



Department of **Local Government,**
Industry Regulation and Safety



Statutory Review

Work Health and Safety Act 2020



Acknowledgement of Country

The Department of Local Government, Industry Regulation and Safety and Quantum Consulting Australia respectfully acknowledge Aboriginal peoples as the Traditional Custodians of Western Australia.

We acknowledge the enduring connection Aboriginal people continue to share with the land, sea, and sky through both their ancestral ties and custodianship to Country.

We pay our respect to Elders both past and present, and acknowledge the value brought to our department through the collective contribution of Aboriginal and Torres Strait Islander peoples across Western Australia.



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Message from the Minister for Industrial Relations



The Cook Government is committed to ensuring that effective work health and safety laws are in place to protect workers, promote safe work environments and ensure employers meet their responsibilities. I am therefore pleased to release the *Work Health and Safety Act 2020* (WHS Act) Statutory Review Discussion Paper.

As the Minister for work health and safety, I am responsible for reviewing the operation and effectiveness of the WHS Act every five years. A report based on the review must also be tabled in Parliament, once the consultation phase is completed.

The WHS Act has provided for a balanced and nationally harmonised work health and safety framework in Western Australia (WA) since it commenced in March 2022. Although the WHS Act has only been operational for a few years, overall, it has been well-received by workplaces and industry alike.

Western Australia's WHS Act is substantially harmonised with the corresponding Acts of New South Wales, Queensland, South Australia, Tasmania, Australian Capital Territory, Northern Territory and the Commonwealth. However, certain model work health and safety provisions were varied to be WA-specific, some of which are discussed herein.

Please consider the questions posed throughout the discussion paper, as they are intended to stimulate discussion and gather valuable feedback on the operation and effectiveness of the WHS Act. The feedback provided will help to inform the review report to Parliament.

Thank you for participating.

Hon. Simone McGurk
Minister for Industrial Relations

Message from the WorkSafe Commissioner



The WHS Act Statutory Review provides a unique opportunity to understand how the WHS Act has been operating since its commencement.

This paper is intended to provide the community with questions to guide input on this issue. However, input on other aspects of the operation of the WHS Act are most welcome.

WorkSafe is committed to continually evolving and improving its regulatory approach in the administration of the WHS Act.

I urge all interested parties to lodge a submission, towards helping to maintain healthy, safe and respectful workplaces in Western Australia within a harmonised framework.

Sally North
WorkSafe Commissioner

Abbreviations

Abbreviation	Description
COAG	Council of Australian Governments
IGA	Inter-Governmental Agreement
Model WHS Act	The model Work Health and Safety Act
Model WHS Regulations	The model Work Health and Safety Regulations
OHS	Occupational Health and Safety
PCBU	Person Conducting a Business or Undertaking
PwC	PricewaterhouseCoopers
QIRC	Queensland Industrial Relations Commission
SWA	Safe Work Australia
Tribunal	Work Health and Safety Tribunal
WHS	Work health and safety
WHS Act	<i>Work Health and Safety Act 2020</i>

Background

Overview of Australia's harmonised work health and safety laws

In 2008, the Council of Australian Governments (COAG) signed the Inter-Governmental Agreement (IGA) for Regulatory and Operational Reform in Occupational Health and Safety. The IGA committed the participating Governments to work together to harmonise work health and safety (WHS) legislation and established Safe Work Australia (SWA) as an independent statutory body.

SWA subsequently developed the model WHS laws in 2011 for implementation across Australia, as agreed by the Ministers responsible for WHS representing the Commonwealth, states and territories.

Each harmonised jurisdiction in Australia (except Victoria) has since implemented their own respective versions of the WHS laws.

Western Australia's work health and safety laws

On 10 November 2020, Western Australia's *Work Health and Safety Act 2020* (WHS Act) was passed by the Western Australian Parliament.

