

---

LABOUR

---

MINISTERS

---

COUNCIL

---

Comparative Performance Monitoring

Comparison of  
Occupational Health  
and Safety  
arrangements in  
Australian jurisdictions

May 1999

---

© Commonwealth of Australia 1999

ISBN 0 642 32444 1

This work is copyright. Apart from any use permitted under the *Copyright Act 1968* no part may be reproduced by any process without permission from the Department of Employment, Workplace Relations and Small Business.

Requests and enquiries concerning reproduction and rights should be addressed to:  
Geoff Wallace  
Safety and Compensation Policy Branch  
GPO Box 9879  
Canberra ACT 2601

Phone (02) 6121 7967  
email [geoff.wallace@dewrsb.gov.au](mailto:geoff.wallace@dewrsb.gov.au)

---

## Disclaimer

The Commonwealth of Australia does not give any warranty that the information herein is current, correct or complete. The information is made available for general information only and should not be taken as a substitute for professional advice. The Commonwealth, its officers, employees and agents shall not be liable for any loss or damage howsoever caused whether due to negligence or otherwise arising from the use of information obtained from this publication.

I am pleased to present a *Comparison of Occupational Health and Safety arrangements in Australian jurisdictions*.

This publication is a matrix of comparative information on the different approaches to achieve workplace health and safety in the Commonwealth, State and Territory jurisdictions. It provides information on each jurisdiction's regulatory framework and duty of care provisions, as well as the approach taken by each jurisdiction to prevent workplace injury and disease.

Australian Ministers responsible for occupational health, safety and welfare recognise that the nation's performance in workplace safety needs to continuously improve. We must take action to prevent the unacceptable economic and human costs of work-related injury and illness.

In December 1998, the Labour Ministers' Council released the first report of the comparative performance monitoring (CPM) project to compare key performance results across all Australian occupational health and safety (OHS) and workers' compensation programs.

The *Comparison of Occupational Health and Safety arrangements in Australian jurisdictions* matrix supplements the first CPM Report. It identifies the different approaches to prevention activities in the jurisdictions, and will help to explain how the OHS outcomes reported in the CPM project are achieved.

The matrix will be a handy reference for OHS practitioners. It will also assist employers and employees in understanding their obligations and meeting their duty of care responsibilities.

The material contained in this publication has been obtained from information provided by the relevant Commonwealth, State and Territory occupational health and safety authorities. Their cooperation in the project is much appreciated.



PETER REITH

Chair, Labour Ministers' Council

Commonwealth Minister for Employment, Workplace Relations and Small Business

19 May 1999



Foreword	3
Strategic directions	6
General duty of care	16
Additional or alternative special or particular duties	18
Special duties of designers, manufacturers, suppliers etc	20
Reporting requirements	22
Occupational Health and Safety representatives and committees	24
Consultation requirements	28
Enforcement policy	32
Enforcement	38
Private right of action	40
Penalty provisions by jurisdiction — 1 July 1998	41
Adoption of NOHSC national standards	42
Further information	44

Comcare administers the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the OHS(CE) Act) in relation to Commonwealth government employment, including the Australian Defence Force (ADF) and agencies which are self-insured under the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). Comcare provides a range of regulatory and enforcement functions on behalf of the Safety, Rehabilitation and Compensation Commission (SRCC), and provides relevant policy advice to the SRCC and to Commonwealth employers.

Prevention is a key element of the jurisdiction's approach. A prevention program is undertaken with the key goals being:

- continued identification and development of prevention demonstration projects;
- promulgation of findings from these projects to Commonwealth agencies; and
- development of initiatives aimed at promoting prevention as a major strategy in the Commonwealth jurisdiction.

The Act provides for the conduct of workplace investigations of occupational health and safety (OHS) issues and incidents as appropriate. This ensures that:

- serious matters are given appropriate consideration;
- the SRC Commission is informed of issues arising from such investigations and can ensure that appropriate action is taken in workplaces to secure the health and safety of employees and others; and
- instances of non-compliance are identified and dealt with as appropriate under the legislation.

The approach can be broadly broken into two strands of investigation activity – planned and reactive investigations.

The Planned Investigation Program (PIP) is a targeted approach aimed at auditing employers' health and safety management systems. The audit process is based on the Victorian WorkCover Authority SafetyMAP tool. Targeting can be based on a number of factors including an employer's OHS record or based on particular aspects of the Act or Regulations. Involved agencies are provided with reports of investigations which detail the findings and assessment of the investigator and include recommendations where appropriate.

Reactive investigations are triggered by an event or occurrence that is considered to be serious enough to warrant an immediate investigation. Outcomes of these investigations focus on the cause of the incident, and necessary action to prevent or minimise the possibility of recurrence. Employers are usually provided with these reports and are required to take corrective action.


Options for enforcement include:

- prohibition and improvement notices (sections 46 and 47 of the Act);
- written directions (section 53 of the Act);
- public enquiries (section 55 of the Act);
- report to the Minister (section 65 of the Act); and
- suspension or cancellation of certificates or licences under the Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations.

For Government Business Enterprises, prosecution may be recommended for serious breaches of the OHS(CE) Act.

In conducting reactive investigations, Comcare uses inspectors from State and Territory OHS Authorities. The framework for these arrangements is provided in Memoranda of Understanding (MOUs) between the federal and relevant State Ministers.

---



WorkCover NSW takes a multi-faceted approach to OHS which includes the following activities:

1. Services (information, assistance, compliance and enforcement)
2. Key processes (eg licensing and approvals, skills development, auditing)
3. Other processes (including promotion and policy).

Achieving compliance with the legal obligations requires a flexible approach that aims for an appropriate balance between information/assistance and compliance/enforcement actions. WorkCover NSW will choose the most effective option for ensuring safety is improved in a lasting way at a workplace. The choice is based on the information gathered and the reasons for the visit to that workplace. These options include:

- provision of information and advice;
- issuing of Improvement and Prohibition Notices and Penalty Notices (on-the-spot fines);
- initiation of prosecution action; and
- a mix of all or some of the above options.

WorkCover provides a range of services to assist those with obligations under the legislation to meet those obligations. For example, WorkCover NSW:

- provides information, advice and assistance through a range of services including its Information Centre, Bookshop, offices and advisory services;
- issues permits and licences for a wide range of activities including storage of dangerous goods, and the importation, manufacture, selling and use of explosives;
- provides technical advice in areas ranging from hazardous substances to lifts, manual handling to safety management systems;
- provides advice on risk management approaches and safety management systems; and
- conducts various information and education programs.

WorkCover NSW encourages a systematic risk management approach where hazards are identified, associated risks are assessed and action is taken to eliminate those risks. Where the risks cannot be eliminated, they must be controlled. Risk management principles are an integral part of WorkCover NSW's information products, training packages and major programs.

WorkCover NSW also encourages a systematic approach to the management of OHS and injury management in the workplace through the adoption of Safety Management Systems.

The two major objectives for the Victorian WorkCover Authority are to:

**1. Improve the performance of Victoria's workplace safety system by:**

- reducing work-related death, injury, illness and disease;
- reducing health and safety risks to the public;
- supporting injured workers to remain at work, or return to work quickly following injury;
- providing quality services from the authority, its agents and other providers to workers, employers and the community;
- maintaining a stable, fully-funded and internationally competitive system for employers, workers and the community.

**2. Be recognised throughout the world as a leading manager of a workplace safety system.**

The Victorian WorkCover Authority is the manager of Victoria's workplace safety system. To achieve and maintain world leadership in system management, the authority:

- actively plans and influences the system (by more than just regulation),
- intervenes where the system cannot reach optimal outcomes (eg reinsurance, advisory services, conciliation), and
- most importantly, accepts responsibility for system outcomes.



The Workplace Health and Safety (WHS) program has been realigned in accordance with the 1997 legislative amendments as well as regional service delivery initiatives of the Department of Employment Training and Industrial Relations. As a result, the Division of Workplace Health and Safety is now responsible for Standards, Policy and Scheme design initiatives under the direction of the WHS Board, while delivery and enforcement services are provided through the network of departmental regional offices.

With the advent of these arrangements, a draft five-year strategic view has been developed by the board which has guided the direction of the division's 1998-99 business planning.

Four major areas have been identified for action and strategies developed to address them. These are:

## **1. Promoting community awareness about the benefits of healthy and safe workplaces**

- implement a major marketing strategy;
- use publications/Internet to promote awareness in key markets;
- use publicity more effectively;
- revise the Health and Safety Awards Program;
- develop Special Initiatives Plans to target key markets and promote initiatives;
- use seminars/information sessions.

## **2. Delivering inspection and advisory services to enhance compliance**

- introduce the 'Compliance Plus' initiative (enhance linkage between solutions development and enforcement activities);
- enhance enforcement with the use of on-the spot fines;
- implement a more structured approach to information and advisory activities;
- appoint additional inspectors;
- expand the competency-based training program.

