

**Department of Mines, Industry Regulation and Safety -
WorkSafe Division**

Submission to the Standing Committee on Public Administration

Inquiry into WorkSafe

Department of Mines, Industry Regulation and Safety

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1. Introduction

WorkSafe is a division of the Department of Mines, Industry Regulation and Safety (DMIRS). DMIRS was formed on 1 July 2017 with the amalgamation of the departments of Commerce and Mines and Petroleum.

WorkSafe's role is the regulation of workplace safety and health in accordance with the *Occupational Safety and Health Act 1984* (the OSH Act).

The principal objective of occupational safety and health (OSH) laws is to promote and secure the safety and health of people at the workplace.

As part of its role, WorkSafe:

- administers occupational safety and health legislation and provides legislative advice to government;
- provides education and information to employers and employees to assist in preventing work-related injury and disease and improving work safety and health performance; and
- enforces occupational safety and health legislation and assists with the resolution of issues in workplaces.

WorkSafe's Vision and Mission are:

Vision – safe and healthy Western Australian workplaces.

Mission – to inspire employers and workers to ensure workplaces are safe through partnership, education and enforcement.

WorkSafe's collaborative approach with industry, employers and the workforce focuses on:

- influencing the commercial environment in Western Australia to ensure the achievement of best safety and health outcomes in the workplace;
- empowering business and community partners to lead in the reduction of workplace hazards and associated risks to health;
- developing a modern, world class regulatory environment;
- enforcing the law; and
- strengthening organisational capacity to assist business operators and workers to manage OSH effectively.

In association with employers and industry across the State, the Australian Work Health and Safety Strategy 2012-2022 (the Strategy) provides particular focus for the work undertaken by WorkSafe.

The 2022 targets for the national Strategy are to:

- reduce the number of worker fatalities by at least 20 per cent;
- achieve a reduction in the incidence of claims resulting from one or more weeks off work of at least 30 per cent; and to
- achieve a 30 per cent reduction in the incidence rate of claims for musculoskeletal disorders resulting in one or more weeks off work.

The Strategy includes a number of action areas, priority industries and priority disorders, which are used for WorkSafe's business planning.

A copy of the Strategy is provided in Attachment 1.1.

WorkSafe’s approach to ensuring compliance by employers and other duty holders is tailored to workplace circumstances and presenting risk. The compliance model extends from education, capacity building and preventative measures through to enforcement as demonstrated in the chart below.



Chart 1: Compliance approach

WorkSafe is currently overseen by the Acting Deputy Director General Safety of DMIRS, who also performs the statutory role of WorkSafe Western Australia Commissioner. WorkSafe’s head office is located in Cannington with regional offices in Bunbury, Albany and Geraldton.

WorkSafe’s field activities are conducted by three operational Directorates, including:

- Construction, Regional and Primary Industries – covering construction, agriculture, forestry and fishing industries;
- Health Hazards and Plant Safety – covering health, community services and education and staffing scientific officers and engineers specialised in health hazards and plant; and
- Manufacturing, Transport and Service Industries – covering manufacturing, transport, wholesale, retail and service industries.

The operational areas are supported by three Directorates:

- Legal Services - providing legal advice and representation in court proceedings;
- Policy and Education - focusing on strategic planning, policy development, evaluation and education and the conduct of audits; and
- Business Services – including the Customer Help Centre (inbound call centre), licensing, plant registration and inspector development and training.

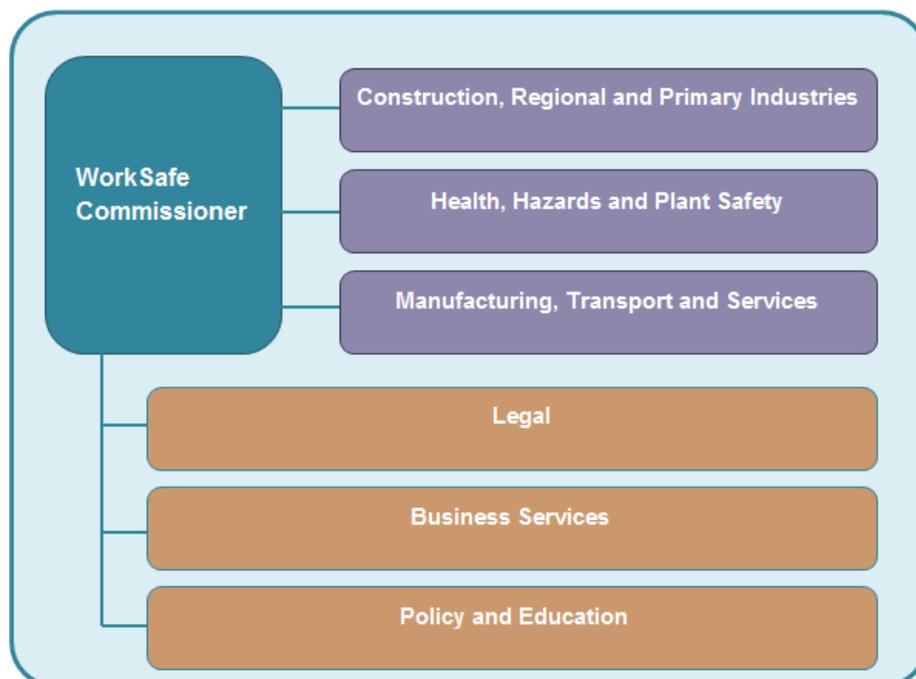


Chart 2: Current WorkSafe structure

Information about imminent changes to the current structure is provided in section 9.1.

2. WorkSafe's performance against the objects of the *Occupational Safety and Health Act 1984 (a)*

The statistics presented in this submission are the most recent statistics available. As far as possible, statistics relating to the financial year 2016-17 have been included. The data relating to 2016-17 was extracted shortly after the end of the financial year. Due to a possible delay in data input, this data is subject to revision.

2.1 Injury statistics

Injury statistics data is provided to WorkSafe by WorkCover WA and is derived from workers' compensation claims lodged in accordance with the *Workers' Compensation and Injury Management Act 1981*. Only those workers who are covered under the *Workers' Compensation and Injury Management Act 1981* are included in the data.

In relation to lost time injuries and diseases (LTI/Ds), preliminary data is provided in relation to the year 2015-2016. The latest available year for published lost time injury and disease data is considered a preliminary dataset and is denoted by 'p' (preliminary). Data revisions may occur for subsequent annual extractions as claims mature or finalise.

Number of LTI/Ds

The total number of LTI/Ds of one or more days or shifts lost from work over the ten-year period 2006-07 to 2015-16 is provided in chart 3.

On average over the last 10 years, there have been 17,774 LTI/Ds per year.

The number of LTI/Ds has decreased by six per cent between 2006-07 and 2015-16. The number of LTI/Ds in 2006-07 was 18,054, compared to 16,890 LTI/Ds in 2015-16.

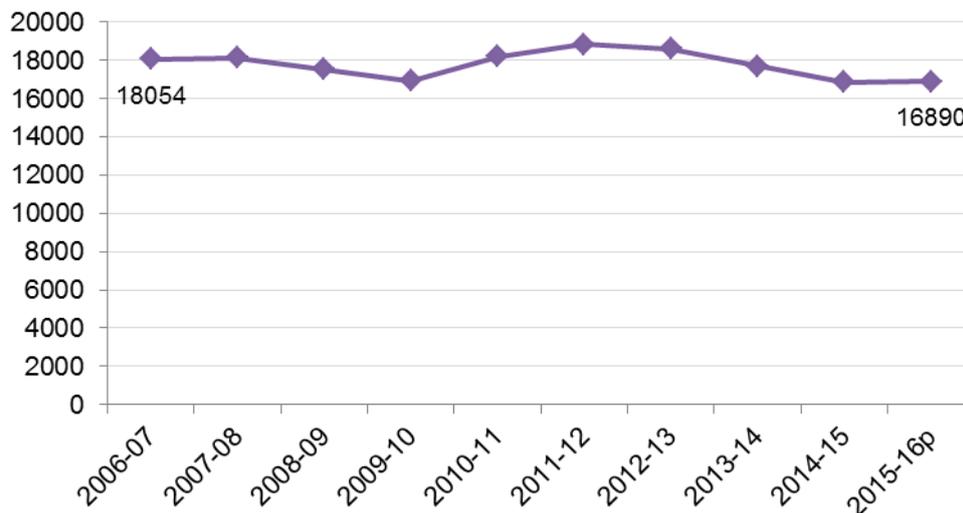


Chart 3: Number of LTI/Ds (one or more days/shifts lost from work) recorded in WA: 2006-07 to 2015-16p

Frequency rates

The frequency rates, which are based on the number of LTI/Ds per million hours worked over the ten-year period 2006-07 to 2015-16 (the last 10 years) are provided in chart 4. Hours worked estimates are provided by the Australian Bureau of Statistics and are derived from the total number of hours worked in a given job.

A general downward trend of the frequency rate is evident in the last 10 years. The frequency rate in 2006-07 compared with the frequency rate in 2015-16 has decreased by 25 per cent.

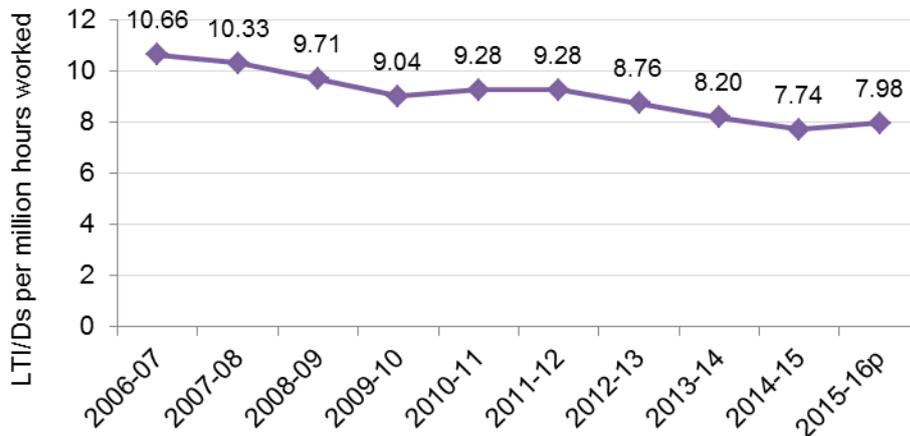


Chart 4: Frequency rates in WA: 2006-07 to 2015-16p

Incidence rates

The incidence rates over the ten year period 2006-07 to 2015-16, which are based on the number of LTI/Ds for each one hundred employees, are provided in chart 5. Employee estimates provided by the Australian Bureau of Statistics are counts of jobs, not persons, hence they are headcounts. For example, if a given person works two jobs, then the employee would be counted twice.

Chart 5 shows a general downward trend of incidence rates over the last 10 years. The incidence rate in 2006-07 compared with the incidence rate of 2015-16 has decreased by 27 per cent.

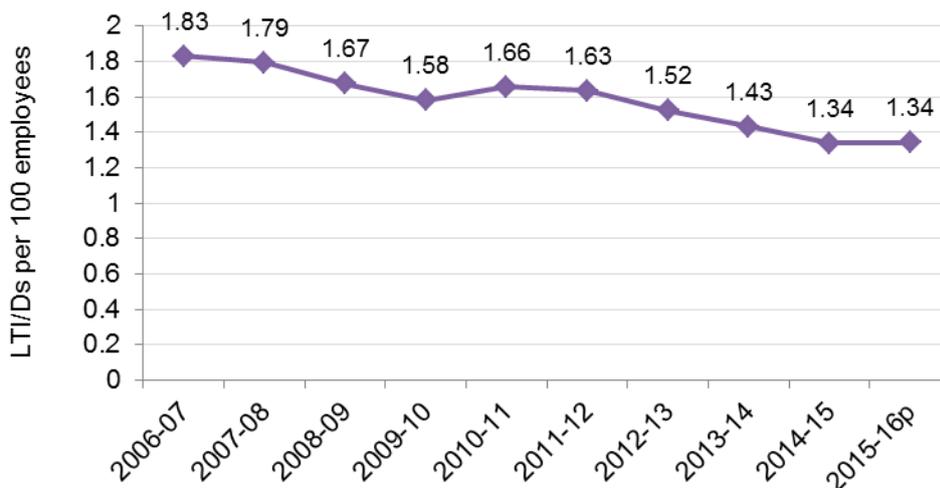


Chart 5: Incidence rates in WA: 2006-07 to 2015-16p

2.2 Work-related traumatic injury fatalities

The work-related traumatic injury fatalities provided in this section relate to work-related fatalities involving injury in WA. Fatalities out of scope for data collection include:

- occupational diseases;
- Commonwealth government workers, workers covered by Comcare and defence personnel;
- self-inflicted injuries;
- road traffic fatalities and work-related fatalities due to natural causes such as heart disease, unless there is a clear reporting relationship between the accident and work being performed at the time of the accident; and
- some compensated deaths due to different data collection methods between WorkCover WA and WorkSafe.

Further information on the data collection methodology is available in Attachment 2.1: State of the Work Environment – Work-related traumatic injury fatalities Western Australia 2006-2007 to 2015-2016.

The total number of fatal incidents in WA includes work-related traumatic injury fatalities under WorkSafe’s jurisdiction and other jurisdictions in WA, including:

- Australian Transport Safety Bureau;
- Department of Mines and Petroleum; and
- Australian Maritime Safety Authority.

The total number of work-related traumatic injury fatalities in WA between 2007-08 and 2016-17 and the fatality incidence rate (per one million workers), is shown in chart 6.



Chart 6: Work-related traumatic injury fatalities and fatality incidence rates WA¹⁾: 2007-08 to 2016-17

¹⁾ Note: in absence of a full year of workforce data, the 2016-17 Fatality incidence rate (8.2) is estimated using 6291.0.55.001 - Labour Force, Australia, Detailed - Electronic Delivery, May 2017 (11 months data) and is subject to revision.

In the last 10 years between 2007-08 and 2016-17, 185 work-related traumatic injury fatalities have been recorded in WA equating to an average of 18.5 fatal injuries per year for the period. Due to the volatility of work-related fatalities in a given year, averages over five-years are used to provide clear trend data. In the five-year period 2007-08 to 2011-12, 95 traumatic injury fatalities have been recorded in WA compared to 90 fatalities in the five-year period between

2012-13 and 2016-17. Most work-related traumatic injury fatalities in the ten-year period between 2006-07 and 2015-16 in WA were reported in industry subdivision Agriculture (28) followed by Metal Ore Mining (23), Construction Services (19) and Road Transport (18).

The highest recording mechanisms of work-related traumatic injury fatalities during the ten-year period between 2006-07 and 2015-16 in WA were being hit by falling objects (43 or 21.6 per cent), followed by vehicle incident (32 or 16.1 per cent) and being hit by moving objects (30 or 15.1 per cent). Further details are provided in Attachment 2.1.

Table 1 shows a breakdown of the number of work-related traumatic injury fatalities over the last 10 years in WA per jurisdiction. The data is based on reports notified to WorkSafe.

Year	WorkSafe	ATSB	DMP	AMSA	Total WA
2007-08	25	0	2	0	27
2008-09	14	1	6	0	21
2009-10	5	2	2	0	9
2010-11	17	1	3	0	21
2011-12	12	3	2	0	17
2012-13	19	0	0	0	19
2013-14	10	1	5	0	16
2014-15	17	1	4	0	22
2015-16	13	1	4	4	22
2016-17	10	0	1	0	11
Total	142	10	29	4	185

Table 1: Work-related traumatic injuries in WA per jurisdiction: 2007-08 to 2016-17

In the last 10 years between 2007-08 and 2016-17, 142 work-related traumatic injury fatalities have been recorded under WorkSafe’s jurisdiction equating to an average of 14.2 fatal injuries per year for the period.

The number of fatal incidents fluctuates from year to year. In the five-year period 2007-08 to 2011-12, 73 traumatic injury fatalities were recorded in WorkSafe’s jurisdiction, compared to 69 fatalities in the five-year period between 2012-13 and 2016-17. This is a decrease of 5.5 per cent. Chart 7 provides a graph of work-related traumatic injury fatalities over the last 10 years in WA per jurisdiction.

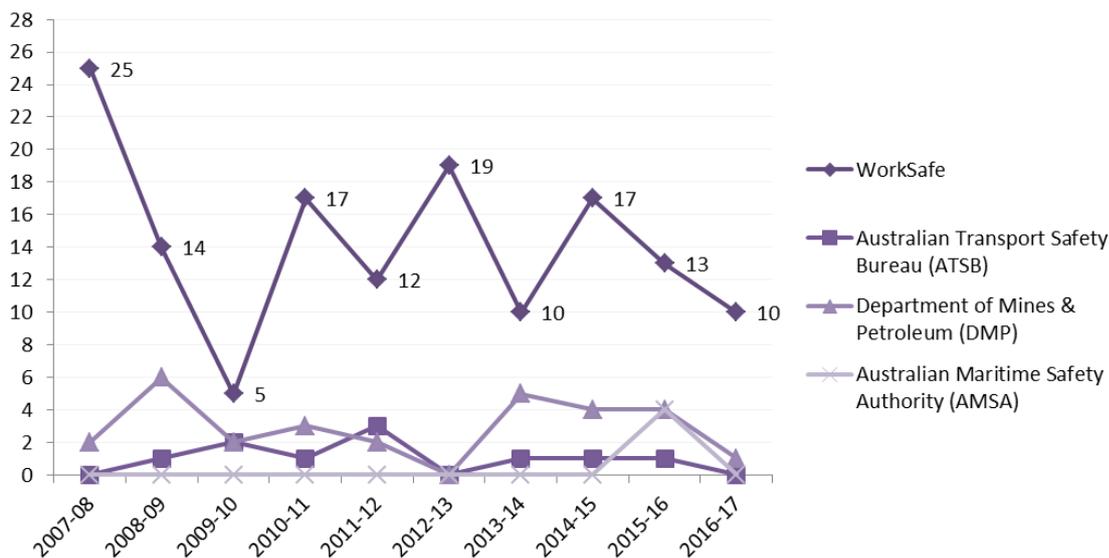


Chart 7: Number of confirmed work-related traumatic injury fatalities notified to WorkSafe by jurisdictional authority: 2007-08 to 2016-17

2.3 Comparison injury and fatality statistics across Australia

The information in this section is based on the Safe Work Australia Comparative Performance Monitoring Report 17th Edition (refer to Attachment 2.2) and provides statistics on serious injuries and traumatic injury fatalities across Australia.

Incidence rates and frequency rates serious injuries and diseases

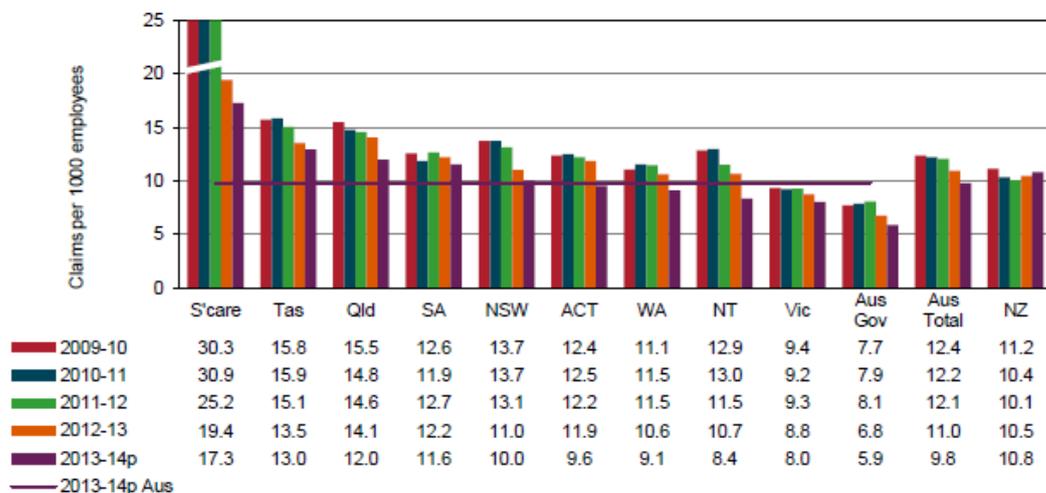
The statistics in this section only relate to serious claims. The definition of a serious claim aligns with the Australian Strategy 2012–2022. Under this definition, a serious claim is one that results in compensation being paid for an absence from work of one working week or more. This definition excludes claims arising from a work-related fatality or claims for injuries that occurred during a recess period away from the workplace. Claims for injuries incurred on a journey to or from work are not included.

Indicator 4 shows that the Australian incidence rate for serious claims has steadily declined over the past four years, decreasing 11 per cent from 12.4 to 11.0 claims per 1000 employees between 2009–10 and 2012–13. Preliminary data for 2013–14 show an incidence rate of 9.8 claims per 1000 employees. While it is expected that this rate will rise when updated data are available, the preliminary data indicate an 11 per cent improvement in incidence rates compared to the previous year.

Falls in the incidence rates of serious claims from 2009–10 to 2012–13 were recorded by all jurisdictions. Seacare recorded substantial decrease (36 per cent), New South Wales (20 per cent), the Northern Territory (17 per cent), Tasmania (15 per cent), the Australian Government (12 per cent), Queensland (9 per cent), Victoria (6 per cent), Western Australia (5 per cent) and the Australian Capital Territory (4 per cent).

Seacare recorded the highest incidence rate of serious claims in 2012–13 with 19.4 claims per 1000 employees, while the Australian Government recorded the lowest rate with 6.8 claims per 1000 employees followed by Victoria with 8.8 claims per 1000 employees. Over the period 2009–10 to 2012–13 New Zealand recorded a 6 per cent decrease in the incidence rate of serious claims, dropping from 11.2 to 10.5 claims per 1000 employees. The incidence rate of serious claims in 2013-14p in WA is lower than in the ACT, New South Wales, South Australia, Queensland, Tasmania and Seacare.

Indicator 4 – Incidence rates of serious* injury and disease claims by jurisdiction



* Includes all accepted workers' compensation claims for an incapacity that results in a total absence from work of one working week or more.

Indicator 5 shows the Australian frequency rate of serious claims decreased 12 per cent from 7.5 claims per million hours worked in 2009–10 to 6.6 in 2012–13. Preliminary data for 2013–14 shows the Australian frequency rate of serious claims was 5.9 claims per million hours worked.

Although the frequency rates data show a similar level of improvement to incidence rates, there are differences in the ranking of jurisdictions. Tasmania recorded the highest frequency rate at 8.4 claims per one million hours worked but the second highest incidence rate. Seacare also changed position due to the 24-hour basis on which their frequency rates are calculated. The frequency rate of serious claims in 2013-14p in Western Australia is lower than in the ACT, Seacare, New South Wales, Queensland, South Australia and Tasmania.

Further information and explanatory notes are provided in Note 1 in Appendix 1 of the Comparative Performance Monitoring Report 17th Edition (refer to Attachment 2.2).

Indicator 5 – Frequency rates of serious* injury and disease claims by jurisdiction



* Includes all accepted workers' compensation claims for an incapacity that results in a total absence from work of one working week or more.

Incidents and incidence rates work-related traumatic injury fatalities

Traumatic injury fatality data are sourced from workers' compensation data, fatality notifications to the various work health and safety authorities and information in the National Coronial Information System (NCIS). Only around 60 per cent of work-related fatalities recorded in the traumatic injury fatalities collection are typically compensated. This is in part due to self-employed workers not being covered by workers' compensation schemes. Many self-employed workers work in high risk sectors such as agriculture, transport and construction. Information presented in this indicator includes only workplace fatal incidents not on a public road.