The WHS Act covers all workplaces within Western Australia's jurisdiction, including mines, petroleum and geothermal energy operations with the exception of major hazard facilities and dangerous goods storage and handling, which are regulated separately under the *Dangerous Goods Safety Act 2004*.

The WHS Act is supported by the following regulations:

- Work Health and Safety (General) Regulations 2022 – applies to all workplaces except those covered by the other two sets of regulations
- Work Health and Safety (Mines) Regulations 2022 – applies to mining and mineral exploration operations
- Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022 – applies to onshore and offshore petroleum, pipeline and geothermal energy operations.

Concurrent SWA Best Practice Review

At the same time that WA is undertaking a statutory review of our WHS Act, Safe Work Australia (SWA) is undertaking a Best Practice Review of the model WHS Act and model WHS regulations to identify opportunities to strengthen and maintain harmonisation of WHS laws and ensure the laws reflect contemporary best practice.

The consultation for the SWA Best Practice Review is from 1 September 2025 to 3 November 2025, which will likely overlap with the Western Australia's WHS Act Statutory Review consultation.

The Terms of Reference and other information regarding the SWA Best Practice Review is available at [SWA's Consultation Hub](#).

WorkSafe remains committed to maintaining harmonised WHS laws where appropriate and will consider the discussion paper and outcomes of the SWA Best Practice Review and any implications for this Statutory Review.

Statutory review of the WHS Act

Section 277 of the WHS Act requires the Minister responsible for the Act (the Minister for Industrial Relations) to undertake a statutory review (Review) of the operation and effectiveness of the Act and prepare a report on the Review.

The Review must be conducted as soon as practicable after the fifth anniversary of the commencement of section 277, being 11 November 2025.

The Review report must be tabled before Parliament as soon as practicable after its preparation, but no later than 12 months after the fifth anniversary.

Once the Review report is tabled in Parliament, the Government will consider the report before making decisions on recommendations.

Terms of Reference

The focus of the Review is to examine the operation and effectiveness of the WHS Act. The terms of reference and scope for the Review are as follows:

- identify areas for improvement to ensure the WHS Act remains relevant and aligned to evolving workplace practices in Western Australia;
- consider the review of the national model WHS Act to ensure harmonisation;
- consider whether the legislation provides a framework to effectively address ongoing and emerging workplace hazards;
- consider the burden faced by industry and others in complying with the laws;
- ensure effective compliance and enforcement of the WHS Act; and
- ensure effective internal, external, and tripartite consultation.

It is important to note that the review is focussed on the operation and effectiveness of the WHS Act. Although the three sets of regulations and codes of practice under the WHS Act do not form part of the review, if there is a compelling reason to make a submission regarding a regulation or code your feedback will be considered. The reason there is not a focus on the regulations is that there are other processes available to consider and progress regulatory amendments.

Having regard for the Terms of Reference will assist contributors to frame feedback within the context of the review.

The role of the regulator

The WorkSafe Commissioner is the regulator under the WHS Act. The WorkSafe Commissioner is responsible for the administration of the WHS Act, and any other WHS laws within the Minister's portfolio. The regulator's functions include:

- monitoring and enforcing compliance with the WHS Act and its regulations;
- providing advice and information on WHS to duty holders and the community;
- collecting, analysing and publishing statistics relating to WHS;
- fostering a cooperative, consultative relationship between duty holders and the people to whom they owe WHS duties, and their representatives;
- promoting and supporting education and training on matters relating to WHS;
- engaging in, promoting and coordinating the sharing of information to achieve the object of the WHS Act, including the sharing of information with other WHS regulators; and
- conducting and defending legal proceedings under the WHS Act.

WorkSafe assists the regulator in the administration of the WHS Act and the *Dangerous Goods Safety Act 2004*. WorkSafe drives workplace change through:

- compliance and enforcement;
- education and guidance;
- inspections and investigations; and
- support for employers and workers.

The WorkSafe Commissioner (including as the regulator) is subject to the Minister's direction and control.