## **3. Facilitating effective workplace health and safety solutions**

- develop networks to enhance health and safety outcomes;
- sponsor leading-edge activities;
- support Workplace Health and Safety Coordinators Program;
- develop partnerships to maximise information sharing of OHS solutions;
- build links between DWHS and WorkCover, the WorkCover Board and the workplace Health and Safety Board;
- develop a program for sharing solutions.

## **4. Implementing a Regulatory Framework**

- review the legislative framework;
- develop new standards;
- develop industry codes;
- develop, promote and distribute information products about making workplaces healthy and safe.

### **Implementation**

The strategies will be initiated in the 1998-99 year. Full implementation and evaluation will be undertaken over an extended period as necessary.

The WorkCover Corporation (WorkCover) and the Department for Administrative and Information Services (DAIS) have joint responsibility for the administration of SA OHS legislation. Both WorkCover and DAIS advise the SA Government in relation to OHS policy.

## **DAIS' industry focus**

In this regard, DAIS' core business activities are prevention and compliance. We achieve the major part of our preventive role by working closely with industry to achieve better understanding of, and compliance with, legislative requirements.

DAIS- staff are based throughout SA and work in multi-disciplinary teams which are focused either on particular industries; a technical discipline, or (in the case of country offices) a geographic region. Our teams comprise staff from varied disciplines and backgrounds, and include OHS and employee relations field staff, ergonomic and occupational hygiene staff, and scientific staff. Each team is currently involved in several landmark industry projects aimed at our preventive objectives, and which each team selects after consultation with industry. Each project becomes the focus of the team's preventive activities, and is resourced accordingly. Each project is critically evaluated during and after its life. Some examples of our current projects are:

- **Community and business services team:** labour hire; medical practices.
- **Construction, utilities and telecommunications team:** elevated work platforms; amusement devices.
- **Manufacturing team:** strategic partnerships; pressure plant auditing.

## **WorkCover's SAFer Industries 2001**


This strategy focuses on 21 industry categories that account for more than half of all workers' compensation claims and costs in South Australia. WorkCover identified these industries after a review of industry statistics to determine where industry intervention would provide the most impact in tackling workplace injury and illness claims in South Australia. SAFer Industries 2001 is a joint approach with industry, is industry driven and will develop strategic industry-wide approaches to health and safety.

WorkCover achieved its target of six industry committees being up and running by 30 June 1998, with consultants allocated to the first ten industry categories. These industries were: nursing or convalescent homes; road transport; hospitality; building construction; grape, fruit, vegetable and nurseries; and meat products manufacturing.

## **Review of South Australia's OHS regulatory system**

On 27 March 1999, the Minister for Government Enterprises indicated to the South Australian Parliament that he has asked DAIS and WorkCover to facilitate a number of trials of industry specific approaches to occupational health and safety, tailored to meet particular industry requirements. These industry trials will include a cross-section of industries covering high and low risk sectors. Employers and employees will be invited to work with government to identify key risks in their respective industries and develop strategies to address those risks. The Minister indicated that he is prepared to give these industry strategies regulatory status as codes of practice and to consider whether these arrangements should override general regulatory standards. The Minister considers that it is very clear that we need to give employers and employees every opportunity to own safety arrangements that are relevant to their industry. Depending upon the effectiveness of these trials, the Government may commit to substantial change to South Australia's regulatory OHS system over the next three years.

---



The Western Australian Government has a **WorkSafe WA 2000 Vision** that by the year 2000:

- Western Australia achieves the lowest work-related injury, disease and fatality rates in Australia; and
- Western Australian injury, disease and fatality rates be at least 50 per cent lower by July 2000 than they were in June 1995.

To achieve the vision the Government has a four-part **WorkSafe WA 2000 Plan**:

- the ThinkSafe cultural change program;
- the WorkSafe Plan to promote occupational safety and health management systems;
- firm and fair enforcement of the *Occupational Safety and Health Act*; and
- provision of information to workplaces, the education system and homes.

Workplace Standards Authority (WST) has focused on influencing the culture of the workplace, so that employers and employees accept their 'duty of care' obligation which is the underpinning principle of the *Workplace Health and Safety Act 1995*.

A re-organisation was undertaken during 1997 to reflect:

- industry specific focus (10 industry sector groups)
- improved services to industry through a multi-skilled inspectorate
- improved information services through the establishment of a dedicated Helpline and publicity/publication branches
- improved enforcement services through the establishment of an Advocacy and Case Management Branch
- a dedicated standards section with responsibility for registration, certification and accreditation.

Field operations are supported and complemented by the Workplace Safe Campaign, an integrated media campaign funded by the Workplace Safety Board. A budget of \$700 000 has been allocated for this campaign during 1998-1999.


The Inspectorate has continued with a sectoral approach to the monitoring of workplace standards and the indicators are that this strategy is being successful in improving occupational health and safety.

The strategy over the next three years will be to:

- provide more specific knowledge of expectations;
- advise on specific information in respect of achieving expectations;
- provide follow-up and reinforcement of components of the Workplace Safety Campaign;
- improve enforcement outcomes using improvement and prohibition notices, show cause conferences and prosecutions;
- consider the introduction of infringement notices (on-the-spot fines) as a means of ensuring legislative compliance without the time, cost and complexity of court prosecutions;
- on-going review of legislation to ensure that it is contemporary and relevant.

These core strategies will be implemented by each sector independently. The identified improvement needs within each sector will be matched with the skills and knowledge of the inspectors so as to enable rapid response to emerging opportunities for intervention.

---



A key objective for the Work Health Authority is to achieve safer workplaces throughout the Northern Territory. The challenge is to overcome the lack of commitment in many sectors of industry to OHS and to address the level of understanding of the responsibilities and obligations inherent in a self-regulatory environment.

Through a combination of advisory and enforcement strategies, the authority will encourage employers to provide and maintain safe and healthy workplaces; designers, manufacturers, suppliers and installers to provide workplace products and services that are safe; and workers to take care of their own health and safety.

The Work Health Authority will also focus on ensuring that there are effective controls on the way in which highly hazardous materials are stored, handled and transported in the Territory. People handling dangerous goods will be encouraged to be aware of the potential dangers and be equipped to prevent mishaps occurring. Standards and systems will also be developed to prevent mishaps.

Particular areas of focus for the Work Health Authority include the following:

- the authority will align the education program with the prevention program targeting strategy and the outcomes of the market research project;
- prevention strategies for workplaces and industry sectors identified by the workplace targeting strategy will be implemented;
- a Work Health safety management audit tool will be developed and trialed by the end of 1998, and new safety management audit tools will be introduced to industry by the beginning of 1999;
- the Work Health (Occupational Health and Safety) Regulations will be reviewed;
- codes of practice will be developed to support the new Dangerous Goods Act; and
- new codes of practice under the Work Health Act will be developed as the need is identified by the workplace targeting strategy.

# Australian Capital Territory

---

In 1997, an external review of ACT WorkCover was conducted to provide information to improve all services. As part of the implementation of the review, ACT WorkCover developed a Prevention Strategies Framework which is a strategic approach based on a systems model. The primary focus of the model is the interaction between WorkCover, its partners, and the enterprises of the ACT.

The premise of the model is that workplaces in the ACT are part of a system, the main purpose of their role being to produce goods and services. However, an additional 'by-product' of this system is workplace-related injury, death and disease.

ACT WorkCover's role is to ensure that the system is influenced in a way that increases prevention of injury, death and disease. WorkCover carries out this role both directly and through formal and informal partnerships with other agencies, enterprises and bodies with shared goals.

In examining the opportunities available to influence the behaviour of people in the system, WorkCover has applied five key strategies. All of these strategies recognise that change in the overall system is the result of change within the individual enterprises. They equally recognise the responsibility of each enterprise in reducing their own rates of injury, death and disease. The five key strategies are:

- leadership in prevention;
- the provision of advice;
- encouragement and support;
- targeted education; and
- enforcement.

The overall measure of WorkCover's success is a downward trend in the rates of injury, death and disease, lower workers' compensation premiums and increasing provision of advice, encouragement and support. The achievement of these measures are reported to the Government on a quarterly basis as part of the requirements of the Purchase Agreement.

The implementation of recommendations arising from the review of WorkCover involves continuous improvement in the internal structures and processes, stronger and productive alliances with stakeholders and reform of all the legislation administered through WorkCover. This includes review and reform of the *Occupational Health and Safety Act 1989*. The review of this Act is expected to be completed in 1999.

An amendment to the *Occupational Health and Safety Act 1989* was passed in the Legislative Assembly on 21 April 1999. This change altered the statute of limitations so that the twelve months in which a prosecution can be brought can commence from the date of the delivery of a Coroner's report or Inquiry report, not only from the date the event occurred.



