrictions that would prevent or inhibit that access, the legislature should give consideration to enacting legislation to remove any such prohibitions and restrictions. |
| **19** | SafeWork should seek to achieve greater consistency in mentoring and field work opportunities. |
| **20** | SafeWork should continue to focus on the workforce planning required to enable the best possible teaching and learning experience. |
| **21** | SafeWork RTO should review its assessment attempt approach to ensure it continues to meet good practice. |
| **22** | SafeWork should fully implement a framework to assess the impact and outcomes the NITP is delivering and for sustaining organisational capability over time. |
| **23** | SafeWork should institute formal assessment for HSR training participants. |
| **24** | SafeWork should update EPH training to reflect more contemporary training practices. |
| **25** | SafeWork’s approval process for providers of EPH and HSR training should continue to be more focused on review and continuous improvement process. |
| **26** | SafeWork should increase current oversight resources and consider an expansion to supervising student outcomes over time. |
| **27** | SafeWork should prepare formal triage training materials by SafeWork and then regularly refreshed. |
| **28** | SafeWork should administer simple triage skills assessments for new starters post training and for existing staff before they deliver training. |
| **29** | SafeWork should give consideration to instituting a formal process of assigning new inspectors to work, for a period of three to six months, in pairs with existing and experienced inspectors when performing those aspects of an inspector’s functions that involve dealing with PCBUs over complaints and notifications, and their investigation. |
| **30** | SafeWork should review all its educational functions, both internal and external, with a view to identifying and utilising the best possible combination of theoretical and practical learning, and that FIWSAG or some equivalent body should be enlisted, assuming its continuing willingness to do so, to have input into both the design and the delivery of internal and external training. That review should extend to a consideration of the desirability and content of on-the-job training, or continuing education, for all staff whose roles involve dealing with PCBUs, workers, unions, HSRs and members of the public in connection with complaints, referrals, requests for service, investigations, and prosecutions. |
| **31** | When SafeWork reviews its educational functions, it should ensure that the review extends to the content and delivery of training (including continuing education) of its Customer Service Centre (or Advisory Service) Staff. |
| **32** | SafeWork should be established as a statutory corporation, an example of this structure being the Environmental Protection Authority (EPA) constituted under the Protection of the Environment Administration Act 1991 (NSW) (PEA Act). |
| **33** | SafeWork should be governed by a board comprising representatives of employer and employee organisations with demonstrated interest and expertise in the field of workplace health and safety. The board should also include at least one person who works and is expert in the field of workplace health and safety, and a representative from an organisation such as FIWSAG. |
| **34** | SafeWork should update the Positive and Productive Workplace Policy and accompanying intranet material. |
| **35** | SafeWork should invest in new processes and supports to ensure accessibility of complaints process for all SafeWork employees |
| **36** | SafeWork should better track delivery times for complaints and grievance issues. |
| **37** | SafeWork should expand training for managers to identify and support the resolution of workplace grievances. |
| **38** | SafeWork should consider clarifying how confidentiality is maintained and balanced against effective investigation of issues. |
| **39** | SafeWork should revise triaging tool to support more consistent decision making to determine the appropriate pathway for complaint resolution. |
| **40** | SafeWork should ensure record keeping and oversight is systematised, and automated where appropriate. |
| **41** | SafeWork should ensure greater consistency and support in the complaints and grievance handling work performed by the People & Culture team on behalf of SafeWork NSW. |
| **42** | Within a period of 9 to 12 months from the delivery of this Report and its publication, SafeWork should undertake a further review of the complaints and grievance handling processes of SafeWork to identify whether the deficiencies in those processes identified in the Nous report have been rectified, and whether the complaints handling function has improved both as to efficiency and as to correctness and consistency of outcomes. |
| **43** | SafeWork should, when restructured, formalise and continue the process of regular meetings with FIWSAG, at least quarterly and more often as circumstances require. |
| **44** | When investigating a workplace incident and considering what action to take, SafeWork should wherever possible make contact with HSRs of the workforce of the PCBU at the location of the incident, and seek their input both as to evidence that may be available of an unsafe system of work and (where enforceable undertakings (EUs) are being considered) as to the precise terms of the EUs that may be negotiated with the PCBU. |
| **45** | SafeWork should develop, formalise and follow a procedure requiring it, when a workplace incident has resulted in the death of or serious injury to a worker: 1. to advise the family of that worker, and where applicable the injured worker, of the steps to be followed in the investigation of the incident;
2. to keep the family and the worker informed of progress of the investigation;
3. to inform the family and worker if a prosecution is to be taken and, if it is, to keep them informed of the progress and outcome of that prosecution;
4. to inform the family and worker, if a prosecution is not to be undertaken, of the reasons for that decision;
5. to consult the family and worker as to the terms of any EU that the PCBU may request and SafeWork may decide to consider; and
6. to offer the family and worker the opportunity to have input into the precise terms of that EU.
