

Department of Jobs and Small Business

Issues Paper

Review of Work Health and Safety Regulatory Framework
in the Building and Construction Industry

29 March 2018



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1. Background to the Review

1.1 Background

Building and construction¹ is a national priority industry under the Australian Work Health and Safety Strategy 2012-2022, however the rate of serious injury and fatality remains relatively high. The proposal for a review of work health and safety (**WHS**) laws in the building and construction industry arose during the Senate debate on the Building and Construction Industry (Improving Productivity) Amendment Bill 2017 (Cth), reflecting a shared desire to improve safety in this priority industry.

1.2 The Review

The Department of Jobs and Small Business (the **Department**) has commissioned an independent review into the WHS regulatory framework in the building and construction industry (the **Review**).²

The Review will focus on the effectiveness of specific aspects of the WHS regulatory framework that address the top three mechanisms of injury over the 10-year period 2007-2016 that accounted for the highest proportion of fatalities in the building and construction sector.³ They are:

- Falling from a height or being hit by a falling object (40% of fatalities);
- Vehicle incidents (16% of fatalities); and
- Contact with electricity (12% of fatalities).

The Review will assess the effectiveness of the WHS regulatory framework, consistent with the scope outlined at Annexure A, in preventing such incidents. The Review will examine the efficiency and effectiveness of all relevant WHS regulations and the regulatory tools in use. The Review will also examine the performance of companies accredited by the Federal Safety Commissioner (**FSC**), including any aspects of the building and construction WHS accreditation scheme (the **WHS Accreditation Scheme**) administered by the FSC, that could inform options to improve outcomes related to these mechanisms across the industry.

¹ This issues paper has used the term “building and construction industry”. The relevant ANZSIC industry classification is “construction”. Data quoted from Safe Work Australia is based on the “construction” classification.

² The Review is confined to the specific items in the WHS regulatory framework set out in Annexure A. The Terms of Reference for the Review are contained in Annexure C.

³ The fatalities data that is being used to inform the Review has been coded by Safe Work Australia for the Work-related Traumatic Injury Fatality (TIF) data set using the nationally agreed Types of Occurrence Classification [TOOCS] version 3, revision 1, 2008 using codes No 01 – Falls from Height; No 21 - Being hit by falling objects; No 57 - Contact with electricity; No 92 - Vehicle incidents.

1.3 Scope of the Review

The Review may, where appropriate, draw on (but will not duplicate) the work of other recent or current reviews. The Review will take into account the views of stakeholders and make observations and recommendations on ways in which the WHS regulatory framework could be improved to enhance safety outcomes.

The Review will not assess the effectiveness of practical compliance and enforcement strategies implemented by regulators to address these issues.

The outcomes of the Review will inform the 2018 Review of the model WHS laws being conducted by Safe Work Australia.⁴

1.4 Principles for the Review

The Review will be guided by the following principles:

- That the needs of all sectors within the building and construction industry are appropriately considered, particularly noting the high number of small businesses within the industry.
- Any recommended amendments to existing laws, regulations, codes or guidance material are to be supported by substantial evidence of their effectiveness in improving safety, enabling the development of any required Regulation Impact Statements.
- That recommendations do not undermine the model WHS legislation and a harmonised approach to WHS.

⁴ The 2018 review of the model WHS laws is being conducted by an independent expert to examine how the laws operate in practice and whether they are achieving their intended results.

2. Contributing to the Review

2.1 Making a submission

The Reviewer and the Department are keen to receive your feedback. All interested individuals and organisations are invited to share their views by providing comment and responses to the questions in this issues paper.

Submissions can address any or all of the questions and can include any evidence, examples or case studies that you think may be relevant. All submissions will be acknowledged and relevant submissions will be posted on the Department's website.

Individuals and organisations can request that their submissions remain confidential. Please be aware that even where you request information be treated as confidential, there may be circumstances in which the Department is authorised or required by law to release that information, for example, in accordance with the *Freedom of Information Act 1982* (Cth) or for the purpose of parliamentary processes.

The Reviewer and the Department will assess all submissions received.

2.2 Closing date for submissions

The closing date for submissions is **4 pm on Friday 27 April 2018**.

