Best Practice Review of Workplace Health and Safety Queensland

Discussion Paper
Foreword

In October 2016, the Premier, the Honourable Annastacia Palaszczuk MP and the Honourable Grace Grace MP, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, announced that a best practice review of work health and safety laws is to be undertaken in response to the recent tragic fatalities at Dreamworld and an Eagle Farm worksite in 2016. In particular, the high profile incident at Dreamworld, which resulted in four fatalities due to the catastrophic failure of an amusement device, has raised concerns about the regulation of public safety matters in Queensland. Additionally, the multiple fatalities at both Dreamworld and Eagle Farm Race Course, where two workers were crushed when a ten tonne precast concrete slab toppled over, have raised concerns about the effectiveness of current offences and penalties under the Work Health and Safety Act 2011.

As a substantial period of time has elapsed since Workplace Health and Safety Queensland’s (WHSQ’s) compliance and enforcement framework was last reviewed, the review will also have a strong operational focus. Previously in 2008, WHSQ’s enforcement and compliance framework was reviewed to ensure it remained relevant and that it continued to provide the necessary deterrence for breaches of Queensland’s work health and safety laws. The review made 50 recommendation but generally found that the framework was sound and well administered.\(^1\) A summary of the review’s findings and recommendations, and the response to the recommendations, is provided at Attachment 1.

Under the terms of reference for this best practice review, the reviewer is asked to consider WHSQ’s effectiveness in light of contemporary regulatory practice. The scope of the review includes all WHSQ’s functions including inspections, investigations, prosecutions, enforceable undertakings, research, strategy and policy development, information and education and awareness campaigns.

The review and subsequent recommendations will specifically consider:

1. the appropriateness of WHSQ’s Compliance and Enforcement Policy;
2. the effectiveness of WHSQ’s compliance regime, enforcement activities, and dispute resolution processes;
3. WHSQ’s effectiveness in relation to providing compliance information and promoting work health and safety awareness and education;
4. the appropriateness and effectiveness of the administration of public safety matters by WHSQ; and
5. any further measures that can be taken to discourage unsafe work practices, including the introduction a new offence of gross negligence causing death as well as increasing existing penalties for work-related deaths and serious injuries.

An independent reviewer has been appointed by the Honourable Grace Grace MP, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs to undertake the best practice review and to consider and report on any potential measures, both operational and legislative, that could be taken to address the matters raised in the terms of reference. The reviewer will be supported by a tripartite reference group which will provide commentary and advice on the matters to be considered as part of this review. The reference group is comprised of two technical experts and representatives from the Australian Industry Group, Master Builders Queensland, the Queensland Council of Unions, the Australian Workers Union and the Queensland Tourism Industry Council.

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This discussion paper provides information about WHSQ’s policies, procedures and activities that support its approach to ensuring that the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011 are communicated, complied with and enforced. It also provides information on the matters raised in the review’s terms of reference and provides questions for consideration by stakeholders and interested parties that will assist the reviewer in finalising the review’s report and recommendations.

**Review Process**

In addition to meetings of the Reference Group, the reviewer intends to consult directly with interested groups and relevant Government agencies. While a process of full written submissions will not be conducted, written comments on the Terms of Reference and discussion questions in this paper is sought.

Written comments can be provided to whspolicy@justice.qld.gov.au and should be received by **Friday 5 May 2017**.

Yours sincerely

Tim Lyons
Independent Reviewer
Best Practice Review of Workplace Health and Safety Queensland
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TOR 1. The appropriateness of WHSQ’s compliance and enforcement policy

As part of the terms of reference for the review, the reviewer has been asked to consider the appropriateness of Workplace Health and Safety Queensland’s (WHSQ’s) compliance and enforcement policy. There are three key factors that influence WHSQ’s compliance and enforcement policy. They are:

- the legislative framework which includes the Queensland Work Health and Safety Act 2011 and associated regulations, codes of practice and guidance;
- the National Compliance and Enforcement Policy which has been adopted by all state regulators as part of the national harmonisation process; and
- Australian and Queensland work health and safety strategies which include commitments to targets for a reduction in injuries and fatalities as well as the identification of key priority industries and disorders.

1.1 Queensland’s work health and safety laws

Queensland adopted the national model work health and safety laws through the Work Health and Safety Act 2011 (WHS Act 2011) and Work Health and Safety Regulations 2011 (WHS Regulation 2011) on 2 January 2012. These model laws have been adopted in all Australian jurisdictions except for Victoria and Western Australia.

The WHS Act 2011, while largely consistent with Queensland’s previous work health and safety legislation, introduced a number of key changes. These included:

- Qualifying the duties of care under the WHS Act 2011 by the ‘reasonably practicable’ standard.
- Removing the reverse onus of proof which means the regulator is now required to prove all elements of the breach and demonstrate that the employer has not taken reasonably practicable measures to prevent the breach. Previously under the absolute duty of care, with defences, the onus of proof was on the defendant.
- Introducing three categories of penalties for a failure to comply with a duty of care which are categorised by the degree of seriousness or culpability involved. The penalties in each category are significantly higher than under the previous legislation, allowing the courts to impose more meaningful penalties and emphasising to the community the seriousness of the offences under the work health and safety legislation. In addition a number of new sanctions were introduced including court ordered undertakings, injunctions, adverse publicity orders, project orders and training orders.
- Placing a positive duty of due diligence on an officer of a corporation or an unincorporated body to ensure compliance through sound corporate governance. An officer must be proactive in taking steps to ensure compliance by the company. Previously executive officers of a corporation could only be found to have committed an offence if the corporation committed an offence.
- Establishing a new duty on persons conducting a business or undertaking to consult with workers and specifying when consultation is required. This gives workers the opportunity to raise work health and safety matters that directly affect them. The WHS Act 2011 also introduced a legislated issues resolution procedure and provisions allowing a worker to cease work if exposed to a serious and imminent risk.

The model work health and safety laws are supported by 23 model codes of practice, 20 of which have been adopted in Queensland. Additionally, Queensland has 21 preserved codes of practice where there is no equivalent model code of practice or the codes support a number of regulations that were carried
across from the *Work Health and Safety Regulation 2008* (i.e. construction regulations relating to falls from height and falling objects).

To ensure Queensland’s work health and safety laws, and supporting codes of practice, continue to be responsive to industry needs and safety concerns and reflect current best practice in safety management, there is a need to continually monitor and review this legislative and policy framework. Often this is driven by the emergence of new health and safety challenges or sustained poor performance in relation to known hazards and risks. To address these issues, a legislative response is often required to ensure that WHSQ has the enforcement and compliance tools necessary to improve work health and safety outcomes.

Some key examples where the legislative framework has been updated in recent years include:

- updating and remaking construction-related codes of practice to ensure they reflect current best practice in safety management and are consistent with Queensland work health and safety laws;
- working with the Department of Transport and Main Roads to implement mandatory helmet requirements when quad bikes are operated on roads;
- working with the recreational diving and snorkelling industry to update the *Recreational Diving, Recreational Technical Diving and Snorkelling Code of Practice 2011* to ensure it is responsive to prevalent safety risks in the industry;
- updating the *Tunnelling Code of Practice in 2011* to reflect the latest information on safe tunnelling practices; and
- introducing 18 new infringement notice offences in December 2016 to provide the WHSQ inspectorate with a cost-effective method of enforcement which can be immediately applied to alleged offenders in high risk areas such as asbestos, hazardous chemicals and construction.

Moving forward there are a number of significant policy issues that will need to be considered, particularly in the construction and agriculture industries. Queensland’s construction-related codes of practice are currently being reviewed to determine whether any of their content should form the basis of new regulatory requirements. Additionally, work is underway in considering whether mandatory helmet requirements should be introduced for quad bikes operated in the workplace.

This discussion paper addresses three specific issues associated with the current legislative framework. These include:

- whether any changes are required to the current work health and safety dispute resolution processes (see discussion at section 2.9);
- whether a new offence of gross negligence causing death should be introduced (see discussion at section 5.1); and
- whether existing penalties for work related deaths and serious injuries should be increased (see discussion at section 5.2).

**Issues to consider regarding Queensland’s work health and safety laws**

1. Other than those identified, are there any other elements of the work health and safety legislative framework that should be reviewed to ensure they are effective in improving work health and safety outcomes?
1.2 WHSQ compliance and enforcement policy

In determining the most appropriate enforcement action to undertake, WHSQ are guided by the need to balance the community’s expectations that duty holders will be monitored and held accountable for non-compliance and the need to work with industry to support and build compliance capacity.\(^2\)

WHSQ’s approach to enforcement and compliance is based on the *National Compliance and Enforcement Policy*\(^3\) (National Policy) and seeks to encourage compliance through a responsive regulatory model that combines the deterrence and accommodative regulation into a multifaceted enforcement regime. This approach recognises that regulatory tools such as persuasion and cooperation are just as important to achieving compliance as the imposition of punitive sanctions. This approach is aimed at achieving a balance between the two forms of regulation which acknowledges that the willingness and ability of a duty holder to comply is a key driver in determining the most appropriate enforcement action to be taken in a particular circumstance.

In deciding what the most appropriate regulatory response is, WHSQ are guided by the National Policy and its enforcement pyramid (see Figure 1).

![National Compliance and Enforcement Policy Pyramid](image)

**Figure 1 – National Compliance and Enforcement Policy Pyramid**

The regulatory pyramid represents a proportional approach to the application of enforcement tools and shows that, as a regulator escalates up the pyramid, the regulatory strategy intensifies from persuasion through to sanctions of increasing severity. The premise behind the regulatory pyramid is that where an individual being regulated is being cooperative, the regulator in turn should attempt to achieve compliance through cooperative ‘persuasive’ measures. Conversely, where an individual is being

\(^2\) National Compliance and Enforcement Policy, p2.
uncooperative the regulator should escalate through the pyramid until punitive sanctions are required thus creating a framework where refusal to comply will result in increasingly severe enforcement action. This approach is not intended to suggest that enforcement and compliance action should always commence with persuasive measures, but rather it acknowledges that more often than not compliance can be achieved through cooperative measures.

Other factors considered by WHSQ in determining the most appropriate enforcement action to undertake include:

- the severity or extent of the potential risk or harm;
- the seriousness of the potential breach and the culpability of the duty holder;
- the duty holder’s compliance history, attitude and the likelihood that the offence will be repeated;
- whether the duty holder was licensed or authorised to undertake the work;
- whether the enforcement tool used will encourage compliance or deter non-compliance;
- whether the duty holder has taken action to try and control a risk and whether the risk is imminent; and
- whether immediate action or a plan to take action will address the safety issue.4

Progressively, and particularly since the introduction of the WHS Act 2011, WHSQ have used a broader range of mechanisms such as utilizing information, guidance education and advice to obtain compliance. Subsequently, the focus of inspectors and advisors has increasingly been to address overall poor performance rather than simply addressing point in time and obvious unmanaged risks. This acknowledges that sustained improvement of poor performance requires a systematic and sustained approach to work health and safety management. Programs such as the Injury Prevention and Management Program (see discussion at section 2.3) and the Small Business Program (see discussion at section 3.2), which deliberately take a cooperative approach to achieve compliance, are primarily aimed at achieving this.

Other activities undertaken by WHSQ such as compliance campaigns use a combination of directive measures, such as improvement notices, and other mechanisms to achieve outcomes. Often an educative phase is used initially, with the workplace given the information, tools and opportunity to voluntarily address their issues before an inspector visits. In instances where the inspector still finds significant unmanaged risks, notices will be issued. The likelihood of there being outstanding risks however is considered to be lessened. In these cases, it is the combination of the educative phase and the likelihood of a site visit by an inspector which achieves widespread improvements even if an inspector does not select that particular workplace to visit.

**Issues to consider regarding WHSQ’s compliance and enforcement policy**

| 2. | Is WHSQ’s compliance and enforcement policy an appropriate approach for monitoring and enforcing compliance with the work health and safety laws? |
| 3. | Does WHSQ’s current approach provide an appropriate balance between enforcement and providing industry with the right tools, information and ability to make workplaces safer? |

1.3 Development of the *Australian Work Health and Safety Strategy 2012-2022* and Queensland health and safety strategies


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4 National Compliance and Enforcement Policy, p7.
work health and safety in Australia. The Strategy’s vision is healthy, safe and productive working lives and its purpose is to drive key national activities, through collaboration between governments, industry, unions and other organisations, to achieve improvements in work health and safety.\(^5\)

Development of the Australian Strategy was informed by consultation with work health and safety experts and the wider community, and the final strategy was endorsed by all ministers responsible for work health and safety (including Queensland), the Australian Council of Trade Unions, the Australian Chamber of Commerce and Industry, and the Australian Industry Group.

The Australian Strategy sets out four outcomes to be achieved by 2022, these include *reducing the incidence of work-related death, injury and illness; reducing exposure to hazards and risks; improving hazard controls; and improving work health and safety infrastructure*.\(^6\) To achieve these outcomes, the Australian Strategy highlights a number of priority industries and disorders that should be the focal point of prevention activities. It also provides national targets and performance indicators to determine the success of these activities. These targets and priority areas are outlined in Table 1 below.

### Targets\(^7\)

<table>
<thead>
<tr>
<th>Priority industries(^8)</th>
<th>Priority disorders(^9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Musculoskeletal</td>
</tr>
<tr>
<td>Road transport</td>
<td>Mental disorders</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>cancers (including skin cancer)</td>
</tr>
<tr>
<td>Construction</td>
<td>asthma</td>
</tr>
<tr>
<td>Accommodation and food services</td>
<td>contact dermatitis</td>
</tr>
<tr>
<td>Public administration and safety</td>
<td>noise-induced hearing loss</td>
</tr>
<tr>
<td>health care and social assistance</td>
<td></td>
</tr>
</tbody>
</table>

**Table 1 – National targets and priority industries/disorders**

Reports on progress against the Australian Strategy are published annually\(^10\) and the strategy is being reviewed in 2017 to ensure it continues to generate sustained improvements in work health and safety.

**Queensland Health and Safety Strategies**

In line with its commitment to the Australian Strategy, WHSQ have identified a number of priority industries and priority disorders that require targeted and sustained action to improve safety outcomes.

Through the use of an evidence-based approach to inform and direct their strategic and operational business activities, WHSQ have identified four priority industry groups and seven industry sub-groups that have the highest risk of work-related injuries or fatalities in Queensland. These industries include manufacturing (sub-sectors: meat processing and metals manufacturing), transport (sub-sector: road

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\(^7\) Australian Work Health and Safety Strategy 2012-2022, p7.

\(^8\) Australian Work Health and Safety Strategy 2012-2022, p17.


freight transport), rural (sub-sectors: horticulture and livestock) and construction (sub sectors: civil construction and construction trades).

In addition to the priority industries, WHSQ have also identified a number of priority disorders. These include musculoskeletal disorders, mental health disorders, asbestos-related disorder, ultraviolet radiation and heat-related disorders, chemical, dust and infectious-related disorders, noise-induced hearing loss disorders and disorders arising from lifestyle chronic disease risk factors. These disorders were identified as priorities because of the severity of consequences for workers; the estimated high overall cost to businesses and workers; the overall number of workers estimated to be directly and indirectly affected; and the existence of known prevention options.

Musculoskeletal disorders in particular are a priority area for WHSQ as they currently represent 61 per cent of all serious claims in Queensland\(^{11}\) and can have a significant financial and emotional impact on industry, workers and the economy. Musculoskeletal disorders are also subject to a specific national target to reduce the rate of claims for these disorders by at least 30 per cent by 2022. Attachment 2 provides an overview of some of the key activities WHSQ have undertaken in relation to musculoskeletal disorders across a number of industries.

To drive improvements in the incidence of injuries and fatalities in these priority areas, WHSQ have developed individual action plans for each industry sub-sector and disorder. These can be found at https://www.worksafe.qld.gov.au/about-us/about-workplace-health-and-safety-queensland/our-focus. These action plans are a core element of WHSQ’s enforcement and compliance framework and outline key deliverables WHSQ will undertake to achieve sustained improvements in work health and safety outcomes.

Issues to consider regarding the Australian Work Health and Safety Strategy 2012-2022 and Queensland health and safety strategies

4. As the Australian Work Health and Safety Strategy 2012-2022 is due for review in 2017, and its objectives and outcomes are strongly linked to the enforcement and compliance activities of WHSQ, are there any areas within the Australian Strategy that need to be improved?

5. Are WHSQ’s priority action plans relevant and appropriate to ensuring that WHSQ’s activities are focused on reducing the incidence of serious work-related injuries and fatalities in Queensland?

TOR 2. The effectiveness of WHSQ’s compliance and enforcement activities

As part of the terms of reference for the review, the reviewer has been asked to consider the effectiveness of WHSQ’s enforcement and compliance activities. WHSQ’s effectiveness in undertaking its compliance and enforcement activities is impacted by its organisational approach and capabilities. Some of the key features include:

- using an evidence-based approach to ensure that regulatory efforts focus on high risk industry, hazards, and poor performers and evaluating the effectiveness of these efforts;
- working with industry including ‘poor performers’, priority industries and small business to improve their safety systems and provide advice on compliance;
- working with industry to address issues associated with priority disorders and ‘at risk’ groups;
- working collaboratively with key stakeholders to reduce injuries and fatalities; and

\(^{11}\) Source: QEIDB January 2017 and ABS Cat. 6291.0.55.003, Accepted claims excluding journey claims and serious claims which result in temporary impairments of five or more days off work or permanent impairments.
• using sanctions including prohibition notices, penalty infringement notices (on the spot fines), prosecutions, enforceable undertakings and licensing and registration powers.

2.1 Evidence-based compliance and enforcement activities

WHSQ uses evidence, both quantitative and qualitative, to drive resource allocation, select priority areas for enforcement activity, inform regulator interventions and monitor and evaluate the effectiveness of these actions. This is done by analysing a range of information sources including: incident notification and workers’ compensation data, learnings from past interventions and incidents, academic and industry driven research, information from other regulators and other jurisdictions, and recommendations arising from independent sources such as the State Coroner or Queensland Ombudsman.

In 2002, WHSQ shifted to an evidence-based approach by using a combination of incident notifications and workers’ compensation data to identify high risk employee groups, industry sectors with high risk profiles and poor performing industries and enterprises for targeted assessments and compliance audits. Since then, WHSQ have modified their data capture and use to include occupational injury blackspot analysis, heat mapping, use of the harm index approach to measure risk and use of the Queensland Employee Injury Database and the Compliance and Investigation System Refresh database to inform resource allocation and targeted activities.

Analysis of this data enabled WHSQ to identify the construction, manufacturing, agriculture and transport sectors as priority industries that are at the highest risk of work-related injuries or fatalities in Queensland. Incorporating this information into their strategic planning enables WHSQ to develop targeted action plans aimed at driving improvements in the incidence of injuries and fatalities in these priority areas (see section 1.3). Targeted and sustained focus on these priority industries through industry action plans, including targeted compliance campaigns and awareness and engagement activities (see examples at Attachments 3 and 4), has seen an overall reduction of incident rates in Queensland. In particular, the five year period to 2014-15 has seen a 15.5 per cent reduction in injury rates with this figure expected to increase to 17.9 per cent for the period from 2010-11 to 2015-16 based on internal WHSQ claim projections. Additionally, the number of work-related traumatic injury fatalities in Queensland has reduced by more than a third (36 per cent) over the same period. More information on WHSQ’s performance is provided at Attachment 5.

As part of their evidence-based approach to reducing work-related injuries and fatalities, WHSQ also evaluate all major interventions, campaigns and programs undertaken. Historically, evaluation has often been seen as a separate activity done after the ‘main event’. However from 2012, WHSQ have been developing and promoting the practice of incorporating evaluation into the planning stage of all their interventions. Evaluation findings are used by WHSQ to improve program delivery and to inform the development of policy and strategy.

WHSQ’s Business Innovation and Planning Unit also contributes to their evidence-based approach by providing a focus on research to support the transformation of their regulatory strategy, capability and organisational performance. This is being achieved by facilitating the development and implementation of planned approaches to WHS regulation that are grounded in a strong evidence base through research and the application of regulatory theory. WHSQ have advised that this approach ensures that their programs, products, information and services successfully engage businesses, motivate safe work practices and achieve their objectives as a regulator.

Issues to consider regarding WHSQ’s evidence-based approach to compliance and enforcement

6. Is WHSQ’s approach to using data and information to target its enforcement and compliance activities appropriate and effective?
7. In your experience, are the areas of most need being identified and resources allocated appropriately?
8. Are there other sources of data and information that could be used by WHSQ to inform its enforcement and compliance activities?
9. Given that historical data is a lag indicator, are there additional steps that can be taken to identify emerging risks (including in relation to emerging technologies and changing work practices)?

2.2 WHSQ capability (resources, service delivery and training)

As at the end of June 2016, there were 426,000 businesses operating in Queensland.12 Of these, 164,000 were employing businesses. Additionally, between 2009-10 and 2012-13 the number of workers in Queensland grew by 3.3 per cent, representing an annual average growth of 1.1 per cent over the three year period. These figures are important as the number of operating businesses impacts on WHSQ’s services and, assuming the trend in the growth rate of workers continues, demand for WHSQ’s services will continue to increase.

As at the end of 2016, WHSQ had over 300 inspectors, advisors and investigators, or 1.1 per 10,000 employees in Queensland (see Table 2).

<table>
<thead>
<tr>
<th>WHSQ Inspector and Advisor numbers (FTE)</th>
<th>2007-08</th>
<th>2011-12</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHSQ Inspectors</td>
<td>246.0</td>
<td>216.0</td>
<td>237.5</td>
</tr>
<tr>
<td>Construction inspectors</td>
<td>N/A</td>
<td>51.0</td>
<td>52.0</td>
</tr>
<tr>
<td>General industry inspectors</td>
<td>N/A</td>
<td>165.0</td>
<td>185.5</td>
</tr>
<tr>
<td>WHSQ Advisors</td>
<td>45.0</td>
<td>81.0</td>
<td>65.6</td>
</tr>
<tr>
<td>Total number of inspectors and advisors</td>
<td><strong>291.0</strong></td>
<td><strong>297.0</strong></td>
<td><strong>303.1</strong></td>
</tr>
</tbody>
</table>

Table 2 - WHSQ inspector and advisor numbers

WHSQ uses the national ratio of field active inspectors to employees as a key benchmark for the number of inspectors that should be employed and have also benchmarked the number of inspectors against performance in the two other major Australian jurisdictions – New South Wales and Victoria. As per Table 3 below, in comparison to these jurisdictions, Queensland is equal with the national average and Victoria, and slightly higher per 10,000 employees than New South Wales.

<table>
<thead>
<tr>
<th>Number of field active inspectors per 10,000 employees</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>Australian average</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007–08</td>
<td>1.0</td>
<td>0.9</td>
<td><strong>1.2</strong></td>
<td>1.1</td>
</tr>
<tr>
<td>2011-12</td>
<td>1.0</td>
<td>0.9</td>
<td><strong>1.1</strong></td>
<td>1.1</td>
</tr>
<tr>
<td>2014-15</td>
<td>1.0</td>
<td>1.1</td>
<td><strong>1.1</strong></td>
<td>1.1</td>
</tr>
</tbody>
</table>

Table 3 - Number of field active inspectors per 10,000 employees

Inspectors and advisors are positioned within three regional areas, containing sixteen regional offices. Each region contains multidisciplinary teams that provide both compliance and businesses engagement functions. The teams specialise in areas such as construction, ergonomics, asbestos, plant design, psychosocial, occupational health and hygiene, chemicals and diving.

WHSQ advises that multidisciplinary teams, incorporating staff who can adopt both compliance and business engagement approaches, works best. There are a number of reasons for this including that smaller regional offices are not staffed to support separate compliance and business engagement teams and it is often necessary over the course of an interaction with a duty holder for an inspector to engage

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12 Count of Australian Businesses, ABS Cat. No. 8165.0.
both compliance and engagement approaches. This approach retains traditional inspectorate compliance approaches but allows management at individual regional offices the flexibility to reallocate resources as needed to suit the mix of compliance and engagement work.

An increased business engagement approach within the inspectorate has required professional development and training in facilitating the process of problem solving and understanding good regulatory decision making. WHSQ advises that this training has resulted in inspectors actively working with industry to seek sustainable solutions to health and safety problems rather than simply identifying non-compliance issues. Additionally, WHSQ plan to provide ongoing training and development support to the inspectorate to fully entrench the capacity to undertake a mix of compliance and engagement work.

WHSQ’s service delivery approach has also been adjusted through the introduction of mobile work teams. These teams provide WHSQ with greater flexibility in the delivery of state-wide services and supports its multifaceted approach to compliance. Mobile work teams include representatives from areas such as the hazardous industries and chemical branch, the construction inspectorate, engineering services and the occupational health unit who work together to assess compliance and engage and educate stakeholders. In establishing a mobile work team, WHSQ match inspectors, advisors and engineers with high risk tasks that are being performed at a workplace or within a particular industry and dispatch the team to undertake compliance audits or provide health and safety advice.

For example, in 2014-15 WHSQ used mobile work teams to service a number of large infrastructure sites in Queensland. In particular the Coal Seam Gas and Liquefied Natural Gas industry was the target of a mobile work team campaign due to the significant growth the industry was experiencing within Queensland. Use of mobile work teams has also doubled as a learning opportunity for WHSQ staff where departmental expertise is shared between mobile work team members.

To improve service delivery, WHSQ have also introduced the use of electronic tablets within the inspectorate. The intention of this is to:

- provide a flexible mobile workforce that can work anywhere at any time;
- provide the ability for inspectors to access advice and support from internal technical experts in real time;
- provide the ability for inspectors to access their desktop environment while in the field; and
- increase effective communication between inspectors and external clients, through the presentation of information.

Use of these electronic tablets has enabled better sharing of work health and safety resources when WHSQ’s staff visit workplaces. In particular, when used in the field, electronic tablets enable the inspectorate to show businesses where information can be found on the website, show videos of best practice safety measures, and demonstrate products and tools available to businesses that will assist them with improving safety at their workplace.

Up until August 2014 the base level qualification for all WHSQ inspectors was a Certificate IV in Government (Investigation). A review at that time concluded resources should be directed into developing the Diploma of Government (Workplace Inspection) to bring Queensland in line with the benchmarked standards of all other jurisdictions.

After the development of the Diploma of Government (Workplace Inspection) and the completion of the quality audit by Queensland TAFE, OIR formally commenced the partnering arrangement for the issue of this Diploma in October 2016. OIR currently have 60 staff enrolled in the Diploma of Government program with the remaining field based inspectors forecast to have completed the Diploma of Government program by June 2017.
Issues to consider regarding WHSQ’s capability

10. What is the appropriate level of skills, qualifications, and ongoing professional development required for inspectors?
11. Are there enough inspectors, and does the current resource allocation within WHSQ strike the right balance between inspectors, management and support functions?
12. Are there any ways in which WHSQ could improve their service delivery?
13. Does the multi-disciplinary and mobile work teams approach operate effectively in different regions and industries?

2.3 Inspectorate and Adviser Activity

WHSQ inspectors and advisors work with industry to ensure health and safety standards are met and sustained, and contribute to WHSQ’s compliance activities by:

- responding to work health and safety complaints and incident notifications;
- undertaking workplace assessments;
- providing practical guidance and compliance support to businesses;
- participating in state-wide compliance campaigns; and
- working with industry to seek solutions to work health and safety problems through a variety of programs and interventions (see section 3.2).

Visits to workplaces by WHSQ’s inspectors and advisors remain a key part of engagement with business and it is only during these visits that an assessment of compliance can be made. Table 1 shows that the number of workplace visits in any given year varies, but on average represents about 26,000 per year. The focus on particular industries depends on the risk profile of that industry and the number of workplaces or worksites that the industry represents. The dominant focus on construction reflects the number of workers employed in this industry, the temporary nature of workplaces and the rapid change in the nature and environment of these workplaces as construction proceeds.

<table>
<thead>
<tr>
<th>Industry Group</th>
<th>2011/12</th>
<th>2012/13</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>539</td>
<td>650</td>
<td>763</td>
<td>711</td>
<td>1030</td>
<td>3693</td>
</tr>
<tr>
<td>Construction</td>
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<td>14682</td>
<td>12672</td>
<td>13204</td>
<td>16118</td>
<td>71467</td>
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<tr>
<td>Health care and social assistance</td>
<td>470</td>
<td>540</td>
<td>448</td>
<td>324</td>
<td>507</td>
<td>2289</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>4473</td>
<td>3399</td>
<td>2628</td>
<td>2663</td>
<td>2863</td>
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<td>31275</td>
<td>26888</td>
<td>28113</td>
<td>32721</td>
<td>150841</td>
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Table 1. Number of workplace visits conducted by WHSQ Inspectors

During these visits, the inspector or advisor may be focussed on particular workplace issues or risks (e.g. falls from height, ergonomic issues, storage and use of chemicals, machinery guarding, UV radiation or asbestos) or they may focus more broadly on the overall work health and safety performance of the workplace and compliance with legislative requirements by the the person conducting a business or undertaking. The location of the workplace, the inspector or advisor’s familiarity with that particular workplace, the complexity of the workplace and the complexity of the issues encountered, all contribute to high variability in the time taken for the inspection and the regulatory tools used to gain work health and safety improvement and regulatory compliance.
Where an inspection or audit reveals that a person conducting a business or undertaking must take action to ensure that they comply with requirements in the legislation, inspectors and advisors can cooperatively secure this compliance through the provision of guidance and advice or, in the case of inspectors, use enforcement powers to ensure compliance. Enforcement by an inspector generally involves issuing an improvement, prohibition or infringement notice. Advisors cannot issue notices but they can seek the support of an inspector to do so. Information regarding the number of notices issued by WHSQ inspectors is provided at Attachment 6.