 |
| **46** | Where a worker who is killed or seriously injured in a workplace incident is to the knowledge of SafeWork a member of a trade union, SafeWork should take, with all appropriate changes, steps in accordance with (a) to (f) at recommendation [45] above to inform and keep informed the relevant officials of that trade union of the progress and outcome of the investigation. |

**Conduct of WHS Prosecutions Review (WorkSafe ACT)**

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| **Number** | **Recommendation** |
| **1** | Implement an efficiency performance measure which requires briefs of evidence to be assessed within 120 days of referral. |
| **2** | Implement an effectiveness performance measure which requires 90% of prosecutions to result in a conviction with the conviction rate being the percentage of defendants convicted in prosecutions which proceeded to a decision or verdict. |
| **3** | Collect investigation and prosecution timeline data and provide regular reports to the WHS Council on the length of time taken from notification of an incident to filing of charges and on the outcomes of prosecutions |
| **4** | Publish detailed prosecution reports, court summaries and data on the WorkSafe ACT website like the reports and data currently provided by the Office of the WHS Prosecutor in Queensland. |
| **5** | Develop a prosecution policy which states clearly how prosecution decisions are made and highlights the breaches expected to result in prosecution action. |
| **6** | Incorporate prosecution priorities into the statement of operational intent. |
| **7** | Establish an in-house prosecution team comprising one senior prosecutor, two junior prosecutors, a legal graduate, and a paralegal. |
| **8** | Amend the Law Officers (General) Legal Services Directions 2012 (ACT) to allow the WHS Commissioner to seek prosecution advice from external counsel without the need for approval from the Chief Solicitor [Solicitor-General] of the ACT. |
| **9** | Amend the Law Officers (General) Legal Services Directions 2012 (ACT) to allow the WHS Commissioner to use external counsel to progress WHS prosecutions through the relevant courts. |
| **10** | Amend the Law Officers (General) Legal Services Directions 2012 (ACT) to allow the WHS Commissioner to establish an in-house prosecution team within WorkSafe ACT. |
| **11** | Ensure that all Industrial Manslaughter offences are prosecuted by the DPP. |
| **12** | Amend section 230 of the WHS Act to reflect the original wording of the model WHS Act. |

**Sentencing Occupational Health and Safety offences in VIC**

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| **Number** | **Recommendation** |
| **1** | The Victorian Government should amend the Occupational Health and Safety Act 2004 (Vic) to create a framework that allows affected persons to make impact statements in sentencing proceedings involving OHS offences. |
| **2** | The Victorian Government should amend the Occupational Health and Safety Act 2004 (Vic) to provide a framework for restorative justice conferences to occur in cases involving offences contrary to that Act. |
| **3** | The Victorian Government should establish a program trialling the use of restorative justice conferences in cases involving offences contrary to the Occupational Health and Safety Act 2004 (Vic), and ensure a system is in place for continuous feedback that results in interim and final evaluations being completed within two and four years, respectively. |
| **4** | The Victorian Government should amend the Occupational Health and Safety Act 2004 (Vic) to: * repeal section 136 (orders to undertake improvement projects);
* revise section 137 to remove the need for offenders to give an undertaking, and rename these as ‘health and safety orders’;
* revise section 137(1) to allow health and safety orders to run for a period of up to five years;
* revise section 137(3) to clarify that the special conditions listed can be imposed on any offender, not just employers;
* revise section 137(3) to include a further special condition ‘to undertake a specified project for the general improvement of occupational health, safety and welfare within the period specified in the order’; and
* revise section 138(c) to specify that the maximum penalty for contravening a health and safety order is 2,500 penalty units for a body corporate, and 500 penalty units for an individual.