The Commonwealth *Occupational Health and Safety (Maritime Industry) Act 1993* is administered by the Seacare Authority, while the inspectorate function is undertaken by the Australian Maritime Safety Authority (AMSA).

Consistent with its vision of enhancing the safety of seafarers, AMSA has initiated the following programs:

- a reform of incident reporting requirements to streamline the altering, reporting and data collection processes. AMSA is also working with industry on the development of industry specific performance indicators to enhance the monitoring of OHS performance;
- a review of medical fitness standards designed to modernise the system of medical examinations and create a new standard which reflects current OHS work practice;
- following a review of its inspectorate function, AMSA has commenced a series of planned safety audits within industry designed to improve the understanding of OHS performance and to raise industry awareness of its obligations and duties under relevant OHS legislation;
- enhanced training of maritime OHS inspectors.

## General duty of care

	Commonwealth	NSW	Victoria	Qld
<b>Principal Act</b>	<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	<i>Occupational Health and Safety Act 1983</i>	<i>Occupational Health and Safety Act 1985</i>	<i>Workplace Health and Safety Act 1995</i>
<b>Administration of Act</b>	Comcare, on behalf of Safety, Rehabilitation and Compensation Commission	WorkCover NSW	Victorian WorkCover Authority	Division of Workplace Health and Safety, Department of Employment, Training and Industrial Relations
<b>Coverage</b> Employers Employees Public at the workplace Manufacturers (plant and substances) Installers (plant only) Designers (plant only) Suppliers (plant and substances) Importers (plant and substances) Occupiers Persons in control of workplace Self-employed Principal contractors	Importers are 'deemed manufacturers'  Not covered: occupiers, self-employed, principal contractors	Employers do not have a duty of care to themselves. It is owed to others in the workplace.  Self-employed, principal contractors and employees do not have a duty of care to themselves.  Limited coverage of risk plant and public risk in relation to the erection and installation of structures.	Those in control of workplaces defined as 'occupier'  Principal contractor's duties not directly addressed - duty as an employer depends on the extent of the control of the workplace.  Additional coverage: public risk plant	Additional coverage: public risk plant
<b>Duties of employers</b> A general duty to: — provide and maintain, so far as is practicable, a working environment that is safe and without risks to the health of employees (including apprentices) while they are at work, and — ensure that people who aren't your employees are not exposed to health or safety risks arising from the work being done	As per general duty	Absence of the words 'so far as is reasonably practicable' from s.15(1) creates a broader duty than that of other jurisdictions.  Defence on grounds of reasonable practicability is allowed.	As per general duty	Duty is owed to any person employed under a contract of service, including volunteers.  Absence of words 'so far as is practicable' from s.28 creates a broader duty than that of most other jurisdictions.

SA	WA	Tas	NT	ACT	Seafarers
<i>Occupational Health and Safety and Welfare Act 1986</i>	<i>Occupational Safety and Health Act 1984</i>	<i>Workplace Health and Safety Act 1995</i>	<i>Work Health Act 1986</i>	<i>Occupational Health and Safety Act 1989</i>	<i>Occupational Health and Safety (Maritime Industry) Act 1993</i>
Department for Administrative and Information Services, Workplace Services WorkCover Corporation	WorkSafe Western Australia	Workplace Standards Tasmania, Department of Infrastructure, Energy and Resources	Department of Industries and Business Work Health Authority	ACT WorkCover, which reports through the Department of Urban Services to the Minister for Urban Services	Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)
Additional coverage: building designer/owner, building materials, erection and installation of structures.	Additional coverage: public risk plant design, erection and installation of structures  Not covered: — occupiers	Additional coverage: public risk plant, building designer/owner, erection and installation of structures	Additional coverage: building designer/owner	Importers are 'deemed manufacturers'  Not covered: principal contractors occupiers	Coverage limited to operators (employers), employees, manufacturers, suppliers, importers (deemed manufacturers), contractors,  persons constructing, modifying or repairing a structure  persons loading/unloading ships,  public at the workplace.
Duty extends to occupiers	As per general duty	As per general duty	As per general duty	As per general duty but includes 'welfare'	As per general duty. Duty to employees extends to contractors whose activity is controlled by operator.

## Additional or alternative special or particular duties

General provision	Commonwealth	NSW	Victoria	Qld
<p><b>Special, particular duties include:</b></p> <p>Providing and maintaining safe plant and systems of work that minimise health risks.</p> <p>Ensuring that plant and substances are used, handled, stored and transported safely.</p> <p>Giving employees whatever information, instruction, training and supervision is necessary, particularly about the plant, equipment and substances (such as chemicals) they use in their work.</p> <p>Providing and maintaining safe access to and egress from the workplace.</p> <p>Maintaining the site in a safe condition.</p>	<p>General provision, plus: Developing an OHS policy, in consultation with relevant unions.</p> <p>Monitoring employees' health and safety at work and maintaining appropriate records.</p>	<p>General provision, plus: Providing and maintaining a safe working environment and adequate facilities for employees' welfare at work.</p>	<p>Duties extend to employees of independent contractor where employer has control over the matter.</p> <p>Employer also has obligations to monitor and keep certain records concerning health and safety of employees.</p>	<p>Complying with regulations and standards made under the legislation.</p>

SA	WA	Tas	NT	ACT	Seafarers
<p>General provisions, plus: Identifying and eliminating workplace risks.</p> <p>Providing safe and healthy facilities for welfare of employees.</p> <p>Keeping information about health and welfare of employees including about work-related accidents and injuries.</p> <p>Preparing and maintaining appropriate policies and procedures about OHS and ensuring employees understand these.</p> <p>Consulting with employees or health and safety representatives.</p>	<p>General provisions, plus: Providing protective clothing and equipment.</p> <p>Notification of fatalities and specified injuries and diseases.</p> <p>Consult and co-operate with HSRs and other employees.</p>	<p>Duties extend to contractors and their employees.</p> <p>General provisions, plus: Providing a safe working environment for contractors and their employees.</p> <p>Ensuring contractors and their employees know health and safety rules and comply with them.</p> <p>Preventing contractors or their employees from working in a way which puts the health or safety of others at risk.</p>	<p>General provisions, plus: Ensuring that visitors to the site are aware of and observe safety requirements.</p> <p>Regulations may provide for monitoring of health of workers, employment of a qualified person to advise regarding health and safety of workers, monitoring conditions likely to affect health and safety of workers, and preparation of written health and safety policy.</p>	<p>General provisions, plus: Developing an OHS policy in consultation with employees and relevant unions.</p> <p>Providing adequate facilities for employees' welfare at work; monitoring health and safety of employees, and conditions of workplaces under employers' control.</p> <p>Maintaining information and records regarding employees' health and safety.</p> <p>Providing appropriate medical and first aid facilities.</p> <p>Ensuring plant is erected or installed in a safe manner and does not constitute a risk to employees' health.</p>	<p>General provisions, plus: Providing adequate facilities for employees' welfare at work.</p> <p>Monitoring employees' health and safety, maintaining appropriate records and providing first aid services.</p> <p>In consultation with involved unions must develop an OHS policy enabling effective cooperation in promoting and developing effective health, safety and welfare measures and for continuing consultations between employers, employees and unions.</p>

## Special duties of designers, manufacturers, suppliers

Standard provisions	Commonwealth	NSW	Victoria	Qld
<p><b>Special duties of designers, manufacturers, suppliers etc</b></p> <p>Designers, manufacturers, importers or suppliers of plant, equipment or a substance (such as a chemical) for use at worksites have a special duty to:</p> <ol style="list-style-type: none"> <li>1. Make sure it is safe when properly used.</li> <li>2. Do whatever testing and examination is needed to reduce or eliminate safety risks.</li> <li>3. Do whatever is needed to give workers using it the information they need to use it safely.</li> </ol>	<p>As per (1) and (3)</p> <ol style="list-style-type: none"> <li>2. Requires research as well as testing and examination to reduce or eliminate health and safety risks.</li> </ol>	<p>As per standard provisions</p>	<p>As per standard provisions</p>	<p>As per (2) and (3)</p> <ol style="list-style-type: none"> <li>1. Make sure it is safe when properly used, both in its design and manufacture.</li> </ol> <p>Ensure appropriate information about its safe use is available and if directed by the CEO, prevent the use of unsafe plant or substances.</p>
<p><b>Duties of employees</b></p> <ol style="list-style-type: none"> <li>1. To take reasonable care of own health and safety while at work and to avoid adversely affecting the health of any other person at or near the workplace.</li> <li>2. To cooperate with the employer or any other person to fulfil requirements imposed in the interests of safety and health.</li> <li>3. To use equipment in a safe and proper manner and in accordance with the employer's instructions.</li> </ol>	<p>As per general duties</p>	<p>No duty to take care of own health and safety at workplace, only that of other persons.</p> <p>Shall not intentionally or recklessly interfere with or misuse anything provided in interests of health, safety and welfare.</p> <p>Must not create a risk (or the appearance of a risk) with the intention of disrupting the workplace.</p> <p>Item 3 does not apply, although cooperation is required so that employer obligations can be complied with.</p>	<p>Shall not wilfully or recklessly interfere with or misuse anything provided in interests of health, safety and welfare, nor wilfully place the health and safety of others at risk.</p>	<p>No requirement to take 'reasonable care' for the health and safety of persons affected.</p> <p>Provides instead for 'wilfully' placing at risk the health and safety of others at the workplace.</p>