Incidents that occurred on a public road are not included in this indicator because some fatalities, particularly those related to traffic incidents, may be missed due to the way these deaths are identified. The information in the NCIS relies heavily on information collected reports which may not include sufficient information to identify whether or not the deceased was working at the time of the incident.

Indicator 9 shows between 2010 and 2014 calendar years there was a 25 per cent decrease in the number of workers killed while working. Incidents which did not occur on a public road decreased by 23 per cent, while incidents which occurred on a public road recorded a 29 per cent decrease. Of the 212 worker deaths identified in 2012–13, 136 were compensated.

The five-year average of the incidence rate of traumatic injury fatalities in WA (1.5) is slightly higher than the average in Australia (1.3), but lower than the five year average rates in the Northern Territory (3), Tasmania (2.4) and Queensland (1.7).

Indicator 9 – Traumatic injury fatalities by state of death

	2010	2011	2012	2013	2014	5yr Average
Incidents not on a public road						
New South Wales	46	41	52	40	44	45
Victoria	31	32	21	24	29	27
Queensland	39	43	45	35	30	38
Western Australia	23	19	16	21	15	19
South Australia	14	16	7	12	7	11
Tasmania	5	6	4	7	6	6
Northern Territory	5	5	4	4	1	4
Australian Capital Territory	1	1	2	1		1
Australian total	164	163	151	144	132	151
New Zealand*	83	75	63	u/a	u/a	u/a
Incidence rate (incidents not on a public road per 100 000 workers)						
New South Wales	1.3	1.2	1.5	1.1	1.2	1.3
Victoria	1.1	1.1	0.7	0.8	1.0	1.0
Queensland	1.7	1.9	2.0	1.5	1.3	1.7
Western Australia	1.9	1.5	1.2	1.6	1.1	1.5
South Australia	1.8	2.0	0.9	1.5	0.9	1.4
Tasmania	2.1	2.5	1.7	3.0	2.5	2.4
Northern Territory	4.2	4.1	3.2	3.1	0.7	3.0
Australian Capital Territory	0.5	0.5	1.0	0.5	0.0	0.6
Australian total	1.5	1.5	1.3	1.3	1.1	1.3
New Zealand*	3.9	3.5	2.9	u/a	u/a	u/a

* New Zealand work-related fatalities are identified by motor vehicle and non-motor vehicle. Figures are three year moving averages. Data for 2011–12 and 2012–13 are not available and are denoted by "u/a".

Cautionary notes regarding the different methodologies and data reported between State (local) and National reports

1. Indicator 9 fatality data is reported by calendar year and not financial year (as is reported by WorkSafe locally).
2. The national fatality incidence rate is reported per one hundred thousand workers. Unlike fatalities reported by WorkSafe WA, the national data scope is wider and producers of the CPM Report have access to additional information sources than the states and territories i.e. workers' compensation data (compensated deaths), notifications from various work health and safety authorities and the national Coronial Information System. As such, national traumatic injury fatalities data includes all work-related fatalities, whether they were notified, compensated or not.
3. Given the differences in data collection methodologies, data reported at the national level is not comparable to that published at State level.

2.4 Investigations

Completed investigations

An investigation is an examination of a safety and health matter that may consist of one or more attendance(s) at a workplace and may require a combination of activities and actions.

WorkSafe inspectors carry out reactive and proactive investigations, which are recorded in the WorkSafe Information Systems Environment (WISE). Further information about WISE is provided in section 5.6. Reactive investigations include investigations into serious and fatal

incidents. Proactive investigations are predominantly investigations conducted as part of industry projects, which are included in the business plans of the operational Directorates. For more information about investigations, refer to section 5.4.

In the ten-year period between 2007-08 and 2016-17, the average number of investigations per year was 8,875. In the five-year period between 2007-08 and 2011-12, on average 9,444 investigations were carried out per year, compared to an average of 8,306 investigations per year in the five-year period between 2012-13 and 2016-17.

The number of proactive investigations conducted in 2007-08 was similar to the number of proactive investigations in 2016-17. The number of reactive investigation in 2007-08 was 5430 compared to 3007 reactive investigations in 2016-17, which is a decrease of 45 per cent. Chart 8 below shows the number of reactive and proactive completed investigations recorded per year over the ten-year period 2007-08 to 2016-17.

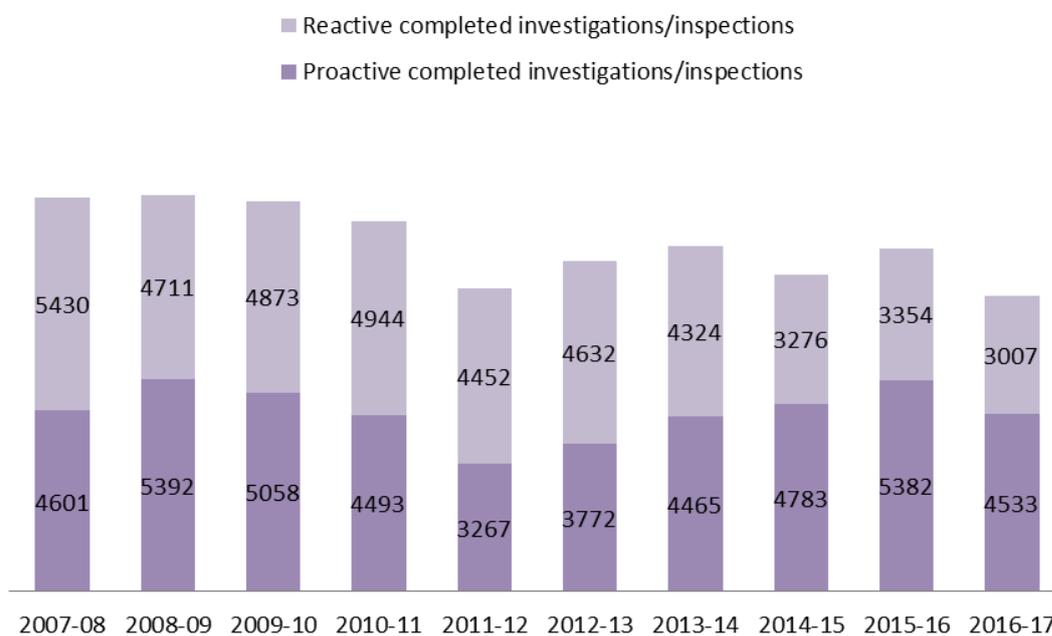


Chart 8 Completed investigations proactive and reactive: 2007-08 to 2016-17

The percentage of proactive investigations consistently increased between 2007-08 and 2015-16 (to 62 per cent). In 2016-17, the nature of 40 per cent of investigations was reactive and 60 per cent was proactive.

Workplace visits

As part of an investigation in WISE, inspectors record activities.

In WISE, the following six activities can be selected:

- visit or inspection;
- meeting;
- phone;
- correspondence;
- support; and
- research.

The number of workplace visits presented in this section is only based on the number of recorded activities relating to visit or inspection. The data does not include meeting activities and is therefore not a true reflection of the number of actual visits to a workplace.

The number of workplace visits has decreased from 12,173 visits in 2007-08 to 7,536 visits in 2016-17, which is in line with the decrease in the number of investigations over the same ten-year period.

Chart 9 shows a breakdown of the total number of workplace visits conducted by WorkSafe inspectors per year over the ten-year period between 2007-08 and 2016-17.

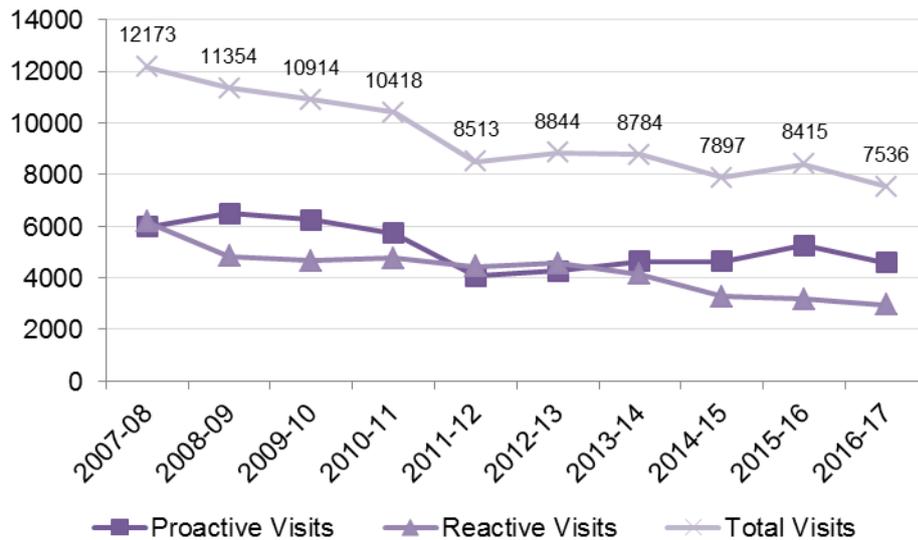


Chart 9: Breakdown of the total number of workplace visits by inspectors: 2007-08 to 2016-17

Chart 10 provides details of the number of visits to an individual business or entity name at a particular address per year over the ten-year period between 2007-08 and 2016-17.

This number is lower than the total number of visits for a number of reasons. For example, in one investigation an inspector may conduct more than one visit to the workplace. Other reasons for return visits include visits to the workplaces to verify compliance with notices or multiple investigations in relation to one workplace in the 12-month period, such as a large construction site, hospital or government department.

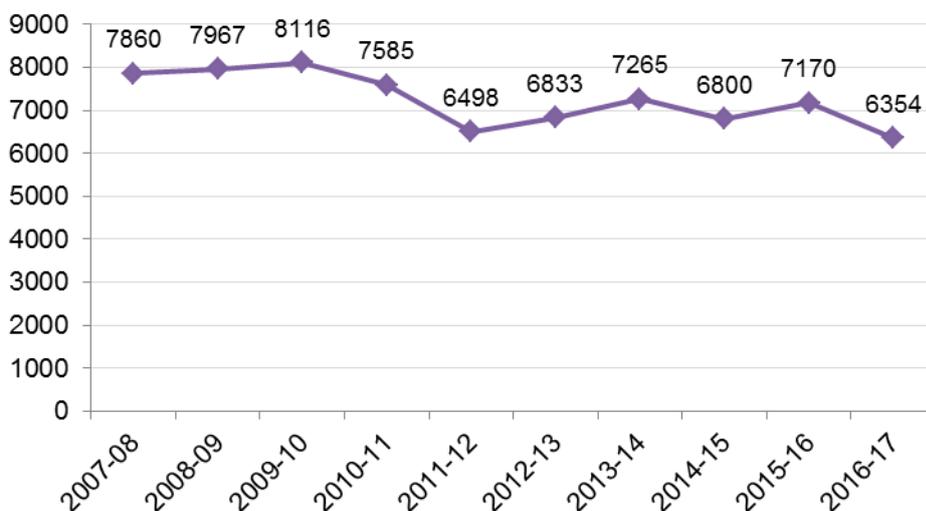


Chart 10: Workplace visits by inspectors to individual business entity names: 2007-08 to 2016-17

Priority Inspection Reports (PIRs)

As part of an investigation, inspectors generally inspect relevant PIRs and industry specific hazards. PIRs relate to seven priority areas, including:

- falls from heights;
- manual tasks;
- slips, trips and falls;
- electricity;
- hazardous substances;
- mobile plant and vehicle movement; and
- guarding of plant.

In an investigation, inspectors record if they have conducted one or more PIRs. A maximum of seven PIRs can be recorded in one investigation.

The average number of PIRs per investigation has increased from 1.3 per investigation in 2007-08 to 2.5 per investigation in 2016-17. The increase is likely due to the introduction of the Quality Investigations Policy in 2013.

The number of PIRs per year over the ten-year period between 2007-08 and 2016-17 is shown in chart 11.

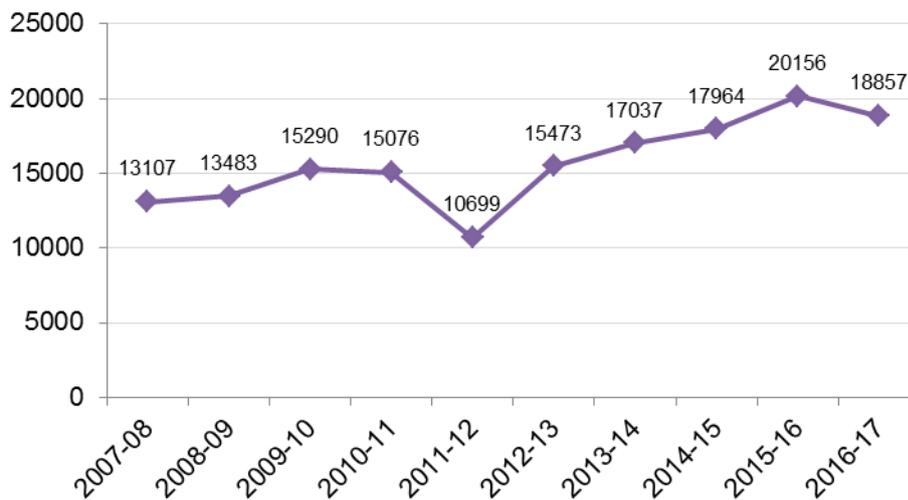


Chart 11: Priority Inspection Reports (PIRs) conducted: 2007-08 to 2016-17

Improvement notices

The number of improvement notices issued per year over the ten-year period between 2007-08 and 2016-17 is provided in chart 12. 9,724 improvement notices were issued in 2007-08 compared with 11,352 improvement notices in 2016-17, which is an increase of 17 per cent.

The average number of improvement notices issued per investigation has increased from 0.97 in 2007-08 to 1.51 in 2016-17.

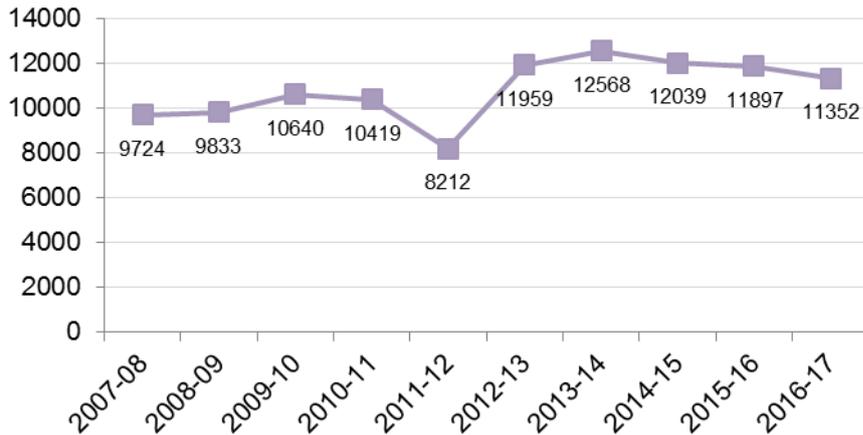


Chart 12: Improvement notices issued: 2007-08 to 2016-17: 2007-08 to 2016-17

Prohibition notices

The number of prohibition notices issued over the ten-year period between 2007-08 and 2016-17 is provided in chart 13. The number of prohibition notices issued in 2007-08 (676) compared with the number issued in 2016-17 (278) shows a decline of 59 per cent.

One of the possible reasons for the recent decline is that mandatory notice writing training was provided to all inspectors in 2014. This clarified the scope and reasons when a prohibition notice can be issued. Another possible reason is that improvements in work practices have resulted in less serious and imminent activities observed by inspectors.

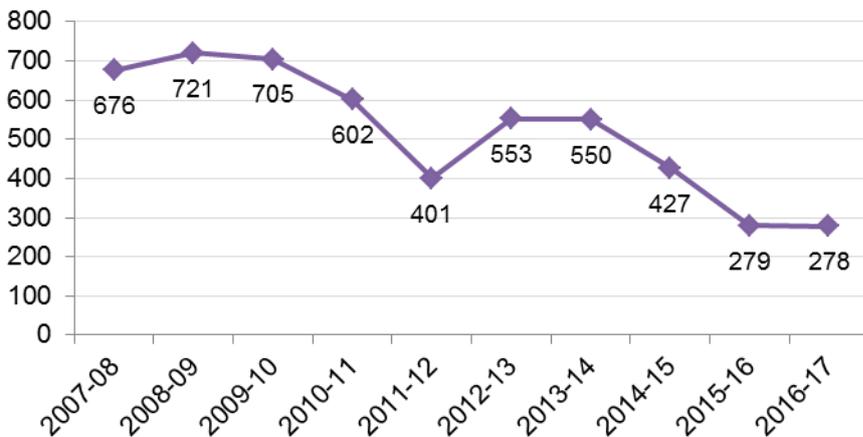


Chart 13: Prohibition notices issued: 2007-08 to 2016-17: 2007-08 to 2016-17

Review of notices

A person to whom an improvement notice or a prohibition notice is issued or the employer may refer the notice to the WorkSafe Western Australia Commissioner for review. A review may be requested in relation to the contents of the notice or to obtain an extension of time. The Commissioner may affirm the notice, affirm the notice with modifications or cancel the notice.

Chart 14 provides an overview of the number of improvement notice review decisions made in the ten-year period between 2007-08 and 2016-17. In 2007-08, 10.0 per cent of improvement notices issued were reviewed. In 2016-17, 5.0 per cent of improvement notices issued were reviewed.

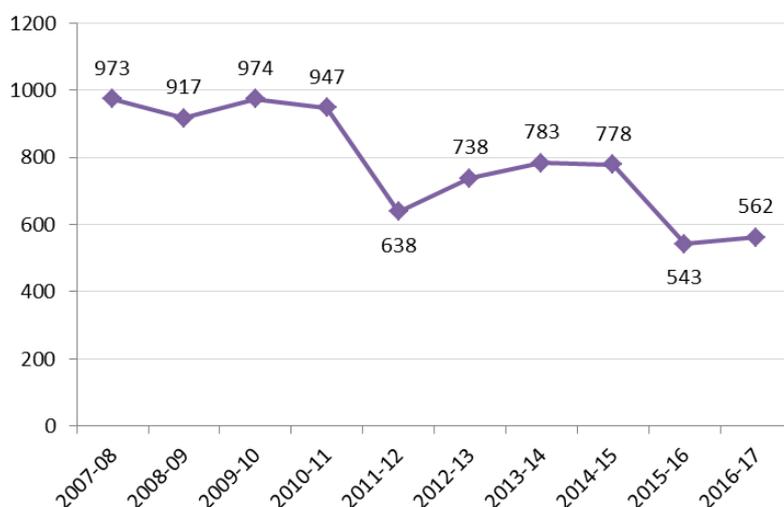


Chart 14: Improvement notice review decision: 2007-08 to 2016-17

Chart 15 provides an overview of the number of prohibition notice review decisions made in the ten-year period between 2007-08 and 2016-17. In 2007-08, 1.6 per cent of prohibition notices issued were reviewed. In 2016-17, 1.1 per cent of improvement notices issued were reviewed.

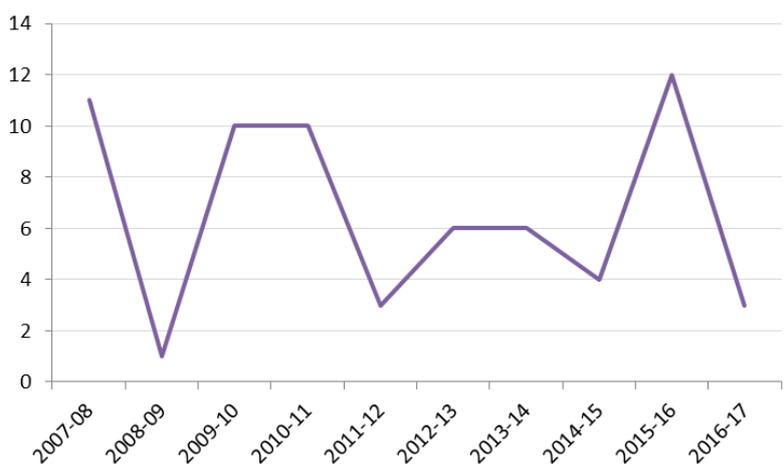


Chart 15: Prohibition notices review decisions: 2007-08 to 2016-17

Regional investigations

Investigations in regional areas are conducted by inspectors based in the regional offices in Bunbury, Geraldton and Albany. In addition, planned and unplanned regional visits are conducted by inspectors based in the metropolitan office.

Unplanned regional visits are generally reactive, for instance as a result of a serious or fatal incident report or where complaints are received that warrant a regional visit. As part of the yearly business planning, proactive visits are planned to regional areas, including Broome/Derby, Karratha, Port Hedland, Esperance, Kununurra/Wyndham, Goldfields, Midwest, Gascoyne, Northern Wheatbelt, Southern Wheatbelt, Great Southern, Esperance, South West and Christmas Island/Cocos Island.

After a regional complaint has been received, it is classified in accordance with the Criteria for Investigation. If no regional visit is planned in the area in the next period and it is a regional complaint that does not warrant an immediate unplanned regional visit, the complainant is contacted by an inspector to obtain their agreement for WorkSafe to contact the employer.

If the complainant gives consent, the inspector contacts the regional workplace by phone, and discusses the issues raised. The source of the complaint can remain confidential. Following the phone conversation, the inspector sends a letter to the employer detailing the alleged concerns, explaining requirements under OSH legislation and providing information relevant to the concerns. When an inspector is in the regional area in the future, the workplace may be visited.

Where a complainant cannot be contacted or does not give consent to contact the employer, the status of the request to attend is changed to not to be investigated with the reason of remote locality, notwithstanding any obvious requirement for WorkSafe to take action without consent of the complainant.

The total number of investigations in regional areas and the number of proactive and reactive completed investigations in regional areas is shown in chart 16. One of the reasons for the decline in the number of regional investigations is the withdrawal of inspectors from Broome and Karratha. In 2016-17, 26 per cent of investigations were in regional areas, while about 21 per cent of the state's population is in regional areas (ABS 2015-16).

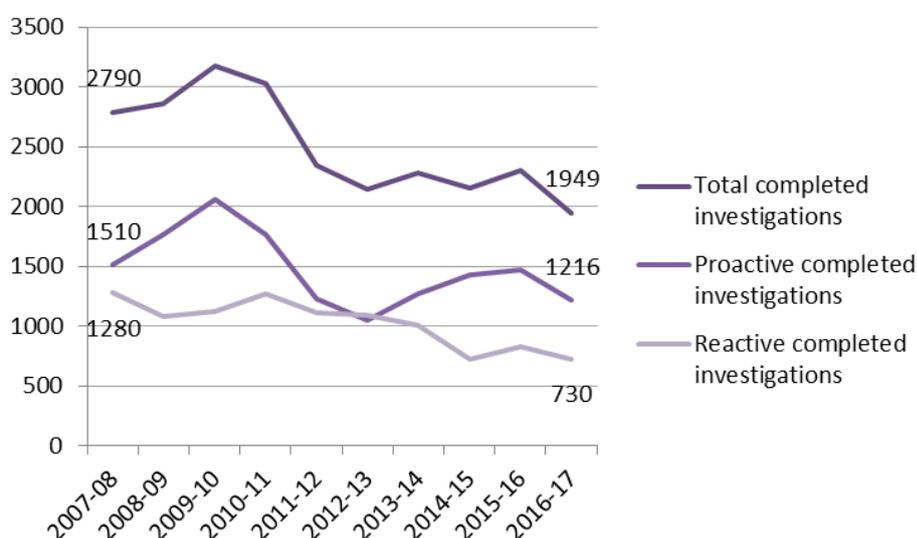


Chart 16: Number of investigations in regional areas: 2007-08 to 2016-17

The number of improvement notices issued in regional areas per year over the ten-year period between 2007-08 and 2016-17 is provided in chart 17. A similar number of improvement notices were issued in 2007-08 (2,641) compared with 2016-17 (2,609).

