



# Submission to the Inquiry into industrial deaths in Australia

## Introduction

Safe Work Australia (SWA) welcomes the opportunity to provide a submission to the Senate Education and Employment References Committee Inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia.

SWA leads the development of national policy and strategies to improve work health and safety (WHS) and workers' compensation across Australia. As a national policy body, SWA does not regulate WHS laws. The Commonwealth, states and territories have responsibility for implementing, regulating and enforcing WHS laws in their jurisdictions.

SWA undertakes research and collects, collates, analyses and reports data to help the Commonwealth, states and territories and employers and workers in Australia achieve the national vision of *healthy, safe and productive working lives*.

SWA was established as a statutory agency on 1 November 2009 under the *Safe Work Australia Act 2008*. SWA is an inclusive, tripartite body, comprised of 15 Members; an independent Chair, nine Members representing the Commonwealth and each state and territory, two Members representing the interests of workers, two representing the interests of employers and the Chief Executive Officer of SWA. The staff of SWA and various committees and groups for technical and policy matters support the SWA Members.

SWA works to achieve healthier, safer and more productive workplaces in the context of the impact of workplace fatalities on individuals and their families, friends and colleagues; workplaces; the entire community; and, the broader economy.

## Workplace fatality data<sup>1</sup>

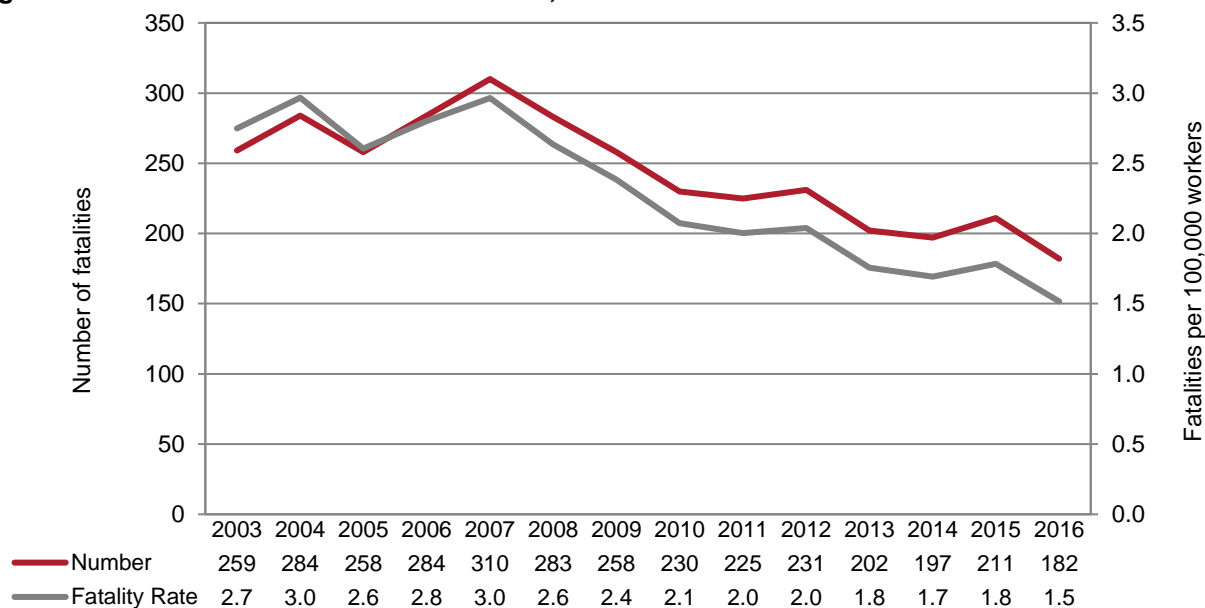
As shown in Figure 1, the number and rate of worker fatalities in Australia have been falling consistently across the last decade. Since the peak in 2007, the number of worker fatalities has fallen from 310 to 182 in 2016, and the rate has halved from 3.0 fatalities per 100,000 workers to 1.5 fatalities per 100,000 workers in 2016 – the lowest rate in the 14 years of the series.

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<sup>1</sup> The data presented in this section is sourced from Safe Work Australia's Work-related Traumatic Injury Fatalities data set. The latest data available are for 2016. Data for 2017 are anticipated to be published in July 2018.