SA	WA	Tas	NT	ACT	Seafarers
<p>As per (2) and (3)</p> <p>1. Make sure it is safe when properly used or handled.</p>	<p>As per (1) and (3)</p> <p>2. Do whatever testing and examination is needed to reduce or eliminate safety and health risks. Ensure adequate information is provided when plant or substances are supplied and thereafter whenever requested.</p>	<p>As per standard provisions</p> <p>plus – Ensure, as far as reasonably practicable, that it is installed safely and in a way that will not subject users to any risks to their health and safety.</p>	<p>As per standard provisions</p>	<p>As per (1); As per (2) plus: Elimination of health as well as safety risks.</p> <p>As per (3) plus 'and without risks to health'.</p>	<p>As per (1) and (3).  (2) requires research as well as testing.</p>
<p>Additional duty to ensure that s/he is not, 'by the consumption of alcohol or a drug, in such a state as to endanger' own safety or that of others at work.</p>	<p>Must report any hazards or injury or harm to health of which s/he is aware.</p> <p>Must use protective clothing and equipment as provided and as properly instructed.</p>	<p>As per general duties</p>	<p>Must take 'appropriate' care rather than 'reasonable' care.</p> <p>To follow all reasonable directions from employer regarding health and safety.</p> <p>Must not wilfully or recklessly interfere with or misuse anything provided in interests of health and or wilfully place at risk the health or safety of a person at workplace.</p>	<p>Must take all reasonably practicable steps to ensure they take no action or make any omission that creates a risk, or increases an existing risk, to health and safety at or near their place of work.</p> <p>Must cooperate with employer or any other person to the extent necessary to enable the employer or other person to fulfil duties placed on employer or others under the Act.</p>	<p>As per general duties, plus: Operator and an involved union or H&amp;S committee may agree on selection or manner of use of protective equipment.</p>

## Reporting requirements

	Commonwealth	NSW	Victoria	Qld
<p><b>Reporting requirements for work injuries and dangerous incidents</b></p>	<p>Regulations require notice of death to be given within 2 hours.</p> <p>Notice of serious personal injury, incapacity from work or dangerous occurrence to be given within 24 hours.</p> <p>Employers must keep a record of each accident and dangerous occurrence for 30 years.</p>	<p>Work injuries, accidents and dangerous incidents must be reported, details as provided by regulation.</p>	<p>Various notification requirements under the Act and regulations such as notifying the WorkCover Authority of dangerous occurrences as well as serious injuries in the workplace.</p>	<p>The provisions for notifying and reporting serious bodily injury, work caused illness or dangerous event to the CEO of DETIR are contained in the Regulation.</p> <p>An event causing death must be notified 'promptly' and in the approved form within 24 hours.</p> <p>All other events or happenings must be notified in the approved form within 24 hours.</p>

SA	WA	Tas	NT	ACT	Seafarers
<p>No express provisions in OHS Act requiring notification to WorkCover Corporation of injuries accidents, etc (note that workers' compensation legislation provides for reporting of claims).</p> <p>Reporting requirements imposed by regulations.</p> <p>Work injuries causing death must be notified by phone or fax as soon as practicable after injury.</p> <p>Preliminary notice by telephone or fax of dangerous occurrences as defined to be notified as soon as practicable after occurrence.</p> <p>Written notification to be provided within 24 hours.</p>	<p>The employer must notify the WorkSafe Western Australia Commissioner of fatalities and specified injuries, and diseases to an employee which occur in the workplace.</p>	<p>The employer must notify an inspector 'by the quickest available means' if a person is killed, suffers serious injury or illness or a dangerous incident occurs at the workplace.</p>	<p>Employer must report 'prescribed' list of accidents including accidents resulting in death, or causing injury resulting in absence of 5 days or more of a worker to the Work Health Authority.</p> <p>Notification to be given 'by the most expeditious means available' immediately after accident or occurrence then in writing within 7 days of the accident or occurrence.</p>	<p>Employer must notify OHS Registrar of deaths, serious injuries resulting in 7 or more days absence from work, dangerous occurrences, or any injury to non-employee.</p> <p>Notification by telephone, fax or electronic means 'as soon as practicable and in any event within 7 days'.</p> <p>Accidents where an employee is injured for one day or more must be recorded.</p> <p>Records to be retained for 5 years.</p>	<p>Notice of accident or dangerous occurrence causing death must be given within 2 hours of operator becoming aware.</p> <p>Notification of serious personal injury and dangerous occurrences within 24 hours.</p> <p>Written report within 28 days.</p> <p>Records of accident or dangerous injury must be kept for 5 years.</p>

# Occupational Health and Safety representatives and committees

	Legislation	Section/Regulation
Commonwealth	<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> Occupational Health and Safety (Commonwealth Employment) Regulations	ss 25-33,37 ss 34-36 Regs 6-29
New South Wales	<i>Occupational Health and Safety Act 1983</i> Occupational Health and Safety (Committees in Workplaces) Regulation 1984	ss 23-26 Reg
Victoria	<i>Occupational Health and Safety Act 1985</i>	ss 29-37
Queensland	<i>Workplace Health and Safety Act 1995</i>	ss 65-85 ss 86-90
South Australia	<i>Occupational Health, Safety and Welfare Act 1986</i> Occupational Health, Safety and Welfare Regulations 1995	ss 26-30 ss 32, 34 ss 31, 33, 34 Div 6.1 Div 6.2
Western Australia	<i>Occupational Safety and Health Act 1984</i> Occupational Safety and Health Regulations 1996	ss 29-35 ss 36-41 Reg 2.2-2.3 Reg 2.7
Tasmania	<i>Workplace, Health and Safety Act 1995.</i> Workplace, Health and Safety Regulations 1998.	ss 26-32 Regs 31-38
Northern Territory	<i>Work Health Act 1986</i>	ss 44A-44G
Australian Capital Territory	<i>Occupational Health and Safety Act 1989</i> Occupational Health and Safety Regulations	ss 36-57 ss 58-60 Reg 3-4
Seafarers	<i>Occupational Health and Safety (Maritime Industry) Act 1993</i> Occupational Health and Safety (Maritime Industry) Regulations	ss 41-72 ss 73-79 Reg 5

## Provides for...

- Health and safety representatives, term of office, training, powers, employers' obligations, resignation, disqualification, deputies, emergency procedures
- Health and safety committee — establishment, functions, duties of employers, elections

- Establishment of committee, functions, powers of members, unlawful dismissal of committee members
- Request for establishment of committee, members, election, procedure, functions of committee, powers of members (more than 20 workers at workplace), accredited training and trainers for committees

- Health and safety representatives, committee on request from health and safety representative, at least half committee to be employees, consultation with representatives

- Health and safety representatives
- Health and safety committees

- Health and safety representatives — elections, composition, deputies, term of office, disqualification of committee members, functions, employer responsibilities
- Health and safety committees — elections, composition, procedure, meetings, term of office, disqualification of committee members, functions, employer responsibilities
- Health and safety representatives committees — establishment, proceedings, members

- Health and safety representatives — election, consultation, term of office, functions, duties of employers, disqualification of representatives, training and notification of election
- Health and safety committees — establishment, composition, functions, meetings

- Health and safety committees — establishment, function, procedures — and representatives
- Safety representatives (more than 10 workers at workplace) election, training requirements, functions, duties of employers

- Health and safety committees — composition, functions

- Health and safety representatives (when employer has 10 or more employees) — selection, powers, emergency action, employer obligations
- Health and safety committee — functions
- Health and safety representative — training

- Health and safety representatives — election, term of office, powers, duties, disqualification, resignation, training, duties of operator
- Health and safety committees — functions, powers, duties, operator's obligations
- Election of health and safety representatives — appointment of returning officer by involved union