The period since 2011-12 has seen the development of new programs and interventions aimed at securing compliance. In the 2000s inspectors compliance activities included a substantial reliance on the issuing of improvement notices. In industries such as red meat processing where performance was often poor, the compliance approach adopted was one where inspectors visited on a periodic basis and often issued a raft of improvement notices. The feedback from the inspectorate and industry was that this approach was not effective in bringing about sustained improvements in safety.

The result has been the development of two new compliance initiatives, the utilisation of safety performance improvement plans and the Injury Prevention and Management (IPaM) program.

Safety performance improvement plans

Seeking voluntary compliance through agreed or negotiated outcomes is a flexible and discretionary way in which inspectors can achieve compliance. These range from an inspector identifying a hazard at a workplace and it being rectified immediately (also known as verbal directions), to a longer term strategy of continuous improvement that is recorded in a safety performance improvement plan which is closely monitored. While at all times during this process the use of enforcement action remains available, it is only applied by the inspector if the duty holder fails to be co-operative or fails to achieve the identified outcomes within the prescribed timeframes.

In addition to the statistics provided regarding the number of assessments, advisories and notices issued, WHSQ have achieved significant long term and industry wide sustainable outcomes by securing compliance through the use of agreed outcomes and safety performance improvement plans. The recorded statistics relating to the assessments, advisories and notices do not capture these agreed outcomes and action plans.

WHSQ’s move to agreed outcomes and action plans is clearly seen in the data with a decrease in the number of improvement, prohibition and infringement notices issued since this period. However this decline is offset by the number of agreed outcomes and action plans that were successfully delivered.

In 2015 and 2016 the construction inspectorate in the South West Gold Coast region completed 2483 agreed actions. Based on approximately 16 field based construction inspectors this is approximately 77 agreed outcomes issued per construction inspector per year. From the same regional Industrial inspectorate and the Agricultural inspectorate (a sample of 17 inspectors) for the same time period (2015 and 2016), 1420 agreed actions were initiated. Based on this sample this equates to approximately 41 agreed outcomes being completed per inspector per year.

For the period between 1 March 2015 and 1 March 2017, the North Queensland/Central Queensland region completed approximately 2103 response assessments and 8942 proactive assessments which resulted in approximately 911 agreed outcomes. In addition, as part of the red meat processing campaign during 2013-2015, WHSQ applied 1100 agreed outcomes across 18 meat processing plants in Queensland. Examples of the range of agreed outcomes and action plans are provided at Attachment 6.
Injury Prevention and Management (IPaM) program

In 2010, it was recognised that employers with comparatively poorer work health and safety performance and claims experience would benefit from a sustained improvement approach. It was evident that issuing hazard focused improvement notices was not going to address the entrenched failures to systematically address work health and safety management. As a result the Work Health and Safety Board supported WHSQ in establishing the IPAM program in 2011.

The IPAM program currently has a team of 26 advisors and has worked with over 999 individual businesses with a combined workforce of approximately 164,000 FTE’s or 215,000 workers. Of these, 569 (57 per cent) of total organisations reside within priority industries (agriculture, construction, manufacturing and transport) with 51,000 FTE’s or 67,000 workers.

In delivering the program, an IPaM Advisor works intensively with businesses for an initial period of 12 months. During this period the advisor makes multiple visits to the business to:

- review the current safety management systems;
- review existing injury management arrangements;
- verify workplace hazards; and
- evaluate workplace safety climate by seeking the views from both managers and employees on the efficacy of safety management in the workplace.

Through this assessment and engagement process, employee participation is improved, as is the businesses capability to comply with legal obligations since legislative requirements and codes of practice are outlined to the business as part of the process. Worker involvement in this process and feedback through participation in safety climate assessments ensures that real improvements are made and are delivered on the ground as safer working conditions and processes.

Following completion of the assessments, the outcomes are then incorporated into a tailored improvement plan for the business. This plan outlines the key opportunities for improvement and sets out activities and milestones for improving the businesses’ management of work health and safety and injury management. After the initial 12 month period, the IPaM advisor continues with regular on-site reviews to support and coach the employer in implementing the plan and monitoring progress. Once the employer has completed the 24 month program, a review is undertaken to identify areas that need ongoing attention, future opportunities for continued improvement and lessons learned through the process.

Since commencement, IPaM has resulted in $26 million reduction in workers compensation premiums, seven per cent reduction in statutory costs, eight per cent reduction in claims and $8 million in business savings.

Issues to consider regarding inspectorate and advisor activity

14. How can the work of the inspectorate and advisors be improved?
15. How can the training, systems and processes used by the inspectorate and advisors be improved?
16. Does the work of the inspectorate and advisors strike the right balance between being proactive and reactive?
17. Have the Safety Performance Improvement Plans and IPaM program been effective?
18. How could the Safety Performance Improvement Plans and IPaM be improved?

2.4 Partnerships and collaboration

Working with industry, the community and other government departments to develop and implement health and safety strategies is a core pillar in regulatory efforts to build sustainable improvements in work
health and safety outcomes. Through collaboration and partnerships, regulators are able to incorporate input and feedback from key stakeholders – an approach that has the ability to translate into a willingness to participate, engage and implement safe work behaviours and initiatives. Some of the key initiatives where WHSQ have pursued improved health and safety outcomes through collaboration and partnerships include the Horticulture Worker Interagency Group, the *Statewide Strategic Plan for the Safe Management of Asbestos in Queensland 2014-2019*, the *Statewide Plan for Improving Quad Bike Safety in Queensland 2016-2019* and safety networks.

**Horticulture Worker Interagency Group**

In July 2015, WHSQ established the Horticulture Worker Interagency Group to develop a whole-of-government approach in dealing with issues experienced by travelling workers, particularly working holiday visa holders, in the horticultural industry. The interagency group is made up of representatives from 13 Queensland Government and three Commonwealth Government agencies.

For efficacy, the Horticulture Worker Interagency Group formed four pillars to focus agency priorities and jurisdiction - Work, Play, Stay and Travel. WHSQ chairs the ‘Work’ pillar. Some of the highlights of the work being undertaken include:

- a forum in Bundaberg which was supported by local council, GrowCom and the Bundaberg Fruit and Vegetable Growers Association where delegates including government, backpackers, horticulture growers, backpacker hostels and labour hire organisations gained a better understanding of each other’s issues.
- Pop up information stands in most major horticulture growing areas in Queensland to provide backpackers with information on their workplace rights and responsibilities and personal safety.
- Stronger links with local councils in the major horticulture growing areas, where a multi-faceted approach is necessary to improve the safety and well-being of workers.

**Statewide Strategic Plan for the Safe Management of Asbestos in Queensland 2014-2019**

WHSQ, local councils and other relevant State government agencies have been working together to provide a more responsive and collaborative approach to the regulation and management of asbestos in Queensland. This has been established through initiatives in the *Statewide Strategic Plan for the Safe Management of Asbestos in Queensland 2014-2019*. Examples undertaken through the plan include: WHSQ and Queensland Health providing training for environmental health officers to ensure councils have the capability to respond to public health risks associated with asbestos; a guide to agency response and management of asbestos incidents so it is clear which agency has lead responsibility; and a mechanism for ensuring priority clean-up of asbestos incidents which meet certain criteria.

**Statewide Plan for Improving Quad Bike Safety in Queensland 2016-2019**

The *Statewide Plan for Improving Quad Bike Safety in Queensland 2016-2019* is a key initiative developed by WHSQ in collaboration with other relevant state government agencies and the Local Government Association of Queensland to raise awareness of the risks associated with quad bike use and enhance operator skill and safety. Key initiatives implemented under the plan include the development of the *Ride Ready* quad bike safety awareness campaign and the mandating of helmet use for quad bikes operated on road or road-related areas.

**Safety networks**

WHSQ have established safety networks within industries to provide a forum for sharing knowledge and identifying simple safety solutions to common problems. In particular, these networks assist WHSQ in engaging with priority industries such as transport, manufacturing, construction and agriculture. Using a
collaborative partnership approach, rather than a compliance approach, helps WHSQ engage and build trust with and between businesses so efforts to improve work health and safety outcomes can be worked on together. For example, the transport industry in Queensland is working together with the work health and safety regulator to devise and share effective low-cost, high-impact safety initiatives to improve health and safety outcomes throughout the state.

**Matters to consider regarding collaboration and partnerships**

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<tbody>
<tr>
<td>19.</td>
<td>Do you think the use of partnerships and collaboration is an effective enforcement and compliance tool?</td>
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<tr>
<td>20.</td>
<td>How should the effectiveness of partnerships and collaboration be measured?</td>
</tr>
<tr>
<td>21.</td>
<td>Should a collaborative approach be used in any other safety areas or issues? If so, which areas or issues?</td>
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**2.5 Investigations**

WHSQ undertake investigations for a number of reasons including to determine the causes of an incident, to assess compliance with work health and safety laws, to determine what action may be needed to prevent further occurrences of similar incidents and to determine what action may be appropriate to enforce compliance with work health and safety laws. Lessons learnt from investigations also inform the development of work health and safety guidance and policy and may inform future changes to work health and safety laws.

In 2015, the Queensland Ombudsman undertook a review to determine the adequacy of WHSQ’s investigation work and processes, following complaints and critical commentary from coronial inquests regarding the quality of these processes.\(^\text{13}\) The review focused solely on work-related deaths and found that WHSQ’s process for notification and referral, triaging, responding to a workplace death and initial investigation activities were generally appropriate and greatly improved\(^\text{14}\). Systemic shortcomings were however identified in investigation planning, issue identification and evidence gathering, and the sufficiency of advice provided by legal officers to support prosecution decisions\(^\text{15}\).

In response to the findings from the Ombudsman’s review, and various findings from internal audits, WHSQ are implementing a range of business improvement strategies for their comprehensive investigations. These include:

- repositioning the reporting relationships within the investigations function into a more centralised model providing for better coordination of investigation resources across the state and standardisation and consistency of outcomes;
- appointing a State Investigations Manager with responsibility for WHSQ investigative services to ensure the delivery of quality, consistent and professional services;
- reviewing investigation manager and investigator role descriptions;
- introducing mandatory investigation qualifications for investigation manager and investigator positions;
- consolidating the number of investigation manager positions across the state, reducing the number from seven to four;
- benchmarking the investigations process and model against interstate work health and safety agencies;

\(^{13}\) Queensland Ombudsman, The workplace death investigations report: An investigation into the quality of workplace death investigations conducted by the Office of Fair and Safe Work Queensland, September 2015, p.xi.

\(^{14}\) Queensland Ombudsman, p.xii.

\(^{15}\) Queensland Ombudsman, p.xii.
commencement of training and skills development in fundamental investigation skills (including areas of deficiency identified in the Queensland Ombudsman’s report and results from a WHSQ individual training needs analysis currently being completed);

- commencement of an annual investigators’ forum discussing contemporary work health and safety investigation procedures and practices;
- introducing a contemporary investigations training manual;
- introducing a suite of new templates for investigation planning, case management and reporting;
- developing a risk assurance map for the work health and safety investigation process; and
- introducing a quality assurance program including both internal and external auditors.

WHSQ has been progressively implementing these initiatives over the past two years and anticipate that their full implementation should be completed by the end of 2017.

**Matters to consider regarding investigations**

| 22. | Are there any further actions WHSQ should be undertaking to improve their investigation processes? |
| 23. | How can the training, systems and processes for investigations be improved? |
| 24. | How can the effectiveness of investigation processes be measured? |

### 2.6 Prosecutions

Part 13 of the *Work Health and Safety Act 2011* (WHS Act 2011) provides the framework for WHSQ to undertake prosecutions in relation to alleged breaches of the offence provisions under the WHS Act 2011. Legal proceedings can be commenced against a person or corporation under the WHS Act 2011 for alleged reckless conduct (category 1 offence), for a failure to comply with a health and safety duty that exposes an individual to a risk of death or serious injury or illness (category 2 offence), or failure to comply with a health and safety duty (category 3 offence).  

WHSQ’s Legal and Prosecution Services’ Unit is responsible for making enforcement decisions and undertaking prosecutions on behalf of the regulator. This includes contributing to case management through investigations into incidents and assessment of evidence, prospects and public policy matters. For this work, in addition to the Director of Prosecution Services, the Prosecution Services’ team comprises of 10 Legal Officers and 3 support staff.

In deciding whether to prosecute (or not prosecute), the Legal and Prosecution Services Unit are guided by the *Director of Public Prosecutions Guidelines* (DPP guidelines) and the *National Compliance and Enforcement Policy* (National Policy). The National Policy, adopted by WHSQ, contains three criteria from the DPP guidelines that need to be met. These include:

- "the existence of a prima facie case, that is, whether the evidence is sufficient to justify the institution of proceedings;"
- "a reasonable prospect of conviction, that is, an evaluation of the likely strength of the case when it is presented in court;"
- "a public interest test which may include the following considerations:
  - the seriousness or, conversely, the triviality of the alleged offence or whether it is only of a technical nature;
  - any mitigating or aggravating circumstances
  - the characteristics of the duty holder—any special infirmities, prior compliance history and background;"

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16 ss31-33 *Work Health and Safety Act 2011* (Qld).
- the age of the alleged offence;
- the degree of culpability of the alleged offender;
- whether the prosecution would be perceived as counter-productive, that is, by bringing the law into disrepute;
- the efficacy of any alternatives to prosecution;
- the prevalence of the alleged offence and the need for deterrence, both specific and general; and
- whether the alleged offence is of considerable public concern.\(^{17}\)

As previously noted in section 2.5 (Investigations), on 18 November 2015, the Queensland Ombudsman presented to the Speaker of the Queensland Parliament a report titled “The workplace death investigations report, a review of workplace death investigations undertaken by the then Office of Fair and Safe Work Queensland” – now Office of Industrial Relations.

The report issued by the Ombudsman makes a number of recommendations to improve the way the Office of Industrial Relations conducts its investigations and exercises its duties to prosecute breaches of relevant Acts. At recommendation 9 in the report, the Queensland Ombudsman recommended that the Under Treasurer engage an independent person to conduct a comprehensive review of Legal and Prosecutions Services addressing a number of matters contained in the report. In response, PricewaterhouseCoopers (PwC) was engaged to assess the appropriateness of the operating model and key functions of the Prosecutions Services unit taking into account (but not limited to) the recommendations raised by the Queensland Ombudsman at recommendation 9, including peer review of the quality of legal memorandums produced by Prosecution Services.

To support the focus of Prosecution Services role in providing timely high quality legal advice and greater transparency and defensibility in regulator decision making, PwC have recommended the establishment of a prosecutions board consisting of key stakeholders (including the Director of Prosecution Services) that will consider legal advice and other relevant considerations when determining whether an incident will be prosecuted.

The PwC review recommendations can be grouped into four key areas:

- **Governance** – refine governance over key decisions and improve practice management support within the unit;
- **People** – enhance staff engagement, support and professional development and improve visibility over the status and allocation of cases;
- **Systems** – invest in enhanced technology solutions to assist standardised file management practices and support greater data integrity and management reporting functionality; and
- **Processes** – strengthen legal analysis contained in final advices to document the strengths and weaknesses of cases against duty holders.

The PwC review report was presented to the Office of Industrial Relations on 28 March 2017 and its findings and recommendations are being considered.

**Matters to consider regarding prosecutions**

| 25. | Is the current approach to prosecutions appropriate and effective? |
| 26. | Should a prosecutions board consisting of key stakeholders be established to ensure greater transparency and defensibility in decision making? |
| 27. | If you support the establishment of a prosecutions Board, what should its precise remit be? |

\(^{17}\) National Compliance and Enforcement Policy, p10.
28. Are prosecutorial decisions made on a timely and efficient basis and based on sound principles?
29. What other arrangements should the Office of Industrial Relations consider putting in place to ensure that prosecution decisions and cases are managed in an efficient manner and in line with the public interest?

2.7 Enforceable undertakings

Enforceable undertakings are voluntary agreements where a person agrees to take certain specified actions to rectify an alleged breach of the work health and safety laws or improve their work health and safety performance. Under Part 11 of the WHS Act 2011, in lieu of other sanctions, WHSQ may accept an enforceable undertaking for a non-category one offence from a person where a contravention, or alleged contravention, of the WHS Act 2011 has occurred.

Enforceable undertakings were introduced by WHSQ in 2004 as a way to achieve sustainable health and safety outcomes at both the workplace and industry level, rather than providing an immediate sanction for a particular instance of non-compliance through court processes. In particular, enforceable undertakings allow WHSQ to apply a graduated approach to compliance and enforcement by enabling restorative efforts to be customised to reflect the particular circumstances of the breach, while also reserving the right to pursue enforcement action in the event of failure to comply with the undertaking.

Where non-compliance with an enforceable undertaking is observed, the matter is escalated to WHSQ’s inspectorate for investigation with a view to initiate prosecution where necessary. If a person is found guilty of contravening an enforceable undertaking, penalties up to $50,000 may apply.

According to Parker’s research, in the context of trade practices, enforceable undertakings provide regulators with:

more innovative, expansive and preventive remedies than are available through court orders. They can both attract management attention, and then can capitalise on that by requiring the company to appoint appropriate staff and implement a compliance program to meet particular standards and by requiring ongoing attention to audits and reports. This will, however, only be done if enforceable undertakings require independent review or audit of compliance with the undertakings.

Other arguments supporting the use of enforceable undertakings include that:

- enforceable undertakings are consistent with a graduated approach to enforcement;
- they provide a speedier and more predictable response to non-compliance than court proceedings;
- by involving the alleged offender in developing the conditions of the enforceable undertaking, ongoing commitment to sustainable improvements is more likely and by allowing affected persons to express views, the principles of restorative justice will (to that extent) be applied; and
- depending on the nature of the undertaking it can provide significant benefits, not only to the immediate workplace and workers, but to the industry as a whole.

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18 Section 216(2).
19 Section 216(1).
Since the inception of enforceable undertakings by WHSQ in 2004, 141 applications to enter into an enforceable undertaking have been accepted, which is estimated to have translated into over $28.8 million in safety benefits provided to workers, workplaces and the community.

As an alternative to prosecution, WHSQ has endeavoured to ensure that decisions around enforceable undertakings are transparent and well considered. To this end, WHSQ evaluates the enforceable undertaking processes to determine whether the processes, policies, procedures, work instructions and guidelines for the WHSQ enforceable undertakings scheme are effective.

Issues that get raised from time to time by stakeholders, include:

- broadening the range of contraventions in relation to which an enforceable undertakings may be accepted;
- not allowing applications for enforceable undertakings to be accepted where the incident involved a fatality;
- clarifying roles of those involved in the enforceable undertaking process and ensuring the process does not build expectations that an enforceable undertaking will be accepted; and
- promoting the use of enforceable undertakings by WHSQ as an alternative to prosecution.

Matters to consider regarding enforceable undertakings

| 30.  | How can the application process be amended to ensure that the process does not build expectations that applications will be accepted? |
| 31.  | Should the enforceable undertaking guidelines exclude consideration of an application involving a fatality, unless particular circumstances exist? |
| 32.  | Alternatively, should enforceable undertakings be promoted for matters involving an alleged contravention by an officer or a worker (other than Category 1 offences), to take advantage of opportunities to encourage and enable behavioural change and capability? |

2.8 Licensing framework

Licensing and accreditation is the highest form of regulatory intervention and is used by work health and safety regulators as a tool to control high risk activities and ensure these activities are undertaken by competent individuals. Activities that currently require a licence or accreditation in Queensland under the Work Health and Safety Regulation 2011 include high risk work (including accredited assessors), asbestos assessing or removal, demolition work and major hazard facilities.

In terms of enforcement and compliance, the licensing framework is considered to be a higher order enforcement tool due to the regulator’s ability to revoke, suspend or cancel a licence or authorisation in response to inappropriate conduct or non-compliance (see Section 1.2). Decisions relating to granting (issuing or renewing), refusing, suspending or cancelling a licence or accreditation are made by WHSQ using a framework for decision making. This framework is centred on provisions for eligibility and matters for consideration set out in the Work Health and Safety Regulation 2011. Matters to be considered include evidence of qualifications, compliance history and evidence of industry experience.

During 2016, Licensing and Advisory Services (LAS) received 66,463 licence applications and issued 64,141 licences. Additionally, there were 12,449 notifications of asbestos and demolition work.

Recent improvements to licensing processes

Since September 2016, WHSQ has been implementing a two-stage strategy to process high risk work licensing online. This new process enables all high risk work licensing transactions to be undertaken online.
and reduces red tape for applicants. Additionally, an engagement program targeting Registered Training Organisations (RTOs) is being implemented. This program will:

- increase the reach and influence of WHSQ in relation to high risk work licensing to ensure the integrity of the assessment process; and
- establish a systematic approach to engaging with RTOs, and build capability of participants in the application of the National Assessment Instruments.

WHSQ’s Licensing Unit has also commenced development of an internal audit process of all tasks managed by the unit which will enable WHSQ to identify opportunities for improvement and to develop strategies to improve processes in alignment with best practice methods.

**Matters to consider regarding WHSQ’s licensing framework**

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<tr>
<td>33.</td>
<td>Is the current licensing regime effective in ensuring that only competent individuals are able to undertake licensed activities?</td>
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<tr>
<td>34.</td>
<td>Are there any further measures WHSQ could undertake to improve its licensing framework?</td>
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### 2.9 Issue resolution processes

As part of their submissions to the 2015 review of the industrial relations frameworks in Queensland, a number of union organisations sought to expand the jurisdiction of the Queensland Industrial Relations Commission (QIRC) to include an increased role in the resolution of work health and safety matters.\(^{21}\) This included a request that the QIRC *assume the necessary jurisdiction to properly deal with work health and safety disputes within a designated “stream”*.\(^{22}\) While the jurisdiction of the QIRC was within scope of the review, it was determined by the reviewer, Mr Jim McGowan, that the review was limited to industrial relations laws and matters concerning the expansion of QIRC’s functions in relation to work health and safety were out of scope.\(^{23}\) In response to this outcome, union organisations indicated that they would refer this matter directly to the Queensland Government for consideration.\(^{24}\)

Since then, in mid-2016, the Queensland Council of Unions approached the Government with a proposal to amend the WHS Act 2011 to provide that:

- unresolved work health and safety issues be referred to the QIRC for resolution; and
- employers be provided with a right of appeal in respect of a direction from a health and safety representative that their work group cease work.

These matters have been referred to this review for consideration.

**Work health and safety issue resolution process**

**How does the current issues resolution framework operate?**

Under the WHS Act 2011, Part 5, Division 5 establishes the process for resolving health and safety issues where the parties to the matter are unable to reach a satisfactory outcome. Issues may relate to whether or not hazards or risks arise from particular work, whether risks are adequately controlled, or whether other risk controls may be required. In particular, the WHS Act 2011 provides that, failing resolution of an issue during preliminary discussions between parties:

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\(^{22}\) Building, Engineering and Maintenance Unions, *Submission to the review of the industrial relations framework in Queensland*, p12.

\(^{23}\) McGowan, 2015, p133.

\(^{24}\) J McGowan, 2015, p133.
• health and safety issues should be resolved in a timely, final and effective manner, either in accordance with an agreed procedure or in line with the default procedure contained in the *Work Health and Safety Regulations 2011* (WHS Regulation);\(^{25}\)
• where an issue is still unresolved, a party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the dispute;\(^{26}\) and
• where parties remain dissatisfied, and the inspectors decision is reviewable, parties can apply to have the decision reviewed by an appropriate tribunal, currently the Queensland Civil Administrative Tribunal (QCAT).\(^{27}\)

Under this framework, parties to an issue are required to make all reasonable efforts to resolve the dispute as quickly as possible to ensure the health and safety of their workers and workplace. Some workplaces will have developed an agreed issue resolution procedure with their workforce, which must be followed when resolving an issue. However, if this is not the case, the default procedure in the WHS Regulation must be used.

Where parties to an issue are unable to resolve the dispute following the use of a resolution procedure, an inspector can be requested to attend the workplace to assist in resolving the issue.\(^{28}\) The inspector can decide on the issue at hand by exercising any of their compliance powers under the WHS Act 2011.\(^{29}\) This may include providing advice, investigating contraventions or issuing an improvement or prohibition notice.

In responding to these requests, WHSQ have advised that:

- Once the request is received, in the first instance, an inspector will make contact with the parties involved to determine the issue and confirm that they have taken reasonable steps to resolve the issues. The inspector will then provide preliminary assistance to the parties to help resolve the issue. This may be done without visiting the workplace.
- If the issue remains unresolved, the inspector will visit the workplace as soon as practicable. Attendance at a workplace is dependent on the geographical location and proximity to inspector resources, however this would normally occur within 1 hour of the request being received.

Where an inspector exercises their powers under the WHS Act 2011 by issuing an improvement or prohibition notice, these notices are subject to internal review and then external review by the QCAT.\(^{30}\) The decision of an inspector to issue a notice can be appealed by the person who received the notice, a person conducting a business or undertaking (PCBU) whose interests are affected by the decision, and a worker or a health and safety representative whose interests are affected by the decision.\(^{31}\)

In 2016, WHSQ inspectors responded to 142 requests for assistance in relation to a work health and safety issue. In response to these issues, 34 improvement and 14 prohibition notices were issued.

WHSQ’s experience is that matters raised through the issues resolution process are generally resolved within 1-2 hours of the parties involving an inspector in the dispute. Additionally, WHSQ’s records indicate that no reviews have been sought in relation to the notices referred to above.

**Why the issues resolution framework was introduced?**

\(^{25}\) s81(2) *Work Health and Safety Act 2011* (Qld).
\(^{26}\) s82(2) *Work Health and Safety Act 2011* (Qld).
\(^{27}\) s223; Schedule 2A *Work Health and Safety Act 2011* (Qld).
\(^{28}\) s82(2) *Work Health and Safety Act 2011* (Qld).
\(^{29}\) s82(4) *Work Health and Safety Act 2011* (Qld).
\(^{30}\) s223 *Work Health and Safety Act 2011* (Qld).
The 2009 National Review into Model Work Health and Safety law recommended that the model Work Health and Safety Act include a process appropriate for the resolution of work health and safety issues arising between those conducting a business or undertaking and the workers engaged or directed by them.32

Stakeholder views from the National review indicated ‘a general consensus in the public submissions that WHS issues should be resolved as quickly as possible, at the workplace and preferably without the need for escalation to an inspector or tribunal. This is not only because risks to health and safety should be resolved quickly, but also as the resolution of issues between the parties at the workplace level avoids escalation of disputes that may compromise relationships, consultation and cooperation’33.

The Explanatory Notes for the WHS Act 2011 note the intention is that issues should be resolved as soon as can reasonably be achieved to avoid further dispute or a recurrence of the issue or a similar issue; that is, an issue should be resolved ‘once and for all’ to the extent that is possible in the circumstances34.

Resolution of cease work disputes

The WHS Act 2011 also provides a framework for the resolution of issues that may arise in relation to the appropriateness of the cessation of work, either at the workers discretion or as directed by a health and safety representative (HSR).

**How do the current cease work provisions operate?**

Under the WHS Act 2011, a worker may cease work, or a HSR may direct a worker to cease work, if they have a reasonable concern that to carry out the work would expose the worker to a serious risk to their health or safety emanating from an immediate or imminent exposure to a hazard (e.g. falls from height, release of asbestos fibres, unguarded plant).35

Where a dispute arises over the cessation of work, similar to the issues resolution process, the WHS Act 2011 enables HSRs or the PCBU most directly involved in the engagement of the worker(s) to request that an inspector attend the workplace to assist in resolving the issue which gave rise to the cessation of work.36

In responding to these requests, WHSQ have advised that:

- Once a request to assist with a dispute is received, an inspector will take immediate steps to ensure any risks to worker safety are controlled, including attending the workplace as soon as possible. In remote locations this may include seeking assistance from other government agencies or regulators (e.g. Queensland Police);
- When an inspector arrives at the site, they will meet with the HSR and employer representative to establish the level of risk associated with the hazard and will inspect and assess the hazard;
- If the inspector establishes that there is a serious risk emanating from an immediate or imminent exposure to a hazard, and it is likely that this will continue to occur if work is reinstated, the inspector will make a decision to prohibit the carrying out of the activity by way of prohibition notice, until such time that they are satisfied that the matter has been remedied.

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35 ss84-85 Work Health and Safety Act 2011 (Qld).
36 s89 Work Health and Safety Act 2011 (Qld).
Similar to the process for the resolution of work health and safety issues, inspectors are entitled to use their compliance powers (such as issuing a notice) to resolve the issue. The decision to issue a notice is subject to internal review and then external review by the QCAT, with appeals able to be made by either the person who received the notice, a PCBU whose interests are affected by the decision, a worker, or a HSR whose interests are affected by the decision.\(^{37}\)

As the power of a HSR to direct work to cease is a significant function, the WHS Act 2011 provides a number of safeguards to prevent this power being misused. These include:

- enabling, upon application to the QIRC, HSRs to be disqualified if they are found to have exercised their powers or functions improperly,\(^{38}\)
- only allowing HSRs who have completed the approved HSR training course to make a direction to cease unsafe work;\(^{39}\)
- requiring HSRs to consult with the PCBU most directly involved in the engagement or direction of the affected worker(s), unless the risk is so serious and imminent that it is not reasonable to do so, in which case consultation should occur as soon as possible after the HSR directs the workers to cease work;\(^{40}\)
- requiring HSRs to attempt to resolve the issue of concern with that person in accordance with the issue resolution procedures required by the WHS Act 2011;\(^{41}\)
- entitling PCBU’s to direct the worker(s) to undertake suitable alternative work, if available;\(^{42}\) and
- entitling worker(s) to continuity of engagement if the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work.\(^{43}\)

Over the last 3 calendar years, WHSQ inspectors have been requested to assist either a health and safety representative or a PCBU on 40 occasions involving a cessation of work with the following notices being issued:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cease work requests for assistance</th>
<th>Improvement notices issued</th>
<th>Prohibition notices issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>25</td>
<td>11</td>
<td>2</td>
</tr>
<tr>
<td>2015</td>
<td>6</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>2016</td>
<td>19</td>
<td>11</td>
<td>2</td>
</tr>
</tbody>
</table>

WHSQ’s experience is that cease work issues are generally resolved within 1-2 hours of the parties involving an inspector. WHSQ records also indicate that no reviews have been sought on any of the notices referred to above.