WorkSafe has the role of providing advice to the Minister to assist with the WHS Act statutory review.

How to make a submission

Submissions are welcome from all stakeholders, including duty holders, regulators, government agencies, unions, workers, legal professionals, researchers, members of the public and other parties who may be affected by topics discussed in the paper.

If you would like to provide general feedback on the operation and effectiveness of the WHS Act, unrelated to the specific questions posed in this paper, that feedback will also be considered.

Submissions can be sent to WHS_Act_Statutory_Review@lgirs.wa.gov.au by using the feedback form provided on the WorkSafe [consultation hub](#) web page.

Submissions close 28 November at 5 pm (Australian Western Standard Time).



Important: A summary of the consolidated feedback may be published. If you would like your feedback excluded from the summary, please note that as part of your submission.

Topics and questions for consideration

The questions posed throughout this paper have been written to elicit information that relates to Western Australia's WHS Act and the terms of reference for the Review.

The topics that follow present a brief summary of the relevant legislation, a 'background' section for context, a 'for consideration' section and accompanying questions.

You are encouraged to provide written submissions that address the scope of this review, based on your experiences while working within this legislation.

Please note you are only expected to answer questions relevant to your situation or experience. Where possible, you should include any evidence and examples to explain your answer. If you would like to submit comments that fall outside of the questions posed, please do so, as they will be considered.

Please note that general enquiries, WHS hazard reports in relation to a particular workplace, or grievances will not be considered as part of the WHS Act Statutory Review feedback. For general assistance, please contact WorkSafe by phone on 1300 307 877, or email wscallcentre@lgirs.wa.gov.au.

TOPIC 1: WHS Act, Part 2 – Health and safety duties

Part 2 of the WHS Act provides the health and safety duties for Persons Conducting a Business or Undertaking (PCBUs), officers, WHS service providers, unincorporated associations, government departments and public corporations including local governments, workers and other people at a workplace.

It is possible for more than one person to share the same duty, and duties cannot be transferred.



Question:

1. Do you consider the health and safety duties in Part 2 to be operating effectively?

Please provide your reasoning and any evidence to support your answer.

Section 26A – Duty of persons conducting businesses or undertakings that provide services relating to work health and safety.

Background

Section 26A is not present in the model WHS Act but was introduced in Western Australia based on recommendations 37 and 38 of [Report 1 of the National review into Model Occupational Health and Safety laws 2008/2009](#), as follows:

37. *The model Act should place a duty of care on any person providing OHS advice, services or products that are relied upon by other duty holders to comply with their obligations under the model Act.*
38. *The model Act should include a definition of a 'relevant service' and a 'service provider' to make it clear what activities fall within the duty and who owes the duty. The definition will be discussed in our second report.*

Under section 26A, WHS service providers must ensure, as far as is reasonably practicable, that the services they provide in relation to a workplace will not put the health and safety of people at that workplace at risk.

The duty applies only to services that could potentially pose a risk in the workplace and applies to WHS services provided to a PCBU and tailored to the circumstances of a particular workplace.

If the WHS service is incorrectly used or not used for its intended purpose by the recipient of the services, the WHS service provider cannot be held responsible.

The provision of a WHS service does not relieve a PCBU of their duties under the WHS Act. In order to provide guidance on this new duty, WorkSafe published the [*Duty of persons conducting business or undertakings that provide services relating to work health and safety: Interpretative guideline*](#).

For consideration

Stakeholder feedback provided anecdotal reports of companies and industry associations dismissing their WHS service providers to avoid any unforeseen legal issues, in regard to the introduced duty under section 26A.



Question:

2. In your view, is section 26A achieving its intended outcome or causing unintended consequences for WHS providers and others (e.g. consultants)?

Please provide your reasoning and any evidence to support your answer.