**Figure 1: Number and rate of worker fatalities, 2003 to 2016**



While worker fatalities are trending down, as shown in Table 1 below, there are still a number of industries where the number and rate of fatalities remains high. In 2016, almost 70 per cent of worker fatalities occurred in just three industries – the Transport, postal and warehousing industry (47 worker fatalities), the Agriculture, forestry and fishing industry (44 worker fatalities), and the Construction industry (35 workers fatalities). In terms of rates, the Agriculture, forestry and fishing industry recorded the highest rate in 2016 of 14.0 fatalities per 100,000 workers, almost 10 times higher than the all industry average (1.5 fatalities per 100,000 workers). This was followed by the Transport, postal and warehousing industry (7.5 fatalities per 100,000 workers).

**Table 1: Number and rate of worker fatalities by industry, 2016**

Industry of Employer	Number of worker fatalities	Fatality rate (fatalities per 100,000 workers)
Agriculture, forestry & fishing	44	14.0
Transport, postal & warehousing	47	7.5
Electricity, gas, water & waste services	8	5.8
Construction	35	3.3
Mining	6	2.7
Arts & recreation services	5	2.2
Administrative & support services	8	1.8
Rental, hiring & real estate services	2	0.9
Other Services	4	0.8
Manufacturing	6	0.7
Public administration & safety	5	0.7
Information media & telecommunications	1	0.5
Retail trade	4	0.3
Health care & social assistance	4	0.3
Education & training	2	0.2
Professional, scientific & technical services	1	0.1
Wholesale trade	..	0.0
Accommodation & food services	..	0.0
Financial & insurance services	..	0.0
<b>Total</b>	<b>182</b>	<b>1.5</b>



In terms of the cause of worker fatalities, Table 2 shows that in 2016, Vehicle collisions accounted for the highest proportion of worker fatalities (76 fatalities or 42 per cent). This was followed by Falls from a height (25 fatalities or 14 per cent), Being hit by moving objects (17 fatalities or 9 per cent) and Being hit by falling objects (17 fatalities or 9 per cent).

**Table 2: Number and proportion of worker fatalities by mechanism/cause of incident, 2016**

Mechanism/Cause of incident	Number of worker fatalities	Proportion of fatalities
Vehicle collision	76	42%
Falls from a height	25	14%
Being hit by moving objects	17	9%
Being hit by falling objects	17	9%
Being trapped by moving machinery	8	4%
Contact with electricity	7	4%
Drowning	7	4%
Being trapped between stationary and moving	4	2%
Being assaulted by a person or persons	4	2%
Rollover of non-road vehicle	3	2%
Contact with hot objects	3	2%
Explosion	2	1%
Being hit by an animal	2	1%
Other mechanisms	7	4%
<b>Total</b>	<b>182</b>	<b>100%</b>

Further data and information on work-related fatalities can be found in the [Work-related Traumatic Injury Fatalities, 2016](#) report, which is available on the SWA website.

## Australian Work Health and Safety Strategy 2012–2022

The [Australian Work Health and Safety Strategy 2012–22](#) (the Australian Strategy) provides a 10-year framework to drive improvements in WHS in Australia. It was agreed by Commonwealth, state and territory ministers with responsibility for WHS, the Australian Industry Group, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. The Australian Strategy is about coordinating and focusing effort and influencing those who are in a position to change the direction of WHS in Australia. While SWA is responsible for developing the Australian Strategy, responsibility for implementing the Australian Strategy is shared among all WHS stakeholders.

SWA directly implements activities that relate to areas of the Strategy through its data collection, policy and awareness raising functions. It also publishes an annual progress report on activities undertaken that relate to the Strategy and performance against the Strategy targets.

The Australian Strategy is underpinned by two key principles. That all workers, regardless of their occupation or how they are engaged, have the right to a healthy and safe working environment and that well-designed work allow workers to have more productive working lives.



The success of the Australian Strategy's vision of 'healthy, safe and productive working lives' will be measured through a number of targets to be achieved by 2022. These include:

- a reduction in the number of worker fatalities due to injury of at least 20 per cent<sup>2</sup>
- a reduction in the incidence rate of claims resulting in one or more weeks off work of at least 30 per cent, and
- a reduction in the incidence rate of claims for musculoskeletal disorders (MSD) resulting in one or more weeks of work of at least 30 per cent.