2.3 How to lodge a submission

Written submissions can be lodged by downloading and completing the comment template⁵ from the Department's website at www.jobs.gov.au/review-whs-laws-construction-industry and sending an email with the completed template in word or pdf format to Reviews@jobs.gov.au.

2.4 Assistance

If you are unable to complete the template electronically please contact the Review Team in the Department of Jobs and Small Business by email at Reviews@jobs.gov.au or by phone on (02) 6121 6174 for assistance.

⁵ A copy of the comment template is also attached at Annexure B.

3. Context of the Review

The Review has been commissioned in the following context:

3.1 Fatalities as a result of the top three mechanisms in the period 2007-2016

In the 10-year period 2007-2016, there were a total of 354 fatalities in the building and construction industry, with 240 of these fatalities from the top three mechanisms of injury. The incidence of work-related fatalities in the building and construction industry has decreased steadily since 2004.⁶

The breakdown of the fatalities by the top three mechanisms of injury is set out in Table 1.

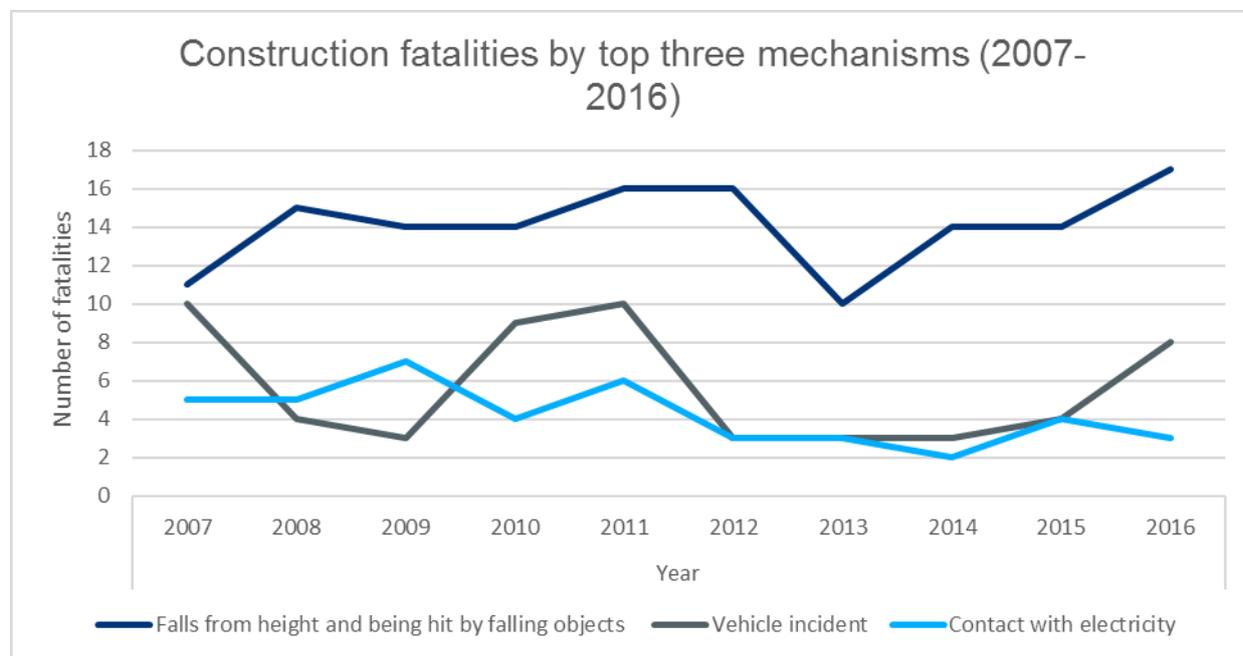
Table 1 - Total number of construction fatalities with reference to top three mechanisms of injury 2007-2016

Mechanism of fatality	Number of fatalities	Mechanism of fatality as a percentage of total fatalities
Fall from a height or being hit by a falling object	141	40%
Vehicle incidents	57	16%
Contact with electricity	42	12%
Other mechanisms	114	32%

⁶ To view Safe Work Australia's Work-related Traumatic Injury Fatalities data set, [click here](https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics-industry) <https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics-industry>. This data covers a different time period to the time period represented in Figure 1 in the issues paper.