## Occupational Health and Safety representatives and committees (cont)

	Commonwealth	NSW	Victoria	Qld
Health and safety representatives (HSR)	Yes	No	Yes	Yes
Deputy HSR	Yes	No	No	No
Committees	Where there are 50 or more employees and DWGs	In workplaces with more than 20 employees	Yes — where requested by HSRs	Yes
Designated work group (DWG)	Yes	No	Yes	Yes — HSRs have defined area if more than 1 representative per workplace
HSR election	Yes — by and from workers in that workplace	No	Yes – by and from DWGs	Yes – by co-workers in a workplace
Union-run election	Yes	Manner of election of committee members determined by employees	Manner of election determined by employees	Yes – if wanted by employees
Paid leave for HSR training	Such time off as is necessary to undertake an accredited course	Leave must be paid for committee members' training (both management and employee representatives)	Such time off as is necessary to undertake an approved course	Access to training a matter for negotiation with employer
Provisional improvement notices (PINs)	Yes	No	Yes	No
Power of HSR to accompany inspectors	Yes	Committee member may accompany inspector if requested. Union representatives have separate power to conduct OHS inspection.	After consultation with employer's representative/s	HSRs may conduct inspections. No specific provision to accompany inspector.
Cessation of dangerous work	HSR may initiate cease work in some circumstances	No	HSR may initiate cease work in some circumstances	No

SA	WA	Tas	NT	ACT	Seafarers
Yes	Yes	In workplaces with 10 or more employees	No	For employers with 10 or more employees	Yes
Yes	No	No	No	Yes	No
In workplaces with more than 20 employees	Yes	In workplaces with more than 20 employees	Where there are more than 20 workers employed and the majority request a committee	Yes	Yes
Yes — work group agreed between employers and employees (may be represented by union)	Areas of responsibility agreed by consultation	No	No, but workplaces are defined for the purposes of establishment of committees	Yes	Yes — at the request of involved unions or an employee with no involved union
Yes — by and from work groups	Yes — by and from the workplace	Employees may elect union official who is not an employee of the employer to be a committee member	No	Yes	Yes — by and from employees in the DWG
Yes — if wanted by employees	Manner of election determined in consultation between employer and employee delegates	No formal role for union in Act	No	No formal role for union in Act	Yes
Entitled to at least 5 days paid leave per year for training	Introductory course — 5 days paid maximum. 1 post-introductory course every 2 years with or without pay as agreed between HSR and employer.	No statutory limit	No statutory limit	No statutory limit	Such time off as is necessary to undertake an accredited course
Yes — known as a default notice	No	Yes	No	Yes	Yes
Yes	Only at request of inspector	Yes	Person nominated by the committee may inspect workplace.	Yes	HSR may conduct inspections. HSR may ask inspector to conduct an investigation and may accompany inspector
HSR may initiate cease work in some circumstances	No — employees have the right to cease work in some circumstances and inform the HSR and employer	Yes — HSR may initiate cease work in some circumstances	Employee may cease work where immediate threat exists	HSR may initiate cease work in some circumstances	Yes

## Consultation requirements

General provisions	Commonwealth	NSW	Victoria	Qld
<p><b>OHS representatives</b></p> <p>Powers of OHS Representatives</p> <ol style="list-style-type: none"> <li>1. Inspect the workplace</li> <li>2. Accompany inspector during inspection</li> <li>3. Attend interviews between employee and management/ inspectors on OHS issues</li> <li>4. Have access to employer's OHS information</li> <li>5. Approve OHS training</li> <li>6. Issue/revoke provisional improvement notices</li> <li>7. Direct cessation of dangerous work</li> </ol>	<p>One HSR and one deputy representative selected (either by election or unanimous agreement) by and from employees in a designated work group.</p> <p>Able to represent employees in consultations with employer only if no committee at workplace.</p>	<p>No provision for safety representatives.</p>	<p>Elected from 'designated work groups' established at request of employee.</p> <p>Failure of employer to comply with provisional improvement notices an offence, unless inspector called in within 7 days and notice is cancelled by inspector.</p> <p>Employer may apply to IRC for removal of representative on grounds of misuse of powers</p>	<p>HSRs must be elected by co-workers in a workplace.</p> <p>Workers may negotiate with employer to elect more than one HSR at the workplace.</p> <p>No power under the Act for HSR representatives to issue PIN or default notices or to direct cessation of dangerous work.</p>
<p><b>OHS committees</b></p> <p>At least half the committee must be employee representatives.</p> <p>Employee representatives are elected by and from workers at the workplace.</p> <p>Employer representatives appointed by employer.</p>	<p>Must be established on request of an OHS representative or an involved union at a workplace where there are 50 or more employees and designated work groups have been established.</p> <p>Composition of committee to be determined by agreement. Must meet at least every 3 months.</p>	<p>Only in workplaces with more than 20 employees.</p> <p>Established on majority request.</p> <p>May be established in small workplaces if WorkCover Authority directs.</p> <p>Chairperson and convenor elected 'by and from' elected employee members.</p> <p>Regulations prescribe how committee is to run.</p>	<p>Secondary to HSRs.</p> <p>Established on request of HSR or if required by regulations.</p> <p>At least half of committee must be employees.</p> <p>Committee should meet at least every 3 months.</p>	<p>Must be established if HSR requests or — in the case of a workplace where work of a particularly hazardous nature is carried out — the Chief Executive of DETIR directs in writing. Minimum 2 members.</p> <p>Members must include any HSR and WHS officer.</p>
<p><b>Functions of OH&amp;S committee</b></p> <ol style="list-style-type: none"> <li>1. Assist to develop, implement, review and make recommendations on OHS measures</li> <li>2. Facilitate consultation and co-operation between employer and employees regarding OHS matters</li> <li>3. Assist in dissemination of OHS information</li> </ol>	<p>As per general functions</p>	<p>Reviews OHS measures to ensure health &amp; safety in workplace and investigates OHS risks.</p> <p>Committee members have the general powers and functions of inspection, etc as HSRs in other jurisdictions.</p> <p>As per general functions (1) and (2).</p>	<p>Main function is to facilitate cooperation between employer and employees in ensuring a safe workplace.</p>	<p>As per general functions, plus:</p> <p>Advise employer about workplace health and safety.</p> <p>Review circumstances surrounding work injuries, work caused illnesses and dangerous events on referral and make recommendations.</p>

SA	WA	Tas	NT	ACT	Seafarers
<p>Elected by and from work groups constituted on request of an employee to employer.</p> <p>Independent contractors excluded from participatory process.</p>	<p>An employee may give notice to employer requiring election of HSR.</p> <p>The employer must invite employees to select a delegate to discuss the number of HSRs to be elected and areas in which they should operate.</p> <p>More limited powers of inspection than in some other jurisdictions (ie only once in each 30 days or by agreement).</p> <p>No power to issue PIN or default notices or to direct a cessation of dangerous work.</p> <p>No power to approve training.</p>	<p>As per general provisions, plus:</p> <p>If 10 or more employees are employed at any workplace they may elect a safety representative.</p> <p>No statutory functions.</p> <p>The employer must confer with the employees' safety representative whenever reasonably requested to do so.</p>	<p>No provision for health and safety representatives</p>	<p>Provision applies only to employers with 10 or more employees.</p> <p>May also apply to principal contractor with substantial control over sub-contractors.</p> <p>Employers obligations to establish designated workgroups not dependent on request by employees or unions.</p> <p>One HSR per DWG 'duly selected' by and from employees in the DWG.</p> <p>Also entitled to select a deputy HSR</p>	<p>No power to approve training course,</p> <p>May request Inspectorate to conduct an investigation.</p> <p>May examine OHS committee records.</p>
<p>Employer with less than 20 employees exempt under the regulations.</p> <p>Established on request of HSRs representative, or at least 5 employees.</p> <p>Relevant HSRs representatives encouraged to be committee members.</p> <p>Must meet at least once every 3 months.</p>	<p>Established at request of employer, an employee or if directed by Worksafe Western Australia Commissioner.</p> <p>Employer has 3 months to comply.</p> <p>Membership includes HSRs or persons elected by employees, and employer reps.</p> <p>Committees must meet at least every 3 months.</p>	<p>Must be established if there are more than 20 persons working at a workplace and a majority of them so request.</p> <p>Unless otherwise agreed between employer and employees, not less than half the members of the committee to be employees elected by employees at the workplace.</p>	<p>Employers of more than 20 workers are required to establish a health and safety committee if requested to do so by a majority of workers.</p> <p>Committee may nominate a person to inspect the workplace.</p>	<p>No provision as to when and in what circumstances an employer is required to establish a committee or what the composition of such a committee should be.</p>	<p>Must be established if requested by HSR or involved union.</p> <p>Membership includes the person in command, HSRs or others as agreed between the operator and unions.</p> <p>Minutes of committee meeting must be tabled at next shipboard management committee meeting.</p>
<p>Consult on proposed changes to HSRs and welfare practices, procedures and policies.</p> <p>Review rehabilitation developments and assist employees to return to work.</p>	<p>As per general functions, plus: considering matters referred by HSRs.</p>	<p>As per general functions, plus to consider and make recommendations to the employer relating to – training and education in, and promotion of, health and safety; changes to be made following an accident or dangerous incident.</p> <p>Committee nominee may carry out inspections</p>	<p>As per general functions plus:</p> <p>functions which in other jurisdictions would be performed by individual HSRs.</p> <p>No power to issue PIN notices or to direct cessation of dangerous work.</p> <p>A person nominated by the Committee is authorised under the Act to inspect the workplace once each 30 days. No right to inspect without notice</p>	<p>As per general functions plus 'such functions as are prescribed' and 'such other functions as are agreed' between employer and committee.</p>	<p>As per general functions</p>