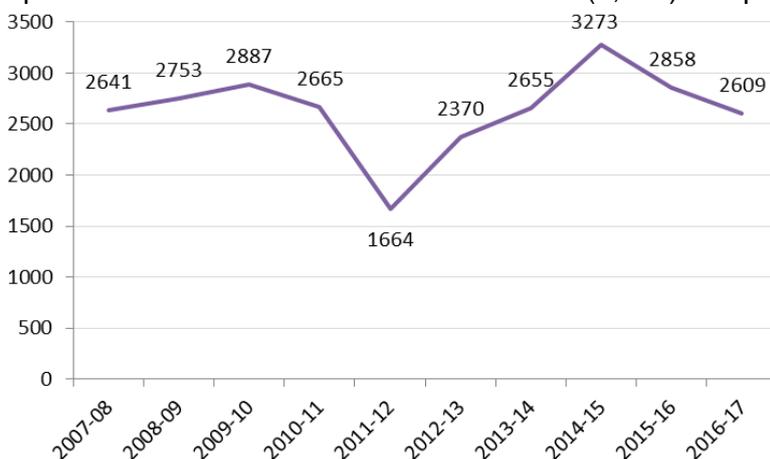


Chart 17: Number improvement notices issued in regional areas: 2007-08 to 2016-17

The number of prohibition notices issued in regional areas over the ten-year period between 2007-08 and 2016-17 is provided in chart 18. The number of prohibition notices issued in 2016-17 (66) compared to 2007-08 (227) shows a decline of 71 per cent.

A possible reason for the recent decline is that mandatory notice writing training was provided to all inspectors in 2014. This clarified the scope and reasons when a prohibition notice can be issued. Other possible reasons are that as a result of the closure of the Broome and Karratha offices, the presence of WorkSafe inspectors in the regional areas has been reduced. Improvements in work practices may also have resulted in less serious and imminent activities observed by inspectors.

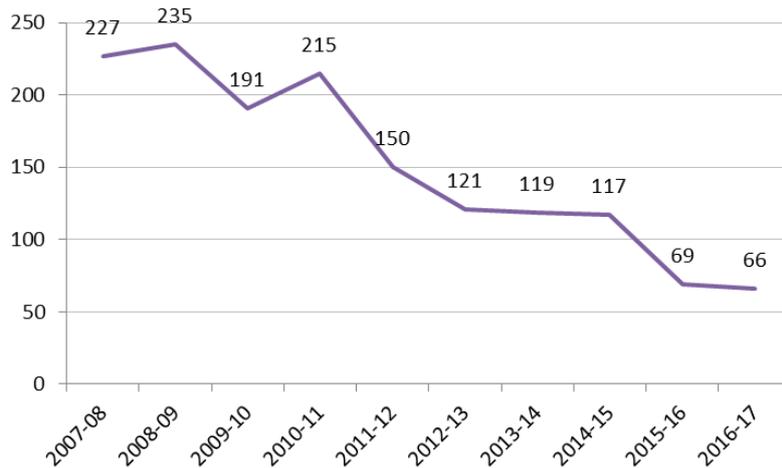


Chart 18: Number of prohibition notices issued in regional areas: 2007-08 to 2016-17

Discussion

Although the number of investigations fluctuates from year to year, the last five-year period between 2012-13 and 2016-17 shows a reduction of 12 per cent in the number of investigations compared with the five year period between 2007-08 and 2011-12.

The number of investigations carried out in a financial year depends on the number of available WorkSafe inspector and other factors.

The availability of WorkSafe inspectors that can do inspection work depends on resourcing levels and the number of inspectors working on serious or fatal incident investigations. Serious and fatal incidents occur across industries and have always been investigated by inspectors in industry teams.

When a number of fatal incidents occur in an industry covered by one industry team, it is likely that inspection work is affected, because inspectors in that team are working on fatal or serious incident investigations.

In recent years, serious and fatal incident investigations have become more complex and time consuming. In addition to legal challenges, technology has evolved, which requires technical knowledge and the use of experts. The working environment has also changed with multiple duty holders at a workplace, including (self-employed) contractors, sub-contractors, labour hire workers, etc. Most recent prosecution briefs to legal services include evidence in relation to multiple duty holders. These factors have increased the complexity of investigations into fatal and serious incidents.

Other factors that influence the number of investigations carried out per year are the quality of investigations and the way investigations are recorded. With the implementation of the Quality Investigations Policy in 2013, clear expectations were set for reactive and proactive investigations, which changed the way inspectors were working across the inspectorate.

Since 2013, the number of Priority Inspection Reports per investigation has increased and so have the number of improvement notices issued per investigation. In addition, proactive industry projects in a variety of industries have been more targeted with increased enforcement activity and the development of Industry Checklists and OSH newsletters.

2.5 Audits

Audits are investigations conducted by inspectors in the Audit and Special Investigations Team. Chart 19 provides the total number of audits conducted of demolition and asbestos licence holders and high risk work licence holders per year over the ten-year period between 2007-08 and 2016-17.

There has been a significant increase in the number of audits conducted of demolition and asbestos licence holders and high risk work licence assessors. The total number of audits conducted in 2007-08 (102) compared with the number of audits conducted in 2016-17 (559) shows an increase of 448 per cent in the total audits conducted.

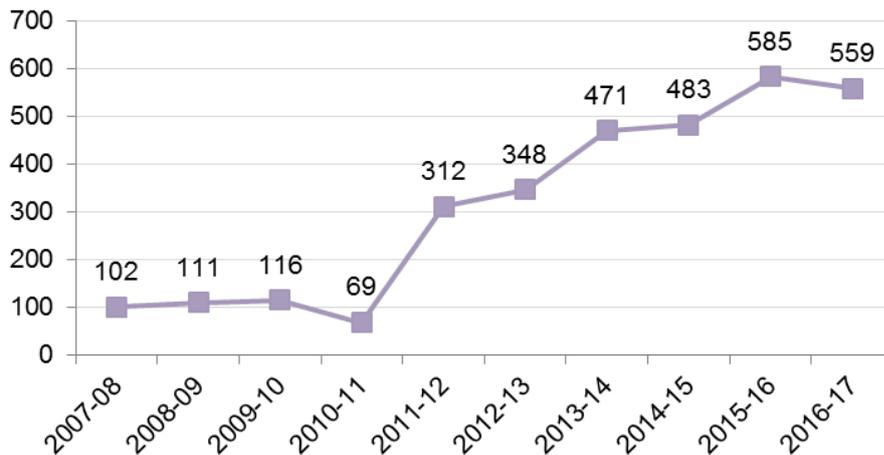


Chart 19: Audits numbers of demolition and asbestos licence holders and high risk work licence assessors: 2007-08 to 2016-17

A breakdown of the different types of audits conducted between 2011-12 and 2016-17 is provided in chart 20. The number of audits of asbestos licence holders has increased since laws on asbestos removal licensing changed in 2010. Further information about audits is provided in section 6.

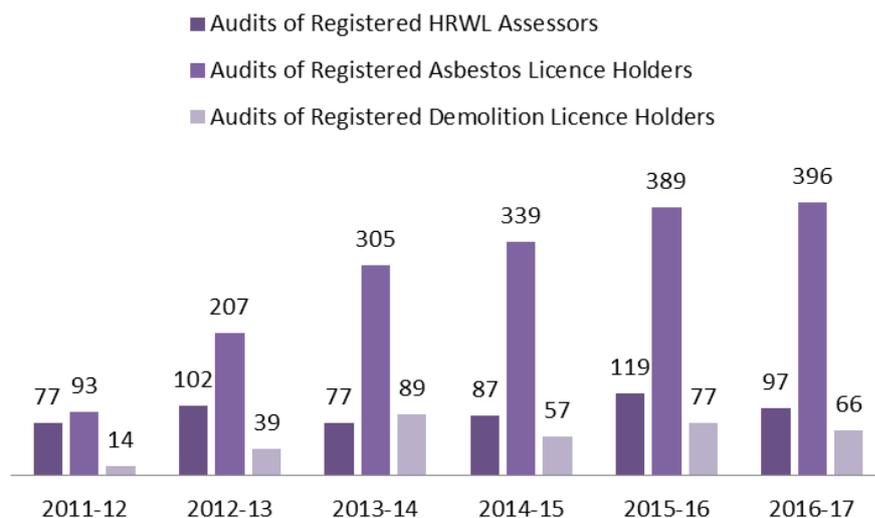


Chart 20: Audits specified by type: 2011-12 to 2016-17

2.6 Requests to attend, including complaints

A request to attend (RTA) is generally recorded in WISE by the Customer Help Centre or is generated by WISE. Further information about the Customer Help Centre is included in section 2.12.

An RTA in WISE is specified by type:

- reported dangerous situations or breaches;
- reported injuries, diseases or fatalities;
- requests for the review of a provisional improvement notice;
- requests for issue resolution under section 25 of the OSH Act;
- demolition notifications;
- tilt up construction notifications; and
- verification requests generated by WISE at random and verification outstanding requests, generated as a result of outstanding notices (see also section 5.6).

An RTA can only receive the status completed, when it has a completed investigation attached to it. One or more complaints or notifiable injuries can be attached to one investigation, for instance if multiple notifications have been received in relation to a matter. Most RTAs that do not have the status completed have the status not to be investigated. A not to be investigated RTA may have still been dealt with.

Reasons for not investigating RTAs are recorded in WISE and include:

- advised to use consultative mechanisms;
- causal factor already being addressed;
- enforcement action in place for causal factor;
- outside departmental jurisdiction;
- referred to other agency;
- outside statute of limitation;
- remote locality;
- minor complaint, not justified; or
- lower priority than other notifications received.

The total number of received and completed RTAs by the inspectorate over the last ten-year period between 2007-08 and 2016-17 is provided in chart 21. In 2007-08, 4804 RTAs were received in WISE, compared to 3966 in 2016-17.

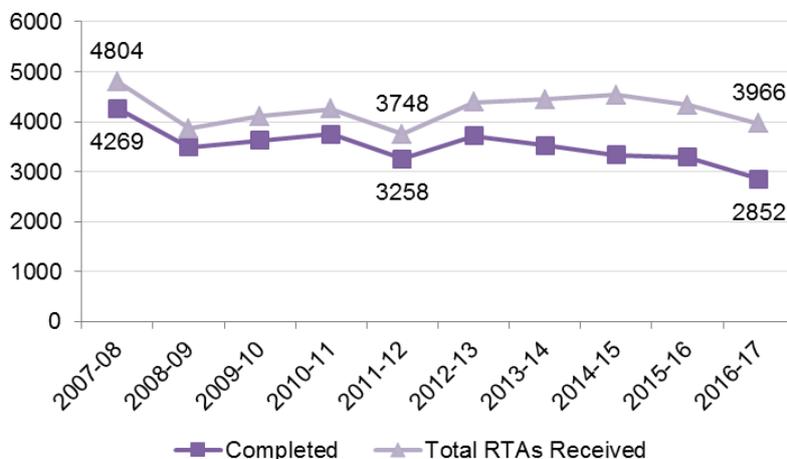


Chart 21: number of received and completed RTAs by inspectorate: 2007-08 to 2016-17

RTA types: Dangerous situation/breach and Injury/disease/death

Chart 22 provides the received and completed RTAs in relation to RTA types:

- dangerous situations or breaches; and
- injuries, diseases or fatalities.

These two RTA types may not include all received complaints, as some may be covered in other types of RTAs. The data does not include notifications of injuries, diseases or deaths to the WorkSafe Commissioner by duty holders required under section 23I of the OSH Act.

As discussed in section 5.1, complaints are classified and not all complaints result in an investigation. In the last five-year period between 2012-13 and 2016-17, 77 per cent of RTAs of the two types referred to above received the status completed. As clarified in the previous section about RTAs, an RTA with the status not to be investigated may still have been dealt with, which is indicated in the reason for not investigating the complaint.

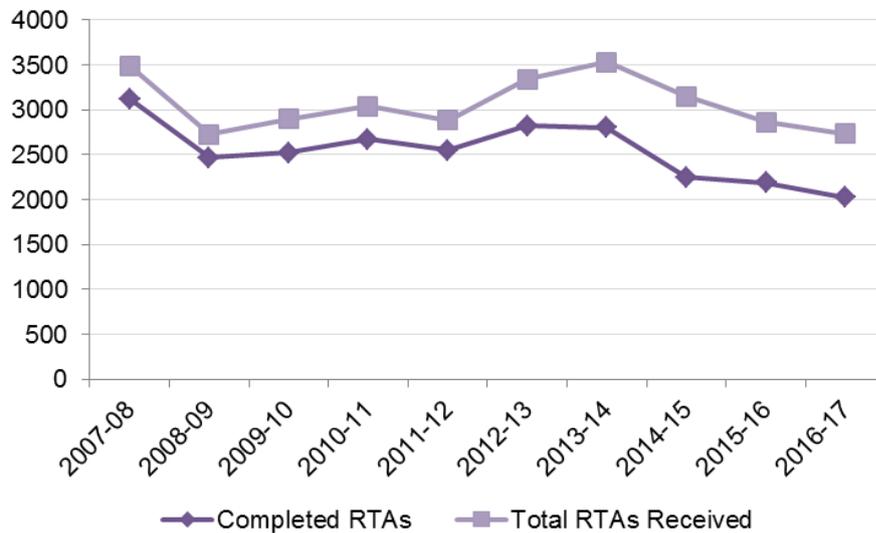


Chart 22: number of received and completed RTAs with types Dangerous situations or breaches and Injuries, diseases or fatalities by inspectorate: 2007-08 to 2016-17

2.7 Prosecutions

The number of prosecution notices signed and convictions per year over the ten-year period between 2007-08 and 2016-17 is provided in chart 23.



Chart 23: Number of prosecution notices signed and convictions: 2007-08 to 2016-17

Chart 24 provides the number of charges issued and the convictions per year over the ten-year period between 2007-08 and 2016-17. Some charges will not result in a conviction or acquittal in the year they were issued, due to time taken by the court process. In some instances the waiting time for a trial can be approximately 12 months.

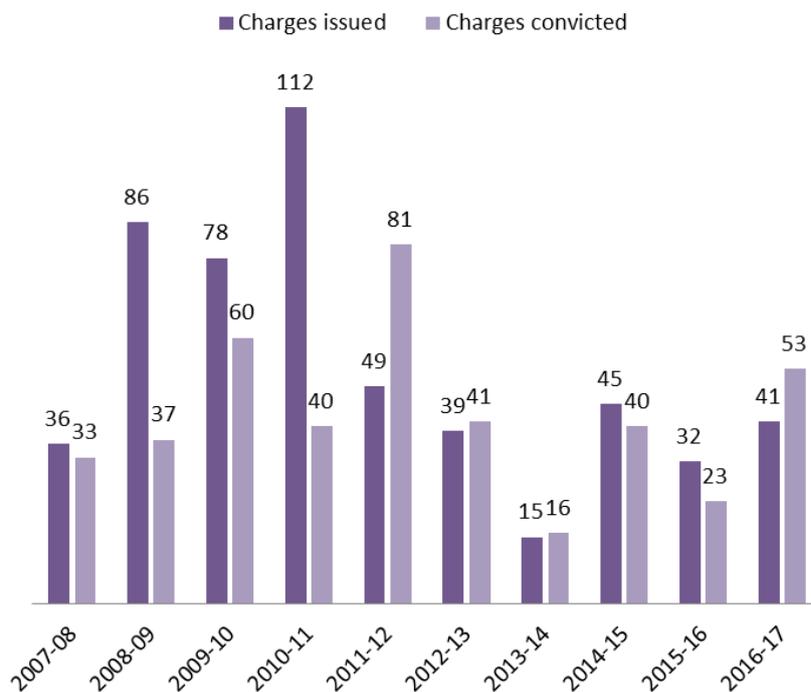


Chart 24: Number of charged issued and charges convicted: 2007-08 to 2016-17

The higher number of prosecution notices and charges issued in 2010-11 resulted from both the higher number of Briefs referred to WorkSafe Legal Services (WLS) and the processing of a backlog of those Briefs. The higher number of Briefs arose from a tendency to prosecute straightforward regulation breaches not relating to serious or fatal incidents, that are now dealt with by issuing improvement and prohibition notices. The processing of the backlog of briefs arose from a restructure of WLS, a temporary increase in resources and improved work processes.

An explanation of the relationship between prosecution notices, convictions, charges issued and charges convicted is provided below.

A signed prosecution notice and the number of charges in a prosecution notice can be a one to one relationship or a one to many relationship; likewise a conviction and its charges, for example:

- one signed prosecution notice can involve one or more charges; and
- one successful prosecution/conviction can involve one or more charges.

Scenario 1 - A prosecution notice is signed to prosecute a business entity. The signed prosecution notice consists of five separate charges that the business entity will defend itself against in court (reported as one signed prosecution notice and five signed charges). The case goes before the court. The business entity is successfully prosecuted and found guilty of two of the possible five charges; the remaining three charges are dismissed. Only one charge needs to be successful to be counted as a conviction. Therefore, the result is counted as one conviction and two conviction charges.

Signed prosecution notice	Signed Charges	Conviction	Conviction charges
1	5	1	2

Scenario 2 - A prosecution notice is signed to prosecute a business entity. The signed prosecution notice consists of one charge that the business entity will defend itself against in court (reported as one signed prosecution notice and one signed charge). The case goes before the court. The business entity successfully defends its case and the case is dismissed. Only one charge needs to be successful to be counted as a conviction. Therefore, the result is zero conviction and zero conviction charge and excluded from the conviction figures, however the one signed prosecution notice and the one signed charge will be counted and reported on.

Signed prosecution notice	Signed Charges	Conviction	Conviction charges
1	1	0	0

Further information about prosecution processes is provided in section 5.8.

2.8 FOI applications

The number of FOI applications in the period between 2008-09 and 2016-17 has significantly increased as demonstrated in chart 25. The number of FOI applications in 2008-09 (190) compared with the number of FOI applications in 2016-17 (438) shows an increase in the number of FOI applications received by WorkSafe of 131 per cent.

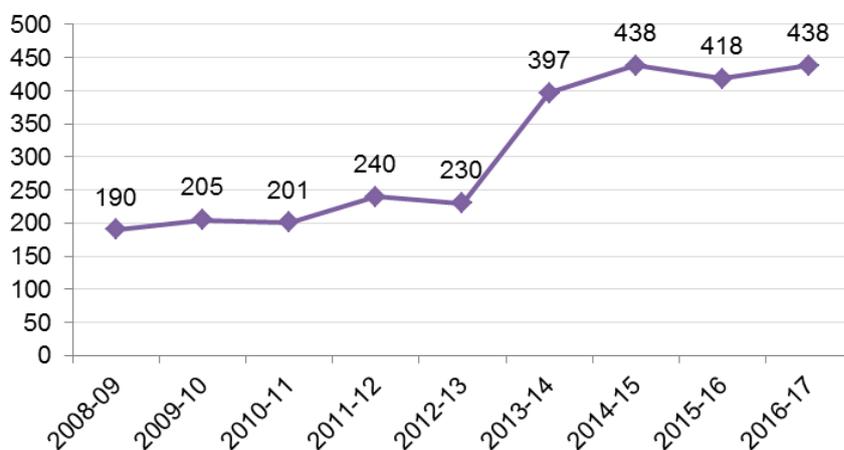


Chart 25: Number of FOI applications: 2008-09 to 2016-17

Further information about FOI processes is provided in section 5.2.

2.9 Licences and registrations processed

The total number of licences and registrations processed by WorkSafe are included in chart 26.

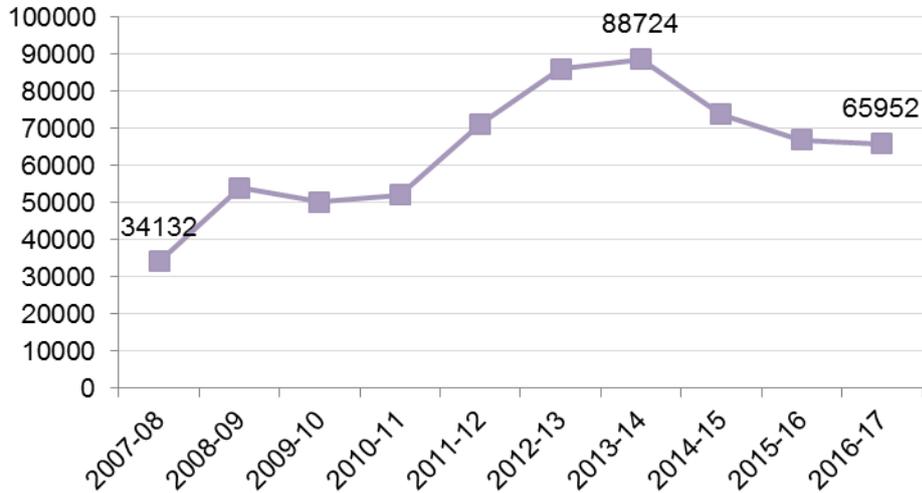


Chart 26: Total number of licences and registrations processed: 2007-08 to 2016-17

Charts 27 – 30 provide a breakdown of the licences and registrations processed by WorkSafe.

In 2010, laws on asbestos removal licensing changed. Since that period, a licence for non-friable asbestos removal was introduced. The introduction of this new licence is reflected in the number of asbestos licences issued since 2010 in chart 27.

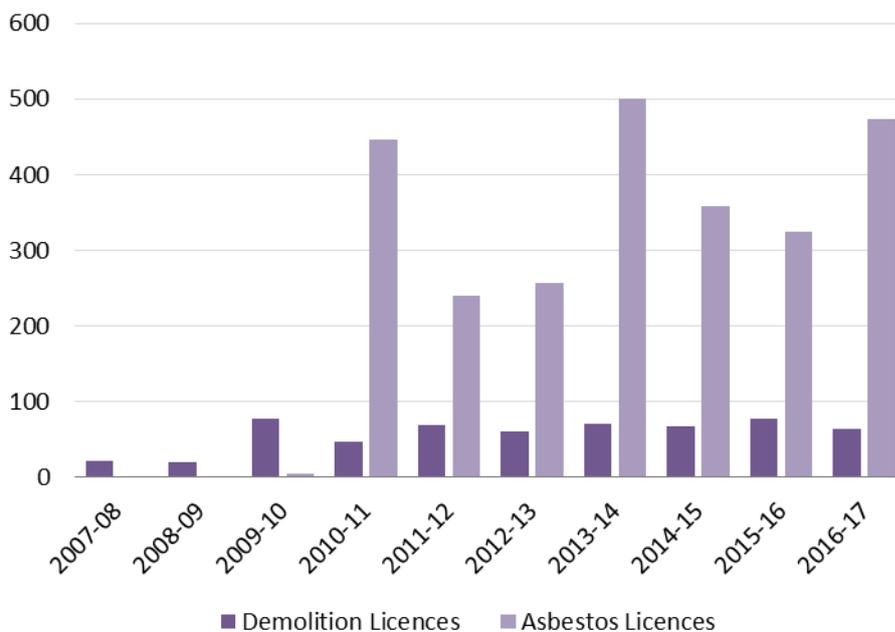


Chart 27: Demolition and asbestos licences: 2007-08 to 2016-17

Chart 28 shows that the number of new high risk work licences (HRWLs) issued in the last three years has declined. This was the result of reduced activity in the mining industry, the end of the construction phase of major infrastructure projects and the general slowing down in construction activity.