Figure 1 below sets out the number of fatalities by the three main mechanisms from 2007-2016.

Figure 1 - Number of construction fatalities by top three mechanisms (2007-2016)



3.2 Australian Work Health and Safety Strategy 2012-2022

The construction industry is a national priority under the Australian Work Health and Safety Strategy 2012-2022, due to the high number of fatalities. The industry accounts for the third highest number of fatalities and the sixth highest fatality rate Australia wide.⁷

3.3 Introduction of the model work health and safety legislation in 2012-13

The known hazards and risks of the three main mechanisms of fatalities in the building and construction industry are subject to comprehensive regulation through the WHS regulatory framework.

The Review is being conducted at a time when all Australian jurisdictions (with the exception of Victoria and Western Australia) have enacted laws based on the model Work Health and Safety Act (**WHS Act**) and the model Work Health and Safety Regulations (**WHS Regulations**).⁸ Victoria has similar laws in place and Western Australia is consulting stakeholders with a view to potentially aligning its laws with the model WHS laws.

⁷ Data provided by Safe Work Australia covers the four-year period 2013-2016.

⁸ A national review into model occupational health and safety laws took place in 2008. The review was conducted by an advisory panel chaired by Robin Stewart-Crompton, with Barry Sherriff and Stephanie Mayman as panel members. This review recommended the form of the model WHS regulatory framework. Important elements of the model are: The retention of a general risk based duties which require duty holders to identify and assess hazards and risks and to, so far as is reasonably practicable, eliminate or minimise risk; and subordinate legislation which sets out specific obligations.

3.4 WHS regulatory framework

The WHS regulatory framework includes:

A principal **WHS Act** that provides the overarching framework of WHS duties and rights at work. The principal Act is supported by WHS Regulations and codes of practice made under the Act as well as guidance material.

WHS Regulations set out detailed requirements to support the general duties in the Act and other procedural or administrative requirements. WHS Regulations identify practical steps and processes that must be applied to specific work activities and hazards to achieve a health and safety standard.

Codes of Practice are developed to assist duty holders to comply with the WHS regulatory framework. They provide further practical guidance to achieve the standards of health and safety required under the WHS Act and Regulations.

The Codes of Practice set out specific requirements to help eliminate or minimise risks to health and safety from certain risks.

Additional **guidance material** is also developed to provide further information and examples on how duty holders may discharge their obligations under the WHS regulatory framework.

3.5 Accreditation by the FSC

In addition to obligations imposed by WHS laws, some organisations in the building and construction industry are also accredited under the WHS Accreditation Scheme for Australian Government funded building work (the **WHS Accreditation Scheme**).

Established in 2005, the FSC works with industry and government stakeholders towards achieving the highest possible WHS standards on Australian Government building and construction projects.

The key functions of the FSC include:

- Promoting sustainable WHS cultural change in the building and construction industry.
- Developing and administering the WHS Accreditation Scheme.
- Identifying and progressing initiatives to improve WHS performance.

The WHS Accreditation Scheme focuses on safety processes and implementation to improve safety outcomes. The WHS Accreditation Scheme is based on over 100 criteria to which accredited companies must adhere. The WHS Accreditation Scheme criteria sets out system and implementation outcomes that must be met to maintain accreditation, but does not prescribe the method by which companies must achieve those outcomes. This is designed to give all companies scope to achieve the WHS Accreditation Scheme criteria compliance in a manner that fits their business.

A review of the WHS Accreditation Scheme in 2014 considered opportunities to streamline and modernise the scheme. One of the review outcomes was the introduction of a risk-based approach to monitoring and enforcing compliance with the WHS Accreditation Scheme requirements, meaning those companies with a strong track record of compliance are subject to less FSC intervention than those with a poor compliance history.

How many businesses are currently accredited?

As at 31 January 2018, 443 companies were accredited by the FSC.⁹

Since the FSC was established, it has been notified of 1,712 directly and indirectly funded contracts for building work covered by the WHS Accreditation Scheme with a combined value of \$105.3 billion.¹⁰

In the 10-year period 2007-2016, 53 fatalities were reported by accredited companies across all mechanisms of injury, 29 of which were caused by the three main mechanisms of injury.¹¹ This represented 15 per cent of all fatalities in the building and construction industry and 12 per cent of total fatalities caused by the three main mechanisms of injury. Accredited companies account for approximately 40-50 per cent of the market turnover.