**Why the cease work provisions were introduced?**

The 2009 National Review into Model Work Health and Safety laws recommended that the model WHS Act explicitly include 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 or any other person to a serious

\(^{37}\) s223; Schedule 2A Work Health and Safety Act 2011 (Qld).
\(^{38}\) s65 Work Health and Safety Act 2011 (Qld).
\(^{39}\) s85(6) Work Health and Safety Act 2011 (Qld).
\(^{40}\) ss85(2)-(4) Work Health and Safety Act 2011 (Qld).
\(^{41}\) s85(2)(b) Work Health and Safety Act 2011 (Qld).
\(^{42}\) s87 Work Health and Safety Act 2011 (Qld).
\(^{43}\) s88 Work Health and Safety Act 2011 (Qld).
risk arising from the immediate or imminent exposure to a hazard. This would permit work cessation to prevent, for example, exposure to a substance which may cause a disease of long latency or a more immediate risk such as falls from a height.

The review also recommended that HSRs be allowed to 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 issue resolution procedures required by the model WHS Act. In addition, it was recommended that HSRs or the person conducting the business or undertaking most directly involved in the engagement of the worker(s) may request that an inspector attend the workplace to decide on any issue arising in relation to the cessation of work.

It was acknowledged that the exercise of this power by HSRs is significant and may cause disruption to operations or require costs to be incurred by PCBUs or others. However, the National Review considered that any concerns about the potential for misuse by a HSR of the power to direct a cessation of work could be met by the provisions for the disqualification of a HSR. At the same time however the WHS Act 2011 prevents HSRs from being “punished” for their involvement in health and safety matters or for performing their functions under the WHS Act 2011. For example, a HSR cannot be dismissed or disadvantaged for directing workers to cease work where this power was exercised in good faith.

Issue resolution and cessation of work processes in other Australian work health and safety jurisdictions

Victoria’s legislation varies slightly from the model work health and safety laws adopted in Queensland in that it provides an additional reviewable decision when work health and safety and cessation of work matters are resolved by an inspector. In particular, Victorian legislation enables disputes concerning continued payment of workers while work is stopped due to determination by an inspector to be reviewed. Under this legislation, an inspector causes work to stop either by issuing a prohibition notice, or determining (in writing) that there was reasonable cause for workers to be concerned for their health or safety. The dispute concerning the entitlement for a worker to continue to be paid until the issue is rectified is first subject to internal review by the Regulator and finally external review by the Victorian Civil Administrative Tribunal.

Jurisdictions that have implemented the model work health and safety laws have the same issues resolution and cessation of work regime as Queensland. Western Australia is also consistent with this approach.

Matters to consider regarding the process for resolving work health and safety and cessation of work issues

The current issues resolution and cessation of work processes under the WHS Act encourage parties to a dispute to expeditiously resolve the issue without the need for escalation to an inspector or a tribunal. This is not to suggest that the resolution of the issue should be rushed, but rather to ensure worker and workplace safety is quickly restored, and from a long term perspective, that ill will and ill feeling that may result from an escalated dispute between parties does not compromise their ongoing working relationship and future efforts to consult, coordinate and cooperate with each other on work health and safety matters.

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48 s66 Work Health and Safety Act 2011 (Qld).
There are concerns however from union organisations that the current issues resolution and cessation of work processes may not adequately facilitate settlement of health and safety issues and that the resolution process may benefit from matters being referred for resolution to an independent body such as the QIRC.

In considering the current regime for issues resolution and cessation of work, and the proposed amendments to these arrangements, feedback and comment is requested on:

35. Whether the current issues resolution framework is adequate?
36. Whether WHSQ’s role in responding to requests for assistance with work health and safety and cessations of work matters is appropriate and adequate?
37. If you support an additional issues resolution process, is the QIRC the appropriate body and what would be the jurisdiction, remedies and processes used?
38. If disputes regarding work health and safety issues need to be referred to the QIRC, at what stage during the dispute?
39. If disputes regarding work health and safety issues need to be referred to the QIRC, what procedure would be most effective and what would be the role of WHSQ?
40. Whether employers require a right to appeal a HSR’s direction for their work group to cease work, and if so, which body or organisation would be the most appropriate to hear this appeal?
41. Whether the proposed right to appeal a HSR’s direction for workers to cease work is duplicative of existing appeal rights under the WHS Act 2011? Particularly whether it duplicates the right to request an inspector to attend a workplace to assist in resolving a dispute and the subsequent ability to appeal the decision of an inspector through QCAT.

TOR 3. WHSQ’s effectiveness in relation to providing compliance information and promoting work health and safety awareness and education

As part of the terms of reference for the review, the reviewer has been asked to consider WHSQ’s effectiveness in relation to providing compliance information and promoting work health and safety awareness and education. The regulatory pyramid referred to in section 1.2 acknowledges that more often than not compliance can be achieved through cooperative measures. Consequently awareness and education activities and the provision of information and guidance about what compliance looks like and how to build a mature safety culture should be a core element of the regulatory model.

3.1 WHSQ’s awareness and education activities

With the growth of social media and the emergence of the digital age, WHSQ have been increasing their use of mass advertising and social media campaigns to expose industry and the community to important safety messages. These campaigns are designed to engage the community and industry in the safety culture debate. They are also designed to influence safety behaviour through a ‘hearts and minds’ approach. This is an approach WHSQ have been using since the Homecomings campaign ran in 2008 where people were encouraged to stop and think about the impact of workplace injuries, not only on the injured person, but on their families and loved ones.

Other methods WHSQ use to engage industry and promote health and safety awareness include industry events, use of safety ambassadors and advocates, and publication of personal story films. Safe Work Month, held in October each year, is WHSQ’s cornerstone industry event. The most recent Safe Work Month, held in October 2016, concluded with more than 4,000 delegates attending events across the state and a further 3,000 people attending the launch event at King George Square.
WHSQ’s Safety Ambassador program also continues to provide opportunities to raise awareness of health and safety issues through the use of high profile personalities with a personal commitment or motivation to promote safety. Football legend and sports presenter, Shane Webcke is WHSQ’s current Queensland Ambassador. Shane’s film where he shares the impact on his family of his father’s workplace death has been viewed on facebook close to 1,000,000 times. Libby Trickett and Trevor Gillmeister are utilised by WHSQ as safety ambassadors. Libby was recently announced as WHSQ’s Mental Health Ambassador and Trevor is Queensland’s Asbestos Awareness Ambassador.

Further information regarding WHSQ’s awareness and engagement activities is provided at Attachment 4 to this paper.

3.2 WHSQ’s engagement with industry to help them understand what compliance looks like and how to build a mature safety culture

Ensuring employers and workers understand what compliance looks like and how to build a mature safety culture is a core element of WHSQ’s enforcement and compliance approach. In particular, providing workplaces with information that is practical, relevant, and easy to use for their specific industry is crucial in enabling, particularly small to medium sized businesses, to implement their own safety strategies. Additionally, the promotion of knowledge about how to build effective safety leadership and culture within organisations enables workplaces to sustainably drive safety improvements.

Some key examples of how WHSQ work with businesses and industry to help them understand what compliance looks like and how to build a mature safety culture include the small business program, the healthy worker initiative, and the safety leadership at work program.

Small Business Program

WHSQ’s Small Business Program is an advisory and assistance program targeted at small businesses (those with fewer than 20 workers) in Queensland. The program aims to facilitate sustainable work health and safety improvements by providing the information, guidance and support required for small businesses to manage their own work health and safety.

The key service provided by the Small Business Program is on-site visits which involve discussion and review of the businesses’ existing safety management arrangements followed by the provision of relevant information, links and templates based on the findings of the visit. Other services delivered by the program include assistance with toolbox talks, presentations and ongoing support by phone or in person. This work is supported by a suite of information and tools including a self-assessment and advisory pack, web-based information, guides and templates.

In the financial year 2015/16, the Small Business Program delivered 370 on-site advisory consultations, 150 workshops to 900 participants on a variety of topics, and 28 presentations to over 1100 people.

Healthy Worker Initiative

WHSQ have partnered with Queensland Health and WorkCover Queensland to deliver the Healthy Worker Initiative (HWI), which promotes a range of targeted evidence-based activities that support workplace health and wellbeing programs, policies and services to reduce the risk of chronic diseases such as obesity, diabetes, stroke, and cancer.

The HWI engages with employers in all industry sectors throughout Queensland to address the SNAPOM risk factors of Smoking, poor Nutrition, harmful Alcohol consumption, Physical inactivity, Obesity and poor Mental Health. A key priority of the HWI is the targeted interventions for industry sectors and occupational groups identified at higher chronic disease risk including construction, transport,
manufacturing, agriculture, small business, health care and social assistance, rural and remote mining and resource sector and Queensland Public Service.

Since 2011, the HWI has engaged with over 66,270 individuals to deliver a number of targeted interventions throughout the state including eight applied research interventions, grant funding to 101 Queensland employers, 22 leadership forums (1918 participants), 83 professional development workshops (1331 participants) and the development of various tools and resources including an online organisational systems benchmarking tool.

Safety Leadership at Work

Concepts such as leadership, culture, risk management and worker involvement have become dominant features in modern day systematic work health and safety management. In particular, safety leadership is recognised as an integral part of building a positive safety culture in the workplace, and that to achieve this, leaders at various levels within an organisation need to take a vested interest in prioritising health and safety. This ethos has driven the development of WHSQ’s Safety Leadership at Work (SLAW) Program which is aimed at enabling industry to develop safety leadership capacity and improve safety culture.

Originally established as the Zero Harm at Work Leadership Program in 2009, the SLAW program seeks to engage and enable industry leaders to demonstrate a visible commitment to safety and contribute to reducing the severity and frequency of work-related incidents in Queensland workplaces. Through the program, front line management, supervisors and workers are encouraged to develop their safety leadership capacity. This is achieved by:

- profiling and promoting businesses which have already made a commitment to safety leadership and inspiring other businesses to do the same;
- encouraging industry to share learnings and work together to develop solutions to significant industry sector and supply chain safety challenges;
- working directly with organisations to increase awareness of leadership practices that can influence positive safety outcomes; and
- providing a range of tools and resources to support organisations who are working towards a stronger safety culture.

As at June 2016, the SLAW Program has over 1,500 members from 944 organisations. This includes 24 senior leaders, 606 workplace leaders and 500 frontline leaders. Additionally, over 3000 industry delegates attended 13 leadership events held in 2015-16.

3.3 Tools and resources to assist industry

In recent years WHSQ have changed the way they do business in response to the rapidly changing industrial landscape and the emergence of the digital economy. In particular, technological advances have enabled WHSQ to enhance the health and safety tools and services available to industry and improve the accessibility of work health and safety information both out in the field and online. This is particularly important in a large decentralised State such as Queensland where the increasingly mobile and dispersed workforce requires innovative strategies to encourage compliance with work health and safety laws and to build capacity and capabilities within industry to manage their own safety initiatives.

Tools and resources

To assist business in understanding what compliance looks like and what’s in it for their business WHSQ have developed a range of tools aimed at allowing business to make more informed health and safety decisions and enable them to take control and to drive improved safety outcomes. Some of the key tools developed by WHSQ include the web-based return on investment calculator, the Participative Ergonomics
for Manual Tasks (PErforM) program, the People at Work risk assessment toolkit and the young worker safety toolkit.

Return on investment calculator

Many businesses recognise the importance of improving work health and safety to reduce work-related injuries and disease. However, less widely known in industry is that work health and safety expenditure can generate a positive return on investment through increased productivity gains and other benefits. Return on investment is essentially a measure of the ‘bang-for-buck’ of an investment (i.e. a measure of the dollars returned in benefits for each dollar spent).

The web-based return on investment calculator is a world first and can assist business to estimate an indicative return on their investments in work health and safety. It provides an indication of whether a particular investment (e.g. a new piece of equipment or a staff wellbeing program) will improve their bottom line and have other positive impacts on the workforce.

The return on investment calculator has already found clear evidence of the cost effectiveness of work health and safety interventions in Queensland businesses including:

- an automatic shrink wrapping machine at Rexel’s Tingalpa distribution centre that had a return of around $1.82 of benefits for every $1 of costs and a payback of upfront costs in less than three years;
- an ergonomics intervention at BP Wild Bean Cafés with a return of around $2.74 of benefits for every $1 of costs and a payback with the first month; and
- a health and wellbeing program at Port of Brisbane that had a return on investment of around $1.58 of benefits for every $1 of costs and a payback period of 15 months.

The return on investment calculator is designed to assist businesses to make better work health and safety decisions.

The Participative Ergonomics for Manual Tasks (PErforM) program

Musculoskeletal disorders currently represent 61 per cent of all serious work-related claims in Queensland. Subsequently, in recognition of the significant financial and emotional cost this has on industry, workers and the economy, a national target has been agreed to reduce the incidence of serious musculoskeletal disorder claims by 30 per cent by 2022 (see section 1.2).

To assist Queensland in achieving this target and proactively make long term sustainable changes in musculoskeletal disorder outcomes, WHSQ have developed the Participative Ergonomics for Manual Tasks (PErforM) program. The PErforM program, which is one of many initiatives WHSQ have undertaken in relation to musculoskeletal disorders (see Attachment 2), is a key initiative aimed at building industry capacity to control hazardous manual tasks risks. In particular, the program actively involves the workers who do the tasks in the risk management process i.e. identifying problem tasks, assessing risk and developing control ideas.

To assist workplaces to implement the program, a comprehensive suite of freely available online resources has been developed by WHSQ. These include training materials (Power Point presentations

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51 Source: QEIDB January 2017 and ABS Cat. 6291.0.55.003, Accepted claims excluding journey claims and serious claims which result in temporary impairments of five or more days off work or permanent impairments.
for managers, trainers and work teams, resource manual, handbook), case studies with cost benefit evaluations, films, fact sheets, webinars and an online PErforM risk assessment tool which can be used on mobile devices.

Examples of organisations that have reduced their injury rates using the PErforM program include:

- Sundale, a community services organisation, reported that there have been no manual handling injury claims in the units where PErforM has been used;
- The City of the Gold Coast Council reported a 60 per cent reduction in workers' compensation claims for manual handling related injuries in the branch where PErforM was implemented.
- CSR Limited reported a 38 per cent reduction in its workers' compensation claims after embedding the PErforM risk assessment tool into their safety management system and implementing their manual handling program.

SafeWork NSW (who are now promoting the PErforM program) and the New Zealand Accident Compensation Corporation have both expressed an interest in implementing the PErforM program.

People at Work risk assessment tool kit

Queensland businesses face a number of challenges from work-related mental health disorders and physical disorders caused by prolonged exposure to work stressors. Reducing the incidence and severity of these disorders continues to be a priority for WHSQ as psychosocial risks are often difficult to identify or easily overlooked.

To assist businesses to be on the front foot with proactively managing the psychosocial hazards of work-related stress, workplace bullying, work-related violence, and fatigue, WHSQ, in partnership with the University of Queensland, Australian National University, WorkSafe Victoria and Safe Work Australia have developed the People at Work Project.

People at Work is a free psychosocial risk assessment tool, which assists organisations to identify and manage risks to the mental health of their workers and to consider some of the health impacts of exposure to hazards such as burnout, musculoskeletal symptoms and sleep difficulties.

Through a five stage risk management process, organisations can independently assess risks to the psychological health of its workers and receive a tailored organisational report that highlights specific workplace risks to psychological health. This can help employers take positive steps towards complying with health and safety laws in relation to psychological health.

A significant number of Queensland businesses have participated in the People at Work Project since it began, with involvement from thousands of workers across a range of industries. More information on this project is available at peopleatworkproject.com.au.

Young worker program and safety tool kit

Young workers aged from 15 to 24 years make up about 18 per cent of the Queensland workforce, with approximately 4400 young workers being seriously injured at work in Queensland each year.

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55 https://www.worksafe.qld.gov.au/agriculture/articles/people-at-work-project
comparison to older workers, and more experienced workers, younger workers are considered to be over-represented in injury statistics. This over-representation is considered to be caused by the unique risk profile of younger workers which may include that they may not perceive when something becomes unsafe or be willing to speak up about unsafe circumstances.

To improve safety outcomes of young workers, amongst other activities, in 2015 WHSQ launched the Young Worker Safety toolkit\textsuperscript{56}. The purpose of the toolkit is to inform employers of the unique risk profile of young workers and provide practical resources to manage these risks through good work design. The toolkit helps employers of young workers, education and training providers, youth service providers and parents and caregivers engage with young people about work health and safety. It encourages actions that build the capabilities of young workers to be safe and productive at work, rather than just relying on them to speak up or ask the right questions.

The toolkit includes a range of resources such as films, presentation templates and checklists that are based on an understanding of how young people learn and communicate with others.

Since the campaign began there have been approximately 720 engagement activities with industry and the Reject Shop is currently piloting the toolkit across its Queensland stores (~60) with the view of rolling it out across other jurisdictions depending on the outcomes.

Other examples of tools developed by WHSQ (which are available on their website) include the industry comparative calculator, the injury ‘cost calculator’, the safety benchmarking tool, the Manual Task Risk Assessment (ManTRA) tool, the noise exposure calculator and the heat stress (Basic) calculator.

**One stop shop**

WHSQ engages with business in a number of ways, for example: websites, newsletters, media, workshops, seminars, telephone calls, email and visits to workplaces. In recognition that workplaces and workforces now operate in a digital age with an increased demand for easily accessible ‘on demand’ and ‘on the go’ services and resources, WHSQ launched the one-stop-shop website in November 2014. The one-stop-shop website – worksafe.qld.gov.au – is a standalone website that unites the previously separate sites of WorkCover Queensland, Workplace Health and Safety Queensland, the Electrical Safety Office and the Workers’ Compensation Regulator. The aim of the website is to pool comparable services and resources in one location and increase industry exposure to relevant information through collaborative initiatives and the cross promotion of resources and services.

Since the launch of the Worksafe website the number of people accessing the website has substantially increased (see Figure 2)\textsuperscript{57}, which in turn increases industry exposure to WHSQ’s resources and tools, and makes the Worksafe website an invaluable instrument for getting information out to industry.


\textsuperscript{57} The chart shows the WHSQ, ESO website up to 2014 and the combined WHSQ, ESO, WorkCover Queensland website after 2014.
Work to improve and expand the services, resources and tools available through the WorkSafe website is continuing, including to:

- enhance the look and feel of the website based on stakeholder feedback;
- redevelop industry microsites based on feedback from industry representatives;
- expand online services through collaboration with the One-Stop Shop Strategy and Implementation office (OSSSIO);
- investigate opportunities to utilise other OSSSIO whole-of-government services including Customer Identity Management (CDIM) and click-to-chat; and
- investigate opportunities to provide targeted work health and safety information to customers logged into WorkCover’s customer portal.

Matters to consider regarding WHSQ’s effectiveness in relation to providing compliance information and promoting work health and safety awareness

<table>
<thead>
<tr>
<th>Question</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>42.</td>
<td>How effective are WHSQ’s awareness and engagement activities in getting the health and safety message to be heard and understood widely?</td>
</tr>
<tr>
<td>43.</td>
<td>How effective are WHSQ’s awareness and engagement activities in driving duty holders to comply with the Work Health and Safety Act 2011?</td>
</tr>
<tr>
<td>44.</td>
<td>Are there demographic, geographic or industry areas where additional measures may be required and if so, what are they?</td>
</tr>
<tr>
<td>45.</td>
<td>In your experience, have attitudes or behaviours been influenced by an awareness and engagement activity run by WHSQ?</td>
</tr>
<tr>
<td>46.</td>
<td>Are there any ways that WHSQ’s approach to awareness and engagement activities could be improved to assist with ensuring compliance with the work health and safety laws?</td>
</tr>
<tr>
<td>47.</td>
<td>How effective are the tools, resources and programs provided by WHSQ in assisting industry and workers to improve safety outcomes?</td>
</tr>
<tr>
<td>48.</td>
<td>Are there any other tools or resources that you think should be developed to encourage and assist industry to comply with the work health and safety laws?</td>
</tr>
</tbody>
</table>
The appropriateness and effectiveness of the administration of public safety matters by WHSQ

The relationship between public safety and work health and safety (WHS) is complex and influenced by many factors, including the state of legislation at any point in time, its interpretation and enforcement by regulatory agencies, coronial findings, the expectations of the community, and the political environment. In Queensland, there are additional factors including the growth of tourism and the impact of business operators providing recreational services and experiences, such as theme park entertainment, underwater diving and snorkelling, and adventure activities.

Public safety in the WHS regulatory context is generally addressed by provisions in WHS legislation that seek to protect third parties, such as members of the public, from harm occurring from the performance of work or the escape of harmful things at a workplace, for example, scaffolding at a construction site collapsing on an adjacent footpath.

In Queensland, the connection between public safety and workplaces was particularly brought into focus by a construction incident in Brisbane in 1988, which caused three fatalities and injuries to other nearby pedestrians. The findings of the subsequent inquiry highlighted the poor public safety standards in the construction industry at the time. This also contributed to modernising WHS legislation in Queensland where various specific health and safety Acts were consolidated into one statute containing general duties covering a range of parties affecting health and safety at work.58 From the outset, the now repealed Workplace Health and Safety Act 1989 made it clear that an employer or self-employed person’s duty of care extended to members of the public to the extent they were not exposed to risks arising from the conduct of the employer’s or self-employed person’s undertaking.

The statutory duty of care owed by a person conducting a business or undertaking to members of the public, also referred to as ‘other persons’, continues to exist today. However, there have been significant changes in the workforce, workplaces and the economy in Queensland since the 1989 Act, and these changes have contributed to testing the boundaries of the duty of care owed to ‘other persons’ under WHS legislation.

WHS regulators and public safety

In the past couple of decades, WHSQ has become involved in incidents falling within the realm of public safety. These incidents have generally resulted in the death of a member of the public, often in circumstances when the person was engaged in a recreational activity. Many of these incidents are based on voluntary involvement of participants in high risk activities which might touch on the voluntary assumption of risk of injury.

Various stakeholders hold different legal, policy and sociological views on WHSQ’s role and function in relation to incidents which could be considered on the fringe of WHS jurisdiction. Due to notification requirements for work-related fatalities, WHSQ’s response may be triggered through notification of a fatality where there is a connection, however remote, with a person conducting a business or undertaking. WHSQ’s practice has tended towards an initial response to determine jurisdiction. Depending on the circumstances, WHSQ may investigate and take enforcement action, and, on other occasions, the incident may be regarded as beyond WHSQ’s jurisdiction with no further action taken.

For WHS regulators generally, the risk of ‘regulatory scope creep’ in relation to public safety can be influenced by several factors, including the community expectation that ‘Government should do

something’ when a tragic incident occurs, coronial inquest findings which make recommendations to
various government agencies to take action, and a lack of clarity around the role and scope of WHS
legislation. An example of where a coroner’s recommendation has not been fully implemented relates to
the death of a child who drowned at a public swimming pool after falling under an inflatable pool device.
In this case, the coroner recommended consideration be given to establishing a pool industry code of
practice. Instead, WHSQ amended an existing publication regarding managing drowning risks at publicly
accessible pools and engaged with industry locally and other jurisdictions to promote these guidelines.

Regulatory scope creep can have flow on effects in terms of pressure on regulator resources, diverting
them from the priority areas where there is a need to reduce work-related fatalities and serious injuries
and illness. WHSQ receives the majority of its funding from WorkCover through workers’ compensation
premiums paid by employers, and this contributes to the reasonable expectation that WHSQ’s resources
will mostly be devoted to reducing fatalities, injuries and illnesses caused by work. Increasingly though,
WHSQ has experienced pressure to consider or respond to matters which fall in the realm of public safety.

Like other states, the Queensland Government has addressed the increase in people participating in
adventure activities, such as white water rafting, through collaborating with the Queensland Outdoor
Recreation Federation to develop a suite of Adventure Activity Standards, which are minimum, voluntary
guidelines for organisations conducting outdoor recreation activities where the participants are
dependent on the activity provider.

The Heads of Workplace Safety Authorities (HWSA) has established a working group to consider
regulatory scope creep issues and the development of a set of guiding principles to assist in the consistent
application of WHS laws and a greater understanding in the wider community. Some WHS regulators
provide information to explain their role in relation to public safety, for example, WorkSafe Victoria
includes information on its website about public safety and explains the role of Worksafe and different
legislation in Victoria which applies to aspects of public safety.

Queensland factors

The nature of Queensland’s popular tourist attractions and their importance to the economy heightens
the need to ensure the ‘tourism experience’ in the state, whether it is experiencing thrill rides at a theme
park, or snorkelling on the Great Barrier Reef, is safe.

The Queensland Government has recognised the importance of tourism for the state’s economy and
identifies Queensland’s competitive advantages as including a ‘safe, clean and green environment’. 59

Based on a broad definition which includes travel for business and education, Queensland’s tourism
sector’s direct output was $10.2 billion in 2014-15, 3.6 per cent of the state output. 60 While tourism is
important throughout the state, the Great Barrier Reef and the theme parks of the Gold Coast are
particularly significant, attracting many visitors every year. Visitation numbers to the Great Barrier Reef
Marine Park are growing with approximately 2.2 million visitor days indicated for the financial year ending
30 June 2016.

Queensland’s workforce has also changed over the last thirty years. The primary sector (eg agriculture,
forestry and fishing) in Queensland has reduced its share of total employment by 5.28 per cent and the
secondary sector (eg manufacturing and construction) has reduced its share of employment by 2.99 per
cent. In contrast, the tertiary sector (eg. health care, education and training, retail and recreational

60 A Review of Queensland’s Trading (Allowable Hours) Act 1990, John Mickel, Chair, Trading Hours Review Reference Group, December 2016
services) has increased its share of total employment by 8.29 per cent. Overall, 77.42 per cent of employment in Queensland is in the tertiary sector.\footnote{ABS Cat. No. 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2016}

**Recreational diving and snorkelling**

Commercially provided recreational diving and snorkelling experiences have been regulated in Queensland for many years due to the incidence of recreational diving and snorkelling fatalities that had prompted government action to improve safety standards in the sector in the 1990s.

Initially, this was done through regulations and codes of practice made under the now repealed *Workplace Health and Safety Act 1995*. These regulations and codes were developed and amended over time as a result of extensive consultation with the diving industry.

Leading up to 2011, the development of the national model WHS laws for Australian jurisdictions did not include national model regulations and codes dealing with recreational diving and snorkelling. The absence of regulation in this area was particularly an issue for Queensland due to the strong recreational diving and snorkelling sector that has evolved in far north Queensland.

The Queensland Government at that time recognised the need to maintain high safety standards for the recreational and diving snorkelling sector. This resulted in the introduction of the *Safety in Recreational Water Activities Act 2011* (SRWA Act), and supporting regulations and codes of practice for recreational diving and snorkelling. When the SRWA Bill was introduced to the Queensland Parliament, the Australian recreational diving market was estimated to contribute $1.4 billion into the economy each year, with the majority of this activity occurring in Queensland.\footnote{Ministerial Second Reading speech, Safety and Recreational Water Activities Bill 2011, Hansard, 10 May 2011.}

To support the regulatory framework, WHSQ undertakes a range of activities to assist industry to comply with the relevant regulatory provisions. The establishment of the WHSQ Diving Unit in January 2009 increased WHSQ’s ability to provide enhanced services to the recreational dive industry. The WHSQ Dive Unit is currently comprised of three full time equivalent inspectors.

In addition to dedicated inspectorate resources, WHSQ has an extensive range of information products to support the recreational diving and snorkelling industry to undertake their business safely. As well as the advisory and educational work performed by the WHSQ Dive Unit, WHSQ has online information products such as checklists, fact sheets, non-English publications, presentations, alerts, posters and prosecution outcomes.

In the first half of 2016-17, there were 10 recreational diving and snorkelling fatalities, which is higher than the annual average for the past five years. Due to concerns about these recent fatalities, the Minister for Employment and Industrial Relations held a Reef Safety Roundtable in February 2017 for industry operators and experts to consider improvements to the codes of practice for recreational diving and snorkelling.

The majority of the recent fatalities involved snorkelling activities, and it should be noted that common factors contributing to risk when snorkelling include age, lack of experience, lack of physical fitness, pre-existing medical conditions such as obesity, heart disease, high blood pressure, breathing difficulties and pre-existing injuries. As a result of the Roundtable, the Minister for Employment and Industrial Relations...
announced working groups would be established to oversee a series of improvements to the snorkelling
and diving code of practice.63

Australia has an extremely low risk of fatality by drowning compared to many other countries. However,
the number of fatalities in Queensland from snorkelling and diving is anticipated to rise, due to the
correlation between these activities and the projected rise in the number of overseas visitors to
Queensland. The number of overseas visitors to Queensland has risen by 3.2 per cent per annum over the
past five years to 2015-16. Tourism Research Australia projects a rise of 4.7 per cent in the number of
visitors coming to regional Queensland for holiday purposes in 2016-17. In particular, the number of
international visitors to North Queensland rose from 1,062,000 in 2011-12 to 1,381,000 visitors in 2015-
16. This increase of 319,000 visitors or 30 per cent, represents the biggest growth across the state, higher
than south-east Queensland and the outback. Also over this period, international visitors to the North
Queensland region accounted for approximately one-third of all visitors.