## Consultation requirements

General provisions	Commonwealth	NSW	Victoria	Qld
<p><b>Employer s obligations regarding consultation with OHS representatives</b></p> <p>To consult about implementation of changes which may affect health or safety.</p> <p>Permit the representative access to workplace to undertake inspections.</p> <p>Consult on development, implementation and review of OHS measures;</p> <p>permit the representative to be present at interviews with employee concerning OHS (with consent of employee).</p> <p>Permit access to information. Allow such time off with pay as is necessary and reasonable for exercise of powers.</p> <p>Allow paid time off to attend training.</p> <p>Provide facilities.</p>	<p>As per general provisions.</p>	<p>Not applicable.</p>	<p>As per general provisions.</p> <p>An employer shall not obstruct attendance of an HSR at an approved course of training relating to OHS.</p>	<p>As per general provisions.</p> <p>Must tell HSR about any work injury, work caused illness or dangerous event happening at the workplace; any proposed changes, plant or substances affecting workplace health and safety the presence of inspectors at workplace and any notices given by inspector.</p>
<p><b>Employer s obligations regarding consultation with OHS committees</b></p>	<p>To make available any information about risks to health and safety of employees or arising from conduct of employer's undertaking.</p>	<p>Provide OHS information</p> <p>To provide committee members with training.</p> <p>Powers and functions are provided by regulation.</p>		<p>As per HSRs.</p>

SA	WA	Tas	NT	ACT	Seafarers
<p>As per general provisions plus:</p> <p>Notify HSRs of accidents, dangerous occurrences, imminent dangers, risks or hazardous situations or work-related injuries.</p> <p>Guaranteed 5 days paid time off for training per year.</p>	<p>As per general provisions plus:</p> <p>Make information available concerning workplace hazards and other matters relevant to safety and health of employees.</p> <p>Notify representative immediately where any accident or dangerous occurrence takes place in workplace.</p>	<p>As per general provisions</p>	<p>Not applicable</p>	<p>As per general provisions</p>	<p>As per general provisions</p>
		<p>General duties listed for HSRs in other jurisdictions and additional obligations as per WA.</p>	<p>Consult with committee on workplace changes which may affect health and safety.</p> <p>Notify committee of accidents.</p> <p>Make information available in regard to workplace hazards, plant and substances used.</p> <p>Make information available on health and safety of workers.</p>	<p>Must make available any information about risks to health and safety at workplaces under employer's control or arising from conduct of employer's undertaking, or from plant or substances used for purposes of undertaking.</p> <p>Must allow paid time off, 'as is necessary and reasonable' to carry out committee duties.</p>	<p>Must make available any information about risks to employees at any workplace under the operator's control and arising from the conduct by an operator of an undertaking or plant and substances used for the undertaking.</p> <p>Paid time during working hours as is necessary for the member to participate in the performance of the committee's functions.</p>

In keeping with the directions outlined in the *Occupational Health and Safety (Commonwealth Employment) Act 1991* the emphasis is on voluntary compliance. This is complemented by a range of prevention activities designed to increase awareness and understanding of OHS and its legal requirements, and to enable employers to develop their own OHS management systems. Enforcement options are used to require compliance where necessary and these may include Improvement or Prohibition Notices. Enforcement through the court system is only considered in the most serious of incidents (involving GBEs).

## New South Wales

---

Achieving compliance with the legal obligations requires a flexible approach that aims for an appropriate balance between information/assistance and compliance/enforcement actions. WorkCover NSW will choose the most effective option for ensuring safety is improved in a lasting way at a workplace. The choice is based on the information gathered and the reasons for the visit to that workplace. These options include:

- provision of information and advice;
- issuing of Improvement and Prohibition Notices and Penalty Notices (on-the-spot fines);
- initiation of prosecution action; and
- a mix of all or some of the above options.

## Victoria

---

The Victorian WorkCover Authority has issued General Guidelines for Prosecution in order to achieve consistency, transparency and predictability in relation to WorkCover prosecutions.

The authority will use promotion, education and advice to encourage compliance with legislative provisions. Where these methods are inadequate, compliance will generally be secured through the use of formal notices and directions, civil recovery and other enforcement methods provided for under the legislation. However, in some circumstances, prosecution will be considered as the only appropriate response to the offender and the only means of deterring other prospective offenders from contravening the legislation.

The authority recognises that, when it files a charge or conducts a prosecution, it is not enforcing the legislation it administers in isolation, but is functioning as a prosecution agency in the criminal justice system. As with all public prosecutions agencies, the authority will take this action when it is required in the public interest.

Public interest considerations that bear upon the decision whether or not to prosecute in a particular case include:

1. the seriousness (including prevalence) of the offence;
2. mitigating or aggravating circumstances;
3. relevant history and other relevant characteristics (such as age, physical health, mental health etc) of the alleged offender;
4. age of the offence;
5. degree of culpability of the alleged offender in connection with the offence;
6. availability and effectiveness of alternatives to prosecution;
7. level of public concern;
8. the necessity to maintain public confidence in the administration of the law;
9. any entitlement of the authority or other person or body to compensation or reparation.

Prosecutions will generally be instituted if investigations disclose:

1. offences involving a significant risk to health and safety, including a risk of death or serious injury (a 'near miss') and a risk of serious ill health;
2. offences that involved a high degree of culpability including recidivism, non-compliance with notices and directions issued under the legislation or a failure to control risks despite previous warnings, information or advice (whether from the authority or any other source);
3. offences that actually result in death, serious injury or serious ill health;
4. offences involving the design, manufacture, importation and supply of any plant or substance for use in a workplace that creates a significant risk to health and safety;
5. offences against inspectors or other persons exercising powers under the legislation;
6. discrimination by an employer against employees or job-seekers who have been health and safety representatives or have assisted inspectors or have made a health and safety complaint.

In appropriate circumstances the authority will file charges under the *Crimes Act 1958* and may also refer matters to and liaise with the Office of Public Prosecutions.

The authority will institute and conduct prosecutions according to the highest standards of ethics and prosecutorial practice.

---

## Queensland

An enforcement policy is currently being developed.

---

## South Australia

Workplace Services' enforcement policy is currently under review as part of a major redesign of the entire prosecution process.

However, South Australia's standing policy has been to use promotion, education and targeted industry assistance to ensure the best possible level of compliance. Workplace Services uses its enforcement activities as reinforcement of these primary roles and where justice for the community clearly requires enforcement action.

Enforcement action includes improvement notices, probation notices and prosecution for breaches of either the primary Act or subordinate legislation. Prosecutions are normally mounted in cases where either:

- an improvement notice or prohibition notice would be ineffective or the opportunity for such a notice has clearly passed; or
- there is a strong potential for results of the prosecution to be used to improve safety in other workplaces and the circumstances of the particular case warrant prosecution.

The redesign of the prosecution process is directed at ensuring that investigations selected for prosecution activity are completed within reasonable time (SA has an objective of deciding on the referral or non-referral of cases within six months for 80 per cent of cases), and to ensure that the mounting of a prosecution will reinforce South Australia's education objectives in key industries.

## Western Australia

---

All provisions of the *Occupational Safety and Health Act 1984* and regulations are important and will be appropriately enforced. However, the enforcement action which is warranted will depend on the circumstances of the case and seriousness of the breach. Enforcement action is in accordance with a published enforcement policy.

Non-compliance will be addressed by: improvement notice, prohibition notice, prosecution action, verbal direction or any combination thereof. Verbal direction in the context of the enforcement policy only relates to situations where a breach can be immediately rectified and inspected prior to the inspector leaving the site.

Action taken by the inspector, including verbal directions, will be conveyed to the employer, safety and health representatives or safety and health committee or any other relevant party while the inspector is at the workplace.

Where an inspector obtains sufficient evidence to establish a *prima facie* case and there is a reasonable prospect of a conviction (and it is in the public interest), consideration will be given to taking prosecution action, instead of or in addition to applying alternative enforcement actions, in circumstances including:

1. where the issue of notices is not considered appropriate for ensuring compliance with the Act or regulations;
2. where an alleged breach of the Act or regulations either has resulted, or could have resulted, in a fatality or serious injury;
3. alleged failure to comply with an improvement or a prohibition notice;
4. where an inspector alleges a person has repeated the same offence;
5. in case of discrimination against an employee for any action in relation to occupational safety and health;
6. breaches of the consultative provisions of the Act; and
7. obstruction of an inspector.

WorkSafe Western Australia's prosecution policy details the relevant considerations associated with decisions relating to instituting and continuing prosecutions. Circumstances may arise in the process of investigating a serious injury or fatality whereby WorkSafe Western Australia forms the view the evidence is appropriate to action under the Criminal Code.