TOPIC 2: WHS Act, Part 3 – Incident notification

Part 3 of the WHS Act outlines how a person who conducts a business or undertaking must notify their WHS regulator of certain serious incidents at work, referred to as 'notifiable incidents'. This is a mandatory requirement.

A notifiable incident is the death of a person; a 'serious injury or illness'; or a 'dangerous incident' arising out of the conduct of a business or undertaking at a workplace. Notifiable incidents may relate to any person, including an employee, contractor, visitor, member of the public or volunteer.

Notifying the regulator can help identify causes of incidents and prevent work-related deaths, injuries, illnesses, damage and loss at other workplaces.

In order to provide guidance on this requirement, WorkSafe published an [*Incident notification: Interpretive guideline*](#).

Background

As part of its current Best Practice Review of the model WHS laws, SWA recently completed a review into incident notifications.

If the model amendments are agreed upon by the WHS Ministers, further local consultation and feedback will be sought from the Work Health Safety Commission and the Mining and Petroleum Advisory Committee. Both committees will then provide their views to the Minister for consideration.

It is worthwhile noting that any changes to incident notifications will not take effect in a jurisdiction until implemented in the WHS laws of that jurisdiction.

To provide an overview the following text has been extracted from the SWA website, regarding its proposed incident notifications changes.

Overview of the proposed changes ([SWA website extract](#))

The changes are intended to provide PCBU's with more clarity and a better understanding of:

- *the types of incidents to be notified are those 'arising out of the conduct of the business or undertaking'*
- *the objective test for deciding whether a serious injury or illness must be notified*
- *duties of PCBU's at a workplace to notify each other of incidents*
- *who may be providing medical treatment for exposure to a substance, and*
- *preserving evidence and incident sites.*

Other changes aim to address key gaps and provide greater certainty to PCBU's on:

- *Notifying dangerous incidents involving the fall of a person, electrical hazards and mobile plant.*
- *Notifying all serious injuries and illnesses including serious head injuries, serious crush injuries and serious bone fractures.*
- *Capturing violent incidents, including sexual assault, arising out of the conduct of the business or undertaking that may not result in a serious physical injury or illness triggering notification, but that exposes a worker or other person to a serious risk to a person's physical or psychological health and safety.*
- *Requiring the immediate notification of a work-related (or suspected work-related) suicide or attempted suicide of a worker, and the suicide or attempted suicide of other persons in specific settings. Rather than notification being triggered by an incident 'arising out of the conduct of the business or undertaking', notification of the suicide or attempted suicide of a worker would be required where there are indicators that suggest a potential link to work or the work environment.*
- *Capturing serious work-related injuries and illnesses that are not already notifiable through the timely notification of a worker's absence period (or likely absence period) of 15 or more consecutive calendar days due to psychological or physical injury, illness or harm arising out of conduct of the business or undertaking.*

SWA is developing detailed guidance to help duty holders understand what is and is not notifiable once the new requirements have been implemented.

For consideration

Your feedback is sought on the proposed incident notification changes that SWA is planning to introduce for the model WHS laws.

Note: Western Australia is not bound to accept all changes SWA introduces for incident notifications. However, WHS harmonisation will be a key factor during the consideration of the changes.



Question:

3. Based on your understanding of the SWA overview of the proposed changes to incident notifications, do you support the intended changes?

Please provide your reasoning and any evidence to support your answer.

TOPIC 3: WHS Act, Part 5 – Consultation, representation and participation

Part 5 of the WHS Act outlines how PCBU's must, as far as is reasonably practicable, consult with workers who are likely to be directly affected by health and safety matters. This includes giving workers a reasonable opportunity to express their views or raise issues about WHS at the workplace.

While a PCBU is responsible for making decisions regarding health and safety, they may not understand the challenges or subtleties of the work performed, or the working conditions. To help improve this understanding, it is important that PCBU's engage in regular consultation with workers.

Consultation is a collaborative process between PCBU's and workers. It involves sharing information about WHS and ensuring that the views of workers are considered when making decisions about health and safety in the workplace.