The SRWA Act and WHSQ’s operational activities in relation to the recreational diving and snorkelling
sector are aimed at ensuring high standards of public safety in this sector. Without this legislative
intervention, the relationship between the dive customer and dive tour operator would be governed by
a contractual relationship and any remedies would lie in contract and tort. While there is a regulatory
framework which can be updated to reflect changes identified in consultation with industry, the WHS
regulator must operate within budget limitations in providing resources dedicated to the recreational
diving and snorkelling sector.

Amusement devices

Amusement devices are a pivotal attraction at many events in Queensland where members of the public
can experience the enjoyment and thrill of riding on these devices. In addition to amusement devices that
are assembled, dismantled and moved between events, Queensland has several major theme parks with
fixed amusement devices. WHSQ is also aware of plans to build a new major ‘active sports theme park’
on the Sunshine Coast. As new amusement devices are designed and installed, there will be a different
mix of older style rides with manual systems and newer ICT based rides.

The WHS Regulation specifically regulates amusement devices as well as other high risk plant. WHSQ has
proactively audited amusement devices at major agricultural shows, local carnivals and school fetes for a
number of years with more than 700 assessments conducted over a 12 month period up to October 2016.
WHSQ also meets twice a year with amusement device stakeholders to discuss safety issues relevant to
the industry and to encourage the adoption of systematic approaches to maintaining equipment in a safe
condition.

Following the incident at Dreamworld in October 2016 when four persons died on the Thunder River
Rapids ride, WHSQ carried out systems audits at the major south-east Queensland theme parks. Both the
investigation of the incident at Dreamworld and the audits of the major theme parks required a high level
of resources with the involvement of investigators, inspectors with expertise in plant, engineers, and
electrical safety inspectors.

63 Media Statement, The Honourable Grace Grace MP, Minister for Employment and Industrial Relations, Minister
for Racing and Minister for Multicultural Affairs, Thursday, February 23, 2017,
updated
Due to Queensland’s tourism sector and the emergence of a significant theme park sector in south-east Queensland over the last three decades, there may be a need for WHSQ to dedicate more resources to amusement devices than WHS regulators in other jurisdictions.

National Model WHS Laws

Public safety and its interaction with WHS laws was considered during the 2008-2009 National Review into Model Occupational Health and Safety Laws, which resulted in the development of the model WHS laws adopted by most jurisdictions\textsuperscript{64}. In Queensland, the \textit{Work Health and Safety Act 2011} commenced on 1 January 2012. The National Review noted the main issue was not whether WHS laws should protect public safety but how wide the protection should be and how an appropriate boundary should be drawn between the proper scope of the model WHS laws and the wider protection of public safety.

The National Review recommended establishing a clearer application of the model WHS Act to public safety, including the protection of all persons from work-related harm; and the provision of up-to-date advice and information about how the model WHS Act relates to the protection of the safety of the public. The Workplace Relations Ministers’ Council’s (WRMC) agreed with these recommendations and provided the following comment in regards to the application of the primary duty of care to any person conducting a business or undertaking –

\begin{quote}
"The (WRMC) panel recommends that the primary duty of care should be owed by any person conducting a business or undertaking. The objective of this recommendation is to move away from the traditional emphasis on the employment relationship as the determiner of the primary duty, to provide greater health and safety protection for all persons involved in, or affected by, work activity. Care needs to be taken during drafting to ensure that the scope of the duty is limited to matters of occupational health and safety and does not further extend into areas of public safety that are not related to the workplace activity."
\end{quote}

Additionally the WRMC provided the following comment on the intersection of WHS laws with other laws or processes -

\begin{quote}
‘A number of recommendations (primarily related to recommendations which cover ‘duty of care’ offences and defence) would cause unwarranted and in a few cases irreconcilable conflicts with existing criminal and procedural laws in the jurisdictions. These matters (which have been kept to a minimum) should be dealt with, as far as possible, outside the model OHS laws.’
\end{quote}

The Explanatory Memorandum to the \textit{Work Health and Safety Bill 2011 (Cth)} addressed the application of the Bill to public health and safety as follows –

\begin{quote}
‘The primary purpose of the Bill is to protect persons from work-related harm. The status of such persons is irrelevant. It does not matter whether they are workers, have some other work-related status or are members of the wider public. They are entitled to that protection. At the same time, the Bill is not intended to extend such protection in circumstances that are not related to work. There are other laws, including the common law, that require such protection and provide remedies where it is not supplied.
\end{quote}

The duties under the Bill are intended to operate in a work context and will apply where work is performed, processes or things are used for work or in relation to workplaces. It is not intended to have operation in relation to public health and safety more broadly, without the necessary connection to work.’

The principles of hazard identification and risk management are familiar to those who know about the WHS regulatory framework. These principles can be useful in other human endeavours and in understanding the ‘failures’ of other systems. However, the useful application of these principles in other areas does not translate into acceptance of jurisdiction within WHS law.

Scope of the primary duty of care

Section 19 of the WHS Act 2011 establishes the primary duty of care of a person conducting a business or undertaking. Section 19(1) provides for the duty owed to workers while section 19(2) is the duty owed to ‘other persons’.

19 Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

(a) workers engaged, or caused to be engaged by the person; and

(b) workers whose activities in carrying out work are influenced or directed by the person; while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

As the explanatory notes for the WHS Bill 2011 state,

Duty extends to ‘others’

Subclause 19(2) extends whom the primary duty of care is owed to beyond the PCBU’s workers to cover all other persons affected by the carrying out of work. It requires PCBUs to ensure, so far as is reasonably practicable, that the health and safety of all persons is not put at risk from work carried out as part of the business or undertaking.

This wording is different to that used in subclause 19(1). Unlike the duty owed to workers in subclause 19(1), the duty owed to others is not expressed as a positive duty, as it only requires that persons other than workers ‘not [be] put at risk’. However, the general aim of both subclauses 19(1) and (2) is preventative and both require the primary duty of care to be discharged by managing risks.’

When read together with the objects of the WHS Act 2011 (section 3), jurisdiction should not be enlivened by many fields of business, recreational or domestic endeavour (for example, tenancy agreements, sporting competition and matters where there is a clear meeting of minds in terms of parties to contracts or entrants upon land).

The WHS legislation is clear in addressing some matters of public safety where there is a clear nexus with work, for example, the requirements for ‘others’ to use personal protective equipment if required when entering a workplace, or the provision of gantries/fencing and exclusion zones during construction work.
Beyond the clearly delineated areas of WHS law designed to have some element of public health and safety protection, the common law in terms of civil liability or remedy might be relevant and the criminal law remains applicable. In some circumstances there may be appropriate Criminal Code offences, for example in relation to ‘dangerous acts’, ‘dangerous things’ and ‘negligent acts causing harm’.65

The WHS Act 2011 should not be seen as a default setting for all human conduct. Extracting section 19(2) of the WHS Act 2011 and applying it to all facets of a ‘business or undertaking’ and its relations with the public and those with whom it might contract is taking the WHS jurisdiction beyond its intended boundaries. Some examples where WHS regulators would not typically consider jurisdiction applies include a child injured playing on playground equipment at a council park; a member of the public tripping and falling at a shopping centre; a person drowning in a resort pool; and a member of the public injured while climbing or abseiling in a national park.

Incidents testing the boundaries of WHS legislation and public safety will continue to occur. WHSQ has clear jurisdiction in certain areas, for example, commercially provided recreational diving and snorkelling, and amusement devices. Given their significance to the Queensland economy, both of these areas warrant ongoing monitoring to ensure standards are rigorous and there is an appropriate level of resourcing for education, compliance and enforcement activities.

Matters to consider regarding public safety

| 49. Is the clarity around the incidence of public safety risks relevant to the scope of work of this review? |
| 50. Is there a need for greater clarity regarding the scope of work health and safety laws and public safety? |
| 51. Can you identify any changes to the regulatory framework that would enhance public safety regarding amusement devices? If so, please outline these changes. |

TOR 5. Further measures that can be taken to discourage unsafe work practices

In announcing the Best Practice Review, the government is committed to examining whether any further measures could be undertaken to discourage unsafe work practices. This includes consideration of:

- the merit of introducing a new offence of gross negligence causing death: and
- whether existing penalties for work-related deaths and serious injuries should be increased.

Issues to consider regarding further measures that can be taken to discourage unsafe work practices

| 52. Is there merit in introducing an offence of gross negligence and increasing penalties? |
| 53. In addition to the above, are there any further measures that should be considered as part of the review that may discourage unsafe work practices? |

5.1 Catastrophic incidents/multiple fatalities – are the current laws sufficient?

In 2016, there were two workplace incidents resulting in multiple fatalities. On 6 October 2016 two construction workers were killed at Eagle Farm Racecourse when it is alleged that concrete slabs fell into a pit where they were standing, and on 25 October 2016, four people died at Dreamworld Theme Park on the Gold Coast after an incident involving an amusement device. These recent high profile incidents have seen calls for the current penalty and offences regime under the work health and safety laws to be

65 Criminal Code s.288-290 and s.328.
reviewed, particularly the ability under the current regime to deter non-compliance and specifically, whether current penalties are sufficient in instances where actions or omissions allegedly involving gross negligence result in catastrophic incidents involving fatalities.

**Background - legislative treatment of work related fatalities in Queensland**

In Queensland, prosecutions for work related deaths have been able to be undertaken under occupational health and safety legislation[^66] and under the *Criminal Code Act 1899* (Criminal Code). The constituent elements for offences under each legislative regime differ.

Occupational health and safety legislation is focussed on imposing health and safety obligations on various duty holders, including the person conducting a business or undertaking (PCBU), who could be a sole operator or a corporate entity, and other duty holders such as workers. The current *Work Health and Safety Act 2011* (WHS Act 2011) was developed as part of a national harmonisation scheme for work health and safety[^67], while the offence provisions in the *Electrical Safety Act 2002* (ES Act) are also modelled on the national model provisions. Currently, where a duty holder breaches an obligation, regardless of whether a breach results in a fatality or injury, the work health and safety regulator has the option to prosecute for the breach. The Director of Public Prosecutions (DPP) also has the right to bring a prosecution under occupational health and safety legislation.

In contrast, the commission of an unlawful killing is the prerequisite for a prosecution to be brought under the Criminal Code for a work related death. In that instance, the Queensland Police Service (QPS) or the DPP can bring a prosecution. Given the discrete nature of offences, it is possible for the one instance of a work related death to result in prosecutions under both legislative regimes. For example, in the case of the electrocution of Mr Jason Garrels in Clermont in 2012, the electrical contractor on site was charged with manslaughter and appeared for committal on 17 October 2016. In addition, successful prosecution action was also taken against the contractor under the ES Act.

**Occupational health and safety legislation – categories of offences**

A person who is allegedly responsible for a work related death could be prosecuted under one of the three categories of offences for breaching a health and safety duty under occupational health and safety legislation[^68]. These offences focus on the failure to meet the safety duty, rather than the actual occurrence of a work-related fatality or injury. Category 1 is a crime under the Criminal Code. It has three elements: the existence of a duty; breach of that duty without reasonable excuse exposing a person to a risk of death, serious injury or serious illness; and recklessness by the offender as to the risk of harm. The maximum penalty is five years’ imprisonment for individuals and monetary penalties of up to $3 million for corporations, $600,000 for officers, and $300,000 for workers and other persons. There are currently a number of category 1 prosecutions on foot in various Australian jurisdictions, including Queensland[^69].

Unlike Category 1, Categories 2 and 3 do not have the element of recklessness and there is no provision for reliance on a ‘reasonable excuse’. The elements in common are that there is a duty owed and that

[^66]: In this paper, the term ‘occupational health and safety legislation’ refers to the *Work Health and Safety Act 2011* (WHS Act), *Safety in Recreational Water Activities Act 2011* (SRWA Act), *Electrical Safety Act 2002* (ES Act), and relevant repealed legislation.

[^67]: Division 5 (Offences and Penalties) of the WHS Act also applies to the SRWA Act.

[^68]: ss31 – 33 WHS Act; ss40B – 40D ES Act.

[^69]: Queensland - December 2015, two corporate PCBUs and two officers were charged with reckless conduct causing death after a roofer fell 5.9 metres from the edge of a roof. The matter was mentioned on 21 September 2016 and all defendants were committed to stand trial in the District Court. The trial is likely to commence in early 2017. South Australia - April 2016, an engineering company and its director were charged with recklessly causing the September 2014 death of a girl on a ride at the Royal Adelaide Show. The matter has been referred to the full Industrial Court to be heard at a date to be set.
duty is breached. Category two has an additional element, i.e. the breach exposes a person to a risk of death or serious injury or illness. There have been successful prosecutions for Category 2 offences for work related deaths, both in Queensland and other jurisdictions. Categories 2 and 3 do not attract a penalty of imprisonment, only a sliding scale of monetary penalties according to the status of the offender (corporation, officer, or other individual).

Manslaughter – Criminal Code

A person can be charged with manslaughter and prosecuted under the Criminal Code for a work related death. The Criminal Code defines the offence of manslaughter as being the unlawful killing of a person under circumstances that do not constitute murder, i.e. without the intention to cause the death or grievous bodily harm of a person. However, manslaughter is usually a result of a careless, reckless or negligent act. The maximum penalty for manslaughter is life imprisonment.

The builder in charge of the site at Eagle Farm Racecourse, where two workers were crushed to death in October 2016, has been charged with manslaughter under the Criminal Code. That case has been set down for hearing in April 2017.

Recklessness and Gross Negligence

As stated above, recent work related incidents involving multiple fatalities have caused concern as to whether current penalties are sufficient in instances where actions or omissions allegedly involve gross negligence. This raises the issue of the difference, if any, between the concepts of recklessness and negligence in manslaughter offences.

In criminal law, conduct is reckless if the offender is, or should be aware, of possible consequences of his/her actions, but is indifferent as to whether those consequences occur. In the context of a category 1 offence, a natural person, or corporate entity (acting through their officers) would display recklessness if they were aware, or should have been aware, of a risk of serious harm or death, but their action or inaction showed that they were indifferent as to whether that risk eventuated.

Gross (or criminal) negligence is found where the actions or omissions of the offender, while not intending to cause serious injury or death, fall far short of the standard reasonably expected in the situation, and which involves such a high risk of death or serious harm, that the act merits criminal punishment.

While there is a fine distinction between the two concepts, they are both at the higher end of the scale of risk taking leading to possible death or serious injury.

Manslaughter compared with WHS/ES Act category 1 offences

The essential difference between a manslaughter (industrial or otherwise) offence under the criminal law and a WHS Act Category 1 offence is the WHS provision arguably has broader coverage. A person commits a Category 1 offence where a WHS duty is breached by engaging in reckless conduct exposing a person to risk of death or serious injury. Unlike a manslaughter offence, there is no requirement for death or serious injury to actually occur for a person to be prosecuted for a Category 1 offence. It therefore can be used for a wider range of incidents. It is also a proactive provision and can be used as a tool to address (by prosecution) serious systemic and corporate behaviour failures before a serious injury or death occurs.

70 ss300, 303 Criminal Code Act 1989 (Qld)
71 R v Nuri [1990] VR 641, 643
Possible solutions to address concerns

Given the serious nature of work related fatalities, including incidents resulting in multiple fatalities, an increase in penalties, or amendment to the current penalty structure in the occupational health and safety legislation could be considered. For example, the Workplace Health and Safety Act 1995 (Qld) (repealed) provided for a scale of penalties. Where a breach resulted in a single fatality, the maximum penalty was 1000 penalty units or 2 years’ imprisonment. However, if a breach resulted in multiple fatalities, the maximum penalty was 2000 penalty units or 3 years’ imprisonment. These penalties are both lower than the current year maximum, but the model of imposing penalties according to the number of fatalities might have value.

Another option could be to introduce a discrete offence of industrial or corporate manslaughter into the Criminal Code. This issue has previously been examined by Queensland and a number of other Australian jurisdictions (see Attachment 8).

This would still be a manslaughter offence but focussed on a particular class of offender, i.e. the corporate entity. However, to prove the necessary degree of negligence, the behaviour of the natural persons, such as company officers, responsible for the management of the entity would still need to be examined by the court.

One of the arguments for the introduction of a specific industrial manslaughter offence is that the current WHS laws are not sufficiently ‘criminal’ in nature. However, s31(3) of the WHS Act specifically provides that a Category 1 offence is a crime and imposes a penalty of imprisonment (maximum 5 years).

Australian courts have repeatedly stated that the primary purpose of WHS prosecutions is deterrence, both general and specific. Historically, work health and safety prosecutions have been kept separate from the general law partly because of the broader object of promoting and encouraging safe work practices.

Matters to consider regarding catastrophic incidents/multiple fatalities

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the current Category 1 offence under the Work Health and Safety Act 2011 sufficient to address catastrophic incidents involving multiple fatalities?</td>
<td></td>
</tr>
<tr>
<td>Alternatively, do penalties need to be increased where an incident involves multiple fatalities?</td>
<td></td>
</tr>
<tr>
<td>Is there a “gap” between WHS/ES Act Category 1 offences and relevant offences under the Criminal Code that needs addressing?</td>
<td></td>
</tr>
</tbody>
</table>

5.2 Existing penalties for work-related fatalities and injuries

The structure of offences and the penalty amounts in Queensland changed significantly when the national model Work Health and Safety legislation was implemented on 1 January 2012.

Under the Workplace Health and Safety Act 1995 (WHS Act 1995) penalties were aligned with the number of fatalities and/or severity of the injury. Under the Work Health and Safety Act 2011 (WHS Act 2011) penalties are based on the behaviour/issue rather than the outcome and the penalties were increased substantially to:

- be proportionate and relevant to the seriousness of the conduct and reflect the consequences that may result from failure to remedy serious risks to health or safety i.e. risk to personal safety and potential loss of life arising from any breaches
- reflect the recommendations from the national review of WHS legislation to strengthen the deterrent effect of the penalties;
- extend the ability of the courts to impose more meaningful penalties, where appropriate; and

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emphasise to the community the seriousness of the offences under the WHS legislation.

The maximum penalties set in the WHS Act 2011 reflect the level of seriousness of the offences and have been set at levels high enough to cover the worst examples of offences involving reckless conduct. Penalties and the possibility of imprisonment in the most serious cases are a key part of achieving and maintaining a credible level of deterrence to complement other types of enforcement action.

In comparison with penalties under the WHS Act 1995, the maximum fines under the WHS Act 2011 are four times greater for corporations, officers and PCBUs as individuals. Under categories 1 and 2, offences and penalties for workers have doubled in most instances. Penalties are a maximum and the courts retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors. The maximum penalties under the WHS Act 1995 and WHS Act 2011 are shown below in Table 1.

Table 1 – Penalties under WHS legislation

<table>
<thead>
<tr>
<th>WHS Act 1995</th>
<th>WHS Act 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Multiple deaths, maximum penalty:</strong></td>
<td><strong>Category 1 reckless conduct offence:</strong></td>
</tr>
<tr>
<td>$750,000 corporation</td>
<td>$3,000,000 corporation</td>
</tr>
<tr>
<td>$150,000 individual</td>
<td>$600,000 or 5 years imprisonment for an individual who is a PCBU or an Executive Officer</td>
</tr>
<tr>
<td></td>
<td>$300,000 or 5 years imprisonment for other individuals e.g. workers.</td>
</tr>
<tr>
<td><strong>Single fatality, maximum penalty:</strong></td>
<td><strong>Category 2 Failure to comply with health and safety duty and exposing a person to a risk of death or serious injury or illness:</strong></td>
</tr>
<tr>
<td>$375,000 corporation</td>
<td>$1,500,000 corporation</td>
</tr>
<tr>
<td>$75,000 for an individual</td>
<td>$300,000 for an individual who is a PCBU or an Executive Officer</td>
</tr>
<tr>
<td></td>
<td>$150,000 for other individuals e.g. workers.</td>
</tr>
<tr>
<td><strong>General breach of duty of care, maximum penalty:</strong></td>
<td><strong>Category 3 Failure to comply with health and safety duty:</strong></td>
</tr>
<tr>
<td>$225,000 corporation</td>
<td>$500,000 corporation</td>
</tr>
<tr>
<td>$37,500 for an individual</td>
<td>$100,000 for an individual who is a PCBU or an Executive Officer</td>
</tr>
<tr>
<td></td>
<td>$50,000 for other individuals e.g. workers.</td>
</tr>
</tbody>
</table>

Penalties in Other Jurisdictions

New South Wales, South Australia, Australian Capital Territory, Northern Territory and Tasmania have all adopted the model WHS laws and have the same offences and penalties as Queensland.

Victoria and Western Australia have not adopted the model laws and their offences and penalties differ from those in Queensland and the other harmonised states. Attachment 9 sets out the maximum penalties in the different jurisdictions.

In Victoria penalties for a general breach of a duty of care and reckless endangerment are similar to the maximum penalties for Category 1 and 2 offences in Queensland. Victoria increased the maximum penalty for reckless endangerment by a body corporate to $3,109,200 (20000 penalty units) on 29/6/2016. The maximum penalty for an individual for reckless endangerment was not changed.

Like Queensland, Western Australia has three categories of offences however the maximum penalties are much lower. The maximum penalty for a breach involving gross negligence by a body corporate is $500,000 for a first offence and $625,000 for subsequent breaches, significantly lower than the maximum penalty of $3,000,000 for reckless conduct by a body corporate under the WHS Act 2011.
Penalties and the Courts

A significant increase in maximum fines under legislation does not mean courts will automatically increase the level of fines they impose. The increase in penalties under the WHS Act 2011 takes time to be reflected in the penalties imposed by the courts. Courts are more likely to impose fines around the same level as they have for previous matters with only incremental increases. This has not been such an issue in other jurisdictions as they had substantially higher penalties prior to model WHS laws than Queensland. For example NSW had a maximum penalty for reckless conduct causing death of $1,650,000 for a corporation under their repealed legislation and South Australia had a maximum fine for risk of death or serious harm of $1,200,000 for a corporation.

Importantly however, in a recent landmark decision, the Queensland District Court found that an employer’s fatality-related fine should have been nearly 40 per cent higher than the one imposed, after examining cases from other harmonised jurisdictions.\(^{74}\) The District Court accepted WHSQ’s submission that the State’s mirror WHS Act 2011 permitted sentencing courts to have regard to decisions from other harmonised states and territories, given that the "main object" of the WHS Act 2011 was to provide for a “balanced and nationally consistent framework” for work health safety.\(^{75}\) Referring to similar cases in NSW and South Australia – with penalties between $87,500 and $425,000, the District Court judge found that the company should have been fined about $250,000 based on an appropriate range of $200,000 to $400,000 “depending on the circumstances of the case”. However, the judge found it was necessary to ameliorate the penalty that would otherwise be appropriate for a number of reasons, including that this was the first appeal “to address the issue of the harmonised national work health and safety laws”. Consequently, the employer was re-sentenced with a fine of $125,000 as opposed to the initial $90,000 fine.\(^{76}\)

Additionally, on 9 May 2016 amendments to the Penalties and Sentences Act 1992 came into effect that reinstate the ability of a court to receive submissions from parties to the proceedings on the range of penalties the party considers appropriate to be imposed. This allows Workplace Health and Safety Queensland to provide submissions to the court on the appropriate penalty range. The ability to reference comparable decisions from other harmonised jurisdictions is one of the matters currently being considered in an appeal to the District Court.

Matters to consider regarding penalties under the Work Health and Safety Act 2011

<table>
<thead>
<tr>
<th>57.</th>
<th>Are the penalties in the Work Health and Safety Act 2011 an effective deterrent to poor health and safety practices?</th>
</tr>
</thead>
<tbody>
<tr>
<td>58.</td>
<td>Are the penalties for reckless conduct in the Work Health and Safety Act 2011 proportionate to the seriousness of the offence?</td>
</tr>
</tbody>
</table>

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\(^{74}\) Williamson v VH & MG Imports Pty Ltd [2017] QDC 56.

\(^{75}\) Williamson v VH & MG Imports Pty Ltd [2017] QDC 56.

\(^{76}\) Williamson v VH & MG Imports Pty Ltd [2017] QDC 56.
Attachment 1: Overview of the 2008 Review of the Workplace Health and Safety Enforcement Framework

The 2008 Review of the Workplace Health and Safety Enforcement Framework found that the framework was sound and generally well administered.

The Review made 50 recommendations, suggesting legislative amendments (13 recommendations), improvements to administration and policies (19 recommendations), possible future changes to legislation (4 recommendations), discussion with national bodies (8 recommendations), no change to identified issues (2 recommendations) and matters for further consideration (4 recommendations). A full list of recommendations and the Government’s response is provided below.

A specific offence of industrial manslaughter was considered to be inconsistent with other jurisdictions and was not recommended by the Review.

Eight of the recommendations proposing legislative amendment were supported and implemented on the basis that they were consistent with other jurisdictions and would form part of the National Model OHS legislation or would streamline Queensland legislative procedures. Key recommendations included:

- commencement of prosecution within 2 years of a coronial inquest or inquiry (R.34);
- clarification of the increased penalty for corporate offenders (R.40);
- clarifying the ability to prosecute departments under the Workplace Health and Safety Act 1995 (WHS Act) and the Electrical Safety Act 2002 (R.42);
- increasing the maximum period of imprisonment for multiple deaths from 3 to 5 years (R.43); and
- allowing Workplace health and Safety Representatives (WHSRs) to issue Provisional Improvement Notices (PINs) (R.45).

It was proposed to not proceed with 5 recommendations that proposed legislative amendments on the basis that they were inconsistent with arrangements in the majority of Australian jurisdictions and they should be considered as part of the development of the National Model OHS Laws. These related to:

- increasing the time for commencement of a prosecution (R.33),
- higher penalties for repeat offenders (R. 26),
- a wider range of sentencing options and sanctions for non-compliance (R.36 and 37); and
- impact of fine level on employer’s business (R.38).

The review also made a series of recommendations to improve policies and administration, all of which were supported. These recommendations related to improving organisational processes, streamlining enforcement and enhancing compliance through better advice, education and information. Some of the key recommendations included:

- benchmarking enforcement activities in priority industries against other jurisdictions (R.13);
- WHSQ and ESO analysing the difficulties in bringing risk focused prosecutions (R.49);
- annually reviewing Schedule 5 of the Penalties and Enforcement Act 2000 (R.32);
- in appropriate cases, the prosecutor should present the court with arguments for a revision upwards of the penalties that are normally imposed and for a reconsideration of the weight given to the factors that are taken into account in sentencing (R.28);
- giving more attention to identifying, educating and, where there are breaches, taking enforcement action against upstream and other obligation holders (R.22);
- reviewing incidents of breaches by upstream obligation holders to see whether sufficient weight is given to enforcement action against them and to identify and address obstacles to effective enforcement action (R.23); and
subject to seeking a nationally consistent approach, finalise the code of practice for corporate executive officer responsibilities (R.46).

The review also made a series of recommendations relating to the need for better advice, education and information. These recommendations, which were all implemented related to:

- separating the education and advisory functions from the investigation and enforcement functions within the inspectorate (R.10);
- undertaking a needs/gap analysis to provide a base point and guidance for improving the effectiveness of advice, education and information to obligation holders and undertake periodic surveys;
- reviewing the training needs of inspectors to determine how to strengthen their education, advisory and auditing skills (R.5);
- identifying the needs of obligation holders (particularly small business) for advice, education and information (R.11 and R.15);
- establishing principles for timely information to obligation holders about progress with investigations and reasons for taking or not taking enforcement action (R.8);
- periodic examination (e.g., as part of annual business planning) of whether WHSQ and ESO resources are satisfactorily deployed to deal with safety issues in areas of precarious employment and in relation to vulnerable groups of workers (R.14);
- more publicly accessible information about WHSQ activities and use of resources to secure public safety (R.6);
- including information in annual reports of Queensland safety regulators of how working relationships have been maintained and improved; and
- giving priority to addressing understaffing, including by reviewing approaches by other regulators to attract and retain staff (R.4).

In response to certain recommendations above in relation to education and awareness, the department gave effect to the successful Victorian Homecomings advertising campaign to change workplace behaviour to reduce work injury and fatalities. The campaign formed part of a comprehensive communication strategy seeking to change attitudes and behaviour.

Following the completion of the review, the unions advised they were seeking the appointment of a Workplace Health and Safety Commissioner under the WHS Act. In relation to this proposal, the department undertook an investigation of OHS administrative structures in other jurisdictions prior to making a recommendation. At the time of the review, WA and the ACT had an OHS Commissioner. The Commissioner was require to act as regulator and direct the resources of the inspectorate, which is quite different to the role of the current Electrical Safety Commissioner. An OHS Commissioner was not appointed in response to the review at the time.

**Summary of Recommendations**

**Recommendations to be implemented**

**Legislative amendments**

**R.17** The Industrial Court of Queensland should continue to have appellate jurisdiction and should have the power to impose or reimpose a sentence of imprisonment when hearing an appeal.

**R.18** The Industrial Magistrates Court, rather than the Supreme Court, should have the power to make orders about compliance with prohibition and improvement notices.

**R.25** The monetary penalties as specified in the *Workplace Health and Safety Act 1995* (WHS Act) and the *Electrical Safety Act 2002* (ES Act) do not need to be increased at this point, but the Director-
General, of the Department of Employment and Industrial Relations (DEIR), should be required to provide the Minister with a report at least once in each three year period on whether any adjustments are required to the penalties and sentencing options that are provided under the legislation.

R.34 Where a report of a coronial inquest or inquiry, or proceedings at the inquest or inquiry, disclose that an offence has occurred under the WHS Act or the ES Act of the regulations, provision should be made to permit proceedings to be commenced within two years after the date of the report or the conclusion of the inquest or inquiry.

R.39 Victim Impact Statements may be prepared by an injured person or deceased person’s survivors and presented to court at sentencing stage.

R.40 The WHS Act and ES Act should either expressly set out the maximum monetary penalties for corporate offenders or include a note to explain that the *Penalties and Sentencing Act 1992* multiplies the maximum fine provided for a natural person by a factor of five.

R.42 The shield of the Crown should not apply in relation to safety and health matters and s.3 of the ES Act should be amended accordingly.