Workplace Standards Tasmania (WST) will, at all times, endeavour to use promotion, education and guidance as the primary tools for ensuring compliance with the provisions of the *Workplace Health and Safety Act 1995*.

However, in cases where it is the view of the WST that there has been a significant breach of the legislation, prosecution will be seriously considered. Examples of *prima facie* breaches of the Act are accidents resulting in death or serious injury or circumstances in which an employer has refused to act to improve safety in a workplace.

A decision on whether to prosecute a breach of the *Workplace Health and Safety Act 1995* will be based on the principles outlined in the Director of Public Prosecutions' policy on prosecutions.

A decision to refer a matter to the Director of Public Prosecutions (DPP) will be made by the Chief Executive on the recommendation of the Investigations Review Committee (IRC). The DPP will decide whether or not to prosecute.

The IRC will make a recommendation only after a written report has been submitted by an inspector or other person authorised under section 34 of the *Workplace Health and Safety Act 1995*. The inspector should submit a report irrespective of whether an investigation has been carried out by an employer or another person.

Deterrence will always be given weighting as part of the public interest consideration of whether or not to prosecute.

## Northern Territory

---

One of Work Health Authority's goals is to have industry meet its responsibilities in relation to occupational health and safety and dangerous goods. The Work Health Authority is committed to ensuring that compliance with the legislation is obtained in a consistent, fair and equitable manner.

Providing advice and assistance to people with obligations under the Work Health Act and the Dangerous Goods Act is an important way for the authority to assist industry to meet the necessary safety requirements.

In line with this approach, obtaining workplace and industry compliance with the requirements of the legislation will be achieved, where possible, in a cooperative manner. During visits to workplaces or when dealing with specific activities, Work Health Officers will consult with and involve the appropriate persons.

Where this cooperative approach fails, a more formal approach will be used to obtain compliance. This may include written advice or directions, or the issue of a range of notices. The Work Health Officer will select the most appropriate action.

Any person who contravenes or fails to comply with any provision of the Act or regulations shall be guilty of an offence against the Act.

Proceedings will be brought by officers in ACT WorkCover via the Office of the Director of Public Prosecutions (DPP).

ACT WorkCover retains the right to brief the DPP and initiate proceedings for any offence against the Act and regulations and the decision to do so will be taken in the light of all relevant information regarding the circumstances of the case.

However, generally speaking improvement and prohibition notices will be the principal instruments to be used by ACT WorkCover for securing compliance with the legal standards set out in the Act and regulations. These notices will be issued by Occupational Health and Safety inspectors pursuant to Part VI of the *Occupational Health and Safety Act 1989*.

Improvement notices will be used to require changes and modifications to workplace plant when issuing these notices, inspectors will rely on the general duties set out in Part III of the Act and on specific requirements set out in regulations.

Prohibition notices will be used to stop the continuation of work which in the inspector's opinion is giving rise to an immediate threat to the health and safety of any person.

If alleged offences against the Act or regulations can be remedied through this system of notices, further legal proceedings will not be instituted in the courts. However, proceedings will generally be instituted in the following circumstances which are viewed as serious matters:

1. failure to comply with either an improvement or prohibition notice;
2. where an alleged breach of the Act or regulations has resulted in a fatality or serious injury;
3. where an inspector alleges an employer has wilfully repeated the same offence;
4. where either an inspector or a health and safety representative alleges a provisional improvement notice has not been complied with;
5. where there are offences in relation to inspectors (eg, assault or obstruction) are alleged;
6. where there is an allegation of discrimination against an employee for any action in relation to occupational health and safety;
7. where the issue of notices is not considered appropriate for ensuring compliance with the Act or regulations eg non-certificated operators of specified industrial equipment, and where a serious incident with the potential for causing injury death has occurred.

The above policy is currently under review with the aim of producing a compliance policy that is broader in scope, and which clearly identifies ACT WorkCover's focus on prevention of workplace accidents and dangerous occurrences.

The Australian Maritime Safety Authority (AMSA) works with the Australian maritime industry to obtain voluntary compliance with the Occupational Health and Safety (Maritime Industry) Act. AMSA has an audit, education and counselling process with industry which aims to integrate company OHS management programs with the requirements of the Act and the various international conventions to which the industry is subject.

On occasions where the compulsion is necessary, AMSA will issue improvement or prohibition notices as appropriate. Serious incidents are referred to the Director of Public Prosecutions for consideration and prosecution.

General provisions	Commonwealth	NSW	Victoria	Qld
<b>Responsible agency</b>	Safety, Rehabilitation and Compensation Commission	WorkCover Authority	WorkCover Authority	Department of Employment, Training and Industrial Relations
<b>Enforcement</b> Right of entry for inspections. Power to require assistance and information. Power to take possession of plant, take samples of substances, etc. Issue improvement notices. Issue prohibition notices. Prosecution before industrial magistrate.	Investigators appointed by Comcare. Investigator reports in writing to Safety, Rehabilitation and Compensation Commission. Commission may conduct public inquiry on basis of report. Prosecutions may be instituted in Magistrates Court by the Director of Public Prosecutions.	Inspection. Inspection may also relate to possible breaches of associated legislation. Issuing of notices or directions by inspectors. Penalty notices (on-the-spot fines). Prosecutions usually initiated by inspector and heard before an industrial magistrate or industrial commission.	Inspection. Prosecutions may be initiated by Minister or inspectors and heard before industrial magistrate.	Inspection. Prosecution before an industrial magistrate. Appeals heard by Industrial Court. Provision for improvement prohibition and seizure notices. Provision to issue infringement notices (on-the-spot fines).
<b>Number of inspectors employed</b>	Core of 20 Comcare staff appointed as investigators. Arrangements in place with most OHS authorities for investigations to be performed by employees of other jurisdictions as Comcare-appointed investigators.	254	214 field-active staff, plus 22 field-active investigators in Investigation Unit.	165
<b>Number of inspections 1997-98</b>	100 Planned Investigations commenced and completed. 232 Reactive Investigations commenced.	50 314 workplaces were visited.	58 189	8900 inspections (29 000 issues assessed).
<b>Specified industries targeted</b>	Planned Investigation Program targeted compliance with Plant Regulations.	Trial industry teams established for Construction and Health and Community Services	Target workplaces with poor OHS performance and workplaces with high risk activities across a range of industries.	Bakeries Motor workshops with vehicle hoists Accommodation (inc hotels) Stevedoring Architectural, aluminium and mineral coating Metal container/sheet metal product manufacturing.

SA	WA	Tas	NT	ACT	Seafarers
Department of Administrative and Information Services — Workplace Services.	WorkSafe Western Australia	Department of Infrastructure, Energy and Resources	Work Health Authority	ACT WorkCover	Australian Maritime Safety Authority (AMSA)
<p>Inspection.</p> <p>Where self-employed person works alone, no inspection unless reasonable belief of safety risk to another party.</p> <p>Issue of improvement or prohibition notices.</p> <p>Prosecution before industrial magistrate.</p> <p>Proceedings may only be brought by Minister or an inspector.</p>	<p>Inspection.</p> <p>Issue of notices.</p> <p>Prosecutions for offences may be instituted by any person authorised by Commissioner and are heard before a safety and health magistrate.</p> <p>Appeals heard in Supreme Court.</p>	<p>As per general provisions.</p> <p>Prosecutions initiated in a magistrates court.</p>	<p>Work Health Officers acting under delegation from Work Health Authority.</p> <p>Inspection.</p> <p>Authority may issue improvement or prohibition notices.</p> <p>Regulations provide for issue of infringement notices (on-the-spot fines).</p> <p>Prosecution through Work Health Court.</p>	<p>Inspection.</p> <p>Issue of notices.</p> <p>Power to make copies, take notes, photographs, etc.</p> <p>Entry under search warrant allowed (s66). Reviewable decisions of inspectors may be reconsidered by Registrar (s83).</p> <p>Decisions may be reviewed by OH&amp;S Review Authority.</p> <p>Appeals to the Supreme Court on questions of law.</p> <p>Inspectors may lay information before DPP re alleged breaches — prosecutions run through Magistrates Court by DPP.</p>	<p>Investigators appointed by AMSA.</p> <p>Inspection and investigation.</p> <p>Appeals against investigators' decisions go to AIRC.</p> <p>Prosecutions initiated in magistrates court.</p>
52 OHS inspectors.	Approximately 90 OHS inspectors.	56 (covering OHS, dangerous goods, industrial relations and worker's compensation).	27 appointed as Work Health Officers (including supervisors and managers).	17 (includes supervisors and managers).	Approximately 45.
<p>5014 inspections.</p> <p>7794 improvement notices.</p> <p>992 prohibition notices.</p>		<p>2300 workplace visits.</p> <p>380 improvement notices.</p> <p>76 prohibition notices.</p>	<p>4033 workplace visits: 24% for enforcement activities.</p> <p>132 infringement notices or on-the-spot-fines.</p> <p>20 improvement notices.</p> <p>18 prohibition notices.</p>	<p>Estimated 2000 inspections in 1998-99</p>	<p>24 inspections of ships.</p> <p>2 provisional improvement notices issued by AMSA.</p> <p>13 improvement notices issued by AMSA.</p> <p>No prohibition notices issued by AMSA.</p>
		Within the sectoral framework workplaces with poor OHS performances and high risk activities targeted.	Target workplaces/ industries with poor OHS performance and those with high risk across a range of industries.	Truss and building frame manufacturers, supermarkets, funeral industry, roofing contractors, panel beaters/spray-painters, hospitals and nursing homes.	

