



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

### Overview

The model Work Health and Safety (WHS) laws are being reviewed.

An independent reviewer, Ms Marie Boland, has been appointed to undertake this review (the Review) on behalf of Safe Work Australia.

The model WHS laws have been designed to protect all workers in Australia, wherever they work and whatever work they do.

Everyone with an interest in these laws is invited to have their say on how the laws are currently operating – what works and what doesn't – and whether they are flexible enough to deal with the way work is evolving, for instance the rise of the 'gig economy'.

An overview of the key issues to be examined by the Review and the Review process is outlined below. A more detailed discussion paper, available on the Safe Work Australia website at <https://engage.swa.gov.au/review-consultation>, examines these issues in greater depth.

### Background

In Australia, each jurisdiction – the Commonwealth, states and territories – has responsibility for making and enforcing their own WHS legislation.

The model WHS laws were developed to provide a framework for a harmonised approach to the regulation of WHS in each Australian jurisdiction.

The Commonwealth, the Australian Capital Territory, New South Wales, the Northern Territory, and Queensland enacted the model on 1 January 2012 and South Australia and Tasmania on 1 January 2013. Victoria and Western Australia are yet to implement the model.

### A flexible approach

The model WHS laws were designed to be flexible and adaptable. Rather than categorise people as employers or employees, the model uses 'person conducting a business or undertaking' (PCBU) and 'worker' to accommodate non-traditional forms of work relationships. A PCBU can be a corporation, partnership, unincorporated association, a self-employed person or a sole trader.

Under the model WHS laws, PCBUs have a duty to ensure, so far as is reasonably practicable, the health and safety of anyone who carries out work for them in any capacity. This includes employees, contractors, subcontractors, self-employed persons, outworkers, labour hire workers, apprentices and trainees, work experience students and volunteers who carry out work.

An organisation cannot comply with its duties unless those who manage it make appropriate decisions and ensure necessary actions are taken. The model WHS laws therefore place a duty on officers to exercise due diligence to ensure the organisation complies with its WHS obligations.

Other duty holders under the model WHS laws include workers, and other people at the workplace such as visitors and customers. There are also upstream duties for designers, manufacturers, importers, suppliers and installers of products or plant used at work.

The Review will investigate whether this 'duty framework' is sufficiently broad to address today's workplace issues and those anticipated into the future.

### The importance of talking about safety

Duty holders must consult, co-operate and coordinate with others who also have a duty for the same health and safety matter. For example, when multiple PCBUs are working together on a construction site, each of those PCBUs are required to consult, co-operate and coordinate with other PCBUs who have a concurrent duty.

The model WHS laws require a two-way flow of information between PCBUs and their workers about health and safety matters. The laws support the election of Health and Safety Representatives (HSRs) to act as representatives for their work group and the formation of Health and Safety Committees (HSCs) as a forum for discussing health and safety with management.

To prevent workers being penalised for raising safety issues, the model WHS laws prohibit discrimination and coercion. The model WHS laws also include an issue resolution procedure that allows a regulator to assist if a WHS issue cannot be resolved internally.



The laws also allow authorised entry permit holders to enter work premises to look into suspected breaches of the WHS Act, or to consult and advise workers on health and safety matters.

The Review will examine whether this consultation and representative framework is effective.

## Compliance and enforcement

Although the rate of workplace injuries and illness has been falling over the last 10 years, unfortunately people still get hurt at work.

The model WHS laws include a range of penalties for those who do not comply with the laws, including imprisonment and fines. There are also a range of enforcement options for WHS regulators to encourage compliance with the laws.

A key change for many jurisdictions implementing the model WHS laws, was to allow the WHS regulator to accept written, legally binding, enforceable undertakings to take specified action to rectify a breach or to improve performance, or as an alternative to prosecution.

The Review will investigate whether the current penalty regime provides an effective deterrent and whether regulators have the powers they need to address and deter non-compliance.

## A cohesive approach

The model WHS laws are made up of a model WHS Act, model WHS Regulations and 24 model Codes of Practice. They are supported by the *National Compliance and Enforcement Policy*.

The Review will consider whether these four elements are working together as intended to provide a framework for securing the health and safety of workers and workplaces.

## The Review process

Public consultation for the Review will be held in the first half of 2018.

The Review will be finalised by the end of 2018 when Ms Boland presents her report to Safe Work Australia Members. Safe Work Australia will report to the Commonwealth, state and territory ministers responsible for work health and safety in early 2019.

## Have your say

Safe Work Australia welcomes views from all interested parties on how the model WHS laws are working in practice.

A discussion paper has been released, outlining some of the key issues being explored in the Review.

You can provide a written submission, make a brief comment online, or participate in an online discussion forum.

You can share your views of and experiences with the model WHS laws at <https://engage.swa.gov.au/review-consultation>.

*All written submissions and comments must be provided by **5pm (EST) 13 April 2018**.*