HRWLs fully replaced the old Certificates of Competency in 2007. As HRWLs have a five yearly renewal date, the first HRWL renewals were issued in 2012-13 as demonstrated in chart 28.

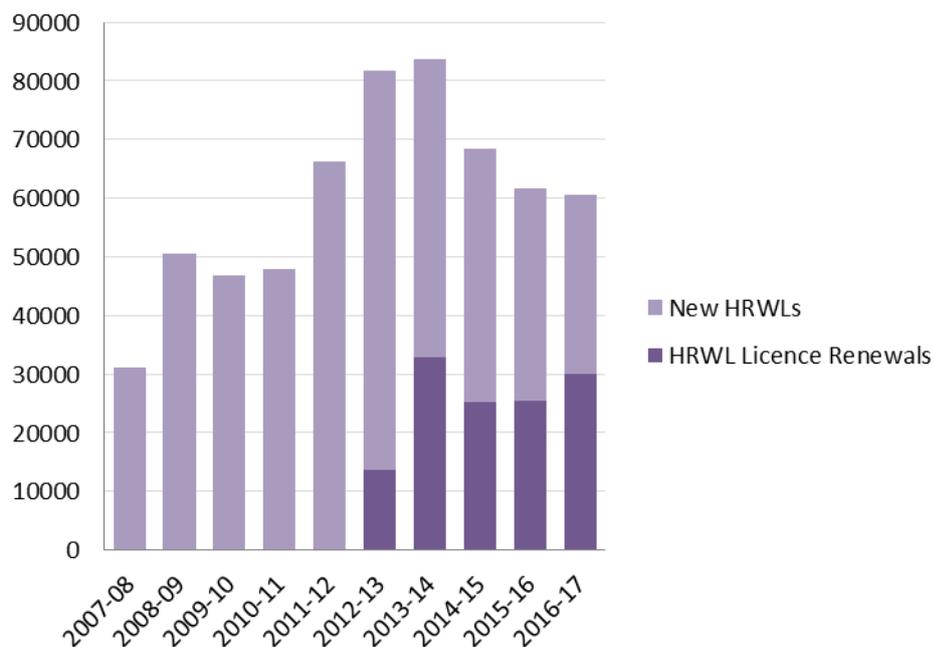


Chart 28: New high risk work licences and renewals: 2007-08 to 2016-17

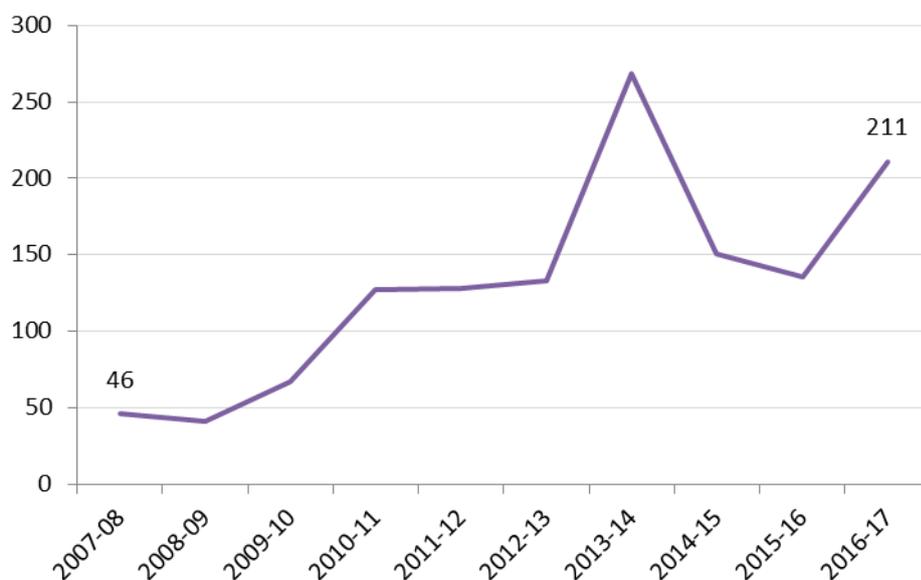


Chart 29: Assessor registrations new and renewals: 2007-08 to 2016-17

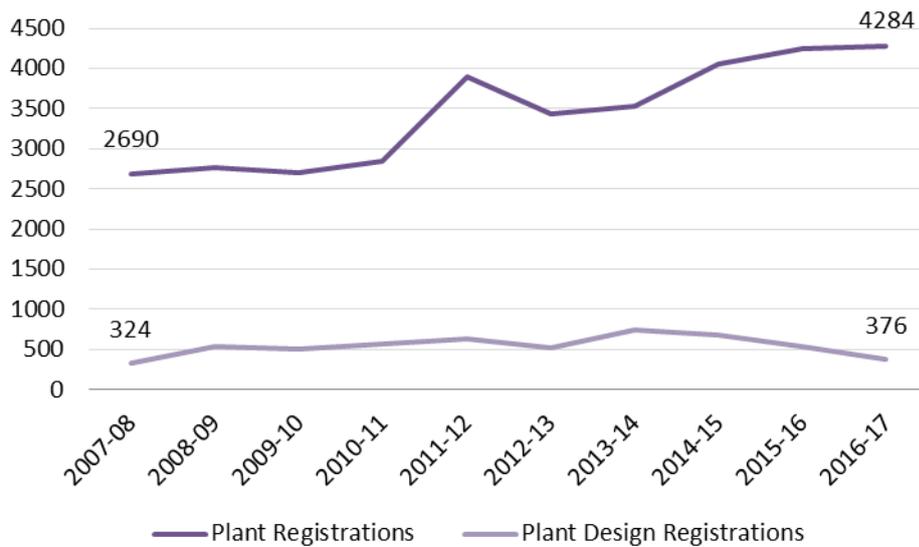


Chart 30: Individual plant registration and plant design registrations: 2007-08 to 2016-17

2.10 Exemptions from regulations

The WorkSafe Commissioner may exempt a person from compliance with the Regulations. If the Commissioner makes the decision not to grant an exemption, this decision may be appealed in the Occupational Safety and Health Tribunal. Exemptions are published on the WorkSafe website.

The number of applications for exemptions and the number of exemptions granted in the period between 2007-08 and 2016-17 is provided in chart 31. In recent years, there has been an increase in the number of exemptions relating to old versions of Australian Standards called up in the Regulations.

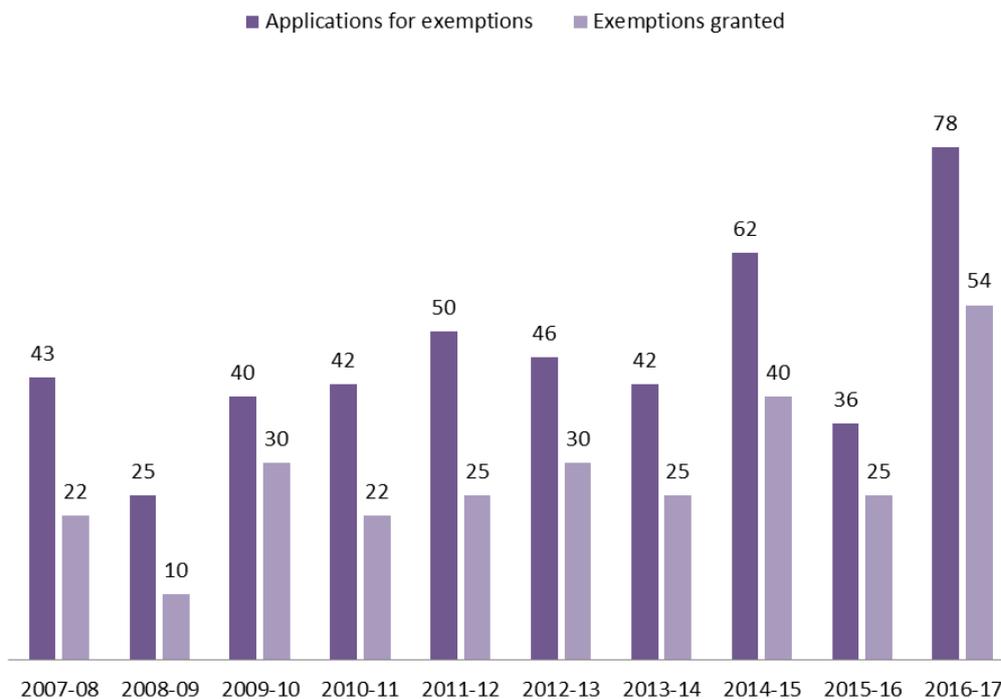


Chart 31: Applications for exemptions and exemptions granted: 2007-08 to 2016-17

2.11 Subpoenas received

Workplace injuries and fatalities give rise to personal injury proceedings in the District Court of Western Australia. Injured persons, insurance companies and third parties to personal injury litigation all wish to access documents held by WorkSafe. From 2009 to 2017, the number of subpoenas issued by the District Court of Western Australia to the WorkSafe Commissioner has increased as shown in chart 32.

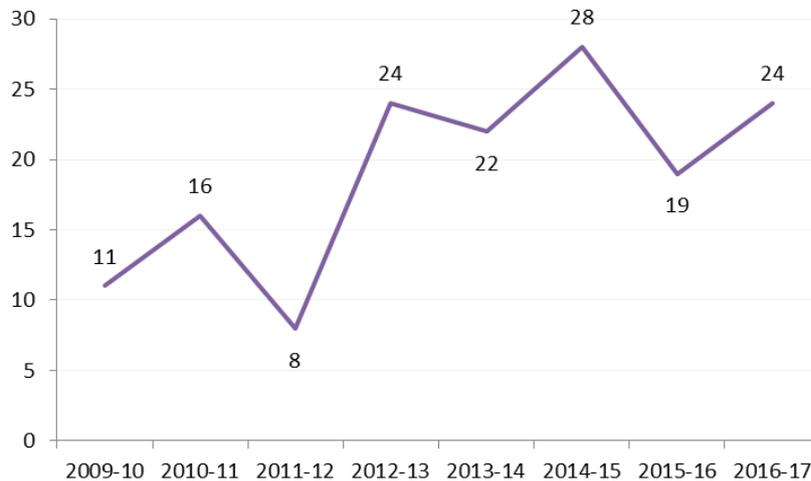


Chart 32: Subpoenas received: 2009-10 to 2016-17

2.12 Customer Help Centre

The Customer Help Centre has a first point of contact resolution approach when responding to customer enquiries. To achieve this, a database of responses to frequently asked questions was developed in consultation with the Operations Directorate. The database of responses enables Customer Help Centre operators to consistently provide an accurate, comprehensive and quality verbal and/or written response to both phone and email enquiries. In addition, an inspector is rostered each day to provide assistance with complex enquiries.

Training and ongoing coaching is provided to Customer Help Centre operators, with a focus on customer service excellence, staff development, the quality of responses to enquiries and quality of information obtained, particularly in relation to requests to attend (RTAs).

As a result of continuous improvements in service delivery, more questions can be dealt with by the Customer Help Centre, which has most likely contributed to the reduction in the number of RTAs referred to the operational directorate in recent years.

Calls and e-mail enquiries

Calls presented to the Customer Help Centre (call centre) peaked in 2013-14 with a total number of 123,389 calls presented. The number of calls has significantly declined in recent years with 70,843 calls presented to the Customer Help Centre in 2016-17.

The number of emails received by the Customer Help Centre, however, has significantly increased over recent years. The total number of email requests received in 2007-08 was 2,572 compared with 20,234 emails received in 2016-17.

In the last six years, there has been a significant change in the way information on occupational safety and health to stakeholders is received and provided by the Customer Help Centre as demonstrated in the charts below.

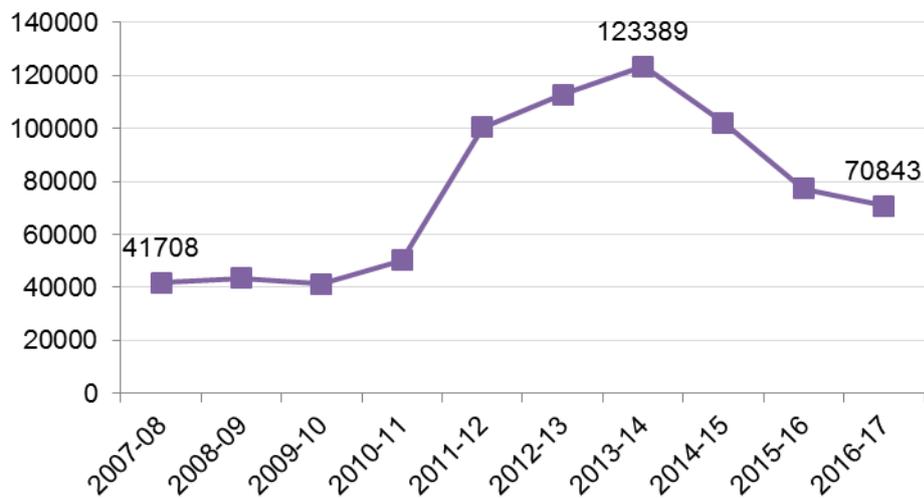


Chart 33: Number of calls presented to Customer Help Centre: 2007-08 to 2016-17

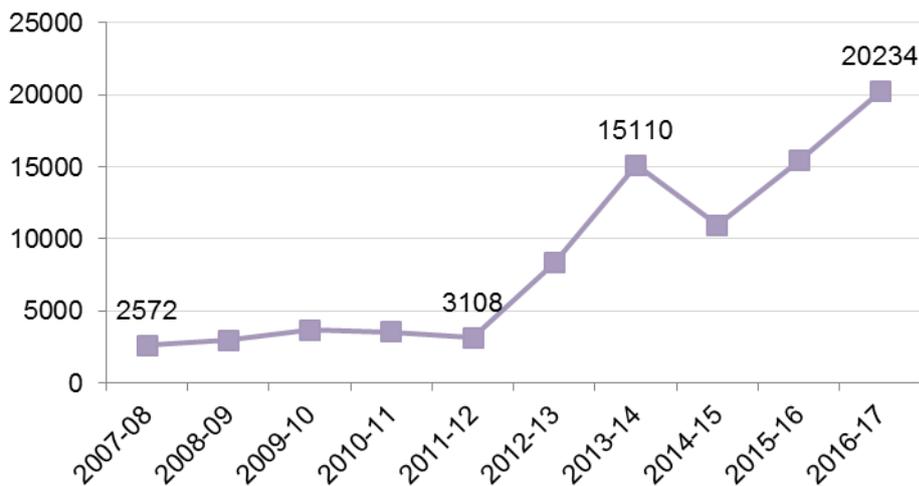


Chart 34: Number of emails received by Customer Help Centre: 2007-08 to 2016-17

Injury notification reported to WorkSafe

The Customer Help Centre also processes injury notifications to WorkSafe.

Since November 2016, employers are able to notify WorkSafe of injuries and diseases through a webpage on the WorkSafe website. This change has been welcomed by employers, as about 80 per cent of the injury notifications are currently reported online. Chart 35 provides the number of injury and disease notifications processed by the Customer Help Centre.

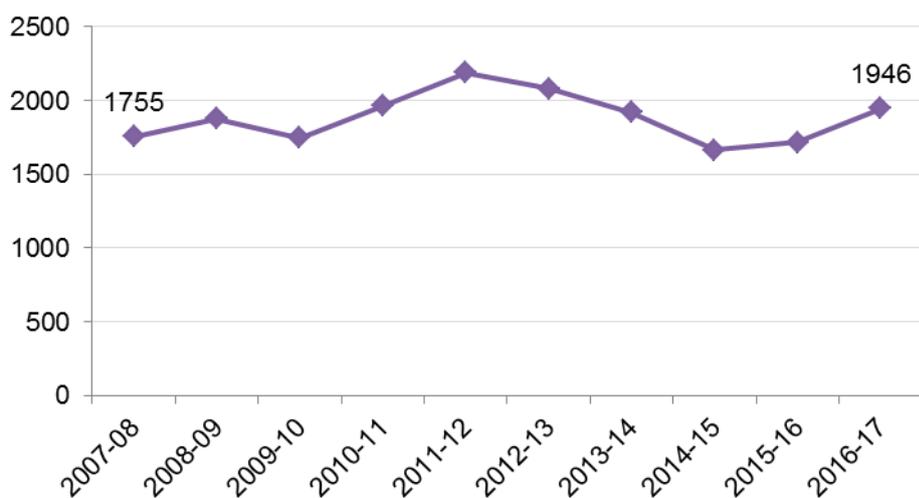


Chart 35: Injury and disease notifications received: 2007-08 to 2016-17

2.13 Stakeholder engagement general

WorkSafe's Stakeholder Engagement Framework (refer to Attachment 2.3) provides objectives, processes and methods that WorkSafe uses to engage with stakeholders.

Stakeholder engagement is integral to WorkSafe's role as strong engagement with stakeholders will enable WorkSafe to achieve its mission to inspire employers and workers to ensure workplaces are safe through partnership, education and enforcement.

WorkSafe interacts with stakeholders in many different ways and for a variety of purposes. Stakeholder engagement can be formal, such as through the Commission for Occupational Safety and Health or ad hoc and informal through workplace visits, awards, meetings, presentations and events, media statements and through the WorkSafe website.

Sections 2.14 to 2.19 provide examples of various stakeholder engagement tools.

2.14 Proactive campaigns

As part of the implementation of the business plan, every year WorkSafe completes a number of proactive campaigns aligning with the Australian Work Health and Safety Strategy 2012-2022 and targeting high risk industries or hazards in particular industries.

Different phases of a proactive campaign or team project include:

1. identification of potential project – including research and agreement;
2. stakeholder engagement - including contact with stakeholders, development of internal and external guidance material such as industry checklists and provision of information through newsletters and a media statement;
3. implementation – including investigations and the provision of information; and
4. finalisation of project and follow up – including the provision of information on the outcome of the project to key stakeholders, media statement.

Stakeholder engagement forms a crucial part of compliance campaigns where inspectors work closely with industry and key stakeholders to promote safety and health in industry.

2.15 ThinkSafe Small Business Assistance Program

ThinkSafe Small Business Assistance Program was a joint initiative between WorkSafe and WorkCover WA. The program offered free workplace inspections by independent consultants to small businesses. Three industry safety projects were also funded as part of the program, including the ThinkSafe Indigenous Project, Shed Safety Assessment Project and Farm Safety Project. Due to cuts to WorkSafe's budget, the funding for the Program has ceased. Acceptance of business applications for the Program was halted in December 2013 and the Program officially closed down in March 2014, which is demonstrated in chart 36.

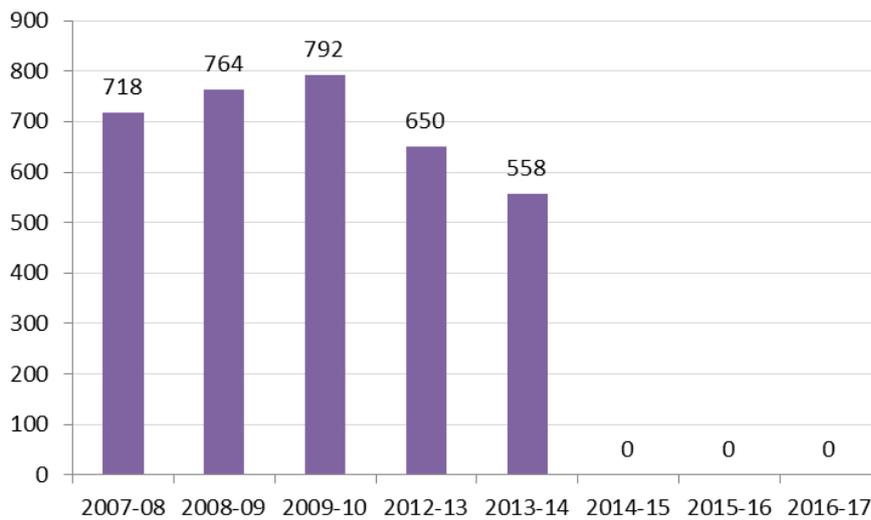


Chart 36: ThinkSafe Small Business Assistance Inspections: 2007-08 to 2013-14

2.16 Events, seminars and presentations

Chart 37 provides an overview of the events, seminars and presentations provided by WorkSafe officers in the ten-year period between 2007-08 and 2016-17. Events and seminars are predominantly organised by WorkSafe's Policy and Education Directorate. Presentations are provided by Community Education officers and WorkSafe inspectors.

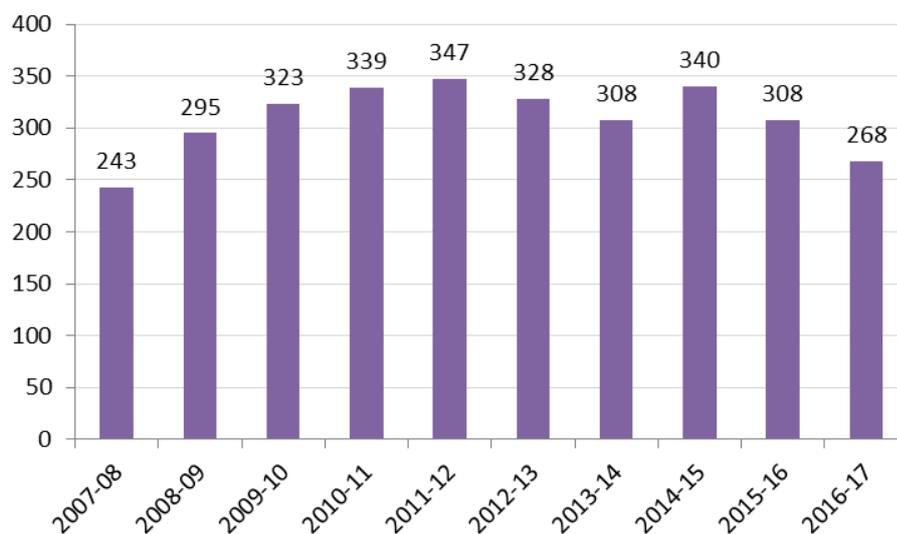


Chart 37: Events, seminars and presentations: 2007-08 to 2016-17

2.17 WorkSafe Plan and WorkSafe Awards

WorkSafe Plan

The WorkSafe Plan is an audit and assessment process that can be used to rate a safety and health management system. It can be used for auditing and rating on the extent to which an organisation has implemented a safety and health management system.

The WorkSafe Plan is promoted by WorkSafe to help workplaces introduce safety and health management systems that support the practices required to establish and maintain safe systems of work. Through formal assessment by an independent WorkSafe Plan assessor, formal recognition in the form of a silver, gold or platinum WorkSafe Plan Certificate of Achievement can be awarded by WorkSafe to organisations that meet certain requirements.

Table 2 shows a breakdown of WorkSafe Plan Certificates of Achievement awarded in the six-year period between 2011-12 and 2016-17.