⁹ Data provided by the Office of the Federal Safety Commissioner.

¹⁰ Data provided by the Office of the Federal Safety Commissioner.

¹¹ Data provided by the Office of the Federal Safety Commissioner.

4. Questions for Stakeholders

Who should provide feedback?

We are keen to hear from a diverse range of stakeholders who will bring unique perspectives on the **effectiveness** (including the accessibility, user friendliness, utility and appropriateness for eliminating or minimising risks) of the WHS regulatory framework.

We would like your views on:

- What is working and why
- What doesn't work and why
- What we could do to make it work

What is effectiveness?

'Effectiveness' is the degree to which something is successful in producing a desired result.

In the context of the Review this includes consideration of a key objective of the WHS regulatory framework: the protection of workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

Questions

You are encouraged to provide feedback in response to the following questions about the WHS Regulatory Framework relevant to:

- Falls from heights and being hit by falling objects;
- Vehicle incidents; and
- Contact with electricity.

Please answer questions from your (or your organisation's) perspective, that is, as someone who owes a duty, is owed a duty or assists duty holders to discharge their duties:

- Question 1 Have you got any comments on whether the guidance in the WHS regulatory framework (refer to Annexure A) is readily available, easy to understand, and in a useful format to assist you to eliminate or minimise risks?
- Question 2 Have you got any comments on whether the WHS regulatory framework (refer to Annexure A) provides sufficient guidance to help you eliminate or minimise risks?
- Question 3 Have you get any comments on how the WHS regulatory framework (refer to Annexure A) could be improved?
- Question 4 Have you got any comments on what is most helpful in the WHS regulatory framework (refer to Annexure A) to eliminate or minimise risks?
- Question 5 Are there any elements of the WHS regulatory frameworks not currently contained in the model WHS regulations, codes of practice or guidance materials that should be considered as part of a nationally consistent framework?

Question 6 Have you got any comments on how the WHS Accreditation Scheme, administered by the FSC, assists you to eliminate or minimise risks?

Annexure A - Overview of the WHS Regulatory Framework

Falls and being hit by falling objects

1.1 Out of scope of review

The following parts of the WHS Regulatory framework will inform the Review, but are out of scope and will not be directly considered as a part of the Review:

Model WHS Act

Work Health and Safety Act 2011 (Cth)

Work Health and Safety Act 2011 (ACT)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety Act 2011 (Qld)

Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Work Health and Safety Act 2012 (SA)

Work Health and Safety Act 2012 (Tas)

Occupational Health and Safety Act 2004 (Vic)

Occupational Safety and Health Act 1984 (WA)

Model WHS Regulations (other than provisions specifically in scope of review)

Jurisdictional based electrical safety legislation

Road traffic laws

Heavy vehicle national laws

1.2 Model WHS regulatory framework

The model WHS regulatory framework relevant to a fall and being hit by falling objects is:

Model WHS Regulations: Part 3.1; Part 3.2, Division 10; Part 4.4; Part 5.1 (as it relates to scaffolds and falls when working on powered mobile plant); clauses 291; 297; 298; 299 to 303; 304 to 306; and high risk work licences (relevant to working at height)

Model CoP: How to manage work health and safety risks

Model CoP: Construction work

Model CoP: Managing the risk of falls at workplaces

Model CoP: Preventing falls in housing construction

Fact sheet: Falling objects

Information sheet: Safe work on roofs

1.3 Jurisdictional differences (exceptions to the model WHS regulatory framework)

The jurisdictional differences to the model WHS regulatory framework relevant to a fall and being hit by falling objects are:

ACT

Work Health and Safety (Formwork) Code of Practice

NSW

Safe Work on roofs - Part 1 Commercial industrial code of practice

Qld

Clause 299(4) of the WHS Regulations is included which provides that in certain circumstances all control measures considered in determining which control measures to implement must be stated in the SWMS.