R.43 The maximum period of imprisonment under the WHS Act and the ES Act for causing multiple deaths should be increased to five years and the relativity of other periods of imprisonment under the Acts should be reviewed.

In addition, the Review recommended further investigation of the introduction of Provisional Improvement Notices (R.45). Following consultation with unions and employers, it is proposed to introduce this provision as part of the proposed current amendments.

R.45 The Director-General, DEIR, should raise in the Australian Safety and Compensation Council the issue of how a nationally consistent approach to the issuing of Provisional Improvement Notices by Workplace Health and Safety Representatives could be achieved.

**Legislative amendments requiring further consideration**

R.9 Legal advice should be sought on whether inspectors are sufficiently indemnified against liability (s.183 of the WHS Act; s.205 of the ES Act) in circumstances where they have given advice to duty holders in relation to meeting obligations.

R.27 There should be an examination of whether the application of the *Penalties and Sentences Act 1992* to enforcement under the WHS Act and the ES Act has any unintended consequences.

R.31 Action to implement the Johnstone report on enforceable undertakings should be finalised.

**Improvements to policies and administration**

R.1 The Workplace Health and Safety Queensland (WHSQ) Enforcement Framework and the Electrical Safety Office (ESO) Prosecution Policy should be revised to make the policy aim of deterrence more explicit, including by setting out the range of penalties that may be imposed where there is a conviction and to clarify how the enforcement framework is integrated with the overall WHSQ and ESO strategies and business plans for securing compliance.

R.2 The revision of the documents should be used as a tool for raising awareness among duty holders of their obligations and the consequences of failure to discharge them.

R.4 The understaffing of the electrical safety inspectorate should be addressed as a matter of urgency and in this respect the Department may wish to consider approaches that are being taken in other States to attract and retain inspectors.
R.5 The training needs of inspectors should be reviewed to determine how to strengthen their education, advisory and auditing skills. This should be undertaken in the context of initiatives by Heads of Workplace Safety Authorities (HWSA) National Workplace Inspectors Training and Development Reference Group. Any necessary modifications should be made to the training programs.

R.6 To improve understanding of the role of WHSQ in securing public safety, more information should be available about this aspect of its work and the allocation of resources to it.

R.8 To improve the transparency of decisions about prosecutions, complainants and obligation holders should be informed in a timely way about progress on investigations and the reasons for decisions about taking or not taking action.

R.10 At least for WHSQ, to reduce any uncertainty about the roles and responsibilities of inspectors and to improve performance, consideration should be given to the separation of education and advisory functions from investigation and enforcement functions, with inspectors allocated to one or other area (and with periodic rotation).

R.11 Action to be taken to identify the needs of obligation holders (particularly small businesses) for advice, education and information, including by surveys.

R.13 Enforcement activities in priority industries should be benchmarked against other jurisdictions.

R.14 There should be periodic examinations (e.g., as part of annual business planning) of whether the resources of WHSQ and the ESO are satisfactorily deployed to deal with safety issues in areas of precarious employment and in relation to vulnerable groups of workers, with benchmarking, if possible, against the use of resources for such purposes by other State regulators.

R.15 The outcome of enforcement activities and the lessons to be learned from them should be more effectively promulgated, including through industry associations, unions, industry media and OHS professionals.

R.22 Although the range of obligation holders does not need to be extended, more attention should be given to identifying, educating and, where there are breaches, taking enforcement action against upstream and other obligation holders who are rarely the subject of such action.

R.23 In order to identify and overcome any technical, administrative or legal obstacles to securing compliance by all obligation holders, a systematic examination should be made of why there appear to be relatively few prosecutions of obligation holders apart from those who are most directly involved in a breach of the legislation.

R.28 In a suitable case, the prosecutor should present the Court with the arguments for a revision upwards of the penalties that are normally imposed and for a reconsideration of the factors currently taken into account in sentencing under the legislation.

R.32 The review, scheduling and implementing of the matters that may be the subject of infringement notices for breaches of the WHS Act and the ES Act should be regularly undertaken (at least annually).

R.35 The Industrial Magistrates Court should be encouraged in suitable cases to exercise its powers under s.53A of the Justices Act 1886 to order mediation.

R.46 The proposed code of practice relating to the obligations of executive officers should be completed and given effect.
R.49  WHSQ and the ESO should analyse the difficulties in bringing risk focused prosecutions as a first step in developing, in consultation with the social partners, a systematic approach to the detection and prosecution of risk-based breaches.

R.50  To improve accountability and foster ongoing cooperation, the various regulators in Queensland with complementary or overlapping responsibilities for work-related safety and health should include a description in their Annual Reports of how they have maintained and improved working relationships with the other regulators.

Consultation and discussion

R.19  With discussion with the Attorney-General’s Department and the Department of Public Prosecutions, an examination should be made of the benefits of bringing more serious matters involving a fatality or serious injury before a superior court.

R.20  The Director-General, DEIR, should discuss with the Chief Magistrate how the Department can assist in informing Industrial Magistrates about matters relevant to the exercise of their jurisdiction in relation to prosecutions under the WHS Act and the ES Act.

R.21  The Director-General, DEIR, should discuss with the State Coroner how the Department can assist more effectively in coronial inquiries and in the dissemination of relevant findings and recommendations.

R.30  Consideration should be given to whether the approach taken to national audits and blitzes by HWSA could be adapted for electrical safety.

R.44  Although an offence of industrial manslaughter is not recommended, the Director-General should raise in the ASCC the issue of achieving a nationally consistent approach to offences relating to work-related fatalities.

R.47  The Director-General, DEIR, should raise in the ASCC the issue of how a nationally consistent approach to the responsibility of corporate officers could be achieved, having regard to developments in relation to companies law.

R.48  The Director-General, DEIR, should raise with HWSA the question of how best to deal with problems associated with seeking to bring proceedings against an upstream duty holder who is located outside the State concerned.

Further consideration

R.3  Consideration should be given to seeking data about the deterrent effects of the policies and their application through periodic surveys of obligation holders.

R.12  Subject to the availability of resources, consideration should be given to enabling intermediaries (industry associations, unions, OHS professionals) to play a greater role in providing advice to duty holders on meeting their obligations.

R.24  When the outcome of the scheduled 2008 review by the National Transport Commission (NTC) of the chain of responsibility provisions of the road laws is available, consider the implications for the regulation of obligation holders under the WHS Act and the ES Act.

What was not recommended

R.7  Only officials should be able to bring prosecutions for criminal breaches under the WHS Act and ES Act.

R.16  The Industrial Magistrates Court should continue to have first instance jurisdiction over prosecutions under the WHS Act and the ES Act.
**Recommendations not being implemented**

**Legislative amendments**

The following 5 recommendations relating to legislative change will not be proceeded with in advance of the National Model OHS Laws as they are not consistent with arrangements in the majority of Australian jurisdictions.

**R.26** Statutory provision should be made for higher penalties where a duty holder is a previous offender.

**R.33** The limitation periods for bringing prosecutions under the WHS Act and the ES Act should, subject to wider criminal justice policy considerations, be increased to within 2 years after the act or omission alleged to constitute the offence or within 6 months of the offence of the offence coming to the knowledge of the complainant or the Chief Executive, whichever is the later.

**R.36** A wider range of sentencing options should be expressly provided for under the WHS Act and the ES Act, namely:

a) orders about specified actions that must be taken or refrained from;

b) Community Service Orders;

c) Adverse Publicity Orders;

d) corporate probation;

e) exclusion from performing certain functions for a specific period; and

f) restrictions on performing particular functions except under specified conditions.

**R.37** There should be a sanction for non-compliance with a non-monetary order.

**R.38** When considering what orders to make upon a conviction for an offence under the WHS Act or the ES Act, the Court should be required, upon application, to have regard to the potential effect of a fine on the capacity of the duty holder to carry on the business that was involved in the proceedings, including the effect on the employment or continuing engagement of other persons by the business.

**Recommendations not supported**

The following recommendations are not supported however they will be considered as part of the National OHS Review.

**R. 41** If it decided to provide for civil remedies as an enforcement option (R.29), consideration should, in the context of the overall enforcement regime, be given to who should be authorised to seek such remedies.

**R. 49** Considerations should be given to providing for civil remedies (fines, injunctions, other remedial orders) as well as for criminal penalties for less serious offences under the WHS Act and the ES Act, with the regulator having the option to bring proceedings of either type for a breach.
Attachment 2: Musculoskeletal disorder activities

Musculoskeletal disorders (MSD) currently represent 61 per cent of all serious claims in Queensland.\(^{77}\) However, over the last nine years, the rate of MSDs per 1,000 workers has reduced as can be seen in Figure 1.\(^{78}\)

![Serious MSD rate per 1,000 workers, 2007-08 and 2015-16](image)

**Figure 1 – Serious MSD rate per 1,000 workers**

It is critical for WHSQ to maintain a targeted and sustained focus on MSD prevention and management to ensure that this trend continues in order to meet the target of a 30 per cent reduction in incidence rate by 2022 given the changes to and challenges of future work in Queensland and Australia.

**Key initiatives and impacts on improving MSD prevention**

Since 2008, WHSQ’s Ergonomics unit has led at least 28 major MSD prevention projects, contributed to numerous projects and steering committees led by external and internal stakeholders, delivered over 400 presentations, workshops and webinars and delivered two key events attended by industry representatives from across Queensland and Australia. In addition, the Unit has developed multiple tools and resources including films, fact sheets, eTools, case studies and audit tools all with the aim of improving industry capacity to prevent and manage MSD risks. Recent key initiatives delivered by the Unit include:

- PErforM program (refer to section 3.3 of the discussion paper)
- Manual handling of plasterboard campaign;
- Leadership in major contractors; preventing strains and sprains campaign
- Hazardous manual tasks work health and safety eTools
- Physical and mental impacts of the transport supply chains
- Cattle crate design project

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\(^{77}\) Source: QEIDB January 2017 and ABS Cat. 6291.0.55.003, Accepted claims excluding journey claims and serious claims which result in temporary impairments of five or more days off work or permanent impairments.

\(^{78}\) Figure 1 shows priority industries as well as industries that had serious MSD claim rates that were either greater than or equal to the average MSD claim rate for Queensland in 2007-08 and 2015-16.
• WHSQ internal MSD capacity building

Further information about these initiatives and their impact on improving MSD prevention is detailed below:

Construction industry

Since 2008, the Ergonomics unit has had a sustained and strong focus on preventing MSDs in the construction industry. The Unit has initiated and led several state-wide campaigns and initiatives in the construction industry aimed at reducing MSDs and promoting culture change. These have included the Manual tasks in civil construction campaign, the Manual Handling of Plasterboard campaign and most recently the Leadership in major contractors; preventing sprains and strains campaign. Each campaign has built on the learnings from the previous campaign, increased industry and WHSQ inspector and advisor capability to manage MSDs and promoted cultural change in this industry. Examples of the impacts these campaigns have had on industry are outlined below.

Manual handling of plasterboard campaign

The Manual Handling of Plasterboard campaign was undertaken by WHSQ between 2011 and 2013. The campaign aimed to raise awareness about hazardous manual tasks risk management, to improve control of manual tasks risks and to reduce MSD’s across the construction industry’s residential and commercial sectors over the long term. A total of 277 audits were conducted by WHSQ inspectors. Further information about the Plasterboard campaign can be found on the WHSQ website at Plasterboard campaign report.

At the recent WHSQ Supply Chain Symposium, a representative of USG Boral reported that the WHSQ Plasterboard campaign influenced their development of a lighter weight plasterboard as well as an industry collaboration currently underway between the 3 major suppliers to eliminate the use of pallets for the storage and movement of plasterboard on construction sites. Both of these significant design initiatives reduce MSD risks in the construction industry and supply chain.

Leadership in major contractors; preventing sprains and strains campaign

The Leadership in major contractors; preventing sprains and strains campaign aimed to reduce the high rate of MSDs caused by hazardous manual tasks (HMT) in the construction industry. The campaign’s focus included principal contractor (PC) leadership, systems for managing HMTs and the implementation of HMT systems on site by the PC and the sub-contractors (SC). Key campaign documents can be found on the WHSQ website at comprehensive assessment tools, campaign report and summary.

Industry stakeholders were consulted throughout the development and implementation of the campaign. This campaign was welcomed by the Office of the Federal Safety Commissioner who noted that it provided a strong imperative to further emphasise to organisations the importance of properly assessing and controlling HMTs as part of a thorough risk assessment process.

Assessments were conducted on 21 PCs and 42 SCs. The campaign provided valuable benchmarking data about PC leadership practices in relation to HMT risk management. The findings identified significant gaps in PC’s HMT risk management systems including their consultation about HMT and control of HMT risks.

Industry participants reported that the campaign was positive as it assisted them in identifying gaps in their systems and several organisations commenced making changes. The findings generated a call to action with the establishment of an industry working party to address MSD prevention in the construction industry. The working party includes Master Builders Queensland, Civil Contractors Federation, Housing Industry Association, Construction Forestry Mining and Energy Union (CFMEU), commercial, civil, residential builders and WHSQ.
As a result of this campaign, the Ergonomics unit has liaised with researchers in the United States and the United Kingdom. Plans are underway to develop an international network to support the construction industry to reduce the incidence of MSDs now and into the future.

**Hazardous manual tasks work health and safety eTools – ManTRA and PErforM (all industries)**

The work health and safety eTools were launched by WHSQ in October 2016. This suite of tools includes two manual tasks risk assessment tools (PERforM and ManTRA) as well as calculators for heat stress, noise exposure and return on investment. The eTools can be used on a range of devices from tablets to smart phones and are available to industry and WHSQ inspectors and advisors. The eTools have been promoted nationally and are a significant innovation for WHSQ.

The PErforM and ManTRA risk assessment tools had been used by the inspectorate and industry as paper based tools to assess the risks associated with hazardous manual tasks. The eTools project was initiated in response to feedback from Industry and WHSQ staff as well as improvements in technology and an increased focus on a mobile workforce.

This innovation builds industry and WHSQ staff capacity to manage work health and safety risks specifically hazardous manual tasks by making risk assessments easier. Complicated calculations are performed by the eTools software and risk assessments can be done in any location on any device as well as being easily documented and saved electronically.

**Physical and mental impacts of transport supply chains (transport industry and its supply chain)**

The project “Physical and Mental Impacts of Transport Supply Chains” was initiated to address the high rate of workers’ compensation claims for musculoskeletal disorders (MSDs) in the Queensland Road Freight Transport industry. In the transport, postal and warehousing sector, MSDs account for approximately 60 per cent of injuries and the average cost of a claim for a serious MSD was $26 00079. The majority of MSDs were caused by hazardous manual tasks (HMT). Although accepted claims for work-related stress (WRS) are low, these are the most expensive type of claim as they often involve lengthy periods of absence from work.80 Also, WRS claims are complex to manage.

Research evidence indicates a strong link between work-related stress, musculoskeletal disorders and the physiological response to pain and fatigue. Risk factors which contribute to work-related stress can affect physical injury, particularly the development of musculoskeletal disorders.

A preliminary literature review elicited information regarding broad work health and safety management and the supply chain. However there is little information in the research regarding the impact of the supply chain on MSD and WRS risks in this industry.

The project aimed to establish an initial evidence base on how the industry is currently managing these risks, the sources of the risks and the types of initiatives that will assist industry stakeholders to manage the risks better in future. This project builds on the findings of the Heads of Workplace Safety Authorities (HWSA) “Moving the Goods Safely” campaign as well as industry feedback.

Stakeholder (both internal and external) consultation has been a significant part of the project and involved surveys and focus groups of drivers and employers across Queensland. A range of issues impacting on these risks have been identified which relate to the customer site, work on or around the truck, time pressures and on-road issues.

Dr Sharron O’Neill from the University of NSW expressed interest in the findings of this project which demonstrated similarities to her current research in the transport industry. Dr O’Neill provided input into a planning session for future initiatives in this area.

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79 WHSQ Musculoskeletal disorder strategy 2013-2022
80 The Incidence of Accepted Workers’ Compensation Claims for Mental Stress in Australia, April 2013. Safe Work Australia.
The findings are now being discussed with industry and internal stakeholders in order to develop future initiatives to improve the prevention and management of MSD and work related stress in the transport supply chain. There was considerable industry interest in the project when the findings were presented at the recent WHSQ Supply Chain Symposium.

**Cattle crate design project (transport, manufacturing and agriculture industries)**

In August 2014, a worker in Central Queensland sustained fatal injuries while cross loading cattle at Gracemere. Following this incident, Workplace Health and Safety Queensland (WHSQ) facilitated a beef supply chain forum with key stakeholders to discuss the high risk issues, barriers and possible solutions for reducing the risk of fatalities and serious injuries associated with livestock transport in the beef supply chain.

The Ergonomics unit (with support from industry and key staff within WHSQ) commenced the *Improving the design of cattle crates: making it safer for operators* project. A lack of guidance on this topic was identified. This project was undertaken between 2014 and 2016.

This project reviewed the impact of design on work health and safety (WHS) hazards associated with the use and maintenance of cattle crates or trailers. For the purposes of this project, the use and maintenance of cattle crates is the collective term for:

- loading, unloading, through loading and cross loading of cattle
- mid-transit inspections of cattle
- cleaning and maintenance of cattle crates.

Key stakeholders including cattle crate transporters, crate manufacturers, graziers and industry associations were consulted throughout this project. Common safety hazards identified included work at height, slips and falls, manual tasks, being crushed by cattle, entrapment and electrical shock. Significant background work including site visits, meetings and industry forums with the industry stakeholders was undertaken. An internal WHSQ steering group was also formed with representatives from across the WHSQ industry and technical units to drive the project.

The *Guide to safe use and design of cattle crates* (a project deliverable) was developed in conjunction with industry, with the aim that common safety hazards are reduced when working on cattle crates. Principles of safe use and design of new or retro-fit of older crates are outlined. This guide includes a number of innovative solutions that are currently in use.

A project report *Improving the design of cattle crates: making it safer for operators* (a project deliverable) discusses factors that influence the design of cattle crates including the requirements to meet multiple regulations, the impact of the supply chain and the current approach to the design and use of cattle crates in Queensland. Opportunities to progress design improvements in cattle transportation are outlined.

**National guide to safe use and design of livestock crates**

As a result of this project, the national industry peak body Australian Livestock Rural Transporters Association (ALRTA) are forming a national industry working party that aims to expand the WHSQ guide so that it can be used throughout Australia and will be applicable for all species of livestock.
Attachment 3: Examples of compliance campaigns

On-Site traffic management (manufacturing, transport, construction and agriculture industries)

In Queensland, from 2009 to 2014, 12 workers died from being hit or trapped by moving plant. Over the same period, a further 947 accepted workers’ compensation claims for serious injuries (five or more consecutive days off work) from being hit or trapped by moving plant. The Workplace Health and Safety Queensland (WHSQ) 2014-2017 Industry Action Plans for Manufacturing, Transport and Construction identify the focus area of ‘working around moving plant and traffic’ and nominate working with industry to address this risk as a deliverable in 2015-17. This is also recognised as a serious risk in the agriculture industry.

To address this issue, a campaign has been developed to increase:

- the engagement and compliance activities relating to traffic management;
- the utilisation of available resource materials by industry;
- the industry uptake of key messages relating to effective onsite traffic management;
- the willingness and capability of industry participants to improve onsite traffic management;
- the number of worksites compliant with WHS duties relating to onsite traffic management;
- the level of higher order design controls for onsite traffic management being utilised by industry.

Initial industry engagement provided relevant advice, guidance and assistance to industry participants to better manage the risks of onsite traffic management within their work environments. This involved collaborating with businesses and workers to explain what compliance looks like for their business, to build capacity and to provide practical tools that assist them to take a systematic approach to managing risks associated with onsite traffic management. A self-assessment tool was provided to workplaces in advance so they could make their own assessment.

This was then followed with worksite assessments to assess compliance of priority industry workplaces in managing the risks associated with onsite traffic management. Worksite compliance assessments were undertaken by inspectors using a project-developed audit tool. The assessments focussed on identifying hazards and risks at a given point in time and included a review of the duty holder’s WHS management system.

Residential Construction ‘Back to Basics’ (Construction industry)

The ‘Back to Basics’ residential construction safety project was designed as a key deliverable of the *Queensland construction trades industry - Action plan – 2014-2017* and the *Civil Construction Industry - Action Plan - 2014-2017*

Data analysis suggested that workers are at risk of injury from fundamental construction activities, which include:

- poor housekeeping practices;
- not using the right tool(s) for the job;
- poor planning;
- falls from ladders or other surfaces;
- inadequate site supervision;
- inadequate site security.

The goal of the ‘Back to Basics’ project was to reduce non-compliance in relation to these activities at residential developments. The goal of the project was to ensure that construction operators on residential estates are motivated to control the risks associated with undertaking fundamental construction activities. The intent was to deliver this in a way which ensured non-compliance was addressed but also
in a way where relationships with the residential construction industry, including relevant industry associations, were enhanced.

This campaign combined the provision of information and regulatory direction to achieve objectives. Inspectors issued 208 statutory notices (87 per cent were improvement notices and 13 per cent were prohibition notices). The assessments also addressed levels of compliance with seven categories of basic WHS management activities (rather than simply unmanaged risks).

**Eyes and Hands Campaign (Manufacturing industry)**

The Manufacturing industry, specifically in metal fabrication and machinery fabrication sub-sectors, has a high rate of injuries resulting from cuts and lacerations to hands and foreign objects entering the eyes. Injury risks are commonly associated with the lack of, or the incorrect use of Personal Protective Equipment (PPE). In 2015, Workplace Health and Safety Queensland (WHSQ) began a campaign based on the SAI Safety Management System AS/NZ 4801 audit tool, to try to reduce the incidence of injuries to eyes and hands. Injuries to hands and eyes average 15 days off work as ‘lost time injuries’. Further, these injuries account for approximately 20 per cent of total claims within the manufacturing industry alone.

The main objectives were to:

- work with industry to identify the common issues that resulted in poor management of these risks at workplaces, and
- provide information and education to workplaces to better manage these risks.

Two hundred workplace assessments were conducted across Queensland. An assessment tool helped workplaces identify risk management practices associated with the management of risks to eyes and hands. This involved reviewing workplace procedures in risk identification, issue resolution, communication, consultation and supervision.

This campaign focussed on achieving its regulatory aims through education, advice and persuasion using a collaborative and facilitative approach to empower businesses to better manage risks to their workforce. Inspectors assessed the overall safety management systems used at the workplace including whether supervisors actively monitored, supported and encouraged their workers to use available controls (note that PPE is often the only control available for metals and machinery fabrication tasks undertaken in these subsectors). The guidance material that accompanied an assessment tool was used to guide the inspector to identify the key elements comprising a ‘good’ safety management system.

Workplaces who participated in the assessment identified the following most common workplace changes implemented as a result of the campaign:

- updating policies, procedures and manuals;
- creating risk registers;
- conducting additional audits;
- maintaining hand tools and bandsaws;
- maintaining and replacing defective guards;
- maintaining and replacing defective PPE;
- changing internal consultation processes to manage risk.

Although it will be sometime before lag indicators such as injury rates show improvement, early indications are that businesses are embracing and actively developing and implementing effective solutions. Longer-term feedback from industry indicates that the cultural change process is working.
Falls from Trucks (Transport industry)

The transport industry has a high rate of injuries and fatalities resulting from workers falling off trucks and trailers. The risks of these are commonly associated with the design of a vehicle, the equipment used, work practices and behaviour including organisational and broader industry factors. As a result, WHSQ began a campaign in 2013 to try and reduce fall related incidents within the transport industry and its supply chain. The main objective was to work with industry to find out what the problems are and to develop practical tools and guidance materials to help them address the risks of falls.

The campaign began with 30 workshops held from March 2013 over a five-month period to inform industry but also to gather intelligence about risks and solutions. Attendance at 28 out of the 30 workshops was 100 per cent with more than 400 people from industry and the supply chain attending. The materials for these workshops were based on previous consultations and the understanding of the risks and solutions current at the time. After this, a tool and guidance material were developed based on what was learned in the workshops. The tool focussed on the design of the vehicle, the equipment used, worker behaviour and activities which was tested in pilot workplace assessments conducted in October 2013.

In 2014, two leadership forums about falls prevention were conducted with industry representatives to discuss falls. Using the intelligence gathered from these forums, the workshops and pilot assessments, it was determined that an on-site facilitated discussion would be an effective way to engage the transport industry. The aim was to use a deeper engagement approach to enable businesses to identify and manage their own risks. Project staff took 12 businesses through a low-level risk identification process where they implemented a suitable solution resulting in 12 short case studies.

A full rollout of 145 assessments was undertaken by inspectors later in 2014. This was designed to gather information about risks and hazards observed on sites and to build the capacity of the inspectorate. The data gathered and the learnings from this body of work informed the development of a range of other materials later in the campaign in order to be able to communicate to a much wider audience with limited resources. As a result, a short film was published on YouTube in November 2015 with 833 viewers. An industry webinar was held on the 20 May 2016 with 499 people registered and approximately 340 people participating on the day.

This campaign focussed on achieving its regulatory aims through education, advice and persuasion using a collaborative and facilitative approach to empower businesses to manage their own risks. Industry participants considered that the facilitated falls risk identification process assisted them ‘to look through the eyes of the regulator’ and expressed appreciation for the additional insight they gained. This had a snowballing effect, with some businesses implementing additional changes and creating their own guidance materials for their workers and their supply chain.

Although it will be sometime before lag indicators such as injury rates show improvement, early indications are that businesses are embracing and actively developing and implementing effective solutions. Longer term feedback from industry indicates that the cultural change process is working and, in a recent survey, road freight industry respondents overwhelmingly expressed commitment to OHS regulation and reasonably high trust in the regulator.

As an outcome of the campaign, WHSQ captured the knowledge from the workshops, assessments, forums, tools, case studies and other outcomes by producing a short campaign report aimed at the industry. This report highlights what Inspectors recorded during the assessments and included the on-site discussion tool and case studies.
Attachment 4: Awareness and engagement activities

The Office of Industrial Relations (OIR) has over the last few years shifted its service delivery model from one which was primarily focused on compliance and enforcement to one with an equal focus on advisory and support services. This model is building industry commitment to, and expertise in sustaining, safe and healthy work environments. In short, industry is being enabled to help Workplace Health and Safety Queensland (WHSQ) to do their job.

To communicate the safety message, WHSQ have targeted all industries and regions with public and industry events, traditional and social media, public relations and a strong use of the online environment. Sometimes there is a significant cost involved in rolling out mass media advertising campaigns, and at other times WHSQ can use virtually cost free communication channels.

The aim is always to raise awareness of the importance of work health and safety, provide advice through educative resources and influence positive behavioural change. At the same time, WHSQ are also trying to foster a positive perception that they are a modern, credible, proactive safety Regulator.

Public awareness advertising campaigns

Advertising campaigns are used to expose a high proportion of the community to messages through media such as television, radio, online channels and newspapers.

Most advertising is driven by the premise that to change behaviour you have to first change attitude, and attitude can be influenced with the right message delivered in the right way.

Behaviours usually, but not always, reflect beliefs and attitudes. In the case of work health and safety however, it’s fair to say that most people don’t want to be hurt, or allow other people to be hurt, while at work. The attitude is right, but the behaviour does not match the attitude.

There are a number of reasons for this. Positive attitudes usually lead to well-adjusted behaviours, but in some cases healthy attitudes may result in harmful behaviour. For example, someone may work dangerously or ignore risks because they want to get a job finished on time. Their attitude towards getting the job done is stronger than their attitude to work safety.

Behaviour can also be influenced by external factors which can negate an established attitude. These include financial costs, what peers and community members are saying and doing, and convenience.

An employer may want to keep their workers safe, but if it costs a lot, or takes up time, they may cut corners, or not place work safety as a high priority. In this case, showing the employer that not spending the money or time is putting their workers at risk, and can be more costly in the long run, should influence them to change their behaviour so that it reflects their attitudes.

The behaviour of peers can have a significant impact on a worker’s behaviour too. A worker may want to spend time locking down a machine before cleaning it, but if everyone else does not do so, chances are the worker will adopt behaviour that goes against an established attitude. The power of peer pressure can be exploited by having someone who the target audience can relate to, set the standard, or deliver a safety message – young workers for example, will listen to what another young person has to say.

It is also possible to change behaviour without considering attitude. If the same machine was reengineered so that it was impossible to clean without locking it down, the safe behaviour would happen, regardless of the workers’ attitude to safety.

If a workplace can foster a strong safety culture, where work safety is the norm, it is much less likely that a worker will use unsafe work practices. And importantly, costly advertising campaigns would not be needed to deliver the safety message. In the meantime though, advertising will continue to be included as a key component of a comprehensive approach to improving work health and safety behaviours in the community.
OIR’s advertising campaigns promote positive attitudes towards work safety and remind people that if they do not work safely, their behaviour is inconsistent with their established belief - that they already know how important it is not to put themselves, or anybody else at risk.

To increase each campaign’s effectiveness, OIR always ensures:

- sufficient funding is secured to allow frequent and widespread exposure to the campaign message
- there is adequate access to support materials and further information
- campaign messages are based on sound research of the target group and tested during campaign development
- outcomes of the campaign undergo rigorous independent assessment.

Overviews of some of our campaigns are detailed below:

**Agriculture safety**

In Queensland, deaths and injuries are disproportionally high in the agriculture industry compared to other industries—around 13 workers die and 1,700 are injured each year. One in every 35 workers will suffer a serious injury and around $15 million is paid out for agriculture workers’ compensation claims every year. Only 3 per cent of Queenslanders work on farms, but nearly 30 per cent of workplace deaths happen on them.

Workplace Health and Safety Queensland ran a public awareness campaign in October and November 2016 to focus attention on the over-representation of worker deaths in the agriculture industry.