## Private right of action

	Commonwealth	NSW	Victoria	Qld
Private right of action for damages	<p>Civil and criminal proceedings as per general legislation.</p> <p>Threshold limits under SRC Act may apply.</p>	Section 22 provides that civil liability is not affected.	Section 28 — expressly negates private action for breach of general duties.	No limits

SA	WA	Tas	NT	ACT	Seafarers
No limits	No reference — must look at the intention of the legislation.	No limits	Section 34 expressly negates private right of action for breach of general duties.	Section 95 expressly negates any right of private action for breach of the Act or regulations.	Section 118 expressly negates any private right of action for breach of the Act or regulations.

## Penalty provisions by jurisdiction 1 July 1998

Jurisdiction	Provision for on-the-spot fines	Maximum penalty individuals (\$)	Maximum penalty corporations (\$)	Imprisonment for serious offences
Commonwealth <sup>1</sup>	No	5000	100 000	Up to 6 months.
New South Wales	Yes	55 000	550 000 825 000 for repeat offences	Up to 2 years for repeat offences.
Victoria	Yes — but not yet implemented.	50 000	250 000	Up to 5 years.
Queensland	Yes	60 000	300 000	Up to 2 years.
Western Australia	No	See note 2 (below)	See note 2 (below)	
South Australia*	Yes — but no regulations in place to give effect to on-the-spot fines.	1000	50 000 for first offence 100 000 for second and subsequent offences.	Up to five years.
Tasmania	No	50 000	150 000	
Northern Territory	Yes	25 000	125 000	
Australian Capital Territory	No	25 000	125 000	Up to 12 months.
Seafarers	No	100 000	500 000	Up to 6 months.

<sup>1</sup> Only Government Business Enterprises are liable to penalties.

<sup>2</sup> There is no differentiation of penalties based on whether the offender is an individual or corporation. Unless specifically provided for: as an employee \$5000, any other person \$25 000. A breach of employee's duty of care carries a maximum penalty of \$10 000, except where the offence results in death or serious injury, where the maximum penalty is \$20 000. A breach of the employer's duty of care carries a maximum penalty of \$100 000 except where the offence results in death or serious injury, where the maximum penalty is \$200 000. Where no penalty is specified, a general penalty applies which is a maximum of \$5000 as an employee and \$25 000 for any other person.

\* During April-May 1999, the SA Minister for Government Enterprises will consider advice from his Ministerial Advisory Committee in relation to the adequacy of the maximum penalties provided in the Occupational Health, Safety and Welfare Act. During March 1999, the Minister advised Parliament of his intention to significantly increase penalties, if that corresponds to the advice he receives.

## Adoption of NOHSC national standards

	Commonwealth	NSW	Victoria
<b>Priority national standards</b>			
Manual handling (1989)	Adopted	Adopted	Adopted
Noise (1993)	Adopted	Adopted	Adopted
Plant (1994)	Adopted	Under consideration	Adopted
Certification standard for users and operators of industrial equipment (1992)	Adopted	Adopted	Adopted
Major hazards facilities (1996)	Under consideration	Adopted under the administration of the Department of Urban Affairs and Planning	Adopted
<b>Hazardous substances package</b>	Note: In 1996-97 the NOHSC declared three new or revised exposure standards for individual hazardous substances, and released a further nine draft exposure standards for public comment.		
Hazardous substances (1994) Standard and Code	Adopted	Adopted	Adopted
Asbestos (1988) Code and Guidance Note	Adopted	Adopted	Adopted
Synthetic Mineral Fibres (1990) Standards and Code	Adopted	Adopted	See note 1
Carcinogens (1995) Standards and Code	Adopted	Under consideration	Adopted
Inorganic lead (1994) Standards and Code	Adopted	Under consideration	Adopted
Ethylene oxide (1991) Code and Guidance Note	Adopted	Not adopted	See note 1
Exposure standards	Adopted	Adopted	Adopted
Timber preservatives (1989) Code and Guidance Note	Adopted	Adopted as code of practice	See note 1
Vinyl chloride (1990) (Code)	Adopted	Adopted as code of practice	See note 1
<b>Other national standards/codes</b>			
Occupational overuse syndrome (1994) (Code)	Adopted	Adopted as code of practice	Adopted
HIV-AIDS (1992) Code and Guidance Note	Adopted	Adopted as code of practice	See note 1
Work in confined spaces (1994) (Standard)	Adopted	Adopted	Adopted
Workplace injury/disease recording (1990) (Standard)	Adopted	Adopted as code of practice	See note 1
Ionising radiation (1995) (Standard)	Adopted	Under consideration by the Environmental Protection Authority	See note 1

<sup>1</sup> Not formally adopted but subject of a compliance statement or acknowledged as guidance giving it evidentiary status under the Act.

Qld	SA	WA	Tas	NT	ACT
Adopted	Adopted	Not intending to adopt	Adopted	Adopted	Adopted
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted as code of practice
Adopted — schedules not yet adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Adopted	Under consideration	Progressing to adoption	Under consideration	Under consideration	Under consideration
The Health Surveillance Expert Working Group recommended the scheduling of one substance by the NOHSC and prepared revised guidelines for three others under the National Model Regulations for the control of Workplace Hazardous Substances.					
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Adopted	Adopted	Adopted	Under consideration	Adopted	Adopted
Under consideration	See note 2	Adopted	Adopted	Adopted	Adopted
Adopted	See note 2	Adopted as code of practice	Adopted as code of practice	Adopted	Adopted as code of practice
Not intending to adopt	See note 2	Adopted	Under consideration	Adopted	Not intending to adopt
Adopted	Adopted	Adopted	Adopted	1995 standard adopted except for Chrysotile at 0.1 f/mL	1995 standard adopted except for Chrysotile at 0.1 f/mL
Not intending to adopt	Adopted	Not intending to adopt	Under consideration	Adopted	Not intending to adopt
Not intending to adopt	Not intending to adopt	Adopted	Not intending to adopt	Not intending to adopt	Not intending to adopt
Adopted	See note 2	Adopted	Under consideration	Adopted	Adopted
Not intending to adopt	Under consideration	Not intending to adopt	Under consideration	Adopted	Adopted
Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Not intending to adopt	Adopted	Not intending to adopt	Not intending to adopt	Not intending to adopt	Adopted
Adopted	Adopted	Not adopted	Adopted	Adopted	Adopted

<sup>2</sup> Yet to be considered. Standard recently declared or to be reviewed by State advisory body.

## Further information

This table contains details of the appropriate person to contact in each jurisdiction if you require additional information or clarification of occupational health and safety matters included in this publication.

Jurisdiction	Contact	Position	Phone number
Comcare	Michael McFarlane	Manager, Operations and Investigations Group	(02) 6275 0031
New South Wales	WorkCover Information Centre		13 10 50 (02) 9370 5301
Victoria	Michael Little	Acting Senior Manager, Strategic Policy and Research, WorkCover Authority	(03) 9641 1210 Fax (03) 9641 1293 Email michael_little@workcover.vic.gov.au
Queensland	Anne Quinnell	Director, Policy	(07) 3247 4846 Fax (07) 3247 4519 Email anne.quinnell@detir.qld.gov.au
South Australia	Mary Jo Fisher Jane Davey	Department for Administration and Information Services WorkCover Corporation	(08) 8303 0232 (08) 8236 1742
Western Australia	Chris White	Director, Information, WorkSafe Western Australia	(08) 9327 8648 Email white@worksafe.wa.gov.au
Tasmania	HelpLine		1300 366 322 within Tas (03) 6233 7657 interstate Email Info@wsa.tas.gov.au
Northern Territory	Scott Caton	Acting Manager OHS	(08) 8999 5044
Australian Capital Territory	Jocelyn Plovits	General Manager, ACT WorkCover, PO Box 224, Civic Square ACT 2608	(02) 6207 1700 Fax (02) 6205 0168 Email jocelyn_plovits@dpa.act.gov.au
Seafarers	David Harrod	Manager, Survey Planning and Development, Ship and Personnel Safety Services	(02) 6279 5656 Fax (02)6279 5966 Mob 0419 639 112