Tilt up and pre-cast construction Code of Practice 2003

Scaffolding Code of Practice 2009

SA

Certain offences (including those set out in clauses 301-304 of the WHS Regulations) are subject to an expiation fee.

Codes based on the Model CoP: Construction work, Model CoP: Managing the risks of falls at workplaces and the Model CoP: Preventing falls in housing construction have not been adopted in South Australia.

National Code of Practice for pre-cast, tilt up and concrete elements in building construction

NT

National Code of Practice for pre-cast, tilt up and concrete elements in building construction

National Code of Practice for the prevention of falls in general construction

1.4 Victorian WHS regulatory framework

The Victorian WHS regulatory framework relevant to a fall and being hit by falling objects is:

OHS Regulations Part 3.3; clause 322; clause 109 (as it relates to falling objects); clause 116 (as it relates to falling objects); part 3.5 (as it relates to objects falling on a person)

Prevention of falls in general construction - Compliance Code

Code of Practice: Prevention of falls in housing construction (this code of practice continues to be available as a source of practical guidance. However, as it is made under repealed legislation compliance with the code may not necessarily mean compliance with a duty under the OHS Act).

1.5 Western Australian regulatory framework

The Western Australian WHS regulatory framework relevant to a fall and being hit by falling objects is:

OSH Regulations Part 3, Division 5; Clause 3.18; clause 3.30; clause 3.31; clause 3.36; Part 3, Division 12 (as it relates to falls); Part 4, Division 4 (as it relates to falling objects); Schedule 6.3 (as it relates to falls)

Code of Practice: Prevention of falls at workplaces

Code of Practice: Safe design of buildings and structures

AS-NZS 4576-1995 Guidelines for scaffolding

Vehicle incidents

1.6 Out of scope of review

The following parts of the WHS Regulatory framework will inform the Review, but are out of scope and will not be directly considered as a part of the Review:

Model WHS Act

Work Health and Safety Act 2011 (Cth)

Work Health and Safety Act 2011 (ACT)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety Act 2011 (Qld)

Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Work Health and Safety Act 2012 (SA)

Work Health and Safety Act 2012 (Tas)

Occupational Health and Safety Act 2004 (Vic)

Occupational Safety and Health Act 1984 (WA)

Model WHS Regulations (other than provisions specifically in scope of review)

Jurisdictional based electrical safety legislation

Road traffic laws

Heavy vehicle national laws

1.7 Model WHS regulatory framework

The model WHS regulatory framework relevant to a fall and being hit by falling objects is:

Model WHS Regulations: Part 3.1

Model CoP: How to manage work health and safety risks

Model CoP: Construction work

Guide: Traffic management general guide

Guide: Traffic management guide - construction work

Information sheet: Traffic management

Checklist: Traffic hazards

Checklist: Traffic control measures

1.8 Jurisdictional differences (exceptions to the model WHS regulatory framework)

The jurisdictional differences to the model WHS regulatory framework relevant to vehicle incidents are:

Qld

Traffic management for construction or maintenance work code of practice 2008

SA

A code based on the Model CoP: Construction work has not been adopted in South Australia.

1.9 Victorian WHS regulatory framework

The Victorian WHS regulatory framework relevant to vehicle incidents is:

Guidance sheet: Work-related driving – Selecting safe vehicles

Guidance sheet: Transporting people and equipment in vehicles

1.10 Western Australian regulatory framework

The Western Australian WHS regulatory framework relevant to vehicle incidents is:

OSH Regulations: Clause 3.22; Part 3, Division 10

Code of Practice: Fatigue Management for Commercial Drivers

Contact with electricity

1.11 Out of scope of review

The following parts of the WHS Regulatory framework will inform the Review, but are out of scope and will not be directly considered as a part of the Review.