WorkSafe Plan Certificate awards				
	Silver	Gold	Platinum	Total
2011-12	4	10	6	20
2012-13	3	4	5	12
2013-14	17	6	12	35
2014-15	9	6	4	19
2015-16	6	9	16	31
2016-17	5	9	7	21

Table 2: WorkSafe Plan Certificates awarded by category: 2011-12 to 2016-17

WorkSafe Awards

The Work Safety Awards recognises outstanding occupational safety and health management, solutions and innovation in WA workplaces that reduce the risk of work-related injury and disease. The Work Safety Awards provide recognition from the community for achievements in occupational safety and health (OSH). WorkSafe promotes winners as leaders in OSH and they are able to use the Work Safety Awards logo to advertise their achievement. Winners are announced at a yearly Work Safety Awards ceremony.

2.18 Safe Work October

National Safe Work Month is held in October each year. It aims to build awareness of work health and safety, encourage discussion about safety at work and share positive workplace stories from across Australia.

During Safe Work October 2016 in WA, 433 participants attended various workshops held at Technology Park, Bentley including 'The Importance of Safe Design', 'Fatigue Risk Management', 'Safe Movement of Vehicles', and 'Diesel as a Carcinogen' to gain useful tools, techniques and strategies to take back to their workplace.

Ninety-two per cent (n=314) of participants that completed a feedback survey strongly agreed or agreed they had learned something new to take back to their workplace.

2.19 WorkSafe website and newsletters

WorkSafe website

The WorkSafe website provides a significant resource in WA on occupational safety and health and assists stakeholders with ensuring that workplaces are safe and healthy and comply with occupational safety and health legislation.

The WorkSafe website consists of a variety of information and resources, presented in a number of focus areas including:

- overview – information about what WorkSafe does;
- licences, registrations and notices – how to obtain a licence, register plant, seek a review, request an exemption or review a notice;
- report or enquire about workplace incidents – how to notify WorkSafe of an injury or make a complaint about a workplace hazard;
- small business safety – a toolbox and essential information for small businesses;
- safety and health topics – how to get started, rights and responsibilities, comprehensive resources including information on common hazards in the workplace and how to control them, videos, industry specific checklists and a subby pack (OSH information for sub-contractors in the construction industry);
- safety and health representatives (SH Reps) – information about and for SH Reps;
- occupational safety and health law – with reference to legislation and information about the functions and powers of inspectors and prosecutions; and
- toolbox – including information about events, education including the Safetyline Institute, posters, newsletters, statistics and the WorkSafe library.

In 2016-17, the WorkSafe website had 1,854,981 unique page views. Unique page views means *In how many Sessions was a unique combination of a Page + Page Title seen at least once (source Google Analytics)*. Currently, the website includes 280 content pages and 509 publications. Most viewed pages in 2016-17 include:

- how do I renew my high risk work licence;
- construction induction card database;
- *Occupational Safety and Health Act 1984*;
- licence and registration search;
- high risk work licence;
- Occupational Safety and Health Regulations 1996;
- approved codes of practice;
- employees – your rights and responsibilities;
- safety and health topics; and
- employers – your responsibilities

Other frequently visited pages include industry checklists and subby pack, commercial vehicle driver fatigue management training, toolbox and report or enquire about workplace incidents.

Due to reduced funding and resourcing, limited resources are available to maintain the website and develop publications, videos, podcasts or other means accessible through mobile technology. Publications are no longer printed and only available online.

In 2016-17, new information and resources were added to the WorkSafe website, including:

- statistics;
- fact sheets;
- bulletins;
- alerts;
- posters;
- industry checklists;
- manual tasks solutions;
- media statements;
- prosecution summaries; and
- WorkSafe's Business Plan.

SafetyLine Institute

The SafetyLine Institute website provides learning guides and associated readings and resources to help learners at workplaces develop competencies in key units of the national qualifications of Certificate IV in Work Health and Safety and Diploma of Work Health and Safety. The aim of the Institute is to help employers, employees and other stakeholders gain knowledge and skills to enable them to participate in improving health and safety at their workplace.

Registered training organisations (RTOs) are licensed to use the materials from the SafetyLine Institute. Those who are interested in gaining a formal qualification BSB41415 Certificate IV in Work Health and Safety and BSB51315 Diploma of Work Health and Safety can enrol with one of the licensed RTO providers. Minor changes were made to the SafetyLine Institute in March 2015. Due to reduced funding, no changes have been made to the learning materials since 2013.

Smartmove

The WorkSafe SmartMove website is a comprehensive OSH educational resource for senior high school students and new young workers that are entering the workforce on a work placement, work experience, or as a school-based trainee/apprentice. The SmartMove Certificate program and SmartMove Safety Passport program gives young workers a chance to learn about the potential dangers of the workplace, and makes them aware of their rights and responsibilities. Due to reduced funding, no updates have been made to the learning materials for SmartMove since 2013.

Fatigue Management Training

This website is a free-to-use educational resource designed to help commercial vehicle drivers and managers/supervisors in various industries understand the impact of fatigue and the strategies to prevent fatigue. An online Certificate of Completion is available from WorkSafe following successful completion of the relevant quizzes for drivers and administrators. Due to reduced funding, no updates have been made to the learning materials for the Fatigue management training since 2013.

Newsletters

Through the website, members of the public can subscribe to four different types of newsletters by email, including:

- OSH updates – including the latest updates and news regarding occupational safety and health in WA;
- OSH Professionals – comprising of links to interesting items, journal articles and new publications;
- Safety and Health Representatives – designed specifically for safety and health representatives and those interested in their roles; and
- WorkSafe events and activities – for information on WorkSafe’s events and activities.

The total number of subscribers to OSH newsletters is currently 12,368.

A variety of information is provided in these newsletters, including media statements, new publications, education and community events and industry projects.

3. Funding and resourcing of WorkSafe (b)

3.1 WorkSafe funding

WorkSafe is currently funded from the Consolidated Account (appropriations), in addition to revenue received from fees and charges through licensing and registration activities.

The WorkSafe budget shown in chart 38 includes approximately \$1 million per year that is paid to Safe Work Australia. The corporate support attributable to WorkSafe is approximately \$6 million per year and is not included in the budget below.



Chart 38: WorkSafe budget in \$ million: 2011-12 to 2016-17

A breakdown of WorkSafe’s funding sources is detailed in table 3 below.

Funding sources	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Fees and charges	10.2	8.2	6.8	7.8	7.2	7.7
Appropriations	12.5	13.9	14.7	14.7	13.4	12.5
Total	22.7	22.2	21.5	22.5	20.6	20.2

Table 3: Breakdown of WorkSafe funding sources: 2011-12 to 2016-17

WorkSafe’s appropriation funding has reduced by \$2.2 million (15 per cent) since 2014-15 as a result of the Government’s Agency Expenditure Review, the Public Sector Workforce Renewal and Targeted Voluntary Severance Scheme savings measures as demonstrated in chart 39.

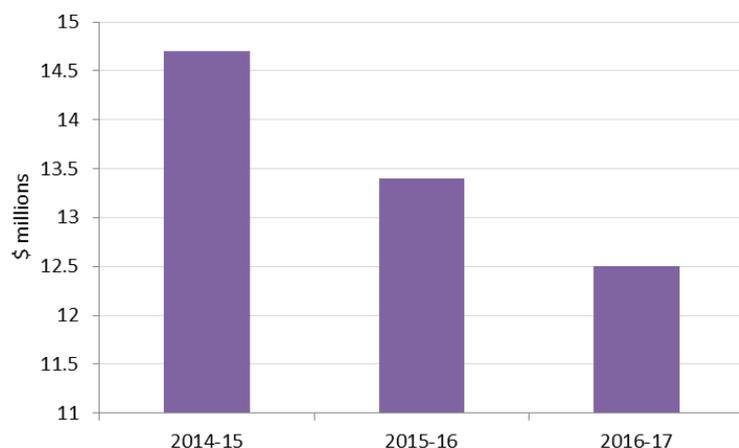


Chart 39: Appropriation funding WorkSafe: 2014-15 to 2016-17

These budget reductions, along with declining fees and charges revenue resulting from the downturn in the economy has placed significant pressure on WorkSafe's funding and resources in the past two years.

A number of measures were taken to reduce WorkSafe's budget to meet the government's savings target, including:

- reduction of 10 inspector positions;
- withdrawing inspectors from Broome and Karratha, including savings in staff housing;
- restructure of the Customer Help Centre;
- reduction of business service officer positions;
- reduction of education policy position;
- reduction of review officer position;
- reduction in the number of inspectors being paid an on-call allowance after hours;
- renegotiation of the medical specialist contract; and
- reduction of six fleet vehicles.

3.2 WorkSafe resourcing

WorkSafe resourcing

WorkSafe staffing levels fluctuate throughout the year. The actual staffing levels used in tables 4 and 5 are based on the FTE actual staffing level on the last working day in June of the financial year.

	Actual staffing levels WorkSafe in FTE
2012-13	155.4
2013-14	148.0
2014-15	142.4
2015-16	131.1
2016-17	132.7

Table 4: Actual staffing levels WorkSafe in FTE calculated on the last working day of the financial year

WorkSafe's actual staffing levels in June 2013 were 155.4 FTE compared with 132.7 FTE in June 2017, which is a reduction of 15 per cent.

Reasons for the reduction in staffing levels include the Government's Agency Expenditure Review, Public Sector Workforce Renewal and Targeted Voluntary Severance Scheme savings measures. As a result of the savings, a number of positions were abolished between 2014 and 2015, including:

- 10 inspector positions, including one Broome based and two Karratha based inspector positions;
- 5 business support officer positions;
- 1 education policy and project officer; and
- 1 review officer.

WorkSafe inspector resources

The actual staffing level for inspectors in FTE was derived by summing FTEs for the following areas:

- Manufacturing, Transport and Service Industries Directorate;
- Construction, Regional and Primary Industries Directorate;
- Health Hazards and Plant Safety Directorate; and
- Audit and Special Investigations Team in Policy and Education Directorate.

	Actual staffing level inspectors in FTE	Available inspector positions in FTE
2012-13	90.0	103
2013-14	92.2	103
2014-15	89.8	103
2015-16	85.2	93
2016-17	86.4	93

Table 5: Actual WorkSafe staffing levels in FTE calculated on the last working day of the financial year

The actual number of inspectors in June 2013 was 90 FTE compared to 86.4 FTE inspectors in June 2017. WorkSafe has up to two inspector recruitment intakes per year to fill vacant inspector positions and an intake is currently underway.

Comparison resourcing across Australia

The information in this section is based on the Safe Work Australia Comparative Performance Monitoring Report 17th Edition (refer to Attachment 2.2) and provides statistics on the number of active field inspectors per 10,000 employees for each jurisdiction in Australia. Inspectors administering mines safety legislation are excluded from this data.

Table 6 provides an overview of the number of active field inspectors in other jurisdictions across Australia per 10,000 employees based on Indicator 13 – Work health and safety compliance and enforcement activity by jurisdiction of the Comparative Performance Monitoring Report 17th Edition. Employee estimates provided by the Australian Bureau of Statistics exclude mining employees and are counts of jobs, not persons, hence they are headcounts. For example, if a given person works two jobs, then the employee would be counted twice.

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AusGov	Seacare	Total
2009/10	1.1	1.0	1.3	1.0	1.4	1.5	1.1	1.2	1.5	6.6	1.1
2010/11	1.0	1.0	1.3	1.0	1.3	1.5	1.1	1.7	1.2	8.3	1.1
2011/12	1.0	0.9	1.2	1.0	1.3	1.5	1.1	1.7	1.2	7.4	1.1
2012/13	1.0	1.0	1.1	0.9	1.3	1.5	1.5	1.5	1.1	1.9	1.1
2013/14	1.0	1.0	1.0	0.9	1.3	1.5	1.4	2.0	1.2	2.1	1.0

Table 6: Number of active field inspectors per 10,000 employees across Australia.

The number of field inspectors in WA that was used to calculate the number of active field inspectors per 10,000 was 103. The number of active field inspectors in WA was the lowest in Australia with 0.9 inspectors per 10,000 employees. As the number of WorkSafe WA positions has been reduced from 103 to 93, the number of active field inspectors per 10,000 employees in WA is likely to be lower at the moment, depending on employee numbers.

3.3 Alternative funding models for WorkSafe

WorkSafe is currently funded from the consolidated account, in addition to revenue received from fees and charges through licensing and registration activities.

Other safety and health regulators in WA and other Australian jurisdictions are funded by the industries they regulate. For example, in WA the following safety and health regulators are funded by industries they regulate:

- EnergySafety Division of the Department of Mines, Industry Regulation and Safety, which is funded through a combination of levy on electricity and gas distributors and revenue from licensing of electrical contractors, electrical workers and gas fitters;
- Resources Safety Division of the Department of Mines, Industry Regulation and Safety, which is funded by a levy on mine operators based on the number of hours worked; and
- WorkCover, which is funded by a levy on workers' compensation payments.

Since 2010, WorkSafe has provided business cases and submissions to government for an industry funding need for WorkSafe. Until now this has not been progressed by government.

4. Adequacy of WorkSafe’s training, oversight and accountability processes (c)

4.1 Induction Program WorkSafe inspectors

In the first 12 months of employment, new inspectors follow an Induction Program. The Inspector Development and Training (ID&T) Steering Committee, which consists of the Executive Director, Operational Directors and Co-Ordinator ID&T has developed the Induction Program and regularly reviews the contents.

Since 2011, 40 inspectors have completed the induction training as demonstrated in table 7.

Year	Number of inspectors
2016	4
2015	5
2014	4
2013	7
2012	12
2011	8
Total	40

Table 7: Number of inspectors that have completed the induction training 2011-2016

The Induction Program includes the following phases:

Phase 1 – Induction training

In the first 6 weeks, new inspectors complete the induction training. This induction training consists of four days per week classroom training and one day per week mentoring with an experienced inspector in the field.

After successfully completing this phase, the new employee is issued a Certificate of Appointment pursuant to section 42 of the Act, under the condition that the inspector can only exercise their authority under direct supervision of an experienced inspector. A copy of the Induction Curriculum is provided in Attachment 4.1.

Phase 2 – Coaching

Between week 7 and 24, new inspectors are coached by experienced WorkSafe Inspectors, who have received coaching training. Generally, a new inspector is rostered with an experienced inspector for a period of two weeks.

During this phase, new inspectors need to demonstrate competency in a number of major focus areas. Progress of the development in the major focus areas is recorded on the Coaching form. A copy of the Coaching form is provided in Attachment 4.2.

When the new inspector has demonstrated competency in all major focus areas, the Team Manager conducts a final assessment in the field before a recommendation is made to lift the condition placed on the Certificate of Appointment to work under direct supervision.

Phase 3 - Working independently in the field

During the period between week 25 and 49, new inspectors work independently in the field, under supervision of the Team Manager. As required, new inspectors will receive guidance and further coaching from experienced inspectors in the team.

Phase 4 - Certificate IV in Government (Investigations)

The last part of the Induction Program is the completion of the Certificate IV in Government (Investigations) in weeks 50-52. This training course is delivered by an external training provider over a period of three weeks. On completion of the Certificate IV, in-house training is provided in relation to statements and interviews and investigation management.

4.2 Skills Development Program WorkSafe inspectors

Training for WorkSafe inspectors is continuous throughout their career through the Skills Development Program.

Table 8 below shows the number of training sessions offered and delivered through the Skills Development Program since 2011 and the total number of attendees at these sessions.

Year	Number of training sessions offered/delivered	Total number of attendees at these sessions
Jan – June 2017	27	113
2016	44	206
2015	50	197
2014	52	371
2013	47	411
2012	55	383
2011	39	166
Total	314	1847

Table 8: Training sessions Skills Development Program 2011-2017

WorkSafe ID&T currently has in excess of 50 training courses, which are available to satisfy the training needs of inspectors. Attachment 4.3 provides a copy of the Skills Development Curriculum, which includes a list of training courses that are currently available.

Training needs are identified through both a training needs analysis conducted every five years and through discussion between the inspector and their Team Manager during their half yearly Performance Review and Development meeting. A copy of the results of the Training Needs Analysis Survey conducted in 2013 is included in Attachment 4.4.

ID&T, in consultation with members of the Steering Committee, regularly reviews this Skills Development Program to ensure the training inspectors receive is current, relevant and in accordance with operational requirements.

After each training session during the Induction Program and the Skills Development Program, inspectors are asked to complete an evaluation form. The information gathered in the evaluation forms is used to ensure the quality, currency and relevance of the training is

maintained. Copies of the Training Evaluation Form and Training Evaluation Summary Form are provided in Attachment 4.5.

Regional Conference – Skills Development Program

The Regional and Primary Industries Team is managed from the Bunbury office. Regional offices are located in Bunbury, Geraldton and Albany.

To ensure the Skills Development Program is available to regional inspectors, a five day Regional Conference is organised yearly. This ensures that regional inspectors also receive the benefits of WorkSafe's Skills Development Program.

In consultation with the Director Construction, Regional and Primary Industries and the Team Manager Regional and Primary Industries, the Regional Conference is planned. The program includes training sessions sourced from the Skills Development Program offered that year or sessions that are identified as a training need throughout the year. A lawyer always attends the Conference to provide training on emerging legal issues for inspectors.

The facilitation of a yearly Regional Conference enables WorkSafe to ensure that training is maintained consistently throughout the inspectorate and opportunities are available to all inspectors irrespective of their location.

4.3 Performance monitoring

Informal and formal methods are used to monitor performance of inspectors. Team managers lead a team of inspectors and implement OSH strategies to address the needs of the industries or areas covered by the team. Managers also ensure that the team works effectively through planning and managing the team's workload and output within the given resources.

As part of their daily work, Team managers monitor the workload of inspectors, provide strategic guidance and ensure the quality of the work by discussing ongoing work and providing feedback to inspectors. As inspectors are predominantly working in the field, various methods are used to discuss ongoing work and provide feedback, including phone conversations, emails, informal meetings, etc.

Formal feedback is provided through the Performance Review and Development System discussed below and through the Quality Check Manager, which is discussed in section 5.5.

Performance Review and Development System

WorkSafe's Performance Review and Development System is designed to support the Department to meet goals and responsibilities through linking employees' performance with the achievement of objectives and to assist employees to achieve their professional goals.

During the first six months of employment, a number of formal review meetings take place under the Performance Review and Development System as follows:

- week 1 - planning meeting;
- 6 week – review meeting;
- 3 months – review meeting; and
- 5 months – review meeting.

Attachment 4.6 provides a copy of the Performance Review and Development Plan for new inspectors.

Following the initial 6 months, yearly Performance Review and Development Plans are prepared. Review meetings take place six monthly or more frequently as required.

As part of the yearly Performance Review and Development Plan, inspectors confirm their commitment to the Code of Conduct and the Corporate Values by signing and dating the following statement: *"I have read and reaffirm my commitment to the Department of Commerce Code of Conduct and the Corporate Values"*.

Further information about the Performance Review and Development System at level 5 is provided in section 4.4.

A copy of the Department of Commerce Code of Conduct is provided in Attachment 4.7. The Department of Commerce Code of Conduct applies until a new Code of Conduct for the Department of Mines, Industry Regulation and Safety has been developed.

4.4 Career Progression

Career Progression

WorkSafe has a Career Progression system in place, which is a pathway for inspectors to progress from one level to another based on demonstration of certain capabilities and demonstration of outputs or outcomes, depending on the level.

The system enables inspectors to progress through to the next level by the production of a Portfolio of Evidence, demonstrating tasks linked to the Diploma of Government (Workplace Inspection) or outcomes as a result of the work being undertaken by inspectors.

The system was originally implemented in 2002 and was reviewed and expanded over the years with support from union delegates. The most recent review was conducted in March 2017 as a result of changes to evidence requirements in the Diploma of Government (Workplace Inspection).

The current Career Progression system includes the following programs:

- Career Progression from level 4 to level 5
- Career Progression from level 5 to level 6, specified calling from level 1 to level 2 and specified calling from level 2 to level 3.

Performance Review and Development System level 5

In addition to the Career Progression system, WorkSafe has a Performance Review and Development System at level 5 in place, which requires inspectors to demonstrate certain capabilities and complete particular tasks over a three year period, to be able to progress through the increments at level 5.

The Career Progression 4-5 system and the Performance Review and Development (PRD) System level 5 are both mapped to units of competency in the Diploma of Government (Workplace Inspection). The Diploma is mapped against 23 tasks, which are conducted by WorkSafe inspectors in the course of their duties.

The requirement to complete 23 tasks over a period of three to four years provides a structured learning, training and coaching environment and sets expectations for what is required from WorkSafe inspectors.

In the last eight years, 27 inspectors have successfully obtained the Diploma of Government (Workplace Inspection) through the Career Progression system.

4.5 Quality Assurance Program

In the interests of further building a culture of accountability and integrity at WorkSafe and receiving feedback as to how services can be improved, an inspection Quality Assurance Program was initiated in the second half of 2015.

The program was built to solicit external stakeholder feedback from employers or their relevant representative who have recently received a visit from a WorkSafe inspector.

The intention of the Quality Assurance Program is to:

- collect evidence that inspections are conducted in accordance with the Code of Conduct;
- continue to build a culture of accountability and integrity at WorkSafe;
- seek and collate feedback from external stakeholders about their experience in dealing with inspectors and whether their experience is consistent with the WorkSafe Code of Behaviour;
- verify that official records of investigations, improvement notices and inspection durations are accurate;
- give WorkSafe the mechanism to identify discrepancies between inspector records and the customer experience;
- collect stakeholder feedback as to how we can improve our performance.

As part of the program the employer, or their relevant representative, is contacted by phone by a manager within the Business Services Directorate, which is separate from the operational areas.

This manager asks a series of questions to determine the quality of the service and the experience of the stakeholder. The responses to the questions are recorded in a spreadsheet. The customer's feedback, including verbatim responses, are recorded. A quarterly report is provided to the Operational Directors.

When an employer or relevant representative is contact by the manager, the following questions are included in the quality assurance survey:

- did [name inspector] introduce him/herself to you in a clear and appropriate manner;
- how long was [name inspector] at your workplace;
- did he/she issue you with any notices or verbal instructions; and
- did you find the inspection helpful.

Inspector activity to be audited is selected by the manager conducting the audits, using random sequencing software.

When the program was introduced in 2015, a three-month pilot was conducted. During this period, for each of the 57 inspectors audited, approximately two employers or their representatives were contacted.

Table 9 provides an overview of the results of the 2015 Quality assurance program:

Results Quality Assurance Program 2015 – Pilot Program	
Number of inspectors	57
Number of inspections conducted	107
Number of workplaces successfully contacted	103

Table 9: Statistics Quality Assurance Program 2015

After the 2015 pilot, the Quality assurance program was fully implemented in 2016.

It was decided that when an inspector is selected through the random sequencing software, the quality assurance survey would be conducted in relation to all workplace inspections conducted by that inspector in the six weeks prior to the survey.

Table 10 provides an overview of the results of the 2016 Quality assurance program:

Results Quality Assurance Program 2016	
Number of inspectors	37
Number of inspections conducted	484
Number of workplaces successfully contacted	340

Table 10: Statistics Quality assurance program 2016

Feedback received from stakeholders about how helpful the inspection had been has been collected as part of the Quality assurance program and has been overwhelmingly positive. In 2015, the feedback in relation to “did you find the inspection helpful” received 100 positive responses and three negative responses. In 2016, the feedback was again very positive, with 332 positive responses and eight negative responses. Chart 40 shows the results from 2015 and 2016. The Quality assurance program is continuing in 2017.