Progress against all three targets has been strong. If current trends continue the reduction in the fatality rate and the serious injury and MSD claim rates will exceed the reductions required to meet the targets by 2022.

## **The model WHS laws**

In 2011, SWA developed a single set of 'model' WHS laws to be implemented across Australia. For the model WHS laws to become legally binding, the Commonwealth, states and territories must separately implement them as their own laws. The model WHS laws have been implemented in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and the Commonwealth. Victoria and Western Australia have not yet implemented the model WHS laws.

The aim of the model WHS laws is to provide all workers in Australia with the same standard of health and safety protection regardless of the work they do or where they work. The model WHS laws are intended to be broadly applicable to all organisations regardless of the size of their industry. The laws are outcomes-based and allow organisations to tailor their approach to safety to suit their circumstances.

The model WHS laws comprise the model WHS Act, model WHS Regulations and model Codes of Practice. The model WHS Act provides a framework to protect the health, safety and welfare of all workers at work and of other people who might be affected by the work.

The model WHS laws cover, among other things, a person conducting a business or undertaking (PCBU), workers and workplaces, which are deliberately broad terms to ensure the Act applies to all types of modern working arrangements, including those that extend beyond the traditional employer/employee relationship (for example, labour hire).

The definition of 'worker' is any person who carries out work in any capacity for a PCBU such as employees, contractors or subcontractors or their employees, labour hire company employees, outworkers, apprentices and trainees, work experience students and volunteers.

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<sup>2</sup> The annual number of work-related deaths due to injury can be variable. For the purpose of measuring progress against the targets, to even out the volatility in the data, four years of data has been used to establish a base period (2007 to 2010), and a three-year rolling average is used to track progress.



The model WHS Regulations are made under the model WHS Act and cover a wide range of specific WHS matters, particularly managing risks to health and safety posed by hazardous work (for example, work involving noise, confined spaces, demolition) and materials (like chemicals and asbestos), major hazard facilities and high risk industries (for example, construction and mines).

The model Codes of Practice provide practical guidance on how to meet the standards set out in the model WHS Act and the model WHS Regulations. Codes of Practice are admissible in proceedings as evidence of whether or not a duty under the model WHS laws has been met. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

### **Review of the model WHS laws**

On 11 August 2017, Commonwealth, state and territory ministers with responsibility for WHS asked Safe Work Australia to conduct a review of the content and operation of the model WHS laws (the Review).

The Review will assess whether the model WHS laws are achieving the objects stated in the model WHS Act, particularly in relation to the concepts that were new or a significant change for most jurisdictions. These include the duties framework, penalty and enforcement measures, and consultation, participation and representation provisions. Terms of Reference of the Review are available on the Safe Work Australia website.<sup>3</sup>

Safe Work Australia has engaged an independent reviewer, Ms Marie Boland, to conduct the review. Ms Boland commenced in November 2017 and is being provided secretariat support by the Agency.

Ms Boland carried out a public consultation process over the first half of 2018. To gather public views and evidence for the Review, Ms Boland published a discussion paper on 19 February 2018 and opened a call for submissions over eight weeks to 13 April 2018. As at 23 May, 128 submissions have been received. These submissions are available to view on the [SWA website](#).

Ms Boland has also held meetings in all state and territory capital cities and two regional centres (Tamworth, NSW and Cairns, Qld) to speak directly with people about their practical experience with the model WHS laws. Stakeholder groups have included regulators, WHS and legal practitioners, businesses, unions, industry organisations, researchers and community groups.

The Terms of Reference for the Review focus on the operation and content of the model WHS Act, rather than assessment of the policy objective underlying harmonisation or whether model WHS laws were the appropriate mechanism for achieving this objective. The Review is also not intended to examine in detail and compare the implementation of the model WHS laws across jurisdictions, or assess the performance of the regulators.

In-line with the Terms of Reference for the Review, Ms Boland has asked for comments on the effectiveness of the compliance and enforcement provisions within the model WHS laws,

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<sup>3</sup> See [www.safeworkaustralia.gov.au/review](http://www.safeworkaustralia.gov.au/review)



such as penalties and enforceable undertakings, as a deterrent to poor health and safety practices. Industrial manslaughter will be considered in this context.

Ms Boland is now reviewing feedback provided to her in submissions and during her consultations. Ms Boland will present her findings to SWA Members by the end of 2018. SWA will then present Ms Boland’s report to WHS ministers for consideration.