 |
| **5** | WorkSafe Victoria should develop a policy relating to health and safety undertakings pursuant to section 137 of the Occupational Health and Safety Act 2004 (Vic) that:1. specifies criteria for deciding whether to recommend that a sentencing court consider imposing an undertaking, including potential conditions of such an undertaking, and
2. encourages the increased use of undertakings in appropriate cases.
 |
| **6** | WorkSafe Victoria should develop a policy relating to adverse publicity orders pursuant to section 135 of the Occupational Health and Safety Act 2004 (Vic) that: 1. specifies criteria for deciding whether to recommend that a sentencing court consider imposing an adverse publicity order, including the content and medium of the information to be publicised, and
2. encourages the increased use of adverse publicity orders in appropriate cases.
 |
| **7** | The Victorian Government should increase the maximum penalties for breaches of health and safety duties under the Occupational Health and Safety Act 2004 (Vic) to:* 50,000 penalty units for body corporates for offences contrary to sections 21, 23, 26, 27, 28, 29, 30 and 31; and
* 10,000 penalty units for individuals for offences contrary to sections 21, 23, 24, 25(1), 25(2), 26, 27, 28, 29, 30 and 31.
 |
| **8** | The Victorian Government should replace section 32 of the Occupational Health and Safety Act 2004 (Vic) with a provision specifying a maximum penalty of 10 years’ imprisonment, in addition to or instead of the (revised) maximum fine of 10,000 penalty units, for individuals who recklessly contravene a health and safety duty under the Act in a way that places, or may place, another person in danger of death, serious injury or serious illness. |
| **9** | The Victorian Government should ask the Sentencing Advisory Council to develop and consult on a draft sentencing guideline for inclusion in the Occupational Health and Safety Act 2004 (Vic) when sentencing offences contrary to that Act. Key features of the guideline would include: * the guideline would apply to all breach of duty offences (sections 21 to 31), as well as the reckless endangerment (section 32) and workplace manslaughter (section 39G) offences;
* the guideline would apply to all offences sentenced after enactment;
* the guideline would provide a range of sentencing outcomes based on various characteristics of the offending and the offender;
* for the purpose of section 5(2)(b) of the Sentencing Act 1991 (Vic), courts applying the guideline would only be permitted to have regard to sentences imposed for an OHS offence pursuant to that guideline;
* courts would be required to follow the guideline but would be permitted to depart from the guideline if following it would be contrary to the interests of justice, and they explain their reasons for doing so; and
* the guideline would include guidance about how courts should approach specific factors in sentencing OHS offences, such as the offender’s culpability, the objective seriousness of the offence, the offender’s financial circumstances, any injury, illness or harm caused by the offence, and the offender’s character.
 |
| **10** | The Victorian Government should amend the Occupational Health and Safety Act 2004 (Vic) to more clearly specify that all court fines paid for OHS offences are to be paid into the WorkCover Authority Fund. |
| **11** | Fines Victoria should, initially and then annually, review all unpaid court fines imposed on body corporates for offences contrary to the Occupational Health and Safety Act 2004 (Vic), and consider whether to serve a declared director notice on any relevant persons. |
| **12** | The Victorian Government should provide the Victorian Law Reform Commission with terms of reference seeking its advice about whether to introduce a legislative framework for successor liability for corporations and other legal entities in Victoria, and if so, what the key features of that framework should be. |