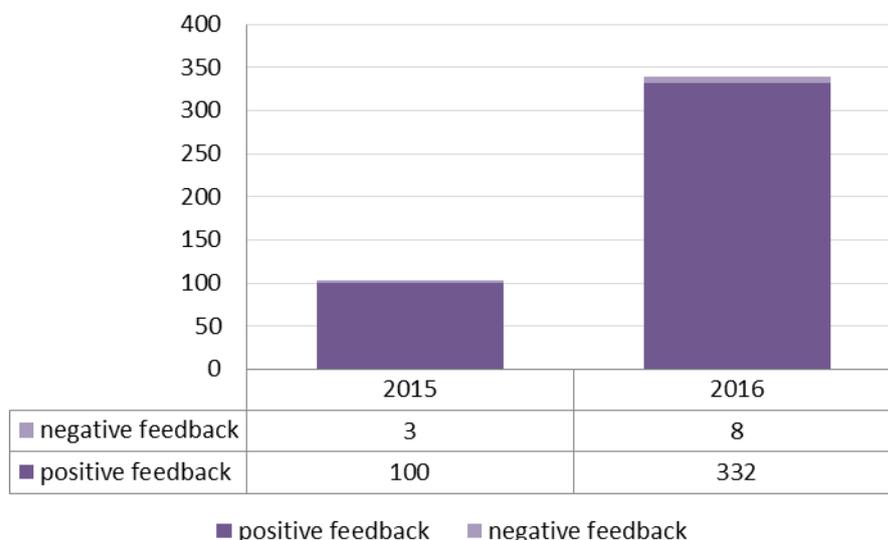


Chart 40: Feedback Quality assurance program 2015 and 2016

4.6 Accountable and ethical decision making training

The Accountable and Ethical Decision (AEDM) training course is part of the induction program and is a mandatory training course for all WorkSafe employees. Every five years employees are required to complete a refresher course.

The purpose of the AEDM training is to:

- raise awareness of issues relating to accountable and ethical decision making in the public sector; and
- provide information about accountability requirements and better prepare staff to deal with situations and issues they may encounter.

The AEDM training comprises seven modules which directly correspond to the components of the department's Code of Conduct, including:

1. personal behaviour;
2. communication and official information;
3. fraudulent and corrupt behaviour;
4. use of public resources;
5. record keeping and use of information;
6. conflicts of interest; and
7. reporting misconduct.

99 per cent of WorkSafe employees have completed the AEDM training online. Currently, 37 officers are due to complete a refresher course.

4.7 WorkSafe Integrity Committee

In July 2012, the Executive Director of WorkSafe established the WorkSafe Misconduct Prevention Committee, since re-named the Integrity Committee. The purpose of the Committee is to develop, guide, manage and review the WorkSafe Misconduct Prevention Strategy. A copy of the Terms of Reference of the WorkSafe Integrity Committee is provided in Attachment 4.8.

To assist the committee to fulfil its purpose, a survey of all WorkSafe employees was conducted in 2012, and again in 2014, to guide future misconduct prevention measures. The results of the surveys were fed back into the WorkSafe Misconduct Prevention Strategy.

Over the past five years, taking into account the results of the 2012 and 2014 surveys, the Committee has put into place a number of initiatives, including:

- a transparent and equitable process for filling short-term acting positions;
- a Code of Behaviour, distributed to all staff;
- an internal misconduct reporting process;
- a High Risk Work Licence (HRWL) Assessor Information Sheet;
- enhancement of the Objective security system; and
- FAQs and answers re misconduct prevention placed on commerce Intranet.

Attachment 4.9 provides an example of one of the outputs of the Integrity Committee, which includes an email from WorkSafe Commissioner Lex McCulloch to WorkSafe officers including a number of attachments relating to misconduct prevention. In the email from Lex McCulloch, a copy of the Code of Conduct (Attachment 4.7) was also attached.

4.8 Customer service complaints and feedback

The department has produced a Customer Service Charter (Attachment 4.10) that sets out WorkSafe's obligations and rights the public has in relation to the services WorkSafe offers.

To make a complaint about services provided by WorkSafe officers or to provide feedback about the quality of customer service provided, members of the public are invited to complete an online form, complete a Customer Feedback form or phone WorkSafe.

Where complaints against WorkSafe inspectors cannot be resolved by the relevant Director, the Manager Audit and Special Investigations will investigate the complaint. The findings and recommendations are reported back to the WorkSafe Commissioner.

When members of the public feel that the complaint has not been properly dealt with, they are encouraged to seek an independent review by the Ombudsman.

4.9 Annual Report

Yearly, WorkSafe reports on its performance in the department's Annual Report.

Details are provided in relation to outputs, including compliance activities, prosecutions, campaigns, education and information initiatives, business services activities, proactive campaigns and awards.

The Annual Report also includes significant issues and trends impacting on WorkSafe's operations and the overall department's audited financial statements and required disclosures.

Annual reports are accessible on the website of the department. For the Annual Report of 2015-2016, refer to Attachment 4.11.

5. Adequacy of administrative processes, including complaints, investigations and prosecution processes (d)

5.1 Complaints

Anyone is able to complain to WorkSafe about workplace safety. Complaints can be lodged online on the WorkSafe website, in writing or by phone. Information on how to lodge a complaint and what information needs to be provided is available on the WorkSafe website.

Leaving contact details allows an investigating inspector to contact the complainant to clarify areas of the complaint. These contact details are kept confidential and will not be revealed to anyone outside of WorkSafe without the complainant's consent.

In certain circumstances, WorkSafe will not be able to conduct an investigation unless they are able to contact the complainant to obtain further information. When investigating certain matters, such as claims of inappropriate behaviour in the workplace, WorkSafe is unable to guarantee anonymity. In those circumstances, an inspector will not conduct an investigation without the consent of the complainant.

After a complaint has been lodged, the information is provided to the Operations Directorate where it is classified in line with the Criteria for Investigation (refer to Attachment 5.1). Depending on the nature of the complaint, information received from a first-hand source employed at the workplace would generally be treated with greater priority than information received anonymously or from second or third hand sources.

Not all complaints will result in an investigation by an inspector. If an inspector needs further information to clarify the concerns, they may contact the complainant to ask some questions and discuss the complaint.

If an investigation takes place and reveals non-compliance with the occupational safety and health legislation, WorkSafe will take appropriate enforcement action in accordance with the Compliance Policy. WorkSafe investigates potential breaches of occupational safety and health legislation for WorkSafe's purposes and not on behalf of a complainant. A WorkSafe inspector will not contact the complainant with the results of their investigation.

When the complainant provides contact details to WorkSafe, the complainant is advised:

- the information provided has been passed on to WorkSafe's Operations Directorate for consideration;
- of the reference number allocated to their enquiry;
- the reference number is confidential and confirms that the complaint has been lodged as an enquiry with WorkSafe;
- the reference number must be quoted should the complainant wish to add any information in the future with regard to the enquiry;
- an inspector will only contact the complainant if further information is required;
- there are limitations placed on the information WorkSafe can provide in relation to an investigation (see also section 8.3); and
- information about an investigation may be provided through a Freedom of Information application.

Further information about the FOI process is provided in section 5.2.

Information on statistics relating to requests to attend is provided in section 2.6.

Information about the role of the Customer Help Centre is provided in section 2.12.

5.2 Freedom of Information

Departmental documents and information on the results of an investigation may be able to be obtained by lodging a **freedom of information request** and paying the appropriate fee. Access rights, etc., in Parts 2 and 4 of the *Freedom of Information Act 1992* do not apply to publications that are publicly available.

The *Freedom of Information Act 1992* (FOI Act) creates a general right of access to documents held by state government agencies, subject to some limitations. Certain documents are protected from disclosure as release would have an adverse effect on the private and business interests of individuals, or would hinder the proper functioning of government, primarily because release will disclose personal information.

A freedom of information application must:

- be in writing;
- give enough information to enable the requested documents to be identified;
- give an address in Australia to which notices under this act can be sent;
- give any other information or details required under the regulations; and
- be lodged at an office of the agency with any application fee payable under the regulations.

Further information about FOI processes and charges is provided in Attachment 5.2.

5.3 WorkSafe inspectors

WorkSafe inspectors are appointed under section 42 of the *Occupational Safety and Health Act 1984*. Their role is to enforce the OSH Act, assist in resolving issues in workplace, and provide advice to employers, persons who control business and workers on how best to improve OSH performance and achieve compliance with OSH legislation.

New inspectors are recruited based on experience in OSH and industry knowledge and experience. Inspectors are organised in industry based teams (e.g. construction, manufacturing, education, community services and health) and specialised teams (e.g. plant, human factors, occupational hygiene).

The current organisational structure will change in August 2017 by delineating inspection and investigation functions. Further information about the changes to the structure is provided in section 9.1.

Section 43 of the OSH Act establishes the powers of WorkSafe inspectors. The powers under section 43 can only be used for the purposes of the OSH Act. Under section 43(1)(a), inspectors have a legal right to enter, inspect and examine at any time, any workplace including aircraft, ships and vehicles, where employees work or are likely to be in the course of their work. This right of entry means that inspectors have unrestricted access to a workplace, except where there is a statutory restriction.

An inspector may take into the workplace any equipment, materials or persons to assist in the inspection, and may also require from the employer or person at the workplace any assistance considered necessary. This includes being accompanied by the employer, safety and health representatives or an employee (where there is no safety and health representative) during the inspection.

When an inspector conducts an investigation, the inspector may:

- examine any plant, substance or thing;
- take possession of any plant or thing;
- take photos, measurements, sketches or recordings and inform the employer and safety and health representative of this, including when and where they may be viewed;
- require the production of any document or extracts of documents;
- examine and take copies of documents
- provide information; and
- interview, either in private or otherwise, any person at the workplace, or any person who has been at the workplace in the last three years and require any person to answer any questions put to them.

The inspector has the power to require that the workplace, or any part of it, be left undisturbed for as long as is specified by the inspector.

When leaving the site, the inspector will inform the employer and the relevant safety and health representative(s), if elected, about the action the inspector has taken or will be taking.

Where an improvement notice or prohibition notice has been issued, under the Act the employer is required to display that notice or a copy of it in a prominent place at or near any workplace that is affected by the notice. This will inform employees of enforcement action taken by WorkSafe inspectors. When the notice has been complied with, the employer can remove the notice.

Through the display of improvement notices at the workplace, employees have access to notices written by inspectors. Where employees have questions or have concerns about the compliance with a notice, WorkSafe can be contacted by phone or online through the website to submit an enquiry or lodge a request to attend.

Workplaces are dynamic and inspectors may not observe potential hazards or activities at a workplace at the time of their visit. The fact that an inspector has inspected a particular workplace is not a representation by WorkSafe that the particular workplace is in any way approved or free of hazards.

5.4 Investigations

Reasons for an inspector to visit a workplace may include:

- proactive investigations, including:
 - industry compliance campaigns; and
 - proactive investigations.
- reactive investigations, including:
 - investigation following a incident, accident or reported breach of the Act or regulations;
 - investigation following a reported injury or disease;
 - review of provisional improvement notice;
 - resolution of issues;
 - verification investigations;
 - outstanding verification investigations; and
 - regulatory inspections.

Generally, WorkSafe inspectors conduct workplace visits unannounced. The Quality Investigations Policy describes what is expected from inspectors when carrying out reactive and proactive investigations. A copy of this Policy is provided in Attachment 5.3.

When inspectors visit a workplace, they generally carry out an inspection in relation to relevant WorkSafe's Priority Inspection Reports (PIRs) and industry specific hazards.

Current WorkSafe PIRS (also referred to as priority areas) are:

- falls from heights;
- manual tasks;
- slips, trips and falls;
- electricity;
- hazardous substances;
- mobile plant and vehicle movement; and
- guarding of plant.

A copy of the PIR Policy is provided in Attachment 5.4.

All provisions of the *Occupational Safety and Health Act 1984* and Occupational Safety and Health Regulations 1996 (the Regulations) are important and will be appropriately enforced in accordance with the Enforcement Policy, which forms part of WorkSafe's Compliance Policy (see Attachment 5.5).

Where non-compliance with the OSH Act or the Regulations is identified, an inspector may take any or a combination of the actions below:

- give a verbal direction – correct a safety issue while the inspector is on site;
- issue an improvement notice – requiring a person to fix something within a certain period of time, which is believed to be a breach of the OSH Act or regulations;
- issue a prohibition notice – prohibiting an activity where the inspector is of the opinion that there is a risk of imminent and serious injury or harm to the health of a person; and
- recommend prosecution action in accordance with the Prosecution Policy.

A copy of the Prosecution Policy is provided in Attachment 5.6.

WorkSafe inspectors are not able to disclose the reasons for an investigation as inspectors follow the requirements under article 15(c) of ILO Convention 81.

Article 15(c) of ILO Convention 81 states:

Subject to such exceptions as may be made by national laws or regulations, labour inspectors – (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence to the receipt of such a complaint.

Although it may sometimes be obvious to a duty holder that an investigation was the result of a complaint made to WorkSafe, inspectors can only disclose the reason for an investigation if a complainant has given consent to disclose that a complaint has been made.

Further information about WorkSafe, inspectors and notices is provided in Attachment 5.7.

5.5 Quality Investigations Policy

The Quality Investigations Policy (refer to Attachment 5.3) was introduced in 2013 with an aim to providing a transparent and consistent approach to WorkSafe's compliance activities.

The policy clarifies expectations for WorkSafe inspectors on how to conduct best practice investigations. The policy was introduced to ensure the quality of WorkSafe investigations and to increase consistency in the way investigations are conducted across the inspectorate.

Specific expectations are set for best practice reactive investigations into complaints or injury or disease notifications and for proactive investigations conducted as part of proactive projects.

The policy further clarifies expectations in taking enforcement action in accordance with WorkSafe's Compliance Policy and what details need to be included and saved in WorkSafe's Information Systems Environment (WISE) and in the department's document management system.

A number of investigations in WISE are flagged for a quality check by that inspector's Team Manager as explained in section 5.6. Managers check if the investigation complies with expectations set in the Quality Investigations Policy.

Following the quality check, Team Managers provide feedback to inspectors.

5.6 WorkSafe Information Systems Environment (WISE)

WorkSafe has a need to record its interactions with its stakeholders for a multitude of reasons, the most important being that of tracking its activities in the area of enforcement. This recording is supported by a computer system named WISE, which is a relational database.

The primary purpose of WISE is to provide WorkSafe with:

- a searchable electronic record of customer interactions and regulatory enforcement activity by person/company name and location (for multi-location operations);
- divisional operational activity statistics; and
- corporate enforcement statistics.

As such, WISE is capable of recording all operational work relating to a person/company name and all its entities over time, with a means to overcome any name or location changes that may occur (e.g. a national retail chain or major builder).

The structure of WISE is centred around the concept of "an investigation" (an inspection), which is defined as an examination of a safety and health matter that may consist of one or more attendance(s) at a workplace and may require a combination of activities and actions.

Both reactive and proactive investigations are recorded in WISE, including investigations into serious and fatal incidents that are also covered under the Case Management System. General information and activities are recorded in WISE investigations, including enforcement action such as improvement notices and prohibition notices.

In recent years, the WISE system has been upgraded many times to increase inspectorate efficiencies. The system is now linked to the Document Management System (DMS) and documents in the DMS system are linked to activities in WISE.

The WISE system also generates email notifications to an inspector when a complaint or reported injury is allocated. As a result, inspectors have immediate access to the information through their mobile phone.

Inspectors use mobile technology and enter data in WISE online and offline. Inspectors are also able to synchronise data while in the field by connecting their laptop to a hotspot on their mobile phone.

In the last 12 months, the online reporting of complaints and injuries and diseases through the WorkSafe website has been implemented. The information entered by clients on the website is automatically transferred into a format suitable for the WISE system, placed in a buffer area for checking by WorkSafe Customer Help Centre staff, then coded and saved into WISE.

WISE has an inbuilt quality feature being Quality Check Manager, whereby a number of investigations are flagged for quality checks by that inspector's Team Manager. An inspector is prevented from closing the WISE investigation until the Team Manager has completed a quality check. Recently an auditor from the Office of the Auditor General reviewed the operation of this Quality Investigation system in WISE.

Another WISE feature is that an automatic request to attend (RTA) of the type verification is sent to an inspector in relation to a number of completed investigations. Approximately five per cent of completed investigations in WISE are selected at random for verification. These are investigations where at least one improvement notice has been issued and the duty holder has returned the compliance slips to WorkSafe, stating that the notices have been complied with. When a duty holder does not return a compliance slip, WISE will generate an RTA of the type verification outstanding. When an inspector receives any verification RTA, the inspector will return to the workplace to re-inspect the workplace and verify compliance with the notices.

WISE has received some criticism from external stakeholders, however WISE was designed for use by WorkSafe. Statistics that can be derived from WISE are relevant to operational requirements. It is acknowledged that WISE is not able to produce information and statistics that are at times requested by external parties.

WISE is owned and maintained by the department and does not have annual licence fees. It was first built in 1995 and currently operates on PowerBuilder 12.6. It is envisaged that in future, subject to available funds, WISE will be replaced by a web-based system. With the recent amalgamation of the Departments of Commerce and Mines and Petroleum, suitability of the investigation system used by Resources Safety for WorkSafe purposes will be explored.

5.7 Case Management System

Following the appointment of Principal Inspectors in 2011, the WorkSafe Case Management system was developed and implemented. This system governs the investigation of serious and fatal workplace incidents. The purpose of the system is to ensure investigations are innovative, meticulous, exhaustive and efficient.

The system comprises three components:

- the Case Management Instruction Manual;
- the compulsory task progress tracker document; and
- the monthly case management meeting document.

The responsibilities of the members of the investigation team are described in the Case Management Instruction Manual, including the role of the Case Manager, investigating inspector, Team Manager and Director. The role of WorkSafe Legal Services is also covered in the Manual.

The investigation team has a collective responsibility to:

1. treat the investigation with the highest priority;
2. attend all case management meetings;
3. ensure the investigation is innovative, meticulous, exhaustive and efficient; and
4. provide any assistance requested by WorkSafe Legal Services.

The Case Manager, which in most circumstances is the Principal Inspector, is responsible for organising the case management meetings and ensuring that:

- correct investigative techniques are used;
- inspector's powers are properly exercised;
- all evidence is obtained; and
- all records of interview are extensive and properly conducted.

Responsibilities of the Case Manager also include managing and supervising the investigating inspector, and:

- ensuring the investigating inspector understands the case management system;
- ensuring the investigation tasks are clear and achievable; and
- providing the investigating inspector with the advice, mentoring and assistance needed to produce the highest possible quality of investigation.

The Instruction Manual further describes the case management process and use of various case management tools.

A copy of the Case Management Instruction Manual is provided in Attachment 5.8.

5.8 WorkSafe Legal Services and prosecution processes

WorkSafe employs a team of three lawyers and administrative officers specialising in the area of occupational safety and health. One of these three lawyers is also Director Legal Services. The team is referred to as WorkSafe Legal Services (WSLS). The team advises upon a wide range of legal issues and conducts civil, administrative and regulatory legal proceedings. The most frequent requests for legal advice concern investigations and most frequently the lawyers appear as counsel for the Commissioner in prosecutions.

WorkSafe officers, including inspectors, have immediate on-site access to WSLS. A lawyer in the team is also available outside of business hours to provide urgent legal advice. The assistance of WSLS' administrative and legal officers is provided to WorkSafe officers routinely throughout each day. Concurrently, lawyers work on long-term matters such as the review of Legal Briefs of evidence gathered during investigations and conduct legal proceedings as counsel for the Commissioner.

The administration of WSLS is supported by a data base system and a series of procedures, guidelines and templates in relation to the following:

- **prosecution:** procedures (WSLS administrative procedure rather than court procedure), template correspondence with the court and accused, next of kin, injured persons, witnesses, template court documents;
- **evidence:** chain of evidence procedural guide, templates and tracking;
- **Coroner:** procedure, correspondence, schedules of documents provided to the Coroner and tracking;
- **review:** Commissioner's review of inspectors decision to issue improvement notices and prohibition notices;
- **review:** Commissioner's decision upon application for exemption;
- **Occupational Safety and Health Tribunal hearings:**, template correspondence with the Tribunal and applicant, template Tribunal documents;
- **administrative hearings:** high risk work licences and assessors hearing procedure, precedent letters to the licence holder or assessor and template hearing documents;
- **delegations:** procedure, template delegation, register of delegations;
- **statistical reporting and tracking** of the above legal proceedings;
- **legal:** legal opinions, legal precedents, judgements and explanatory material;
- **inspector training:** training provided by lawyers to the inspectorate; and
- **investigation guides:** guides and checklists created to assist inspectors.

Administrative processes are continuously updated and improved to reflect legal changes. New legal opinions, judgements, precedents and other court documents are added to the existing bank of legal resources. Live tracking documents are constantly updated as matters within WSLS progress. For example, every prosecution is tracked, so its place within WorkSafe and the court system is accurate at any given time. Finally, online subscriptions to key legal research resources are maintained.

Legal advice

Legal advice is provided from the inception of an investigation until the conclusion of any court proceedings and all relevant parties are notified of the outcome

During most investigations, inspectors request at least one legal opinion concerning an aspect of their investigation. The formal process requires opinions to be requested by the principal inspector sending an email to the WSLS email group. The Director of WSLS allocates the request for legal advice to a lawyer. If the request concerns an investigation, which a particular lawyer has already advised upon, that lawyer will be allocated the request.

In other instances, inspectors visit a lawyer's office to ask for an impromptu legal opinion.

Both forms of request for a legal opinion occur regularly throughout each day. Almost without exception the legal opinion is provided immediately or within hours of the request. Finally, the opinion is then shared within the WSLS group. This ensures continuity of future legal advice. The opinion is then saved into the WSLS electronic file containing previous legal opinions.

Provision of the Legal Brief by the inspectorate to WSLS

At the conclusion of an investigation conducted by inspectors, the inspectors compile a legal brief of evidence to provide to WSLS. The brief includes a written request for legal advice as to whether the evidence supports the charging of one or more parties with one or more charges, and the evidence gathered throughout the investigation (the Legal Brief). In many instances, multiple parties and multiple charges are recommended.

Legal Briefs can run to 40 lever arch volumes of documentary evidence, including specialist technical material such as drawings, plans, CCTV footage, computer programming data and code, electronic engineering diagrams and drawings. When a Legal Brief is provided to WSLS, a quality assurance check is conducted on the Legal Brief. A copy of the Quality assurance checklist and further information is provided in Attachment 5.9.

If a WSLS lawyer has provided legal advice during the investigation, the same lawyer will be assigned the Legal Brief. This supports the efficiency and quality of the review of the Legal Brief and the conduct of any resulting prosecution.

Independent expert evidence

A party being investigated can sometimes be the only expert within a particular area because they designed the plant or the process themselves and have not shared it outside their organisation. They may have also manufactured the plant themselves. WSLS assists the inspectorate by reviewing the resumes of potential experts located by the inspectorate in conjunction with WSLS. WSLS also assists with preparing the brief to the expert that includes drafting the questions and reviewing the resulting opinion to assess whether a supplementary opinion is needed.

A brief to an expert will contain material which must all be capable of admission at any future trial, and questions framed to ensure an opinion is provided in an admissible form. An expert is engaged in the sense understood by the law, so the opinion of the expert may be admissible as an exception to the rule causing opinion evidence to be inadmissible. An expert is not a person engaged to investigate a matter. An investigation by an expert or inspector is inadmissible. It is for the court, and only the court, to determine to the standard of beyond reasonable doubt, what occurred.