The campaign was based on one used by WorkSafe Victoria and supported by their agriculture industry groups. The Queensland advertising depicted two industry sub-sectors that are relevant to Queensland farmers.

The objective of the campaign was to increase agriculture workers’ and their families’ awareness of the high number of deaths in the industry. This campaign stressed the importance that workplace deaths are preventable and that taking a few extra seconds to stop and think about the task at hand could prevent another death.

The campaign comprised:
• online (social media and news websites), press (newspapers and industry publications) and radio (featuring Queensland Safety Ambassador, Shane Webcke)
• media editorial – targeted talk-back radio interviews with industry experts supported by Shane Webcke’s introduction
• YouTube snippets with Shane Webcke and industry experts
• social media, web content, eSafe editorial and printed collateral.

Industry stakeholders Agforce Queensland, Growcom, Queensland Farmers Federation, Canegrowers and Australian Country Choice had some initial concerns that the campaign would portray the industry in a negative light and discourage people from seeking employment in it. These concerns were addressed after consultation between these groups and WHSQ officers and executive which clarified the campaign’s role in WHSQ’s overall agriculture strategy.

_Ride ready_

Over the last 15 years, 69 people have been killed in quad bike incidents in Queensland. Between 2009 and 2013, there were approximately 1500 quad bike-related hospitalisations, 3000 emergency department presentations and more than 1000 ambulance attendances in Queensland.

The _Ride ready_ public awareness campaign ran as part of the Statewide plan for improving quad bike safety in Queensland 2016–2019. The plan was developed to address a coronial enquiry which recommended running public awareness campaigns on helmets, training, passengers, children riding adult-sized quad bikes and quad bike general safety.

Pre-campaign market research showed quad bike users are over-confident and project unsafe beliefs onto other users and:

• confident riders are more likely to be involved in an incident, not complete formal training, nor believe in its benefits;
• the majority of users do not wear helmets because they believe their ability to ride safely, slowly, for a short timeframe or on flat terrain circumvents any risk;
• doubling and allowing children to ride adult-sized quad bikes is common and considered safe if riders are experienced;
• there is a lack of understanding and misinformation around the dangers posed by quad bikes.

The campaign has so far run in the lead up to and during the June, September and December 2016 school holidays, and will be repeated in all school holidays until 2019. Its objectives are to:
• increase the number of users who wear helmets when riding by 10 per cent;
• increase the belief amongst the target audiences that children riding adult-sized quad bikes is unsafe by 10 per cent;
• increase the number of users who do not double passengers by 10 percent;
• increase the perceived value of doing formal quad bike training by 10 per cent;
• increase users’ understanding of quad bike manufacturer stated load limitations by 10 per cent.

The campaign consists of three 30-second social media adverts supported by press adverts.

Market research following the second phase showed that there was:
• a 7 per cent increase in the belief that doubling is dangerous;
• a 6 per cent increase in the belief that training is valuable;
• a 7 per cent increase in the belief that helmets are a must;
• an 8 per cent increase in the belief that side by side vehicles are safer than quad bikes.

The campaign outperformed the advertising benchmark in the Australian market (12 per cent) in terms of being attention grabbing (a combination of novelty, affective impact and relevance) at 28 per cent.

The campaign so far has therefore had a positive impact on attitudes and beliefs. Behaviours however remain fairly consistent with pre-campaign results, suggesting more exposure to the adverts is required. Research will be conducted after the third phase and should show the beginnings of behavioural change.

Playing it safe

![Image of Shane Webcke with text: “One day my dad went to work and never made it home...”]

This campaign, featuring Safety Ambassador Shane Webcke describing his father’s workplace death, sought to make people think about the impact that a workplace injury or death would have on the worker’s family. It ran on social media in September and October 2015 and achieved the following:
• 52 per cent of those surveyed reported to have made a personal connection with the advertisement;
• 25 per cent of those surveyed took away the messages of “Work safe, be safe at work and workplace safety is paramount”;
• Employers and employees who saw the campaign stated they were more likely to speak up or make suggestions on work safety improvements;
• Significantly fewer people were not thinking about health and safety consequences (from 21 per cent down to 12 per cent);
• 27 per cent reported they would be likely to implement more safe work practices or be more diligent in regards to work health and safety.

The campaign ran again in September and October 2016 and is currently still being evaluated.

Stay safer up there, switch off down here

The State Coroner recommended a public awareness campaign following his inquest into the deaths of the three Queensland insulation workers on the Home Insulation Program in 2009-10. The Electrical Safety Office first ran this campaign in May to July 2014, followed by a less extensive second phase in May 2016.

The campaign urged homeowners and tradespeople to turn off all the main power switches at the switchboard before heading up into the roof using the key message ‘Stay safer up there, switch off down here’. It featured a family at home, with dad announcing he’s going up into the roof. There is little reaction to this from his family until the lights and power go off. Concern about an electric shock escalates until dad walks in through the back door slightly bemused that they hadn’t realised that he would of course turn the power off before he went up there. It consisted of TV, radio and online advertising, supported by web content, print and social media.

The first phase was also supported by more than a million brochures which were distributed through inserts in all major metropolitan newspapers, and point-of-sale distribution at hardware stores. The brochures contained stickers to be placed on ceiling manhole covers and switchboards reminding people to turn off the power before going up into the roof.

Post campaign evaluation of the first phase was very positive, showing clear behavioural change:

- There was an increase of 11 per cent of those stating they would turn the power off first, and 16 percent of influencers stating they would make sure those in their homes who are likely to enter the ceiling space turn the power off first.
- The amount people saying they would not turn the power off decreased by 6 per cent.
- 72 per cent of homeowners said they would now turn the power off before going into the ceiling space, and a further 15 per cent said they wouldn’t go up there at all.
- The campaign outperformed the advertising benchmark in the Australian market (12 per cent) in terms of being attention grabbing (a combination of novelty, affective impact and relevance) at 35 per cent.
Evaluation of the second phase showed that:

- there was a big increase in the belief that turning off power will reduce the risk of electric shock:
  - 72 per cent to 79 per cent for home occupiers;
  - 72 per cent to 85 per cent for tradespeople.
- the number of people who reported turning off the power before entering the ceiling space increased:
  - 50 per cent to 63 per cent for tradespeople;
  - 35 per cent to 41 per cent for home occupiers.
- 94 per cent of home occupiers would turn off the power before entering a ceiling space compared to 82 per cent in 2014.

Getting back

This campaign sought to raise awareness of the benefits of returning injured workers to meaningful work as soon as they are cleared to do so. It targeted workers, employers and medical professionals and ran in August and September 2015 on television, radio, billboards, websites, print and social media. It achieved the following:

- 96 per cent of employees considered returning to work be an important step in an employee’s recovery.
- Those who saw the adverts were more likely to have recently had a conversation about returning to work after a work injury (31 per cent) than those who hadn’t seen the campaign (13 per cent).
- The frequency of injured worker contact with their employer increased by 12 per cent.
- There was a 7 per cent increase in the belief that the best course of action is an early return to work.
One safety switch may not be enough

The Electrical Safety Office ran a public awareness campaign to raise awareness of the benefits of having safety switches on multiple household circuits and to encourage people to consider fitting additional switches.

The campaign ran from June until August 2015 on television, radio, billboards, websites, print and social media. It achieved the following:

- Awareness of electrical safety switches strengthened, with 91 per cent of respondents indicating that they were now aware of the term ‘electrical safety switch’.
- More homeowners acknowledged that there is room for improvement in household electrical safety (there was a five per cent drop in the perception of electrical wiring safety and an eight per cent drop in the perception of electrical appliance safety).
- More people intended to protect additional circuits with a safety switch:
  - ratepayers (3 per cent increase);
  - renters / tenants (5 per cent increase).
- 5 per cent less respondents thought that one safety switch was enough.
- 5 per cent more renters were likely to request that additional safety switches be installed.
- 5 per cent more people were checking for an electrical safety switch when purchasing or renting homes.
- 5 per cent more people were prepared to test their safety switches every three months.
- The adverts outperformed the advertising benchmark in the Australian market (12 per cent) in terms of being attention grabbing (a combination of novelty, affective impact and relevance), achieving 21 per cent.

OIR is currently seeking approval to run a second phase of this campaign on social media only in April 2017.

Work safe for the moments that matter
The ‘Work safe for the moments that matter’ advertising campaign included television, radio, online and print materials and ran from September to October 2014.

This campaign built on the message of the previous Homecomings campaign (see below) that sought to influence behavioural change by reminding people that work safety is important because our loved ones want us to come home at the end of each day. It got people thinking more about the good things that are worth coming home safely for – a positive slant to the same motivation.

The campaign ran on TV, radio and online channels. The adverts showed different workers at the start and end of their working days with snapshot moments that were special for each of them. It prompted people to consider work safety and think – ‘if I want to keep experiencing these moments in my life, I need to be safe at work’.

It achieved the following:

- 83 per cent of influencers rated work health and safety as ‘very important’—an increase of eight per cent.
- 5 per cent more people were regularly reminding their family and workmates to work safely.
- 88 per cent of employers would ‘possibly’ or ‘definitely’ follow up on concerns about workplace risks and implement solutions to address workplace hazards—an increase of 4 per cent.
- 70 per cent said the adverts grabbed their attention and made them think about things they personally care about.
- On YouTube, the adverts were watched approximately 1.3 million times, with a completion rate (times the ads played to the end) of 17 per cent (221 000 views).
- During the campaign the Workplace Health and Safety Queensland Facebook page received 1085 new likes (representing sustained interaction beyond the life of the campaign)—a 130 per cent increase, exceeding the campaign objective of 20 per cent.

Homecomings

The Homecomings campaign encouraged people to stop and think about the impact of workplace injuries, not only on the injured person, but on their families and loved ones. Its objectives were to change community attitudes to work safety, and in turn their behaviour at work, by highlighting that we need to stay safe at work in order to come home each day to those we care about, and who care about us.

The campaign’s key message was: What’s your most important reason for workplace safety?

Phase 2 – the most recent - featured a girl on stage at her school play, waiting for her dad to join her mum in the audience. He is late and the concern escalates when a policewoman appears at the door. She’s just there to see her kids perform though, and the next second dad arrives, prompting relieved smiles from mum and delight from their daughter.

The campaign ran for five weeks from October 2011 to November 2011 on TV, radio, press and outdoor.

It achieved the following:
• The importance placed by employers on work health and safety increased from 54 per cent to 74 per cent, by 25-54 year olds from 68 per cent to 73 per cent, and by males from 63 per cent to 73 per cent.

• 28 per cent of employers, employees and influencers and 26 per cent of employees were more likely to implement changes at their workplace or be more diligent in their roles.

• Employers’ awareness of work health and safety policies increased from 39 per cent to 49 per cent.

• Employees’ awareness of work health and safety policies increased from 80 per cent to 83 per cent.

• The percentage of 25-54 year olds who believed their knowledge of work health and safety increased went from 26 per cent to 35 per cent.

• 17 per cent made changes to their own behaviour at work

Phase 1 featured a young boy waiting for his dad to get home from work, with shots of other dads, mums and kids coming home to their families. His dad is late, and although he gets there in the end, the boy and his mum are starting to worry that something has happened to him at work.

The first wave of the campaign aired state-wide for six weeks from May 2008 on television, radio and in print. It was also supported by media releases, web content, and a direct mail package that was sent out to more than 10,000 employers.

A second wave ran in October 2008 on television, radio and billboards. A final wave ran in April 2009 on television and radio to coincide with International Day of Mourning.

It achieved the following:

• 46 per cent indicated the campaign had a positive impact on perceptions of work health and safety at their organisation;

• 27 per cent of employers, employees and influencers were more likely to implement changes at their workplace or be more diligent in their roles;

• Employers’ awareness of workplace health and safety policies increased from 38 per cent to 56 per cent;

• Employees’ awareness of workplace health and safety policies increased from 26 per cent to 40 per cent;

• 28 per cent believed their perceptions of work health and safety changed;

• 19 per cent made changes to their own behaviour at work.

Forthcoming campaign – Really bad day

Anywhere, any day, anytime.

WorkSafe inspects workplaces because we don’t want anyone to have a really bad day.

worksafeeveryday.com.au
WHSQ is seeking approval to rebrand and run WorkSafe Victoria’s *Really bad day* adverts which ran in Victoria in February and March this year.

Aimed primarily at employers, this graphic and fairly confronting campaign’s objectives are to increase the belief that a workplace inspection is likely and encourage employers to be proactive and take action to prevent workplace incidents.

Post campaign research in Victoria has shown that 89 per cent of employers and 85 per cent of workers understood the advert’s main message. There was an increase of seven per cent in the belief that an inspector will visit the workplace and a four per cent increase in the belief that those employers doing the wrong thing will eventually get caught. Finally there was a two per cent increase in those stating that work health and safety is discussed at work at least a few times a week.

WHSQ are planning to run the adverts from mid-April 2017 for four weeks (coinciding with Workers’ Memorial Day and International Day of Mourning) and in October during Safe Work Month.

It will run on TV, radio, online, social media and press. It will be supported by media statements, editorial, subscription emails, a campaign web page and printed collateral.

Objectives will be set for the campaign to achieve:

- increased awareness of the WHSQ compliance role;
- increased belief that an inspection is likely;
- increase in employers taking action to improve safety;
- increase in workers taking action themselves;
- improved perception of WHSQ as an effective, proactive regulator.

**Forthcoming campaign – Child safety at home-based workplaces**

Since November 2010, 14 children have died in Queensland home-based workplaces. Seventy-six per cent were 0–9 years old.

Home businesses primarily fall under the small business classification, and the most common industries are manufacturing, transport and agriculture.

A home business has many of the same hazards as a commercial workplace. When some or all of business operations are undertaken in a home environment, business owners must still manage safety to ensure no harm comes to anyone while they are at the workplace. This includes visitors and family members.

This message will form the basis of a public awareness campaign that will support current operational efforts to reduce the number of incidents involving children in home workplaces.

The campaign objectives are to:

- increase awareness of the risks home businesses pose to children;
• reduce the number of children killed or injured in home businesses over the next five years;
• positively influence attitudes towards the importance of safety in home workplaces;
• increase the use of safety management systems in home businesses;
• encourage the use of the Serious about safe business guide by home-based businesses.

The key messages of the campaign will be:
• home workplaces have many of the same risks as commercial workplaces;
• safety must be managed at home workplaces;
• your family and friends could be at risk in home workplaces;
• visit worksafe.qld.gov.au for information on making your home business safe.

The campaign will run in early 2017 and will comprise of social media and website banner advertising combined with media statements and online / print editorial.

Industry events

Safe Work Month, held in October, aligns to a national event that encourages all working Queenslanders to get involved in health and safety at their workplace. For the most part, attendees at events are work health and safety advisors and senior managers responsible for organisation-wide health and safety.

A public breakfast event in King George Square, Brisbane launches the month’s activities. Around 3000 people pass through the square during the morning, spending time at 25+ trade displays hosted by sponsoring organisations that are involved with health and safety.

Regional breakfast forums run throughout October at major metropolitan centres, including presentations from employers on practical solutions to work health and safety problems. Safety Ambassador Shane Webcke has for the last two years spoken at the breakfast forums about the workplace death of his father, and the impact this had on his family. Other keynote speakers over the last two years have included Antarctic expedition leader Racheal Robertson on extreme leadership; Dr Adam Fraser on the impacts of human behaviour; and Paramedic and State Trauma Councillor Paul Spinks on worker wellbeing and mental health. Participant feedback is sought via email after all forums and is consistently overwhelmingly positive.

The Injury Prevention and Return to Work Conference is the flagship event of the month, attended by up to 1000 safety and rehabilitation (rehab) and return to work professionals. It features high profile keynote speakers, health and safety and rehab and return to work experts, and industry representatives speaking about safety leadership, innovative safety strategies, the challenges of implementing them, and the lessons learned.

Safe Work Month 2016 concluded with more than 4,000 delegates attending events across the state, including the Injury Prevention and Return to Work Conference (860), Safe Work Month breakfast forums (1,336), Safe Work and Return to Work Awards (310) and industry led events (1,500). Additionally, a further 3,000 people attended the Safe Work Month launch event at King George Square.

The Injury Prevention and Return to Work Conference was positively received, with 91 per cent of the 860 delegates indicating they would attend again. The 10 Breakfast forums were well attended with four locations exceeding 150 guests. Fifteen businesses sought our assistance to host industry events across the state, with most seeking Shane Webcke, a safety ambassador or a departmental speaker, or other funding assistance. Our events were sponsored by 56 business demonstrating the business community’s commitment to improving work health and rehabilitation outcomes.

In addition to Safe Work Month, WHSQ hosts other major industry forums aligned to key topics such as musculoskeletal disorders, asbestos awareness, safety leadership at work and rehabilitation and return to work.
**Safety ambassadors**

OIR’s Safety Ambassador program continues to provide strong opportunities to raise awareness of health and safety issues, using high profile personalities with a personal commitment or motivation to promote safety.

Shane Webcke, football legend and sports presenter, is Queensland’s Safety Ambassador. Shane shares the story of how his father’s workplace death impacted his family at industry events and through a short film. He offers advice to workers and businesses about the importance of staying safe at work and creating a strong safety culture. OIR pays Shane to speak at individual workplaces where the company meets certain criteria including audience size and invitations extended to companies in their supply chain. This model has proved so successful that OIR will expand it in 2017. Shane’s film has been watched close to 1,000,000 times on Facebook.

Trevor Gillmeister, also an NRL legend and sports presenter, is Queensland’s Asbestos Awareness Ambassador. Through a short film and in person at community events, Trevor shares the story of the impact on his family of his father’s death from mesothelioma, caused by exposure to asbestos fibres during his work as a boiler maker. Trevor’s film, *Dear Dad*, features Trevor reading a letter to his father reminiscing about his life and all of the things he has missed out on since he died. It has been watched around 1400 times on YouTube.

Libby Trickett was announced as the Queensland Mental Health Ambassador in 2016, tasked with raising awareness of the issue within workplaces. The Olympic gold medalist and world record holding swimmer has personally experienced her own mental health challenges, suffering depression after she stepped away from the pool in 2010. Libby has shared her story through a short film and in person as she helps us to raise awareness of the important role work colleagues can play for those who are struggling. She speaks to workers about her recovery, the help she got on the way, and the positive impacts of exercise on recovery from mental ill-health. Importantly she encourages people to have the courage to tell someone they are not well - and that it’s ok to not be ok and to ask for help. Libby’s film has been viewed on Facebook more than 370,000 times.

**Safety advocates**

Famous people are not the only ones with a story to tell. The WHSQ safety advocate program draws on the experiences of everyday people who have either been injured at work, or have had a family member killed at work. The program aims to:

- increase awareness about the importance of work health and safety;
- highlight the personal impacts that an injury can have on workers and their families;
- prompt discussion about work health and safety;
- encourage employers and workers to develop work health and safety solutions together.

Safety advocates are paid by OIR to visit workplaces and speak at safety meetings, toolbox talks and other events. Each has also worked with OIR to produce a film which looks at the impacts of the injury or death on family members, friends and work mates, as well as the workers themselves. The advocates are:

- Bill Martin - Bill’s son, Tim, died at the age of 17 after he received an electric shock at work. Bill shares his tragic story to inspire people to take the lead in safety culture, and to better understand the unique safety requirements of young workers.

- Jed Millen - Jed’s career as a rigger ended when the bridge deck he was working on collapsed under his feet and he fell five metres onto the ground, permanently injuring his upper spine vertebrae.

- Gavan McGuane - Gavan was blinded when he tripped and fell at work. He shares his story to prevent anyone else having to experience what he went through.
• Garry Nichols - Garry was involved in a rural tractor roll-over incident which resulted in traumatic injuries, including the loss of his leg.

• Julie and Don Sager - Julie and Don Sager’s son Adam died when he was 25 years old from mesothelioma after breathing in asbestos fibres as a toddler while his parents worked on their new home.

In 2016, the safety advocates visited 84 workplaces throughout Queensland. The safety advocate webpages were viewed nearly 5500 times, and their films were watched over 5100 times. Feedback received from businesses after each visit has been 100 percent positive, with employers and workers impressed with the impact of the films and presentations on their workers:

“Bill was awesome! His message was clear and powerful. More than a few tears were shed.”

“We appreciated Bill’s honesty and openness and know that his visit had a huge impact on increasing awareness of the importance of health and safety at work.”

“Jed was absolutely sensational and delivered the message to work safe with true passion.”

“Jed captured the attention of our workplace audience with a powerful message. Our workers were like sponges listening to him – he had a great impact on them.”

“Gavan’s talk was a real success. You could have heard a pin drop, everyone was listening so intently. “

“I have been to many advocate talks in the mines, and I have to say Gavan’s was the best.”

**Personal story films**

Including the films featuring these Safety Advocates, OIR has produced nine case study films in the same format, featuring people who have been injured or killed at work. The films explore the impacts of the injury on family members, friends and work mates, as well as on the workers themselves. The films have been well received by industry and between them have had thousands of online views and thousands more hard copies given out at industry forums. They include:

**In it for the long haul:** The Tiffany Ward story, about a food processing worker whose arms were caught in a potato processing auger when it was switched on while she was cleaning it.

**A rush of blood:** The Miles Paterson story about a cattleman whose quad bike went over a creek embankment, flipped and landed on him.

**Too fast, too soon – Domenic’s story** about a seven year old who suffered life-threatening injuries when he crashed his quad bike into a power pole.

**Jason’s story** about a young worker who was electrocuted on a construction site he had been working on for just nine days.

**Between a rock and a hard place:** The Garry Nicholls story about a rural tractor roll-over incident.

**Changing focus:** the Gavan McGuane story, about a hospitality worker who was blinded when an alkaline substance mixed with gas under pressure squirted into his eyes

**Building Bridges:** The Jed Millen Story, about a bridge deck collapse and subsequent five metre fall on to concrete

**Losing breath:** The Adam Sager story, about a 25 year old who died of mesothelioma after being exposed to asbestos dust as a toddler while his parents renovated their new home.

**Forever young: Tim’s story,** about a young worker who was fatally electrocuted when his elevating work platform took him into overhead powerlines.
Guidance films

OIR publishes short guidance, best practice case study and information for industry films to YouTube. Some examples include:

- *All aboard! Greyhound’s journey to improve safety* which looks at how Greyhound’s participation in OIR’s Injury Prevention and Management Program resulted in a significant drop in injury rates and improved their workplace safety culture.

- *Capral Aluminium – Involving workers to develop solutions for hazardous manual tasks* which looks at how Capral Aluminium reduced the risks of manual handling and took steps to become the most automated and modern plant in Australia.

- *Working safely with asbestos* showing home renovators where to find and how to work safely with asbestos.

- *Electrical exclusion zones* showing supervisors and workers how to assess the risks of working near overhead or underground powerlines.

- *No sprains, big gains* showing how to manage the risks of manual tasks.

- *The right start: Building safe work for young workers* for supervisors and managers of young construction workers.

- *Managing your drivers’ safety at delivery points* identifying ways to control the risks to prevent injuries to truck drivers delivering to unfamiliar sites.

- *Healthy work. Healthy you.* Promoting a healthy lifestyle and encouraging workers and employers in multiple industries to make healthy lifestyle choices.

- *Supervising resort divers for recreational diving tour operators.*

- *Quad bikes – the right tool for the task?* Prompting people to consider other more suitable vehicles for some tasks.

- *Safe bat handling* showing workers and volunteers how to handle injured bats without risking infection.

- *Working on a safer Queensland* showing how WHSQ can assist businesses to manage safety.

Safe Work and Return to Work Awards

The Queensland Safe Work and Return to Work Awards recognise and reward organisations and individuals for their contribution and commitment to positive work health and safety and return to work outcomes.

In 2016, the Awards received 143 entries, with 40 different business sharing in 43 awards. 310 industry representatives attended the ceremony during Safe Work Month.

Awards are given in the following categories:

1. Best work health and safety management system
2. Best solution to an identified work health and safety issue
3. Best work health and safety practices in small business
4. Best individual contribution to work health and safety
5. Best solution to an identified electrical issue
6. Most significant improvement to work health and safety
7. Best workplace health and wellbeing initiative
8. Best demonstrated leadership in work health and safety
9. Injured worker achievement awards
10. Best rehabilitation and return to work practices in a small/medium business
11. Best rehabilitation and return to work management system
12. Best individual contribution to rehabilitation and return to work
13. Best demonstrated leadership in return to work.

OIR works with winning businesses to develop short best practice case study films so that their solutions and initiatives have ongoing industry wide value as an educational resource.

**Online, subscription email, webinars and social media**

**Website**

The establishment of a one stop shop website with WorkCover Queensland has also allowed OIR to reduce duplication of effort by businesses and reduce their confusion about notification when a worker gets injured. Employers can access a joint claim and incident service so businesses don't need to duplicate reporting incident information to both WorkCover Queensland and Workplace Health and Safety Queensland.

The combined site is the single point of truth for all work health and safety, electrical safety and rehabilitation and return to work information and services in Queensland. All elements of our digital communication strategy lead back to specific content on the site, depending on who OIR are targeting with what information.

As well as information, services and the resources detailed elsewhere in this paper, businesses can access online tools that include:

- the return on investment calculator which estimates ROI for investments in work health and safety
- the PErforM (participative ergonomics for manual tasks) and ManTRA (manual task risk assessment) tools
- the Noise exposure calculator to determine if an employer needs to conduct audiometric testing
- the Heat stress calculator to determine the potential for heat-induced illness at a workplace
- the harm index, which combines workers’ compensation claim numbers and costs of workplace incidents to produce a visual representation, broken down by industry, occupation or region, of the relative harm workers are likely to sustain during their working lives. Red represents serious harm, orange for average or moderate harm and green for low harm
- the online safety benchmarking tool, which lets businesses assess whether they have an effective health and safety management system and anonymously compare their performance with other businesses across similar industry sectors and sizes. It helps businesses to identify areas of health and safety which are being managed well, and those which may require further action. It gives a score for each section of the business, a total score, and where the business is placed in comparison to other organisations of a similar size and type that have completed the survey
- the injury cost calculator, which shows what a workplace injury will cost a business – costs that aren’t picked up by workers’ compensation insurance. There are a few real life examples published to demonstrate to businesses the kind of figures that they might be facing:
  - Transport example: A driver sustained a back injury when he slipped and fell from the cab of a truck. This injury cost the business $4,505 and took the business four days to recover.
- Manufacturing example: A worker sustained a superficial crush injury to the left wrist. This injury cost the business $117,014 and took the business more than a day to recover.
- Construction example: A worker sustained a minor back injury while carrying out jackhammer works using a 70 lb hammer. This injury cost the business $8090 and took the business more than one and half days to recover.
- Rural example: A farmhand sustained a fractured clavicle, three fractured ribs and bruising when he was thrown from his motor bike. This injury cost the business $21,725—which included building a fence to avoid similar injuries in the future—and took the business more than three weeks to recover.

- the metal fabrication tool – which guides employers through the risk aspects of specific tasks and areas common to fabricated metal workplaces.

Subscription email

WHSQ currently has more than 25,000 subscribers largely made up of work health and safety professionals. ESO has around 60,000 mostly electrical contractors. Read stats show that our subscribers are extremely engaged with the information sent to them. This includes the bi-monthly eSafe newsletter, eAlerts for urgent announcements, incident alerts that follow work related fatalities, event invitations and industry specific newsletters for the electrical, construction and rural industries.

Webinars

OIR hosts regular webinars on a range of topics, including injury prevention, return to work strategies and workers’ compensation legislation. The recordings of these sessions are published online for employers and workers who were not able to participate in the live event.

Social media

Social media has introduced substantial and pervasive changes to communication between organisations, communities and individuals. It is also a very challenging environment for government agencies, given that the demand for instant information and responses does not sit easily with the traditionally risk averse nature of official communication. OIR uses Facebook, Twitter and LinkedIn, all of which are growing steadily in importance for OIR as a communication channel with industry. OIR has:

- 13,000 likes of the Workplace Health and Safety Queensland Facebook page;
- 5000 followers of Workplace Health and Safety Queensland’s LinkedIn profile;
- 3500 followers of Workplace Health and Safety Queensland’s Twitter feed;
- 1500 likes of the Rehabilitation and return to work coordinators Facebook page;
- 5000 likes of the Electrical Safety Office Facebook page;
- 1300 followers of the Electrical Safety Office’s Twitter feed.
Attachment 5: Queensland’s work health and safety performance against national performance

WHSQ benchmark and monitor their performance against other Australian and New Zealand jurisdictions through the Comparative Performance Monitoring (CPM) report administered by Safe Work Australia. The CPM is used by WHSQ to facilitate improved work health and safety service outcomes and identify best practice to support policy making.

The latest CPM Report (CPM 18) was released by Safe Work Australia on 24 March 2017 and provides comparative data on the five years from 2010-11 to 2014-15.

**Serious injury and disease claims**

According to the latest Comparative Performance Monitoring Report (CPM 18) Queensland’s serious injury and disease claim rate improved by 15.5 per cent over the period from 2010-11 to 2014-15, relative to the national average of 16 per cent.