Question:

4. Do you consider Part 5 of the WHS Act, Consultation, representation and participation, to be operating effectively?

Please provide your reasoning and any evidence to support your answer.

Section 82 – Referral of issue to regulator for resolution by inspector.

Background

If a WHS issue arises, the concerned parties must first make reasonable efforts to attempt to mutually resolve the matter, under part 5 of the WHS Act. The parties must discuss the matter and apply an issue resolution procedure to resolve the issue between both parties.

If both parties fail to resolve the issue, section 82 allows any party to the issue to request the regulator to appoint an inspector resolve the issue.

Before requesting assistance from the regulator, parties are first encouraged to contact WorkSafe to discuss the consultation undertaken and investigate any other options that may help to resolve the issue.

For consideration

Section 82 requires a WorkSafe inspector to make a decision to resolve a WHS issue within 2 days. Inspectors consistently report this time frame is not always achievable, as section 82 matters are often complex and time-consuming.

Another compounding effect on the tight review timeframe is that section 82A, *Extension of deadline for making decision resolving issue*, provides that if the deadline set by section 82(3) is not practicable, the regulator must apply to the Work Health and Safety Tribunal (Tribunal) to set a new deadline. The Tribunal will then set a new deadline that it considers to be practicable.

It is worthwhile noting that section 82A, *extension of deadline for making decision resolving issue*, is unique to Western Australia and is not harmonised with the model WHS laws.

Section 82A is not present in the model WHS Act but was introduced in the WHS Act based on recommendation 13 of [Review of the model Work Health and Safety laws: Final report](#), as follows:

13: Resolving outstanding disputes after 48 hours Amend the model WHS Act to provide for:

- (a) disputes under ss 82 and 89 of the model WHS Act to be referred to the relevant court or tribunal in a jurisdiction if the dispute remains unresolved 48 hours after an inspector is requested to assist with resolving disputes under the default or agreed procedures and with cease work disputes
- (b) a PCBU, a worker, an HSR affected by the dispute or any party to the dispute to notify the court or tribunal of the unresolved issue they wish to be heard
- (c) the ability for a court or tribunal to exercise any of its powers (including arbitration, conciliation or dismissing a matter) to settle the dispute, and
- (d) appeal rights from decisions of the court or tribunal to apply in the normal way.

WorkSafe endeavours to review WHS issues between parties as quickly as possible. However, the current 2-day timeframe is proving to be unachievable in most cases. This leads to frustration for both parties involved in the dispute.

In Queensland, the *Work Health and Safety and Other Legislation Amendment Act 2024* [split dispute resolution into two pathways](#).

The first pathway is where an inspector is required to first make a decision before the matter can be referred to the Queensland Industrial Relations Commission (QIRC). These matters relate to work group determinations, work group variations and the constitution of health and safety committees.

The second pathway is for matters where parties to an issue can either request an inspector to be appointed to assist with resolving the matter (and then refer the matter to the QIRC) or directly take a dispute to the QIRC.

The topic of referral of issues to regulators is currently under review by SWA through its Best Practice Review and the Queensland approach is being considered.

WorkSafe will monitor the proposed SWA changes to referral of issues and consult with the Minister and stakeholders accordingly.



Questions:

- 5a. Do you consider the 2-day turnaround time reasonable, or do you support Western Australia investigating alternative approaches to manage dispute resolutions (noting that SWA is reviewing the matter)?
- 5b. Do you consider the Queensland approach to dispute resolution preferable to Western Australia's?

Please provide your reasoning and any evidence to support your answer.

TOPIC 4: Introduction of infringement notices

For consideration

The WHS Act does not currently allow for infringement notices. However, stakeholder feedback indicates that there may be merit in considering the introduction of infringement notices for select WHS compliance issues.

The model WHS Act allows for jurisdictions to implement a penalty notice scheme and Western Australia is the only jurisdiction yet to do so.