Locating an expert willing to be engaged by WorkSafe to provide an independent opinion in relation to an area of expertise falling within his or her area of expertise is challenging. First, potential experts do not want to judge others within their shared industry. Second, potential experts may be put off by the potential that they will be required to give evidence at a trial and undergo cross-examination. Third, the area requiring an expert opinion is often so specialised that there is only one or more persons holding that expertise within Western Australia or even Australia. Fourth, there is often little motivation for an expert to expose him or herself in these ways.

Electronic evidence and physical evidence

In addition to the exceptionally large quantity of complex documentary evidence, Legal Briefs can include CCTV footage, electronic evidence extract by use of forensic computer analysis, electronically recorded records of interview, physical evidence such as equipment and items of plant and samples.

It is increasingly common for parties to use complex electronic systems, particularly within the manufacturing industry as it moves into the area of robotics. To collect the evidence, WorkSafe sources an expert with knowledge of the particular type of system and coding used. The expert is further engaged to decipher the evidence for WorkSafe in a manner that makes the expert's evidence admissible.

If the investigation concerns a fatality, in some instances Western Australian Police (WAPOL) computer forensics may assist. Of course the WAPOL must prioritise their limited resources, so it can take a significant amount of time to receive the results.

Storage of evidence

Electronic and physical evidence is unlikely to be admissible at trial if, the chain of evidence is not carefully preserved. This most importantly includes electronically recorded interviews with suspects and witnesses. This means that at all points of time the location and handling of the evidence must be capable of proof. The chain of evidence begins when evidence is collected, such as at site, and ends when it is tendered into evidence.

WSLS has developed a comprehensive chain of evidence process and manages the process. It includes use of a series of receipts and the electronic tracking of entry and exit from a secure evidence room by nominated officers. Large plant, such as vehicles, is stored in external storage facilities hired for that purpose. The chain of evidence is still maintained from collection of the evidence until its admission. The Evidence policy guidelines – Check-in procedures Legal Services - are provided in Attachment 5.10.

Site visits

In some instances the lawyer will attend the site or inspect the relevant plant or machinery to better understand the evidence provided in the Legal Brief, in particular complex drawings, site plans and production processes.

WSLS tracking processes of Legal Briefs provided by Inspectorate

Upon receipt of the Legal Brief, WorkSafe Legal Services initiates its tracking process. The life of the Legal Brief is tracked from its receipt by WSLS to the closing of the file and its storage in the department's records section. At any time, the stage reached by a Legal Brief, the lawyer to whom it has been assigned and its location is immediately available.

Once the brief is allocated, a lawyer will review the evidence in the Legal Brief to determine if there is admissible evidence capable of proving each of the elements needed to prove the charge. During the process, the lawyer will meet with the relevant inspectors to clarify the evidence and if necessary suggest that further evidence be obtained to clarify a particular issue.

A person cannot be charged unless there is sufficient evidence to support a prima facie case with a reasonable prospect of success. The principle is set out in the WorkSafe Prosecution Policy, which mirrors that of public prosecution agencies throughout Australia and internationally. A copy of the Prosecution Policy is provided in Attachment 5.6.

Updates provided by WorkSafe Legal Services

The Procedure Notification of third parties and WorkSafe officers of fatalities investigated by WorkSafe is provided in Attachment 5.11. When a charge is made, WSLS prepare a detailed letter for the next of kin or injured person. Correspondence templates for the next of kin and victims are provided in Attachment 5.12.

When the Legal Brief reaches a milestone, WSLS updates the Commissioner, media officer, relevant inspectors and the relevant operational director. Subsequently, any updates as to the progress of the prosecution will be emailed. WSLS aims to send the update within 24 hours of the prosecution meeting a milestone. The milestone at which an email is sent within 24 hours includes when a charge is made, a prosecutor attends court, orders are made by the court, and a judgement delivered. The details of the update will include the name of the lawyer prosecuting the charge, the name of the accused, the charge, the orders made by the Magistrate, and the date of any future court appearance.

Legal opinions as to prospects of success

A lawyer assigned a Legal Brief reviews it to provide a legal opinion as to whether there is sufficient admissible evidence to support one or more charges of one or more persons. It is common for multiple parties to be charged arising from one incident.

At the commencement of the review process, the lawyer meets with the principal inspector. The meeting provides an overview of the investigation and any particular legal challenges it could present. Commonly, the reviewing lawyer meets with the principal inspector throughout the file review process to clarify evidence or whether particular lines of inquiry were pursued. Further, a site visit with the inspector to better understand the relevant plant, work process, geography of the incident site or, one as similar as possible is not uncommon.

Typically, the review requires the lawyer consider all of the documentary evidence, watch any video recordings, meet with any independent experts, and review the chain of evidence tracking. Legal research will also be required to resolve any novel legal issues and likely legal arguments.

If the lawyer identifies aspects of the investigation that require further investigation, an initial legal opinion in that regard will be provided. The Legal Brief is then returned to inspectors with a request for instructions as to whether the additional lines of inquiry or evidence will be pursued. If the Legal Brief is returned with instructions to consider the additional evidence, the reviewing lawyer will review the additional evidence and provide a final legal opinion. Alternatively, the Legal Brief may be returned with instructions to close the file or pursue a prosecution without the further evidence.

Magistrates Court Process

The result of the lawyer's review of the Legal Brief is a legal opinion as to whether there is sufficient evidence to support any charges. The *Criminal Procedure Act 2004* (CPA) prescribes the prosecution process. If the evidence supports a charge, prosecution notice (including the charge), court hearing notice and statement of material facts are all drafted. The Prosecution procedures checklist used by WSLS is provided in Attachment 5.13.

The courts may not have hearing dates available, particularly for regional matters where the court may only sit once every three months, and for trials. The public interest test is applied and carefully documented. If the public interest test is satisfied, the charge is formally authorised in writing and the prosecution officer instructed to attend before a Justice of the Peace to make the charge. Finally, the charge is filed at the Magistrates Court and a copy served upon the Accused.

The time taken between the commencement of a prosecution and a conviction or acquittal is determined by the judicial process. That is, it is not determined by the prosecutor. Lengthy court lists are the greatest contributor to delays.

Proceedings must be commenced in the court closest to where the alleged offence occurred. As a result prosecutions are commenced in regional areas, throughout the metropolitan area and in Perth. In these instances, the lawyers travel to regional areas for both sentencing and trials.

Unlike the superior courts, the Magistrates Court does not publish its decisions. That is, its decisions are not publically available. After a conviction, WSLS drafts a summary of the prosecution outcome. The summary is signed off by the prosecutor and it is then published on the WorkSafe website. The website can be searched to find the outcome of past prosecutions. It is the only publically available summary of the decision. An example of a prosecution summary is provided in Attachment 5.14.

6. Adequacy of WorkSafe's audits of training providers delivering occupational safety and health training (e)

The *Occupational Safety and Health Act 1984* (the OSH Act) and the Occupational Safety and Health Regulations 1996 (the Regulations) prescribe courses which must be completed. As a result of the requirements of the OSH Act and Regulations, WorkSafe has responsibility for auditing limited aspects of occupational safety and health training.

Generally the courses required by the OSH Act and Regulations are units of competency sourced from the Vocation and Education sector and delivered by a Registered Training Organisation (RTO). As a result, the training must comply with the Standards for Registered Training Organisations 2015 (the Standards for RTOs 2015) which is administered by Western Australia's Training Accreditation Council (TAC) and the Commonwealth's Australian Skills Quality Authority (ASQA). These agencies have the compliance and enforcement responsibility for training delivered by RTOs.

The functions of ASQA are prescribed in s. 157 - Functions of the National VET Regulator - in the *National Vocational Education and Training Regulator Act 2011* (Cth) and include:

(1) The National VET Regulator has the following functions:

- (a) to register an organisation as an NVR registered training organisation;
- (b) to accredit courses that may be offered and/or provided by registered training organisations; and
- (c) to carry out compliance audits of NVR registered training organisations;

The TAC's functions, detailed in Part 4 and 7A of the *Vocational and Education Act 1996* (the VET Act), are to:

- register training providers; and
- accredit courses.

In discharging its functions, the TAC may also:

- inquire into training providers and courses;
- vary, suspend or cancel registration;
- vary, suspend or cancel accreditation; and
- cancel qualifications.

The purpose of the Standards for RTOs 2015 is to:

- describe the requirements that an organisation must meet in order to be an RTO in Australia;
- ensure that training delivered by RTOs meets industry requirements (as set out in the training package or accredited course) and has integrity for employment and further study; and
- ensure RTOs operate ethically and consider the needs of both learners and industry.

The OSH Act and Regulations allocate audit responsibilities for prescribed work and tasks as detailed below.

6.1 Safety and health representatives

S. 6 of the OSH Act establishes the Commission for Occupational Safety and Health (the Commission). Under s. 14 - Functions of the Commission -, the Commission has the authority to accredit training courses in occupational safety and health (s. 14(1)(h)).

Safety and health representatives, as elected representatives of their work colleagues in matters of occupational safety and health, play an important role in fostering co-operation and consultation between employers and employees. Accordingly, the Commission accredits introductory training courses for safety and health representatives. To be accredited by the Commission, introductory training courses for safety and health representatives must be designed to provide safety and health representatives with information and skills to enable them to effectively carry out their functions in the workplace they are elected to represent.

The purpose of accreditation is to enable the Commission to ensure training providers, of which there are 27, have appropriate skills and knowledge, and that learning methods are suitable. Once this is the case, the learning outcomes are more likely to be met and the service to be at an appropriate standard of quality. The Commission assesses applications for accreditation against agreed criteria and will not accredit courses where relevant criteria have not been met.

In the first instance, a twelve month interim accreditation is granted by WorkSafe. During this time, an on-site assessment of delivery of the course may be conducted by WorkSafe. At the end of the twelve month interim period, once a provider has successfully met all requirements, formal accreditation will be considered by the Commission for a period of three years.

Providers need to re-submit for accreditation within three months of their current accreditation's expiry.

Accreditation granted by the Commission is course specific and does not apply to an organisation, an individual trainer within the organisation or other courses offered by the organisation. Courses accredited by the Commission do not lead to the award of a qualification to the participant but are designed to assist workplace parties to perform their roles. Accordingly, only statements of attendance will be issued to participants.

To ensure suitable facilities and administrative process, the criteria for course accreditation includes the requirements that:

- the competencies in occupational safety and health and training are the same as those required for RTOs; and
- organisations applying for accreditation or renewal of accreditation to deliver the introductory training course for safety and health representatives must be RTOs.

Ongoing course evaluation must be undertaken by the training provider as a quality control measure to ensure learning outcomes specified are achieved. An evaluation report should be submitted when re-accreditation of a course is sought. For introductory training courses, the evaluation focuses on determining the extent to which course participants are satisfied with the course for the key areas: Inspections and Investigations; Hazard Identification and Risk Management; Communication and Representation; Conflict Resolution and Provisional Improvement Notices.

6.2 Asbestos Removal Licences, Demolition Licences and High Risk Work Licence Assessments

The Regulations provide the following authorisations which are subject to audit by WorkSafe inspectors:

- Asbestos Removal
 - Unrestricted
 - Restricted

- Demolition
 - Class 1
 - Class 2
 - Class 3

- High Risk Work Licence Assessors
 - There are 29 class of work requiring a High Risk Work Licence

Asbestos Removal Licences

A licence is required in WA for the removal of materials that contain asbestos. Only a licence holder, or an employee of a licence holder, may carry out this type of work.

The Regulations – Part 5, Division 4 - Further requirements in relation to certain hazardous substances – r. 5.44 to r. 5.45B provide authority for the issuing of two types of asbestos removal licence (Unrestricted and Restricted). Each licence is valid for a period of three years and is endorsed with a number of conditions that relate to the way asbestos removal work is carried out:

- Unrestricted: An Unrestricted Asbestos Removal Licence allows the licence holder, or people employed by the licence holder, to remove all forms of asbestos (friable and non-friable). Friable asbestos means any material that contains asbestos and is in the form of a powder, or can be crumbled, pulverised or reduced to a powder by hand pressure when dry. Examples of friable asbestos include, but are not limited to, asbestos lagging, sprayed insulation, millboard, felt and woven asbestos matting.
- Restricted: A Restricted Asbestos Removal Licence allows the licence holder, or people employed by the licence holder, to remove amounts exceeding 10 square metres of bonded (non-friable) asbestos. Bonded asbestos contains material such as cement or rubber, which stabilises the product and gives it a non-friable structure. Common examples are asbestos cement sheets and pitch-based electrical switchboards.

Under 10 square metres of bonded (non-friable) asbestos can be removed without a licence. Although a licence is not required to remove ten square metres or less of non-friable asbestos material, all asbestos removal work must be carried out properly using safe work procedures and systems of work. There is a duty of care that all removal of asbestos containing materials at a workplace is carried out in accordance with the OSH Act, the Regulations and Part 9 of the Code of Practice for the Safe Removal of Asbestos – 2nd Edition [NOHSC: 2002 (2005)] and Code of practice for the Management and control of asbestos in workplaces.

R. 5.45A – Unrestricted asbestos licence, grant of - of the Regulations requires that the WorkSafe Western Australia Commissioner (the Commissioner) is satisfied the applicant is able, or has the systems, to do the work in a safe and proper manner and has the training

and experience to supervise the work. To be satisfied as to the ability of applicants to do the unrestricted asbestos removal work, the Commissioner has an approved form which includes the requirements for applicants to provide documentation and information about training and experience. The approved form is included with the WorkSafe publication titled Unrestricted Asbestos Licence Application Guide (the UAL Guide) in Attachment 6.1.

The training requirements in the approved form include:

- a training manual that covers the training of all employees involved in asbestos removal work and is compatible with the National Code of Practice, or
- proof that the applicant/nominee has been trained in the Remove Friable Asbestos (Course code CPCCE3015A) by a Registered Training Organisation (RTO) as well as a statement from the company explaining all employees will also undertake the VET course.

Prior to the granting of an Unrestricted Asbestos Licence, the proposed holder of the licence or authorised person on behalf of a Proprietary Limited Company will sign a declaration that they will comply with the specified Unrestricted Asbestos Licence Conditions (enclosed in the UAL Guide).

R. 5.45B. – Restricted asbestos, grant of – of the Regulations requires that the Commissioner is satisfied the applicant is able, or has the systems, to do the work in a safe and proper manner and has the training and experience to supervise the work. To be satisfied as to the ability of applicants to do the restricted asbestos work, the Commissioner has an approved form which includes the requirements for applicants to provide documentation and information about training and experience. The approved form is included with the WorkSafe publication titled New Application for Licence to Carry Out Restricted Asbestos Work (the RAL Guide) in Attachment 6.2.

The training requirements in the approved form include:

- a Statement of Completion from a Registered Training Organisation for the Restricted Asbestos WSRAL001 course (which is approved by WorkSafe); or
- Statement of Attainment from a Registered Training Organisation for the course Supervise Asbestos Removal CPCBC4051A unit of competency.

There are 45 RTOs approved to deliver the Restricted Asbestos WSRAL001 course.

Only the applicants for a Restricted Asbestos Licence or their supervisors are required to complete the specified courses. Employee training is required by the general duty under s.19 of the OSH Act.

Prior to the granting of a Restricted Asbestos Licence, the proposed holder of the licence or authorised person on behalf of a Propriety Limited Company will sign a declaration that they will comply with the specified conditions of the Restricted Asbestos Licence (enclosed in the RAL Guide).

The audit of WorkSafe Unrestricted and Restricted Asbestos Licence holders is an audit to verify that asbestos licence holders are complying with the conditions of the licence. The auditor checks that there is a record of relevant training maintained by the asbestos licence holders for those persons carrying out asbestos removal work.

Asbestos licences are issued for three years and require renewal to the end of this period. The Audit investigators endeavour to audit one third of all asbestos licence holders each

year between them. Priority is given to licence holders that are in the third year of their licence and have not been audited since the last renewal of the licence.

If, in the opinion of an Audit investigator, the results of the audit do not meet the asbestos licence conditions, and cannot be addressed before the Audit investigator leaves the premises, the Audit investigator will consider the options for actions consistent with the WorkSafe Compliance Policy. The Audit investigator may arrange a follow up audit at an appropriate time, based on the seriousness of the non-compliance.

Demolition

A licence is required in WA for certain types of demolition works. Only a licence holder or an employee of a licence holder may carry out this type of work. Each licence is valid for a period of two years and is endorsed with a number of conditions that relate to the way demolition work is carried out. It is an offence to do any of the work described as Class 1, Class 2 or Class 3 demolition work unless licensed to do the work.

Each class of demolition work is defined in r. 3.114 of the Regulations:

- Class 1 – the definition lists different types of demolition but is effectively an open class.
- Class 2 - means demolition work comprising the total or partial demolition of a building or structure that is less than 10 metres in height when measured from the lowest ground level of the building or structure to the highest part of the building or structure but does not include the total or partial demolition of a single storey dwelling and prescribed work allowed under Class 1 demolition work
- Class 3 - in relation to demolition work, means work comprising the removal of more than 200 m² of brittle or fragile roofing material from a building or structure

R. 3.116 – Class 1, 2 or 3 demolition licences, application for etc. - of the Regulations requires that the Commissioner is satisfied that the applicant is able to do that class of demolition work in a safe and proper manner. To be satisfied that the applicant is able to do the class of demolition work, the Commissioner has an approved form which is included with the WorkSafe publication Guidelines for applicants for a demolition licence issued under the Occupational Safety and Health Regulations 1996, 30 June 2016 in Attachment 6.3.

The training requirement in the approved form includes:

- all persons carrying out demolition work have been trained in safe methods of demolition by an RTO; and
- the holder of the Demolition Licence will be subject to auditing and must co-operate with officers of WorkSafe, including answering questions and allowing full access to all documents relating to the carrying out of demolition work which includes, but is not limited to, documents relating to the training provided to persons who carry out demolition work.

The unit of competency required for those carrying out demolition work is titled Carry out demolition work (code CPC2009A).

The audit of demolition class licence holders is an audit to verify that the licence holders are complying with the conditions of the licence. The auditor checks that there is a record of relevant training maintained by the asbestos licence holders for those persons carrying out asbestos removal work.

Demolition licences are issued for two years and require renewal at the end of that time. The Audit investigators endeavour to audit half of all demolition licence holders each year. Priority is given to licence holders that are in their second year of the licence and have not been audited since the last renewal of the licence.

If in the opinion of an Audit investigator, the results of the audit do not meet the demolition licence conditions, and cannot be addressed before the Audit investigator leaves the premises, the Audit investigator will consider the options for actions consistent with the WorkSafe Compliance Policy. The Audit investigator may arrange a follow up audit at an appropriate time, based on the seriousness of the non-compliance.

High Risk Work Licence Assessors (Assessors)

Under r. 6.2 – High risk work licence needed to do high risk work – of the Regulations, a person must not do high risk work of a particular class unless the person holds a high risk work licence (HRWL) for that class of work. Schedule 6.3 – High risk work – of the Regulations defines the 29 classes of work requiring an HRWL.

In order to be issued with an HRWL, an application must be made to the Commissioner in an approved form (r. 6.5). There are a number of matters which must be considered by the Commissioner before issuing a licence, including whether the applicant has recently been issued with a:

- notice of satisfactory assessment (r. 6.6(3)(a)); and
- qualification or statement of attainment (r. 6.6(3)(b)).

The terms “notice of satisfactory assessment” and “qualification or statement of attainment” are defined in r. 6.1 – Terms used – of the Regulations:

- *notice of satisfactory assessment* means a document issued by an assessor containing information to the effect that the person named in the document is competent to do high risk work of the class specified in the document; and
- *qualification or statement of attainment* means a document issued by a registered training organisation containing information to the effect that the person named in the document —
 - (a) has received training from the organisation in the performance of high risk work of the class specified in the document; and
 - (b) is competent to do that work.

A person authorised as an assessor is authorised to issue notices of satisfactory assessment for the class or classes of high risk work in respect to which the person is authorised (r. 6.19). There is an assessment instrument for each HRWL class.

R. 6.20 – Notice of satisfactory assessments, duties of assessor before issuing - of the Regulations includes requirements that assessors:

- must not issue a notice of satisfactory assessment unless the assessor has assessed the person’s competency in accordance with the approved assessment instrument and is satisfied the person is competent; and
- is satisfied the person has sufficient knowledge of English (written and oral).

Relevant definitions are:

- *assessment instrument* for high risk work of a particular class, means a written statement of the steps to be taken, and the assessment methods to be used, by an assessor when conducting an assessment of a person's competency to do high risk work of that class (r. 6.20); and
- *approved* means approved by the Commissioner (r. 1.3).

The assessment instruments are provided to all jurisdictions by Safe Work Australia, consistent with the aim of facilitating the operation of a nationally uniform, competency based licensing system for persons performing certain types of high risk work.

Each HRWL class has its own assessment instrument. The assessment instruments provide the framework for assessors assessing candidates against the relevant units of competency.

Each assessment instrument has knowledge, calculation and performance criteria.

- Knowledge Assessment –
 - includes a number of questions related to the knowledge and skills required to operate safely in a workplace;
 - includes Critical questions which must be answered correctly; and
 - depending on the HRWL class, candidates must achieve either 75 per cent or 90 per cent mark in relation to non-critical questions.
- Calculation Assessment –
 - include arithmetic calculations based on simulated workplace examples; and
 - all questions must be answered correctly.
- Performance Assessment -
 - Involves observation of the candidate performing the tasks that are required in the workplace to the standard outlined in the unit of competency.
 - Candidates must safely and competently complete all the requirements identified on the observation checklist and complete all the requirements identified on the observation checklist.
 - All assessments must be undertaken in the workplace and/or under realistic workplace condition.

The assessment instruments are confidential and not for general distribution. For the information of the Standing Committee, enclosed are the following:

- Assessment Instrument for Licence to operate a forklift truck – Candidate version (Attachment 6.4);
- Assessment Instrument for Licence to operate a forklift truck – Assessor version (Attachment 6.5); and
- Licensing Persons Performing High Risk Work, Mandated National Assessment Instruments, Guide for Assessors (Attachment 6.6).

The assessment instruments make reference to Work Health and Safety (WHS) laws. However, as WA is still considering the WHS laws, candidates must be trained and assessed consistent with the requirements of the Regulations. Assessors are required to make the appropriate editorial changes to the assessment instruments used in WA.

As a consequence of r. 6.6(3)(a), r. 6.6(3)(b) and the definition of a statement of attainment (r. 6.1), a notice of satisfactory assessment issued by an assessor and statement of

attainment issued by an RTO are required before an HRWL can be issued by the Commissioner. R. 6.20 are the matters subject to audit by WorkSafe. Training and assessment requirements for RTOs are specified in the Standards for RTOs 2015 and fall within the jurisdiction of the TAC and ASQA.

The audit is to verify that the Assessor is complying with the administrative conditions imposed on the Assessor. The auditor checks requirements specified in the Assessor Registration Conditions which are included in the Application guide - A guide to becoming a WorkSafe registered assessor for licensing persons performing high risk work, which is included in Attachment 6.7.

Assessor registrations are issued for three years and require renewal at the end of that time. The Audit investigators endeavour to audit a third of all Assessors each year. Priority is given to licence holders that are in the third year of the registration and have not been audited since the last renewal of the registration. The expected outcome from the audit is to establish that the Assessors are maintaining and retaining all of the administrative records that are imposed by the registration conditions.

If in the opinion of an Audit investigator, the results of the audit do not meet the Assessor conditions, the Audit investigator will consider the options for actions consistent with the WorkSafe Compliance Policy. The Audit investigator may arrange a follow up audit at an appropriate time, based on the seriousness of the non-compliance.