## Powers of investigation, compliance and enforcement

The model WHS Act provides for general functions and powers of regulators and inspectors. There are a number of compliance and enforcement tools available under the model WHS Act, including improvement, prohibition and non-disturbance notices, remedial action, injunctions and enforceable undertakings, as well as legal proceedings

The [National compliance and enforcement policy](#) (NCEP) sets out the principles endorsed by the Workplace Relations Ministers’ Council underpinning the approach WHS regulators take to monitoring and enforcing compliance with the WHS laws. It is a model policy agreed by jurisdictions. It operates alongside other nationally agreed policies and procedures governing the use of specific regulatory tools, or policies that may be specific to each regulator where they relate to the regulator’s interface with the criminal justice system in their jurisdiction.

Regulators have two approaches to the NCEP. The first is to adopt it in full. The second is to incorporate some elements into their jurisdiction’s operational policy framework for compliance and enforcement.

## Health and safety duty offences

There are three categories of criminal offences for breach of health and safety duties under the model WHS Act. The maximum penalties are different depending on the category of the offence and whether the offender is a worker, an individual as PCBU or officer, or a body corporate and are set out below.

Category 1 – a duty holder, without reasonable excuse, engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.

Category 2 – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

Category 3 – a duty holder fails to comply with a health and safety duty.

Table 1: The penalties for breach of health and safety duty offences

Type Order	Corporation	Individual as PCBU or officer	Individual as worker or other
Category 1	\$3 million	\$600 000, five years in jail or both	\$300 000, five years jail or both
Category 2	\$1.5 million	\$300 000	\$150 000
Category 3	\$500 000	\$100 000	\$50 000





## Consultation and participation

The model WHS laws require a PCBU to consult, co-operate and coordinate activities with other PCBUs where they have a concurrent duty of care relating to the same work activity or project. The model laws also require a two-way flow of information between PCBUs and their workers about WHS matters.

### Consultation with workers and representation of workers

The model WHS Act reflects the important role workers can play in identifying hazards and risks, and finding ways to manage them. The Act requires PCBUs to consult their workers before making changes or implementing measures that may affect health and safety.

The Act provides for health and safety representatives (HSRs) and health and safety committees (HSCs) to facilitate consultation. Further information is available in the Guide: [Worker representation and participation](#).

The model WHS Act aims to protect workers and encourage them to be involved as HSRs or on HSCs and to raise WHS issues as they arise by offering protection from discrimination and coercion because they have been involved in or raised WHS issues. The Interpretive Guideline - [Discriminatory, coercive or misleading conduct](#) provides further information.

### WHS entry permit holder

The model WHS laws recognise that involvement by unions in WHS matters at the workplace remains important for the effective operation of consultation and participation mechanisms for workers. The model laws also outline the requirements and processes for workplace entry by WHS entry permit holders and the powers of a WHS entry permit holder on entry.

A WHS entry permit may be issued to a union official who has completed an approved training course and holds a valid and current entry permit under the *Fair Work Act 2009* or the relevant state or territory workplace legislation. Subject to certain conditions, a WHS entry permit allows the holder to inquire into a suspected contravention of the model WHS Act and meet with workers to discuss their WHS rights and obligations. A WHS entry permit holder can only enter during usual working hours and must comply with any reasonable requests relating to workplace WHS requirements.

While at the workplace to inquire into a suspected contravention, the WHS entry permit holder has the right to inspect work systems, consult the PCBU and workers in relation to a suspected contravention, and inspect or make copies of any documents relating to the suspected contravention, if accessible. If they identify a potential hazard, they have a right to warn any individual potentially at risk.

## The future of work

SWA worked with the CSIRO's Data61 team to consider the impacts of a number of megatrends on WHS and workers' compensation over the next 20 years. Digital technologies, including automation, artificial intelligence and augmented reality, are becoming more common in the workplace. Employment patterns and structures are also shifting with the introduction of freelance task-based work. These changes are happening



within the broader context of Australia's ageing workforce and rising levels of stress and chronic disease.

New technologies and ways of working introduce new risks and challenges for WHS and workers' compensation, but they also have the potential to make work safer and reduce workplace injury. The [Workplace Safety Futures](#) report has provided insights but primarily has identified areas for further consideration and monitoring.