In New South Wales, infringement notices are generally issued for minor matters where a high volume of contraventions are expected (e.g. failing to comply with reporting obligations). A person who receives an infringement notice can choose to pay the amount specified in the notice as an alternative to court proceedings. If the person fails to pay, court proceedings can be brought against them for the alleged contravention.

The amount payable in an infringement notice would be significantly lower than the penalty that a court could impose in relation to the alleged contravention. This would ensure that infringement notices, which do not reflect a court sanction or constitute an admission of guilt, would remain a subordinate but effective compliance measure.

In Western Australia, dangerous goods officers currently issue infringement notices in accordance with section 56 of the *Dangerous Goods Safety Act 2004*. Approximately 20 are issued per year, and reportedly the administration and resource implications are minimal.

Selecting offences to be prescribed as penalty offences, and determining the associated penalties, would be an integral aspect of establishing a WHS infringement notice scheme in Western Australia.

For example, Queensland has identified a number of priority infringeable offences for enforcement. If a Queensland inspector identifies a contravention of a provision determined by the regulator to be a priority, the inspector will issue an infringement notice.

Priority infringeable offences in Queensland include:

- non-compliance with an improvement notice;
- incident notification and reporting;
- consultation with workers; and
- safety management and record keeping.



Questions:

6. Do you support Western Australia introducing an infringement notice penalty scheme?
7. Can you provide an argument for or against introducing an infringement notice penalty scheme?

Please provide your reasoning and any evidence to support your answer.

TOPIC 5: Requirement to display notices for psychosocial hazards

In 2022, PricewaterhouseCoopers (PwC) were engaged by WorkSafe to undertake a regulatory capability review of WorkSafe Mines Safety in preventing and responding to sexual assault and sexual harassment in the Western Australian mining industry. Recommendation 29 of the [Regulatory Capability Review of WorkSafe Mines Safety: Final Report](#) was to 'consider supporting changes on the requirement to display notices for sexual assault and sexual harassment'.

WorkSafe responded, as follows:

The WHS Act requires notices to be displayed in the workplace for transparency and as a deterrent to unsafe practices. WorkSafe acknowledges the importance of displaying notices and ensures identifying information is not included on notices. WorkSafe will consider the settings for notices during the statutory review of the WHS Act. In the interim, the affected person will be consulted about the wording of notices where practicable.

Section 210 of the WHS Act currently requires that a person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being conducted that is affected by the notice.

Given recommendation 29, WorkSafe is considering including a provision in the WHS Act to allow for certain notices relating to psychosocial hazards to not be displayed at workplaces. Instances where this could apply may be where a notice relates to a specific matter, incident, party, or sensitive content.



Question:

8. Based on the PwC report findings and recommendation 29, do you support including a provision in the WHS Act to allow for certain notices relating to psychosocial hazards to not be displayed at workplaces?

Please provide your reasoning and any evidence to support your answer.

TOPIC 6: General feedback on the operation and effectiveness of the WHS Act or other WHS matters

WorkSafe recognises that workplace participants and the public may also want to provide feedback on the general operation and effectiveness of the Act or on other WHS matters not specifically outlined in this discussion paper.

If you have any additional feedback on Western Australia's WHS laws that you would like to bring to WorkSafe's attention, please do so.



Questions:

- 9a. Do you have any additional feedback on the general operation and effectiveness of Western Australia's WHS laws?
- 9b. Do you have any positive feedback regarding Western Australia's adoption of the harmonised WHS laws?
- 9c. Do you consider Western Australia's WHS legislative framework to be effectively addressing emerging workplace hazards?
- 9d. Do you consider Western Australia's WHS legislative framework to be reducing the compliance burden faced by industry and others?

Please provide your reasoning and any evidence to support your answer.

Thank you for taking time to consider the topics and questions outlined in this discussion paper. We look forward to reviewing any feedback you wish to provide as part of this Review.

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