*Table 1 - Queensland’s injury rate against other jurisdictions: Incidence rates (claims per 1000 employees) and percentage improvement of serious* compensated claims by jurisdiction.*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Government</td>
<td>7.9</td>
<td>8.1</td>
<td>6.9</td>
<td>6.3</td>
<td>5.0</td>
<td>36.7%</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>13.1</td>
<td>11.7</td>
<td>11.1</td>
<td>9.7</td>
<td>8.8</td>
<td>32.8%</td>
</tr>
<tr>
<td>Tasmania</td>
<td>15.9</td>
<td>15.1</td>
<td>13.7</td>
<td>13.4</td>
<td>12.0</td>
<td>24.5%</td>
</tr>
<tr>
<td>New South Wales</td>
<td>14.7</td>
<td>14.0</td>
<td>11.7</td>
<td>10.8</td>
<td>11.1</td>
<td>24.5%</td>
</tr>
<tr>
<td>Queensland</td>
<td>14.8</td>
<td>14.6</td>
<td>13.0</td>
<td>12.1</td>
<td>12.5</td>
<td>15.5%</td>
</tr>
<tr>
<td>Western Australia</td>
<td>11.6</td>
<td>11.5</td>
<td>10.9</td>
<td>10.1</td>
<td>9.9</td>
<td>14.7%</td>
</tr>
<tr>
<td>Victoria</td>
<td>9.3</td>
<td>9.3</td>
<td>8.9</td>
<td>8.8</td>
<td>9.0</td>
<td>14.9%</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>12.7</td>
<td>12.5</td>
<td>12.4</td>
<td>11.4</td>
<td>12.3</td>
<td>3.1%</td>
</tr>
<tr>
<td>South Australia</td>
<td>11.9</td>
<td>12.7</td>
<td>13.2</td>
<td>12.9</td>
<td>11.6</td>
<td>2.5%</td>
</tr>
<tr>
<td><strong>Australia</strong></td>
<td><strong>12.5</strong></td>
<td><strong>12.4</strong></td>
<td><strong>11.2</strong></td>
<td><strong>10.5</strong></td>
<td><strong>10.5</strong></td>
<td><strong>16.0%</strong></td>
</tr>
</tbody>
</table>

*Includes accepted workers’ compensation claims for temporary incapacity involving one or more weeks compensation.*

In an attempt to provide more up to date data, internal WHSQ claim projections shows that over the last year the serious non-fatal injury rate (per 1,000 workers) as measured by Safe Work Australia (SWA) should slightly decrease for 2015-16 after a slight increase in 2014-15. An annual reduction of 2.6 per cent for 2015-16 is expected. Combined, this results in an overall reduction in the serious non-fatal injury rate of 17.9 per cent between the period from 2010-11 to 2015-16.

---

81 Workers’ compensation data is sourced from the Queensland Workers’ Compensation Regulator and the Comparative Performance Monitoring Report, 17th Edition released by Safe Work Australia in October 2015. Accepted claims are those claims for which liability has been accepted by insurers at least once in the claim’s history. Some claim types take longer to be accepted, in particular fatalities, diseases and permanent impairment claims.
The increase in incidence rates from 12.1 in 2013-14 to 12.5 in 2014-15 is primarily due to a decrease in the number of workers calculated to be working in Queensland during 2014-15 compared to 2013-14. In particular, Queensland’s workforce, which is calculated by Safe Work Australia in collaboration with the Australian Bureau of Statistic and takes into account labour force and employee earning figures, was predicted to have decreased by 140,000 workers between 2013-14 and 2014-15 (see Table 2).

Table 2 - Accepted non-fatal SWA serious claims, 2010-11 to 2015-16 internal OIR projections

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers ('000)</td>
<td>1899.52</td>
<td>1940.11</td>
<td>2097.93</td>
<td>2119.59</td>
<td>1979.58</td>
<td>2007.12</td>
</tr>
<tr>
<td>No. Claims</td>
<td>28,097</td>
<td>28,369</td>
<td>27,254</td>
<td>25,727</td>
<td>24,706</td>
<td>24,396</td>
</tr>
<tr>
<td>Rate (per 1,000 workers)</td>
<td>14.8</td>
<td>14.6</td>
<td>13.0</td>
<td>12.1</td>
<td>12.5</td>
<td>12.2</td>
</tr>
<tr>
<td>Rate (per 1,000 workers)</td>
<td>14.8</td>
<td>14.6</td>
<td>13.0</td>
<td>12.1</td>
<td>12.5</td>
<td>12.2</td>
</tr>
</tbody>
</table>

While this workforce reduction had a marginal impact on the injury rate (which increased to 12.5), it had a more significant impact on industries such as agriculture and construction. In particular, the agricultural industry saw a 22.3 per cent reduction in predicted workers and the construction industry a 21.2 per cent reduction (see Table 3). Consequently, each of these industries have experienced an increase in injury rates per 1000 workers as outlined in Table 4. Notably however, other priority industries such as Manufacturing and Transport have experienced reductions in their injury rates of 21.7 per cent and 8.8 per cent respectively (see Table 4), however these industries have not been as significantly impacted by the adjustments to workforce figures.

Table 3 – Employees ('000) by industry

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>31.04</td>
<td>34.53</td>
<td>35.31</td>
<td>42.92</td>
<td>32.07</td>
<td>24.91</td>
<td>-22.3%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>156.99</td>
<td>155.63</td>
<td>153.27</td>
<td>151.91</td>
<td>167.72</td>
<td>143.99</td>
<td>-14.1%</td>
</tr>
<tr>
<td>Construction</td>
<td>132.49</td>
<td>138.5</td>
<td>141.35</td>
<td>174.85</td>
<td>177.99</td>
<td>140.26</td>
<td>-21.2%</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>97.03</td>
<td>95.61</td>
<td>94.14</td>
<td>113.83</td>
<td>104.13</td>
<td>96.35</td>
<td>-7.5%</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>234.51</td>
<td>250.01</td>
<td>263.27</td>
<td>273.82</td>
<td>280.67</td>
<td>278.57</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Other</td>
<td>1,187.91</td>
<td>1,225.24</td>
<td>1,252.77</td>
<td>1,340.6</td>
<td>1,357.01</td>
<td>1,295.5</td>
<td>-4.5%</td>
</tr>
<tr>
<td>Total</td>
<td>1,839.97</td>
<td>1,899.52</td>
<td>1,940.11</td>
<td>2,097.93</td>
<td>2,119.59</td>
<td>1,979.58</td>
<td>-6.6%</td>
</tr>
</tbody>
</table>

Table 4 – Queensland serious non-fatal injury rates by Industry (per 1,000 workers)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation &amp; food services</td>
<td>11.1</td>
<td>12.3</td>
<td>10.9</td>
<td>11.7</td>
<td>10.0</td>
<td>-9.9%</td>
</tr>
<tr>
<td>Administrative &amp; support services</td>
<td>29.6</td>
<td>28.2</td>
<td>24.4</td>
<td>20.6</td>
<td>20.7</td>
<td>-30.1%</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>-----------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Agriculture, forestry &amp; fishing</td>
<td>27.1</td>
<td>27.0</td>
<td>21.0</td>
<td>27.1</td>
<td>32.0</td>
<td>18.1%</td>
</tr>
<tr>
<td>Arts &amp; recreation services</td>
<td>10.0</td>
<td>8.9</td>
<td>9.2</td>
<td>8.8</td>
<td>8.3</td>
<td>-17.0%</td>
</tr>
<tr>
<td><strong>Construction</strong></td>
<td>20.3</td>
<td>21.2</td>
<td>16.4</td>
<td>16.7</td>
<td>21.4</td>
<td>5.4%</td>
</tr>
<tr>
<td>Education &amp; training</td>
<td>12.1</td>
<td>10.0</td>
<td>9.1</td>
<td>9.5</td>
<td>9.6</td>
<td>-20.7%</td>
</tr>
<tr>
<td>Electricity, gas, water &amp; waste services</td>
<td>10.6</td>
<td>7.9</td>
<td>10.2</td>
<td>8.5</td>
<td>8.8</td>
<td>-17.0%</td>
</tr>
<tr>
<td>Financial &amp; insurance services</td>
<td>3.4</td>
<td>2.4</td>
<td>2.1</td>
<td>2.1</td>
<td>2.2</td>
<td>-35.3%</td>
</tr>
<tr>
<td><strong>Health Care and Social Assistance</strong></td>
<td>16.6</td>
<td>16.4</td>
<td>15.6</td>
<td>14.0</td>
<td>14.0</td>
<td>-15.7%</td>
</tr>
<tr>
<td>Information media &amp; telecommunications</td>
<td>4.0</td>
<td>4.7</td>
<td>3.7</td>
<td>3.9</td>
<td>4.9</td>
<td>22.5%</td>
</tr>
<tr>
<td><strong>Manufacturing</strong></td>
<td>26.3</td>
<td>25.9</td>
<td>22.9</td>
<td>18.0</td>
<td>20.6</td>
<td>-21.7%</td>
</tr>
<tr>
<td>Other services</td>
<td>11.6</td>
<td>11.5</td>
<td>10.1</td>
<td>8.1</td>
<td>9.0</td>
<td>-22.4%</td>
</tr>
<tr>
<td>Professional, scientific &amp; technical services</td>
<td>2.8</td>
<td>3.2</td>
<td>2.3</td>
<td>2.1</td>
<td>2.3</td>
<td>-17.9%</td>
</tr>
<tr>
<td>Public administration &amp; safety</td>
<td>11.3</td>
<td>11.6</td>
<td>13.1</td>
<td>11.2</td>
<td>10.2</td>
<td>-9.7%</td>
</tr>
<tr>
<td>Rental, hiring &amp; real estate services</td>
<td>9.2</td>
<td>10.7</td>
<td>6.3</td>
<td>6.6</td>
<td>8.0</td>
<td>-13.0%</td>
</tr>
<tr>
<td>Retail trade</td>
<td>10.3</td>
<td>10.4</td>
<td>9.1</td>
<td>8.7</td>
<td>9.0</td>
<td>-12.6%</td>
</tr>
<tr>
<td><strong>Transport, postal &amp; warehousing</strong></td>
<td>21.6</td>
<td>22.6</td>
<td>19.2</td>
<td>19.4</td>
<td>19.7</td>
<td>-8.8%</td>
</tr>
<tr>
<td>Wholesale trade</td>
<td>20.6</td>
<td>18.7</td>
<td>16.1</td>
<td>17.5</td>
<td>17.9</td>
<td>-13.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>14.8</td>
<td>14.6</td>
<td>13.0</td>
<td>12.1</td>
<td>12.5</td>
<td>-15.5%</td>
</tr>
</tbody>
</table>

\(^a\)Total includes Mining. Source: Safe Work Australia, October 2015 (ANZSIC 2006).

While injury rates per 1000 workers has increased in the agricultural and constructions industries, the number of serious claims for these sectors has either decreased or only experienced a marginal increase. Table 5 in particular demonstrates that while workforce numbers have influenced changes in injury rates, Queensland’s claims rates are showing an overall steady decline.
### Table 5 – No. of serious claims per industry from 2009-10 to 2014-15

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>972</td>
<td>937</td>
<td>953</td>
<td>901</td>
<td>870</td>
<td>796</td>
<td>-8.5%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>4,394</td>
<td>4,091</td>
<td>3,976</td>
<td>3,483</td>
<td>3,017</td>
<td>2,967</td>
<td>-1.7%</td>
</tr>
<tr>
<td>Construction</td>
<td>3,110</td>
<td>2,817</td>
<td>2,996</td>
<td>2,873</td>
<td>2,975</td>
<td>3,006</td>
<td>1.0%</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>2,139</td>
<td>2,062</td>
<td>2,124</td>
<td>2,180</td>
<td>2,016</td>
<td>1,899</td>
<td>-5.8%</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>4,284</td>
<td>4,158</td>
<td>4,318</td>
<td>4,283</td>
<td>3,935</td>
<td>3,897</td>
<td>-1.0%</td>
</tr>
<tr>
<td>Other</td>
<td>13,604</td>
<td>14,032</td>
<td>14,002</td>
<td>13,534</td>
<td>12,914</td>
<td>12,141</td>
<td>-6.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>28,503</strong></td>
<td><strong>28,097</strong></td>
<td><strong>28,369</strong></td>
<td><strong>27,254</strong></td>
<td><strong>25,727</strong></td>
<td><strong>24,706</strong></td>
<td><strong>-4.0%</strong></td>
</tr>
</tbody>
</table>

**Detailed serious injury and disease claims by industry and jurisdiction**

The tables below provide a detailed comparison of Queensland injury and disease claim rates in relation to other jurisdictions:

**Incidence rates of serious claims for Agriculture, forestry and fishing by jurisdiction**

![Incidence rates of serious claims for Agriculture, forestry and fishing by jurisdiction](image-url)
Incidence rates of serious claims for Manufacturing by jurisdiction

Incidence rates of serious claims for Electricity, gas, water and waste services by jurisdiction

Incidence rates of serious claims for Construction by jurisdiction
Incidence rates of serious claims for Transport, postal and warehousing by jurisdiction

Incidence rates of serious claims for Information, media and telecommunications by jurisdiction

Incidence rates of serious claims for Financial and insurance services by jurisdiction
Incidence rates of serious claims for Rental, hiring and real estate services by jurisdiction

<table>
<thead>
<tr>
<th>Claims per 1,000 employees</th>
<th>QLD</th>
<th>ACT</th>
<th>NSW</th>
<th>VIC</th>
<th>SA</th>
<th>NT</th>
<th>WA</th>
<th>TAS</th>
<th>Aus Gov</th>
<th>Aus Av</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>9.2</td>
<td>10.6</td>
<td>6.3</td>
<td>5.8</td>
<td>5.1</td>
<td>4.3</td>
<td>8.7</td>
<td>2.3</td>
<td>5.2</td>
<td>7.0</td>
</tr>
<tr>
<td>2011-12</td>
<td>10.7</td>
<td>5.3</td>
<td>6.2</td>
<td>5.2</td>
<td>6.2</td>
<td>7.1</td>
<td>6.0</td>
<td>3.4</td>
<td>3.6</td>
<td>6.7</td>
</tr>
<tr>
<td>2012-13</td>
<td>6.3</td>
<td>6.5</td>
<td>5.3</td>
<td>4.8</td>
<td>5.0</td>
<td>3.7</td>
<td>7.3</td>
<td>2.6</td>
<td>4.9</td>
<td>5.6</td>
</tr>
<tr>
<td>2013-14</td>
<td>6.6</td>
<td>9.2</td>
<td>4.5</td>
<td>5.8</td>
<td>5.2</td>
<td>6.1</td>
<td>4.6</td>
<td>3.8</td>
<td>1.7</td>
<td>5.3</td>
</tr>
<tr>
<td>2014-15p</td>
<td>8.0</td>
<td>6.7</td>
<td>6.2</td>
<td>5.9</td>
<td>5.8</td>
<td>5.1</td>
<td>4.8</td>
<td>3.8</td>
<td>3.0</td>
<td>6.3</td>
</tr>
</tbody>
</table>

Incidence rates of serious claims for Professional, scientific and technical services by jurisdiction

<table>
<thead>
<tr>
<th>Claims per 1,000 employees</th>
<th>TAS</th>
<th>NT</th>
<th>VIC</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>WA</th>
<th>Aus Gov</th>
<th>Aus Av</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>6.8</td>
<td>9.0</td>
<td>2.0</td>
<td>4.4</td>
<td>2.8</td>
<td>2.1</td>
<td>2.6</td>
<td>3.3</td>
<td>3.2</td>
</tr>
<tr>
<td>2011-12</td>
<td>6.4</td>
<td>8.6</td>
<td>2.3</td>
<td>2.5</td>
<td>3.2</td>
<td>2.7</td>
<td>3.3</td>
<td>2.8</td>
<td>2.8</td>
</tr>
<tr>
<td>2012-13</td>
<td>6.2</td>
<td>5.1</td>
<td>2.0</td>
<td>2.2</td>
<td>2.3</td>
<td>2.6</td>
<td>2.2</td>
<td>2.9</td>
<td>2.3</td>
</tr>
<tr>
<td>2013-14</td>
<td>5.3</td>
<td>3.6</td>
<td>2.2</td>
<td>2.1</td>
<td>2.1</td>
<td>2.9</td>
<td>2.5</td>
<td>2.0</td>
<td>2.3</td>
</tr>
<tr>
<td>2014-15p</td>
<td>4.5</td>
<td>3.6</td>
<td>2.5</td>
<td>2.5</td>
<td>2.3</td>
<td>2.3</td>
<td>2.2</td>
<td>2.1</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Incidence rates of serious claims for Administrative and support services by jurisdiction

<table>
<thead>
<tr>
<th>Claims per 1,000 employees</th>
<th>QLD</th>
<th>ACT</th>
<th>NT</th>
<th>TAS</th>
<th>NSW</th>
<th>VIC</th>
<th>WA</th>
<th>Aus Gov</th>
<th>Aus Av</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>29.6</td>
<td>12.1</td>
<td>29.8</td>
<td>21.8</td>
<td>15.5</td>
<td>7.1</td>
<td>6.4</td>
<td>23.8</td>
<td>0.0</td>
</tr>
<tr>
<td>2011-12</td>
<td>28.2</td>
<td>15.4</td>
<td>20.6</td>
<td>25.7</td>
<td>10.4</td>
<td>6.9</td>
<td>6.8</td>
<td>22.5</td>
<td>12.5</td>
</tr>
<tr>
<td>2012-13</td>
<td>24.4</td>
<td>15.1</td>
<td>20.6</td>
<td>18.8</td>
<td>7.7</td>
<td>7.2</td>
<td>4.2</td>
<td>24.0</td>
<td>0.0</td>
</tr>
<tr>
<td>2013-14</td>
<td>20.6</td>
<td>11.1</td>
<td>17.2</td>
<td>14.2</td>
<td>7.9</td>
<td>6.0</td>
<td>5.2</td>
<td>20.7</td>
<td>0.0</td>
</tr>
<tr>
<td>2014-15p</td>
<td>20.7</td>
<td>17.5</td>
<td>16.8</td>
<td>16.7</td>
<td>7.4</td>
<td>7.0</td>
<td>5.6</td>
<td>5.6</td>
<td>0.0</td>
</tr>
</tbody>
</table>
Incidence rates of serious claims for Public administration and safety by jurisdiction

Incidence rates of serious claims for Education and training by jurisdiction

Incidence rates of serious claims for Healthcare and social assistance by jurisdiction
Incidence rates of serious claims for Arts and recreation services by jurisdiction

Incidence rates of serious claims for Other services by jurisdiction

Traumatic injury fatalities at the workplace

CPM 18 reported that the number of traumatic injury fatalities at the workplace in Queensland reduced by more than a third (36 per cent) from 2010-11 to 2014-15 from 47 to 30 fatalities. Giving Queensland the highest decrease of any jurisdiction.

Table 6 - Queensland’s traumatic injury fatalities at the workplace against other jurisdictions

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>40</td>
<td>48</td>
<td>50</td>
<td>36</td>
<td>42</td>
<td>5%</td>
</tr>
</tbody>
</table>

82 The identification of the employment status of compensated workers has improved (i.e. whether the worker is an employee, self-employed, volunteer, or student on industry placement). This has resulted in small changes to the number of employees used to calculate injury and fatality rates for the monitoring measures. The full-time series has been updated with the revised data to ensure time-series consistency.
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation &amp; food services</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Administrative &amp; support services</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Agriculture, forestry &amp; fishing</td>
<td>20</td>
<td>13</td>
<td>13</td>
<td>13</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Arts &amp; recreation services</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>6</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Construction</td>
<td>10</td>
<td>12</td>
<td>4</td>
<td>5</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Education &amp; training</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Electricity, gas, water &amp; waste services</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Financial &amp; insurance services</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Information media &amp; telecommunications</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Other services</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Professional, scientific &amp; technical services</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Public administration &amp; safety</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Rental, hiring &amp; real estate services</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Retail trade</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 7 below provides a breakdown of each of these traumatic injury fatalities by industry. The industry with the highest average number of traumatic injury fatalities per year between 2010-11 and 2014-15 was Agriculture, forestry and fishing (13), followed by Construction (8), Transport, postal and warehousing (3), and Manufacturing (3).

Table 7 - Queensland traumatic injuries at the workplace by industry

Source: Safe Work Australia, October 2015
Further to the 36 per cent reduction in traumatic injury fatalities, Queensland also recorded the second highest reduction in traumatic injury fatality rates. In particular, Queensland’s traumatic injury fatality rate reduced by 38 per cent (see Table 8), a significantly higher reduction than the national average of 20 per cent (see Figure 1).

**Table 8 - Queensland’s traumatic injury fatalities rate at the workplace against other jurisdictions**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport, postal &amp; warehousing</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Wholesale trade</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total*</td>
<td>47</td>
<td>45</td>
<td>39</td>
<td>36</td>
<td>30</td>
<td>39</td>
</tr>
</tbody>
</table>

*Includes Mining.


**Figure 1 - Queensland’s incidence rate of traumatic injury fatalities against the national average, fatalities per 100,000 employees**
Attachment 6: WHSQ’s inspectorate activity

This attachment seeks to highlight:

- the quantity of contacts made to WHSQ and indicators of the quality and timeliness of contact services provided;
- the quantum of inspectorate proactive and reactive activity undertaken;
- the areas in which inspectorate resources have been allocated;
- the quantum of notices issued by the inspectorate to bring about compliance;
- the extent of the use of sanctions by WHSQ inspectors; and
- inspectorate capacity as compared with other WHS regulators.

A mixture of internal data, derived databases used by inspectors, Infoline contact officers and licensing staff has been sourced for this report together with data reported in the Comparative Performance Monitoring Reports produced by Safe Work Australia.

WHSQ contact

Table 1 - WHSQ contact 2011-12 to Q1 2016-17

<table>
<thead>
<tr>
<th>Type of contact</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>Q1 2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notifications made</td>
<td>11,096</td>
<td>9,503</td>
<td>9,636</td>
<td>9,744</td>
<td>9,806</td>
<td>2,302</td>
</tr>
<tr>
<td>Number of occupational licensing transactions</td>
<td>87,769</td>
<td>74,012</td>
<td>79,733</td>
<td>62,036</td>
<td>59,810</td>
<td>17,038</td>
</tr>
<tr>
<td>Clients accessing information and advisory services, which includes the following three measures.</td>
<td>2.4M</td>
<td>2.2M</td>
<td>1.3M</td>
<td>5.1M</td>
<td>6.6M</td>
<td>1.0M</td>
</tr>
<tr>
<td>- Number of telephone enquiries to AAA Centre</td>
<td>111,247</td>
<td>112,570</td>
<td>118,276</td>
<td>121,690</td>
<td>145,262</td>
<td>43,672</td>
</tr>
<tr>
<td>- Number of email enquiries to AAA Centre</td>
<td>6,111</td>
<td>4,755</td>
<td>4,800</td>
<td>3,117</td>
<td>3,103</td>
<td>675</td>
</tr>
<tr>
<td>- Visits to website</td>
<td>2.2M</td>
<td>2.1M</td>
<td>1.2M</td>
<td>4.9M</td>
<td>6.5M</td>
<td>966K</td>
</tr>
<tr>
<td>Calls abandoned (percentage of incoming)</td>
<td>8%</td>
<td>10%</td>
<td>12%</td>
<td>12%</td>
<td>6%</td>
<td>12%</td>
</tr>
<tr>
<td>Percentage of calls answered without delay</td>
<td>43%</td>
<td>37%</td>
<td>35%</td>
<td>55%</td>
<td>65%</td>
<td>59%</td>
</tr>
</tbody>
</table>

* Source data supplied by Business Systems and Support Unit on 6 October 2016

* Supplied by Licensing Services

* Supplied by Advisory Services. This measure should not be compared to previous reports due to the commencement of the One Stop Shop in November 2014

* Supplied by Awareness and Engagement Unit. This measure should not be compared to reports prior to the commencement of the One Stop Shop in November 2014

* Calls answered in less than 20 seconds.

---

83 “Percentage of calls answered without delay” - this percentage represents calls answered within 20 seconds.
Inspectorate activity

Table 2 - WHSQ inspectorate activity, 2011-12 to Q1 2016-17

<table>
<thead>
<tr>
<th>Type of activity*</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>Q1 2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of workplace visits</td>
<td>31,088</td>
<td>30,219</td>
<td>25,862</td>
<td>26,589</td>
<td>32,005</td>
<td>6,646</td>
</tr>
<tr>
<td>Total number of distinct workplaces visited</td>
<td>14,458</td>
<td>14,723</td>
<td>12,957</td>
<td>12,886</td>
<td>14,892</td>
<td>3,653</td>
</tr>
<tr>
<td>Assessments conducted</td>
<td>22,075</td>
<td>23,343</td>
<td>18,919</td>
<td>17,406</td>
<td>22,005</td>
<td>4,738</td>
</tr>
<tr>
<td>Advisories conducted</td>
<td>4,865</td>
<td>3,047</td>
<td>2,861</td>
<td>4,515</td>
<td>4,222</td>
<td>747</td>
</tr>
<tr>
<td>Investigations conducted</td>
<td>1,017</td>
<td>606</td>
<td>244</td>
<td>259</td>
<td>209</td>
<td>51</td>
</tr>
</tbody>
</table>

*Source data supplied by Business Systems and Support Unit on 6 October 2016

b Source ABS 8165.0 - Counts of Australian Businesses, June 2011 - June 2015

c Preliminary figure based on financial year

Under the Workplace Health and Safety Response Assessment Process (WRAP), events received by each region are triaged to determine the regional response. This response can include a determination to close out the event, create and allocate a response assessment, allocate as an investigation, or an escalation through these responses as required.

Inspectorate resource allocation

The following tables provide two different ways of illustrating the allocation of inspectorate resource to industry groups. Table 3 illustrates the distribution of inspector time within particular business groups. Table 4 illustrates the proportion of the total number of activities that have been undertaken within particular business groups.

The presentation of the information using the two tables helps to verify the distribution of resources across the industry groups. The data presented highlights complementary allocation of resources regardless of the data used.

---

84 The resource allocation for the inspectorate (Table 9) has been determined using the time recorded in the Compliance & Investigation System Refresh (CISR) for an inspector to action an event, investigation, assessment or advisory including travel time. The resource allocation for the inspectorate (Table 10) has been determined using the total number of field activities recorded in CISR, to action an event, investigation, assessment or advisory. Field Activities' is made up of the following activity types - Workplace Consultation, Workplace Observation, Workplace Survey Visit, Group Coaching Delivery, Relationship Management Program Development and Negotiation, Site Monitoring, Site Visit, Site Visit (No Insp Report), and Toolbox Talks.
Table 3 - WHSQ inspectorate resource allocation by industry, 2011-12 to Q1 2016-17 (per cent of total activities based on time allocation) a

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>47%</td>
<td>39%</td>
<td>40%</td>
<td>39%</td>
<td>38%</td>
<td>37%</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>5%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>14%</td>
<td>12%</td>
<td>11%</td>
<td>12%</td>
<td>11%</td>
<td>11%</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>1%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Public Administration and Safety</td>
<td>1%</td>
<td>6%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>4%</td>
</tr>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>2%</td>
<td>3%</td>
<td>4%</td>
<td>3%</td>
<td>4%</td>
<td>6%</td>
</tr>
<tr>
<td>Education and Training</td>
<td>1%</td>
<td>3%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Other *</td>
<td>30%</td>
<td>31%</td>
<td>30%</td>
<td>30%</td>
<td>32%</td>
<td>34%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

a Source data supplied by Business Systems and Support Unit on 6 October 2016.

* Includes industries such as ‘Accommodation and Food Services’, ‘Administrative and Support Services’, ‘Arts and Recreation Services’ and ‘Professional, Scientific and Technical Services’

Table 4 - WHSQ inspectorate resource allocation by industry, 2011-12 to Q1 2016-17 (per cent of field activities based on activity count) a

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>38%</td>
<td>47%</td>
<td>47%</td>
<td>48%</td>
<td>49%</td>
<td>46%</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>4%</td>
<td>3%</td>
<td>3%</td>
<td>4%</td>
<td>3%</td>
<td>5%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>14%</td>
<td>11%</td>
<td>10%</td>
<td>9%</td>
<td>9%</td>
<td>9%</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Public Administration and Safety</td>
<td>7%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>3%</td>
<td>2%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Education and Training</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Other *</td>
<td>30%</td>
<td>31%</td>
<td>32%</td>
<td>32%</td>
<td>31%</td>
<td>32%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

a Source data supplied by Business Systems and Support Unit on 6 October 2016.

* Includes industries such as ‘Accommodation and Food Services’, ‘Administrative and Support Services’, ‘Arts and Recreation Services’ and ‘Professional, Scientific and Technical Services’
Compliance notices

WHSQ inspectors issue a range of notices for the legislation under which they have been appointed as inspectors. Table 5 deals with notices that require compliance action by the person who has been issued the notice.

Table 5 - WHSQ compliance notices by category, 2011-12 to Q1 2016-17

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Improvement notices</td>
<td>6,986</td>
<td>5,467</td>
<td>4,392</td>
<td>1,731</td>
<td>1,742</td>
<td>466</td>
</tr>
<tr>
<td>Prohibition notices</td>
<td>1,750</td>
<td>1,349</td>
<td>1,207</td>
<td>749</td>
<td>533</td>
<td>152</td>
</tr>
<tr>
<td>Electrical safety protection notices</td>
<td>80</td>
<td>57</td>
<td>39</td>
<td>14</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>Unsafe equipment notices</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>8,816</td>
<td>6,873</td>
<td>5,638</td>
<td>2,495</td>
<td>2,290</td>
<td>626</td>
</tr>
</tbody>
</table>

* Source data supplied by Business Systems and Support Unit on 6 October 2016 (and DG Report Card for previous periods).