Model WHS Act

Work Health and Safety Act 2011 (Cth)

Work Health and Safety Act 2011 (ACT)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety Act 2011 (Qld)

Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Work Health and Safety Act 2012 (SA)

Work Health and Safety Act 2012 (Tas)

Occupational Health and Safety Act 2004 (Vic)

Occupational Safety and Health Act 1984 (WA)

Model WHS Regulations (other than provisions specifically in scope of review)

Jurisdictional based electrical safety legislation

Road traffic laws

Heavy vehicle national laws

1.12 Model WHS regulatory framework

The model WHS regulatory framework relevant to contact with electricity is:

Model WHS Regulations: Part 3.1; Part 4.7

Model CoP: How to manage work health and safety risks

Model CoP: Construction work

Model CoP: Managing electrical risks in the workplace

General guide: Definitions OH&E

Guide: Working in the vicinity of overhead and underground electrical lines

Guide: Working near low voltage OH&E near structures

Guide: Operating cranes and mobile plant near OH&E

Guide: Transporting high load near OH&E

Information sheet: Working in the vicinity of overhead and underground electrical lines

Information sheet: Scaffolding near OHEL

Fact sheet: Electrical risks

Incidents and scenarios: Case studies

1.13 Jurisdictional differences (exceptions to the model WHS regulatory framework)

The jurisdictional differences to the model WHS regulatory framework relevant to contact with electricity are:

NSW

Work near overhead power lines code of practice

Qld

Electrical safety Code of Practice 2010 - Electrical equipment rural industry

Electrical safety Code of Practice 2010 - Working near overhead and underground electric lines

Electrical safety Code of Practice 2010 - Work

NT

The Northern Territory has not adopted the Model CoP: Managing electrical risks in the workplace.

SA

A code based on the Model CoP: Construction work has not been adopted in South Australia.

1.14 Victorian WHS regulatory framework

The Victorian WHS regulatory framework relevant to contact with electricity is:

OHS Regulations: Clause 114

1.15 Western Australian regulatory framework

The Western Australian WHS regulatory framework relevant to contact with electricity is:

OSH Regulations: Part 3, Division 6

Annexure B - Comment Template

Name of organisation/individual:

Contact number of person completing feedback (in case we need to discuss any aspect of this submission with you):

In which jurisdictions do you or your organisation operate/work? (Please indicate all that apply):

I give permission for this submission:

To be published with the name above	YES	NO
To be published with the name withheld	YES	NO
To be used to inform the Review, but not published	YES	NO

I am attaching a file.

YES NO (my comments are set out below)

I am responding to question number(s):

My comments are:

Annexure C - Terms of Reference

BACKGROUND

Building and construction is a national priority industry under the Australian Work Health and Safety Strategy 2012–2022, however the rate of serious injury and fatality remains high. The proposal for a review of work health and safety (WHS) in the building and construction industry arose during the Senate debate on the Building and Construction Industry (Improving Productivity) Amendment Bill 2017, reflecting a shared desire to improve safety in this priority industry.

The Review

The Review will focus on the effectiveness of specific aspects of the regulatory framework that address the top three mechanisms of injury over the 10-year period 2007-2016 that accounted for the highest proportion of fatalities in the building and construction sector. They are: falls from heights and being hit by falling objects (40% of fatalities), vehicle incidents (16% of fatalities) and contact with electricity (12% of fatalities). The Review will assess the operation of the relevant WHS regulatory framework to preventing such incidents, including the efficiency and effectiveness of all relevant WHS regulations and the regulatory tools in use. The Review will also examine the performance of companies accredited by the Federal Safety Commissioner including any aspects of the building and construction WHS accreditation scheme (the Scheme), administered by the Federal Safety Commissioner, that could inform options to improve outcomes in these areas across the industry.

Scope of the Review

The Review may, where appropriate, draw on (but should not duplicate) the work of other recent or current reviews. The Review will take into account the views of stakeholders and make observations and recommendations on ways in which WHS laws could be improved to enhance safety outcomes. The Review will not assess the effectiveness of practical compliance and enforcement strategies implemented by regulators to address these issues. The outcomes of the Review will inform the 2018 Review of the model WHS laws being conducted by Safe Work Australia.

Principles for the Review

The Review will be guided by the following principles:

- (a) that the needs of all sectors within the building and construction industry are appropriately considered, particularly noting the high number of small businesses within the industry;
- (b) any recommended amendments to existing laws, regulations, codes or guidance material are to be supported by substantial evidence of their effectiveness in improving safety, enabling the development of any required Regulation Impact Statements; and
- (c) that recommendations do not undermine the model WHS legislation and a harmonised approach to WHS.