Detailed breakdown of compliance notices by notice type and industry

Table 6 - Improvement notices

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>241</td>
<td>314</td>
<td>215</td>
<td>41</td>
<td>69</td>
<td>31</td>
</tr>
<tr>
<td>Construction</td>
<td>2,116</td>
<td>1,462</td>
<td>1,359</td>
<td>740</td>
<td>1,001</td>
<td>208</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>84</td>
<td>98</td>
<td>68</td>
<td>18</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>1,575</td>
<td>1,032</td>
<td>643</td>
<td>254</td>
<td>159</td>
<td>45</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>245</td>
<td>228</td>
<td>191</td>
<td>44</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>Other Industries</td>
<td>2,725</td>
<td>2,333</td>
<td>1,916</td>
<td>634</td>
<td>483</td>
<td>176</td>
</tr>
<tr>
<td><strong>Total Industry</strong></td>
<td>6,986</td>
<td>5,467</td>
<td>4,392</td>
<td>1,731</td>
<td>1,742</td>
<td>466</td>
</tr>
</tbody>
</table>

Table 7 - Prohibition notices

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>35</td>
<td>40</td>
<td>33</td>
<td>22</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>Construction</td>
<td>973</td>
<td>761</td>
<td>731</td>
<td>438</td>
<td>358</td>
<td>106</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>10</td>
<td>3</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>276</td>
<td>168</td>
<td>116</td>
<td>82</td>
<td>28</td>
<td>8</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>44</td>
<td>22</td>
<td>28</td>
<td>16</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Other Industries</td>
<td>412</td>
<td>355</td>
<td>293</td>
<td>189</td>
<td>125</td>
<td>32</td>
</tr>
<tr>
<td><strong>Total Industry</strong></td>
<td>1,750</td>
<td>1,349</td>
<td>1,207</td>
<td>749</td>
<td>533</td>
<td>152</td>
</tr>
</tbody>
</table>

Statutory Notices are from the Compliance Investigation System and represent both notices issued as a result of reactive investigations and notices issued as a result of proactive assessments.
Sanctions

Infringement notices, prosecutions and enforceable undertakings are the key sanctions available under the Queensland WHS legislation. Table 10 highlights the application of infringement notices and enforceable undertakings.

There are two reasons for the decrease in infringement notices being issued, firstly under the harmonised laws the number of breaches that infringement notices can be issued against has significantly reduced and secondly WHSQ is conducting more risk based prosecutions where greater time and resources are required.

Table 10 - Infringement notices and undertakings, 2011-12 to Q1 2016-17
Detailed breakdown of infringement notices by industry

Table 11 - Infringement Notices

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Construction</td>
<td>158</td>
<td>34</td>
<td>38</td>
<td>26</td>
<td>41</td>
<td>11</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>7</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>5</td>
<td>4</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other Industries</td>
<td>33</td>
<td>20</td>
<td>8</td>
<td>4</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total Industry</strong></td>
<td><strong>207</strong></td>
<td><strong>61</strong></td>
<td><strong>57</strong></td>
<td><strong>30</strong></td>
<td><strong>56</strong></td>
<td><strong>16</strong></td>
</tr>
</tbody>
</table>

Table 12 - Total of infringement fines

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>$2,400</td>
<td>$800</td>
<td>$4,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Construction</td>
<td>$147,089</td>
<td>$54,272</td>
<td>$59,648</td>
<td>$56,160</td>
<td>$84,528</td>
<td>$23,152</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>- $-</td>
<td>- $-</td>
<td>$2,160</td>
<td>- $-</td>
<td>- $-</td>
<td>- $-</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>$8,732</td>
<td>$800</td>
<td>$4,400</td>
<td>- $-</td>
<td>$2,160</td>
<td>$-</td>
</tr>
<tr>
<td>Transport, Postal and Warehousing</td>
<td>$4,000</td>
<td>$8,400</td>
<td>$4,400</td>
<td>- $-</td>
<td>- $-</td>
<td>- $-</td>
</tr>
<tr>
<td>Other Industries</td>
<td>$27,828</td>
<td>$42,176</td>
<td>$11,072</td>
<td>$7,632</td>
<td>$28,224</td>
<td>$12,240</td>
</tr>
<tr>
<td><strong>Total Industry</strong></td>
<td><strong>$190,049</strong></td>
<td><strong>$106,448</strong></td>
<td><strong>$85,680</strong></td>
<td><strong>$63,792</strong></td>
<td><strong>$114,912</strong></td>
<td><strong>$35,392</strong></td>
</tr>
</tbody>
</table>

National Comparisons

Inspectorate capacity and activity

Table 13 and 14 below provide an overview of WHSQ’s inspectorate capacity and activity in relation to other jurisdictions.

Table 13 - WHS jurisdictional inspectorate capacity, 2014-15

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of active field inspectors</td>
<td>315</td>
<td>261</td>
<td>210</td>
<td>103</td>
<td>93</td>
<td>31</td>
<td>25</td>
<td>30</td>
</tr>
<tr>
<td>Active field inspectors per 10,000 employees</td>
<td>1.0</td>
<td>1.1</td>
<td>1.1</td>
<td>1.0</td>
<td>1.4</td>
<td>1.1</td>
<td>2.2</td>
<td>2.1</td>
</tr>
</tbody>
</table>

Source: Comparative Performance Monitoring Report – 18th Edition

Table 14 - WHS jurisdictional inspectorate activity, 2014-15

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of workplace visits: proactive</td>
<td>25,164</td>
<td>22,403</td>
<td>22,938</td>
<td>5,114</td>
<td>6,157</td>
<td>2,823</td>
<td>17,93</td>
<td>442</td>
</tr>
<tr>
<td>Number of workshops/presentations/seminars/forums: proactive</td>
<td>649</td>
<td>u/a</td>
<td>5,138</td>
<td>324</td>
<td>287</td>
<td>N/A</td>
<td>157</td>
<td>100</td>
</tr>
<tr>
<td>Number of workplace visits: reactive</td>
<td>10,818</td>
<td>18,317</td>
<td>768</td>
<td>3,264</td>
<td>7,988</td>
<td>2,717</td>
<td>3,499</td>
<td>2,247</td>
</tr>
<tr>
<td>Other reactive interventions</td>
<td>13,227</td>
<td>u/a</td>
<td>6,437</td>
<td>14,063</td>
<td>3,684</td>
<td>0</td>
<td>u/a</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Comparative Performance Monitoring Report – 18th Edition
Notices and Sanctions

Table 15 and 16 below sets out the number of notices issued and sanctions imposed by WHS jurisdictions in 2014-15.

**Table 15 - WHS jurisdictional prohibition and improvement notices issued, 2014-15**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of improvement notices issued</td>
<td>6,545</td>
<td>15,730</td>
<td>1,752</td>
<td>12,039</td>
<td>1,728</td>
<td>241</td>
<td>74</td>
<td>369</td>
</tr>
<tr>
<td>Number of prohibition notices issued</td>
<td>673</td>
<td>542</td>
<td>759</td>
<td>427</td>
<td>832</td>
<td>106</td>
<td>131</td>
<td>133</td>
</tr>
</tbody>
</table>

Source: Comparative Performance Monitoring Report – 18th Edition

**WHS jurisdictional application of sanctions, 2014-15**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforceable Undertakings</td>
<td>5</td>
<td>8</td>
<td>7</td>
<td>n/a</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Legal proceedings finalised</td>
<td>91</td>
<td>113</td>
<td>54</td>
<td>19</td>
<td>19</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Successful legal proceedings&lt;sup&gt;a&lt;/sup&gt;</td>
<td>88</td>
<td>104</td>
<td>42</td>
<td>13</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Number of infringement notices issued</td>
<td>92</td>
<td>u/a</td>
<td>30</td>
<td>n/a</td>
<td>2</td>
<td>14</td>
<td>1</td>
<td>13</td>
</tr>
</tbody>
</table>

Source: Comparative Performance Monitoring Report – 18th Edition

<sup>a</sup> Successful legal proceedings’ are those which result in a conviction, order or agreement
Attachment 7: Examples of securing compliance without enforcement

Case Study – Agreed Safety Performance Improvement Plan in the red meat industry

Background
The meat and meat processing industry is a high priority for WHSQ, as it encompasses national priority areas of livestock, transport and manufacturing industries. In an environment with largely ageing infrastructure, the workforce demographic is diverse, ranging from low skill-set to highly technical professionals in relatively small groups who work under strict production timeframes. Repetition of task, poorly designed equipment, high staff turnover and small windows of opportunity to redesign plant so as not to impact production or the supply chain, all add complexities to managing worker health and safety.

Over the past 10 years, WHSQ has been working with the red meat industry to improve safety outcomes for workers in the following ways:
- Monitoring compliance through proactive audit campaigns;
- Responding to notified incidents and complaints;
- Recommending prosecutions for legislative breaches;
- Developing guidance materials; and
- More recently, engaging with industry through the Meat Industry Advisory Group (MIAG).

What was the problem?
The meat and meat product industry historically had a serious injury claim rate of 66 claims per 1000 employees, well above the average claim rate of 14.8 claims per 1000 employees. Audit campaigns have produced some success in areas such as knife safety and machine guarding, however long-term improvement has been difficult to achieve as it commonly involves issues of plant design such as:
- High cost of new plant;
- Absence of proven safer new technologies or processes; and
- Difficulty of inserting new machinery into an existing plant layout.

This industry is highly regulated by all 3 levels of government with a focus on food safety and animal welfare. WHSQ are only one regulator in this space. Some businesses within the industry were leading the way through highly technical innovation in their plants, yet other areas of the workplace were falling significantly behind acceptable safety standards. WHSQ visited these workplaces regularly, issuing notices and requiring rectifications, with very little engagement from the business or the industry as a whole. Several prosecutions were pending and at least one business had opted for an Enforceable Undertaking as a result of a serious legislative breach. The relationship between WHSQ and the industry as a whole was not effective, clearly more work and an alternative approach was needed.

What was the solution?
Recognising that more work needed to be done, WHSQ changed focus with the red meat processing industry in 2013 and developed a broad program, modelled on IPaM, to target the 18 major meat processing plants across Queensland. A well planned program of work was designed to be delivered by a small team of highly skilled Inspectors to systematically work through the business from the live end where cattle are received to the end point where meat is loaded onto transport for distribution. This program of work included strong industry engagement, pre-visit meetings at workplaces where WHSQ expectations were clearly defined, walk through assessments, close out meetings once the assessment was completed and ongoing communication between Inspectors and the management of the workplace until identified risks were been addressed.
One of the elements of this program of work that made the most impact and gained industry buy-in was the use of agreed outcomes that clearly discussed the risk, the expectations from WHSQ and the timeline in which the rectification would be done.

This approach combined with strategically placed notices on high risk low cost issues gave the business a clear direction on what needed to be done, such as recording each and every issue, prioritising it and using as a template to plan and program rectification work.

A total of 1100 agreed actions were recorded for the 18 red meat processing workplaces across Queensland,

What were the benefits?

The use of agreed outcomes in this industry sector has strengthened the relationships between all parties with WHSQ clearly demonstrating that they are serious about working with industry to develop longer term strategies to improve safety in the workplace and to assist businesses to move beyond compliance and towards best practice.

Evidence of the positive outcomes of the approach can be judged by the high rate of voluntary compliance with improvements outlined in the action plans and the absence of complaint or agitation against the large scale intervention in a highly competitive sector. For example, falls from height on the processing platforms were a major risk area, with the majority of workplaces not controlling the risk. After the program 80 per cent compliance has been achieved through voluntary measures and more importantly businesses are working together to share ideas

Case Study – Agreed Safety Performance Improvement Plan for Macadamia Australia

Background

Macadamia Australia are one of the largest group of macadamia producers in Queensland and Australia, with plantations across Central and Northern Queensland. Maintaining 130,000 macadamia trees, and promoting best practice and innovation in growing and handling, 2000 tone of nuts are harvested each year. Due to this huge task, over 200 people are employed for field work, operating machinery and working in their processing plant.

Macadamia Australia have a non-negotiable code of ethics for all suppliers to their businesses, the consequence of breaching this code is potential cancellation of supply agreements. Meeting requirements of various statutory legislation is part of this code, so all suppliers have an interest in keeping on top of their legislative requirements, including WHS.

What was the problem?

A supplier to Macadamia Australia in North Queensland, came to the attention of WHSQ through a mobile team of Inspectors who were monitoring compliance with WHS in the horticulture industry. On first visit, the property appeared in good shape, but further inspection located old and poorly designed plant with very rudimentary guarding, the hazardous chemical plant was in poor condition and unmaintained, posing a risk to both people and the environment. Staff, including backpackers, were not supervised or provided with adequate training on the high risk tasks and the general housekeeping of the packing shed was poor.

As the Inspector needed to take action to have the serious high risk issues managed, they opted, after consulting their manager, to utilise flexibility to gain compliance.

What was the solution?
To gain compliance with legislative requirements the Inspector used a mix of enforcement methods in the following order:

- Statutory notices for high risk, low cost issues that placed workers at immediate risk, taking time to explain the necessity with the PCBU;
- Agreed outcomes captured through work plans for longer term rectifications such as major redesign of guarding, housekeeping and training of staff doing lower risk work.

These agreed outcomes were closely monitored, through regular conversation, the sharing of photographs, work orders and receipts as an indication that work was ongoing, and site visits to confirm the work was actually being done.

The Inspector knew it was in the best interest for the PCBU to comply or they risked losing their supply agreement with the parent company, so open and frequent discussion were held during the life of the agreement.

Utilising this method enabled the business to work towards best practice not just meeting legislative requirements. The Inspector also put the PCBU in touch with the Queensland Workforce Development Office who, as part of their role, research business management and skills based training for the agriculture sector. This enabled quality training to be provided on site at a reduced cost.

**What were the benefits?**

The PCBU was able to put more time into researching best practice and gain support from the parent company to comply which enabled a cultural shift at the workplace where safety was prioritised.

This method of gaining compliance was far more palatable in this situation and the flexibility diffused the animosity towards the Government. The PCBU now enjoys an ongoing relationship with WHSQ.

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**Case Study – Agreed Safety Performance Improvement Plan for Transport for Brisbane**

**Background**

Transport for Brisbane (a division of Brisbane City Council) operates one of the largest public transportation bus fleets in Australia, together with the City Cat and City Ferry providing a public transportation network across Brisbane’s metropolitan area employing approximately 2900 employees of which 2300 are Bus Drivers.

Manmeet Sharma, a 29 year old Transport for Brisbane Bus Driver was killed during work at a Bus Stop located at Moorooka, South of Brisbane in October 2016. The Bus Driver stopped at a designated Bus Stop when a short time later, a member of the public threw an incendiary device at the driver and set both the driver and Bus alight. Eleven passengers were trapped on the bus and did not self-evacuate. These passengers were released from the bus by a passer-by who forced open the Centre service door.

Primary incident stakeholders included –

- Transport for Brisbane (TfB)
- Workplace Health and Safety Queensland (WHSQ)
- Queensland Police Service (QPS)

**What was the problem?**

QPS led the initial investigation into the event with WHSQ conducting a separate Investigation into this incident which focused on the following:

- **Height** of the Internal Centre door emergency release buttons, with many of these located at 2200 – 2350 mm from floor level
- **Placement / depth of External** emergency release buttons and
Misleading emergency button Decal design and placement.

Existing Emergency Buttons located in ‘above head’ positions were deemed too high for most of the passenger population likely to ride on TfB Buses. Specifically, only males in the top 5 percentile of reviewed anthropometric data could easily reach emergency buttons located in ‘above head’ positions. The relevant Australian Design Rule (ADR) is silent on on-board provisions for emergency evacuation of passengers and others. Voluntary industry standards such as the BIC Door Safety Advisory refers to the ‘best practice’ of locating Buttons ‘at or above eye height’.

WHSQ reviews of Emergency release buttons located externally demonstrated their position placement varied ranging from surface mount up to 55mm recessed behind the relevant bus’s side panel. TfB initially undertook to address the risks observed by WHSQ relating to the misleading decal design / placement. Despite this, TfB submitted no proposal to WHSQ involving a risk based solution to the identified existing button placement e.g. placed at a challenging height for a high proportion of the passenger population likely to ride on the TfB Bus Fleet.

**What was the solution?**

WHSQ’s initial actions were guided by the National Compliance and Enforcement Policy, and included statutory notices to address immediate risk to passengers together with strong engagement-led actions to secure compliance through further discussions and communications which provided TfB senior management with a clearer understanding of WHSQ’s concerns. As a result of the ongoing engagement, TfB elected to submit a Project Plan and Agree Actions to WHSQ. TfB have committed to the rectification of issues listed in the Agreed Actions and are working towards identifying any further measures to be adopted following the various external and internal reviews.

Parallel to the ongoing investigation, the Manufacturing, Transport and Logistics Strategy Unit of WHSQ worked with Inspectors to develop a strategic response for the benefit of the bus industry, which has been working collaboratively with WHSQ to gain a consistent approach to improve safety across this industry. A project was designed in collaboration with industry that includes the following:

- Reviewing the controls in place to date regarding the location of emergency release button for service doors throughout their fleet;
- Liaising with suppliers of plant to determine existing risk management practices to identify the location of the emergency release button for service doors throughout their fleet;
- Confirming the location of emergency release button for service doors throughout their fleet;
- Completing an interim risk assessment to determine any imminent risks to health and safety arising from the ability of the general population to access the emergency release button for service doors throughout the fleet and putting in place any interim controls required;
- Receiving and considering the additional information arising from the report from external consultants, material from the suppliers, the Regulator and Industry Review and considering whether any additional opportunities for safety improvement are identified and further risk assessment required as a result.

Future industry-wide outcomes may include - further development of an industry-wide standard, development of ADRs, compiling risk assessments from suppliers and the review of anthropometric data in order to continuously improve and enhance safety outcomes for passengers and workers. A preliminary TfB internal review of the fleet has identified four bus models for this project, however, the whole TfB fleet will be subject to the same assessment to identify any other potential risks.

TfB anticipated an 8 (eight) month timetable for the above process to be completed, and WHSQ liaised with TfB to identify key milestones to ensure the action plan remained on track. The process is ongoing at this stage.
What were the benefits?

By adopting an engagement-style approach, WHSQ has secured senior TfB management commitment to undertaking a fleet-wide approach in managing the risks that WHSQ identified with the placement of emergency evacuation buttons.

WHSQ have committed technical support from the Ergonomics and Engineering Units to support the industry-wide changes. WHSQ will leverage off this commitment and actions taken by TfB to engage with other Queensland bus service providers and set an industry-wide standard.

The above actions will inform an industry-specific case study to support improvements in the Queensland bus service industry. WHSQ will collaborate with TfB senior management to positively present these proposed improvements at the upcoming cross-agency Bus Safety Forum.

WHSQ will continue to consult with other suppliers of buses in Australia to secure improvements in future bus design, and through this, seek to secure changes to the Australian ADRs. Overall, by using an engagement approach with TfB, WHSQ potentially will affect changes in the effectiveness of emergency evacuation provisions on buses specifically in the Queensland jurisdiction, with the potential to afford positive changes in the future for all buses designed, manufactured, supplied and used by all Australian jurisdictions.

Case Study – Securing compliance without enforcement – PerforM

Background

The Participative Ergonomics for Manual Tasks (PErforM) program is a key WHSQ initiative which aims to build industry capacity to manage hazardous manual tasks risks, through a systematic approach across their business. It does not only address one hazardous manual task (HMT) in isolation due to a non-compliance issue.

The PErforM program has demonstrated ongoing business benefits and sustainable results including improved WHS systems and improvements in safety culture. Coordination, planning and evaluation of the state-wide PErforM program and industry network is done by the Ergonomics Unit of WHSQ. The program is delivered to industry by staff who are trained and designated as ‘PErforM trainers’. WHSQ inspectors and advisors also provide assistance to industry regarding the PErforM program and it has been integrated into the IPaM program and Enforceable Undertakings arrangements.

The PErforM program has been successfully used by a range of industries and across different sized workplaces. Since 2011 until the end of 2016, approximately 2320 industry representatives have registered to attend the state-wide workshops.

What was the problem?

The cost of manual task injuries in Queensland workplaces is difficult to measure. Workers’ compensation data shows increasing compensations claims, and it is well recorded that many workers fail to make full recovery, often carrying injures through their lifetime.

WHSQ, through the Ergonomics Unit provide advice to other strategy units and priority programs to design well rounded campaigns to target high risk issues in priority industries.

What was the solution?

The following case study examples show how various organisations across a range of priority industry sectors have reduced injury and compensation rates using the PErforM program include:
• **Palletmasters**, a medium sized manufacturing business is presenting their PErforM journey at the March 2017 PErforM network meeting. They report that since implementing PErforM manual task related injuries at the workplace have reduced significantly (no quantitative data on this yet), their workers are proactively identifying problem tasks and the safety culture in the workplace has improved.

• **The City of the Gold Coast Council** reported a 60 per cent reduction in workers’ compensation claims for manual handling related injuries in the branch where PErforM was implemented. Their story has been published as a case study film and webinar on the WHSQ web site.

• **CSR Limited** reported a 38 per cent reduction in its workers’ compensation claims after embedding the PErforM risk assessment tool into their safety management system and implementing their manual handling program. The CSR story is available as a webinar and in an Australian Strategy case study published by Safe Work Australia.

**What were the benefits?**

In 2015 WHSQ provided advice, training and industry contacts to SafeWork NSW who are now promoting the PErforM program. Most recently, the New Zealand Accident Compensation Corporation expressed interest in implementing the PErforM program in New Zealand.

Good industry relationships, transparency in delivering the program and ensuring that WHSQ Inspectors who deliver this program are equipped with a high skill set has led to the success in the above projects. Compliance was gained through the provision of information and advice that was backed up by a credible program that had industry support. One could argue that this level of compliance would not have been secured through enforcement alone. Success in such a program can be difficult to measure, however a survey of past workshop registrants was conducted during 2015 to identify the level of implementation of the PErforM program post workshop attendance. The evaluation findings (average response rate of 15 per cent) indicated that:

• Since attending a workshop 54 per cent of respondents have used PErforM at their workplaces

• The majority of controls implemented were high level, primarily involving task redesign and use of mechanical aids

• Business benefits from implementing PErforM have included decreased injuries, improved productivity, communication and risk awareness.
Attachment 8: Consideration of industrial manslaughter offences in Australian jurisdictions

Recent consideration of industrial manslaughter offences in Australia

Queensland

The issue of industrial manslaughter was examined in a research brief by the Queensland Parliamentary Library in 2006, two years after the ACT industrial manslaughter provisions came into effect.\(^8^6\) In Queensland, a person who unlawfully kills another under such circumstances as not to constitute murder is guilty of manslaughter\(^8^7\) and a person could be prosecuted for a work-related death under the Criminal Code. The research brief noted that for a prosecution for manslaughter by criminal negligence to be successful, a very high degree of negligence needs to be established – much higher than for civil negligence. This standard of proof would apply regardless of whether the offence was one of general, or industrial, manslaughter.\(^8^8\)

In late 2007, an independent review into the Workplace Health and Safety Enforcement Framework was commissioned by Workplace Health and Safety Queensland (WHSQ). The review was initiated in the context of trade unions seeking to introduce the offence of industrial manslaughter and raising general concerns over WHSQ’s approach to enforcement. The review did not recommend introducing an offence of industrial manslaughter, noting that no consistent position had emerged in the various jurisdictions on the issue. There did not appear to be any reason or justification for the introduction of a new offence where the current criminal law could be applied where necessary.

The *Workplace Health and Safety Act 1995* (repealed) provided for a scale of penalties. For example, where a breach resulted in a single fatality, the maximum penalty was 1000 penalty units or two years’ imprisonment. However, if a breach resulted in multiple fatalities, the maximum penalty was 2000 penalty units or 3 years’ imprisonment.\(^8^9\)

South Australia

In 2016, the Greens sponsored the Work Health and Safety Act Amendment Bill which proposed the imposition of jail terms of up to 20 years on company officers and individuals who recklessly cause a work-related death (see the inquiry report tabled 1 November 2016). However, a parliamentary committee declined to support the bill. Under a recommendation from the inquiry, SA public prosecutors will establish a protocol for ensuring due consideration is given to launching manslaughter prosecutions after workplace deaths.

Australian Capital Territory

In November 2003, the ACT passed the *Crimes (Industrial Manslaughter) Amendment Act 2002*, which commenced on 1 March 2004. That Act inserted a new Part 2A into the *Crimes Act 1900* (ACT), creating two new offences of industrial manslaughter [note, the term industrial manslaughter is not defined, nor is it used in the substantive provision]. These offences provide that employers (corporations) and senior officers can be prosecuted for the work-related death of workers and carries a maximum penalty of 20 years’ imprisonment. To date, there have been no prosecutions under the Crimes Act provisions, however,

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\(^8^6\) Industrial Manslaughter, Research Brief No 2006/3, Queensland Parliamentary Library, January 2006.
\(^8^7\) s303 *Criminal Code Act 1900* (Qld).
\(^8^8\) Industrial Manslaughter, Research Brief No 2006/3, pp 8, 9.
\(^8^9\) s24(1)(a), (b) Workplace *Health and Safety Act 1995* (Qld) (repealed).
there has been a successful Category 2 prosecution (for a breach of duty resulting in death) of a corporate entity under the *Work Health and Safety Act 2011* (ACT).

**Commonwealth**

After the passage of the ACT legislation, the Commonwealth was concerned that some Commonwealth authorities (particularly Government business enterprises, and the employees of such bodies covered by the ACT legislation) could be liable to prosecution for the industrial manslaughter offences contained in Part 2A. Accordingly, the Commonwealth government introduced a Bill to exclude Commonwealth employers and employees from the application of the ACT industrial manslaughter laws and any other similar industrial manslaughter laws enacted by a State or Territory in the future.

The Commonwealth opposed the ACT industrial manslaughter laws on the basis that:

- they created specific offences which duplicated existing offences in other ACT legislation (including OHS legislation) available to deal with workplace deaths; and
- Part 2A singled out the conduct of employers and senior officers.

The Commonwealth considered that creating industrial manslaughter offences under the general criminal law was inconsistent with the overall objective of the WHS legislative framework, i.e. to prevent workplace deaths and injuries, rather than just imposing punishment after the event.

**Victoria**

In Victoria, the government commissioned Chris Maxwell QC to conduct a review of Victorian OHS laws (the Maxwell Report). That report rejected the introduction of an industrial manslaughter offence. The Report noted the widely-held view that prosecution of manslaughter should remain within the province of the general criminal law.

**New South Wales**

In 2000, a panel of legal experts was established to advise the New South Wales government about the Occupational Health and Safety Act 2000. The Panel considered that establishing each of the elements required by the offence in the ACT law provided a very high threshold to secure a conviction. It was believed that the elements in the ACT law were more onerous to satisfy than those which then existed under the NSW Occupational Health and Safety Act. Consequently, it was believed that very few convictions would result, and therefore the deterrent effect of such laws would be lessened.

**National Review**

The Australian National Review into Model Occupation Health and Safety Laws (2008/2009) emphasised that contraventions of the WHS statutes, particularly the general duty provisions, were and should be ‘criminal’. The Review noted “Providing for a breach of a duty of care to be a criminal offence is an essential element of modern OHS legislation…. Making non-compliance with a duty of care a criminal offence not only reflects the seriousness with which such conduct is regarded, but also reinforces the provision’s deterrent effect.”

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90 Brett McKie v Munir Al-Hasani & Kenoss Contractors Pty Ltd (in liq) [2015] ACTIC 1
93 Maxwell, pp13-14.
In responding to the proposal under the National Review into Model OHS Laws (2009) that a Category 1 offence have the elements that the duty holder was reckless or grossly negligent, the Workplace Relations Ministerial Council (WRMC) considered that 'gross negligence' offences should be dealt with outside the model Act as they would otherwise cut across local criminal laws and manslaughter offences. Accordingly, the WRMC modified the wording of the Category 1 offence to cover the most serious breaches, for an offence of recklessly endangering a person to risk of death or serious injury at a workplace, thus removing 'gross negligence' from the categories of offences.
## Attachment 9: Comparison of other jurisdictions penalty levels

<table>
<thead>
<tr>
<th>Queensland, NSW, ACT, SA, NT and Tasmania</th>
<th>Victoria</th>
<th>Western Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category 1</strong> reckless conduct offence:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporation</td>
<td>$3,000,000</td>
<td>Breach with gross negligence</td>
</tr>
<tr>
<td>Individual who is a PCBU or Executive Officer</td>
<td>$600,000 or 5 years imprisonment</td>
<td>Corporation</td>
</tr>
<tr>
<td>Other individuals e.g. workers</td>
<td>$300,000 or 5 years imprisonment</td>
<td>$500,000, first offence;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$625,000 subsequent offence.</td>
</tr>
<tr>
<td><strong>Category 2</strong> Failure to comply with health and safety duty:</td>
<td>Aggravating factor - reckless endangerment.</td>
<td>Individual:</td>
</tr>
<tr>
<td>Corporation</td>
<td>$1,500,000</td>
<td>$250,000, first offence and 2 years imprisonment</td>
</tr>
<tr>
<td>Individual who is a PCBU or Executive Officer</td>
<td>$300,000</td>
<td>$312,500 subsequent offence and 2 years imprisonment</td>
</tr>
<tr>
<td>Other individuals e.g. workers</td>
<td>$150,000</td>
<td></td>
</tr>
<tr>
<td><strong>Category 3</strong> Failure to comply with health and safety duty:</td>
<td>Maximum fine for breach of general duty</td>
<td>Breach causing death or serious harm</td>
</tr>
<tr>
<td>Corporation</td>
<td>$500,000</td>
<td>Corporation</td>
</tr>
<tr>
<td>Individual who is a PCBU or Executive Officer</td>
<td>$100,000</td>
<td>$400,000 first offence</td>
</tr>
<tr>
<td>Other individuals e.g. workers</td>
<td>$50,000</td>
<td>$500,000 subsequent offence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Individual:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$200,000 first offence</td>
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<tr>
<td></td>
<td></td>
<td>$250,000 subsequent offence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Maximum fine for breach of general duty other than above</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$200,000 first offence</td>
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<tr>
<td></td>
<td></td>
<td>$250,000 subsequent offence</td>
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<tr>
<td></td>
<td></td>
<td>Individual</td>
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<tr>
<td></td>
<td></td>
<td>$100,000 first offence</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$125,000 subsequent offence</td>
</tr>
</tbody>
</table>

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94 The maximum penalty units for reckless endangerment for a body corporate in Victoria was increased from 9000 to 20,000 on 29/6/2016.