As at 14 July 2017, WorkSafe had the following numbers of authorisations issued:

Asbestos Removal	
• Unrestricted	23
• Restricted	1157
Demolition	
• Class 1 –	35
• Class 2 –	88
• Class 3-	24
High Risk Work Licence Assessors	501

Table 11: Number of authorisations issued as at 14-07-2017

The number of audits undertaken by WorkSafe from 2007-08 to 2016-17 were:

	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17
Audits of Registered HRWL Assessors	Breakdown data not available				77	102	77	87	119	97
Audits of Registered Asbestos Licence Holders					93	207	305	339	389	396
Audits of Registered Demolition Licence Holders					14	39	89	57	77	66
Total Audits	102	111	116	69	312	348	471	483	585	559

Table 12: Number of audits undertaken by WorkSafe: 2007-08 to 2016-17 (see also chart 20)

WorkSafe's audit activities identified some important areas where Assessors were not complying with the requirements of the Regulations. As a result, in December 2015 the Commissioner felt it was important for all Assessors to hear about these circumstances and WorkSafe's concern. He therefore invited Assessors to attend one of several seminars which took place in the metropolitan area, Bunbury, Geraldton and Karratha, during February 2016 and May 2016. At these seminars, WorkSafe addressed all Assessors in relation to their responsibilities under the Regulations, the conditions of the certificate of registration and what it means to be a public officer.

In accordance with regulations 6.28 and 6.29 of the OSH Regulations, the Commissioner can hold a hearing to decide whether to suspend or cancel the registration of an assessor. The Commissioner is required to afford the assessor the benefits of natural justice. This includes ensuring the assessor is fully aware of the details of each allegation, has access to the supporting evidence, and an adequate opportunity to respond to each allegation. Responding includes providing evidence to the contrary, calling witnesses and attending the hearing before the Commissioner.

After hearings conducted by WorkSafe Legal Services, in March and June 2016 and April 2017, the Commissioner cancelled the registration of two assessors and suspended the registration of another for three months. Two of the assessors were subsequently charged and convicted for offences relating to their conduct as assessors. In addition, in 2017 WorkSafe has referred a further five Assessors to WorkSafe Legal Services for consideration of cancellation or suspension of their registration and/or prosecution.

WorkSafe does not audit those Assessors who do not issue any notices of satisfactory assessment. For example in 2016-17, 170 Assessors did not issue any notices of satisfactory assessment.

Construction induction training certificate

Since 2009, as part of a national approach to construction induction training, WA's White Card (also referred to in the Regulations as the "construction induction training certificate") has been recognised in all states and territories, and in reciprocation the cards of all other jurisdictions are recognised in WA.

The construction induction training course for the White Card is currently based on the nationally recognised unit of competency *CPCCOHS1001A – Work safely in the construction industry* (the existing unit).

R. 3.136 – Construction induction training certificate, when required – of the Regulations requires that employees and self-employed persons must not do construction work at a workplace unless they hold a construction induction training certificate.

R. 3.235 -Terms used - of the Regulations includes definitions of:

- construction induction training certificate;
- construction induction training course; and
- recognised construction induction training course.

As a result of these regulations, construction induction training certificates can only be issued by RTOs scoped to deliver the unit of competency CPCCOHS1001A Work safely in the construction industry.

WorkSafe has formal agreements in place with 214 RTOs to conduct the training and assessment for the White Card, and to subsequently issue WA White Cards.

On 9 December 2016, the existing unit was superseded by the new unit of competency *CPCCWHS1001 – Prepare to work safely in the construction industry* (the new unit). The nationally recognised training information website, training.gov.au, indicates that the new unit '*supersedes and is equivalent to CPCCOHS1001A Work safely in the construction industry.*' There are some changes to the new unit, principally in the assessment requirements. The changes mean that the unit of competency shifts from a 'knowledge based' course to now be a 'knowledge and skills based' course. As a result, WorkSafe understands that this will make online delivery and assessment of the new unit commercially impractical.

The Australian Industry Skills Committee (AISC) is the body responsible for endorsing nationally recognised training packages and units of competency. The TAC and ASQA have jurisdiction with regard to the training and assessment for this qualification.

7. Timely implementation and public education of coronial inquest recommendations arising from workplace death (f)

WorkSafe aims to complete its own enforcement and educative actions prior to the State Coroner holding an inquest and making any recommendations.

On 1 May 2017, the State Coroner wrote to the Minister to draw a recommendation to his attention. The recommendation suggested the Commissioner update an Australian Standard. The Commissioner is unable to alter an Australian Standard because standards are not legislative instruments. They are developed by Standards Australia, a not-for-profit non-government organisation. The Minister's response is in Attachment 7.1.

Except in very rare instances, a WorkSafe investigation, prosecution, education campaign or industry project is completed before the State Coroner initiates the processes available to her under the *Coroners Act 1996*.

Assistance provided to the State Coroner

The Director of WSLS formally writes to the State Coroner to ensure she is updated as to the progress of all WorkSafe investigations and prosecutions relating to fatalities. Initially, the State Coroner is formally notified that WorkSafe is investigating the fatality. Subsequently, the Director writes to the State Coroner to advise her of: when an investigation will not be resulting in a prosecution, when a person has been charged (including details of the charge) the outcome of any prosecution. Further, WSLS works closely with members of the Coroner's Office on a regular and informal basis.

If an investigation has not led to a prosecution or a prosecution has been completed, the State Coroner is formally invited to request access to evidence held by WorkSafe by way of a Form 8 (pursuant to regulation 14 of the *Coroners Regulations 1997*). WSLS Coroner policy guidelines and procedures are provided in Attachment 7.2.

During 2016-17, WorkSafe notified the Coroner that it had begun 10 investigations into workplace fatalities and that it had completed 13 investigations. During that period WorkSafe received three requests for evidence from the Coroner. WSLS worked closely with members of the Coroner's office to provide as much evidence as possible.

8. Legislative and jurisdictional issues (g)

8.1 Legislative issues

The current *Occupational Safety and Health Act 1984* is 30 years old. Most other jurisdictions in Australia have adopted national Workplace Health and Safety legislation in the last five years.

A review of occupational safety and health legislation in WA has commenced with the announcement on 12 July 2017 by the McGowan Government of the development of a new Work Health and Safety Bill for WA. The Bill will modernise and consolidate workplace health and safety regulations.

The Bill will be based on the national Work Health and Safety Act and will replace the *Occupational Safety and Health Act 1984* and the *Mines Safety and Inspection Act 1994* and incorporate OSH components from the *Petroleum and Geothermal Energy Resources Act 1967*, *Petroleum (Submerged Lands) Act 1982* and the *Petroleum Pipelines Act 1969*.

8.2 Jurisdictional issues

The scope of the OSH Act does not include every workplace in WA. Workplaces and work activities in general industry will normally be included, except for those in mining and petroleum and those covered under the federal Comcare legislation.

Comcare

Comcare administers the *Work Health and Safety Act 2011* (the WHS Act) and *Work Health and Safety Regulations 2011* (WHS Regulations). The WHS Act and WHS Regulations are based on the model workplace health and safety laws adopted in most states and territories.

The WHS Act covers Commonwealth agencies, Commonwealth public authorities as well as non-Commonwealth licensees. The Commonwealth WHS Act imposes duties on these organisations (known as persons conducting a business or undertaking or PCBU) according to the Commonwealth WHS Act) to ensure the safety of all workers on the site.

The Commonwealth WHS Act definition of worker includes individuals who are contractors, sub-contractors, employees of contractors and sub-contractors, labour hire employees and apprentices or trainees.

Employers and their employees who are engaged as contractors and sub-contractors by Commonwealth agencies, Commonwealth public authorities and non-Commonwealth licensees are covered by the WA OSH Act. This means that the Commonwealth WHS Act and the WA OSH Act may both apply to individuals defined by the WHS Act at the same workplace.

Depending on the circumstances and the extent of control by various parties at the workplace, WorkSafe inspectors may investigate at workplaces where both Commonwealth and state occupational safety and health legislation apply.

If there is any uncertainty about the extent of the jurisdiction, WorkSafe and Comcare officers liaise to clarify jurisdictional boundaries or resolve the jurisdictional issues. Where jurisdictional issues are not resolved, legal advice is sought by both jurisdictions in order to resolve the issue. WorkSafe's Comcare jurisdiction procedure is provided in Attachment 8.1.

Australian Maritime Safety Authority (AMSA)

WorkSafe and the Australian Maritime Safety Authority (AMSA) have different views about jurisdictional responsibility for the loading and unloading of vessels to which the *Navigation Act 2012* (Cth) (the Navigation Act) applies.

WorkSafe has received legal advice that the OSH Act will not apply in these circumstances. AMSA has also obtained legal advice that takes an alternative view. WorkSafe's advice notes the introduction of new provisions in the Navigation Act relating to the safety of loading and unloading operations and the consequential exclusion of the concurrent operation of the OSH Act concerning these issues.

The matter has not been resolved and as a result of the conflicting advice, the jurisdictional responsibility at waterfront workplaces in WA is uncertain.

WorkSafe Commissioner Lex McCulloch has highlighted the differences to the Chief Executive Officer of the Australian Maritime Safety Authority in writing in a letter dated 23 October 2014 and has suggested some amendments which may resolve the issue. A copy of this letter is provided in Attachment 8.2.

No formal response has been received from AMSA following this letter.

On an operational level, officers of AMSA and WorkSafe inspectors meet approximately quarterly to discuss any issues and to provide updates. On an operational level, regular contact by phone and e-mail is maintained between both parties. When an incident occurs, both parties liaise and discuss whose jurisdiction the incident comes under. Where WorkSafe is of the opinion that the incident comes under AMSA jurisdiction, assistance is offered to AMSA officers to provide support and experience, if required.

Australian Transport Safety Bureau (ATSB)

The ATSB is established by the Commonwealth *Transport Safety Investigation Act 2003* (the TSI Act) and conducts investigations in accordance with the provisions in this Act.

The ATSB's function is to improve safety and public confidence in the aviation, marine and rail modes of transport through:

- independent investigation of transport accidents and other safety occurrences;
- safety data recording, analysis and research; and
- fostering safety awareness, knowledge and action.

Generally, WorkSafe WA is not involved in incidents that are investigated by the ATSB under the TSI Act. This includes incidents and accidents involving:

- civil aircrafts in Australia;
- marine transport involving import and export of cargo in and out of Australia and cruise shipping; and
- rail transport.

The TSI Act contains powers for the release of transport safety information, including investigation reports that detail the findings and significant factors that led to a particular transport safety occurrence.

A comprehensive regime of provisions within the TSI Act is in place to maintain the confidentiality of, and legal protection for, a range of sensitive safety information obtained by ATSB investigators. ATSB investigation reports and most evidence collected during an investigation cannot be used in civil or criminal proceedings. ATSB investigation reports may be used for coronial inquests for the purpose of improving safety.

National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)

NOPSEMA enforces the *Offshore Petroleum Greenhouse Gas Storage Act 2006* (OPGGS Act), and its activities include monitoring OSH performance and investigating accidents within its jurisdiction. The delineation between WorkSafe's jurisdiction and NOPSEMA's jurisdiction is generally clear and without significant interface.

Safety Division of the Department of Mines, Industry Regulation and Safety

As a result of the Machinery of Government changes, the Department of Mines, Industry Regulation and Safety (DMIRS) was formed on 1 July 2017. An interim structure has been put in place, which includes a newly formed Safety Division including:

- WorkSafe;
- Resources Safety; and
- Energy Safety.

Phase 2 of the Transition Project to establish DMIRS commenced on 1 July 2017 and will include the integration of service delivery functions. This includes the development of the Corporate Support service structures for the full integration of the two departments and a review of operations and integration of client based service delivery.

Post 31 December 2017. Phase 3, will commence which includes the implementation of revised integrated service delivery approach. The paragraphs below relate to jurisdictional issues with Resources Safety and Energy Safety.

Resources Safety

The *Occupational Safety and Health Act 1984* does not apply to or in relation to a workplace:

- (a) that is, or at which work is carried out on, a mine to which the Mining Act 1978, or the Mines Safety and Inspection Act 1994, applies; or
- (b) at which a petroleum operation or geothermal energy operation, as defined in section 5(1) of the Petroleum and Geothermal Energy Resources Act 1967, is carried on; or
- (c) at which a pipeline operation, as defined in section 4(1) of the Petroleum Pipelines Act 1969, is carried on; or
- (d) at which an offshore petroleum operation, as defined in section 4 of the Petroleum (Submerged Lands) Act 1982, is carried on.

The Resources Safety Division of the Department of Mines, Industry Regulation and Safety is responsible for the administration of safety legislation at the above workplaces through their Mines Safety Division and the Petroleum Safety and Dangerous Goods Division.

A Memorandum of Understanding (MOU) on the administration of occupational safety and health legislation between WorkSafe and Resources Safety was signed on 22 January 2015. A copy of the MOU is provided in Attachment 8.3. As the departments have now amalgamated, this MOU is due for review.

Where there is any uncertainty about jurisdictional boundaries, WorkSafe and Resources Safety communicate in order to resolve these uncertainties. Where appropriate, WorkSafe has provided assistance to Resources Safety in relation to technical matters.

EnergySafety

EnergySafety is responsible for the provision of regulatory services to the Western Australian community through licensing and compliance activities in the area of energy safety, including electricity and gas.

When an energy (electricity or gas) related occupational incident occurs, both EnergySafety and WorkSafe (WS) may investigate, depending on the circumstances.

When both agencies gather evidence for potential charges under either EnergySafety or WorkSafe legislation, evidence needs to be gathered in such manner that it minimises the likelihood that the evidence will not be admissible to a court in any resulting legal proceedings.

EnergySafety inspectors, who are electricians and specialist engineers, have assisted WorkSafe inspectors in the past. When there are no possible charges under EnergySafety legislation, EnergySafety inspectors may assist WorkSafe inspectors with their investigation through section 43(2) of the *Occupational Safety and Health Act 1984*.

If there are possible charges under EnergySafety and WorkSafe legislation and both agencies work together when gathering evidence, it may then be unclear who used which powers under which Act. This may adversely affect the admissibility of evidence to a court.

The OSH Act binds the Crown in the right of the State and also, so far as the legislative power of the State extends in all its other capabilities. The OSH Act allows WorkSafe to compel evidence from EnergySafety. The converse does not apply because the EnergySafety legislation does not bind the Crown. EnergySafety is not able to compel evidence from WorkSafe.

Issues surrounding investigations that fall under both EnergySafety and WorkSafe legislation are complex. The way electrical incidents are currently investigated by WorkSafe and EnergySafety is currently determined on a case by case basis.

8.3 Providing information to external parties

Inspectors appointed under section 42 of the *Occupational Safety and Health Act 1984* (the Act) have powers under section 43 that can only be used for the purposes of the Act, i.e. for establishing if workplace safety measures comply with occupational safety and health laws.

Unless required by law, WorkSafe inspectors are not able to provide information obtained during investigations for the purposes of the Act to external parties. This is a common legislative limitation.

The Public Sector Code of Ethics and the Department of Commerce Code of Conduct also require public servants to ensure the integrity and security of confidential information and documents, respect the privacy of individuals and protect intellectual property.

WorkSafe documents can only be provided by complying with the FOI Act.

There are limitations on the information that can legally be provided by government, as the FOI Act makes reference to “exempt matters” in clauses listed in Schedule 1 and include:

- a) Cl. 3 - Personal information
- b) Cl. 5 - Law enforcement, public safety and property security, matter prejudicial etc. to
- c) Cl. 7 - Legal professional privilege, matters subject to

Further information about the FOI process is provided in section 5.2.

Information that is not subject to legal professional privilege can also be provided by complying with an order from a judicial authority such as the District Court or another legislative scheme.

The disclosure of information outside established legal processes that is not subject to legal professional privilege may prejudice an ongoing investigation and any resulting prosecution. When gathering evidence for an investigation, the disclosure of information may also be contrary to the interests of an injured person or the next of kin.

8.4 Stakeholders accompanying WorkSafe inspectors during investigations

From time to time, WorkSafe is asked if third parties are able to accompany a WorkSafe inspector during their investigation. Third parties might include industry representatives or union organisers.

The *Occupational Safety and Health Act 1984* (the OSH Act) does not provide for third parties to accompany inspectors at workplaces. Third parties accompanying inspectors is inconsistent with WorkSafe’s obligations to ensure the integrity and security of confidential information and documents and to act impartially and maintain privacy. There are also concerns that third parties accompanying inspectors will hinder proper investigation outcomes.

WorkSafe inspectors investigate breaches of the OSH Act on behalf of the State of WA with a view to providing appropriate and targeted enforcement of the OSH Act. When an investigation commences, the outcomes are not known.

Evidence gathered during an investigation may be provided by parties who have rights to privacy. If used in judicial proceedings, the evidence may be subject to legal professional privilege. It is inconsistent with the privacy rights and privilege for third parties to have access to, or hear, information when it is being obtained.

There is an exception to this where the OSH Act provides the inspector with the power to decide if he or she needs to be accompanied. This can only occur if the following conditions are met:

- the inspector is exercising one of the powers the OSH Act provides;
- the power is exercised for the purpose of the OSH Act, most commonly enforcing offence provisions; and
- the inspector considers he/she requires the assistance of that person.

If all of these criteria are met, and a person accompanies the inspector, the accompanying person can only assist the inspector for the purpose of the inspector’s functions. These are broadly, enforcing the OSH Act.

For the purpose of any resulting prosecution, the accompanying person's actions will be deemed to be done by an inspector, so they can only be carried out if an inspector could carry out the same function. The actions will then be part of the evidence gathered during an investigation, and subject to legal professional privilege, so unable to be disclosed.

Accompanying persons are most commonly experts, who assist inspectors when they exercise their powers to examine any plant, substance or other thing at the workplace.

If a person accompanies an inspector and these criteria are not met, it may be an abuse of an inspector's powers, the evidence gathered by the accompanying person and the inspector inadmissible at a trial, therefore compromising enforcement of the OSH Act.

9. Any other relevant matter (h)

9.1 Changes to the WorkSafe structure

In May 2017, the WorkSafe Commissioner released a proposal for structural change to WorkSafe staff following a Capacity Review of the Investigative Practices within WorkSafe.

During a three week consultation period, staff members were provided with the opportunity to provide written feedback or discuss the proposed changes to the structure with their relevant Director or with a representative from the Department's Human Resources Branch.

Following staff consultation, the final structure was distributed to staff in June 2017. It is envisaged that the changes to the structure will be implemented in August 2017.

A number of drivers for change were identified, including:

- limitations of the existing WorkSafe structure;
- the need to enhance proactive and inspection work activities;
- legislative reform;
- results from the Investigative Capacity Review;
- increasing scrutiny of OSH regulators; and
- the location of the audit and compliance team.

The restructure applies to WorkSafe's operational directorates, principally by delineating inspection and investigation work functional areas.

A chart of the new structure is provided below.

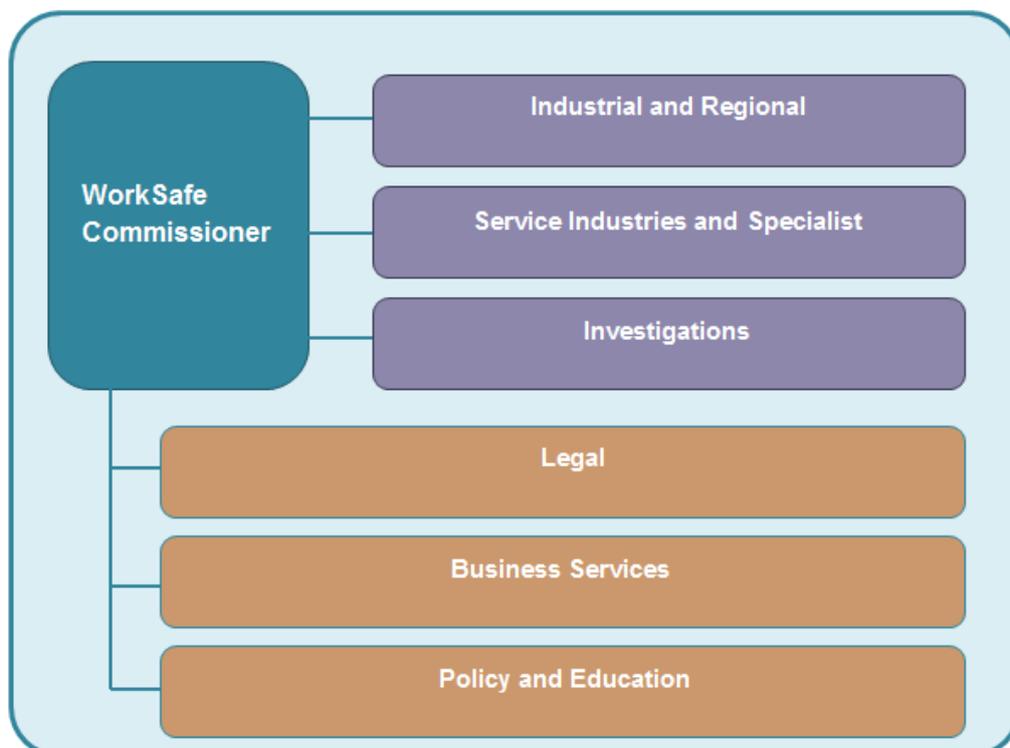


Chart 41: WorkSafe structure as of August 2017

In the new structure, WorkSafe's field activities are conducted by the following three Directorates:

- Industrial and Regional - covering construction, manufacturing, transport, wholesale, and agriculture, forestry and fishing industries;
- Service Industries and Specialist – covering public sector, health, education, community services, retail and service industries, and staffing scientific officers and engineers specialised in health hazards, plant and machinery; and
- Investigations – tasked with the investigation of fatal and serious injuries across industries.

No change has been proposed to the supporting Directorates including Legal, Policy and Education and Business Services.

In the new structure, investigations into serious and fatal incidents (investigations) are carried out by the Investigations Directorate. Other reactive investigations and proactive investigations (inspections) are carried out by the Industrial and Regional Directorate and Service Industries and Specialist Directorate.

The primary objective of a functional delineation of inspection and investigation work is to maximise opportunity to develop and implement strategies, processes and staff development relevant to the respective functions. The proposed structure also seeks to ensure work performed under the respective functions is appropriately prioritised and resourced.

The proposed changes also seek to realign industry distribution between inspection work teams and directorates. The purpose of this realignment is to facilitate the establishment of an Investigation directorate, whilst ensuring there are appropriately resourced industry based inspection work teams.

Detailed organisation charts of the new structure are provided in Attachment 9.1

LIST OF ATTACHMENTS

Attachment	Name
Attachment 1.1	Australian Work Health and Safety Strategy 2012-2022
Attachment 2.1	State of the Work Environment Fatalities 2006-07 to 2015-16
Attachment 2.2	Comparative Performance Monitoring Report 17 th edition
Attachment 2.3	Stakeholder Engagement Framework
Attachment 4.1	Induction Curriculum WorkSafe Inspectors
Attachment 4.2	Coaching form
Attachment 4.3	Skills Development Curriculum WorkSafe Inspectors
Attachment 4.4	Training Needs Analysis 2013
Attachment 4.5	Training evaluation forms
Attachment 4.6	Performance Review and Development Plan new inspectors
Attachment 4.7	Code of Conduct Part 1-2
Attachment 4.8	Terms of Reference – Misconduct Prevention Committee
Attachment 4.9	Email Integrity Committee – Misconduct documents
Attachment 4.10	Customer Service Charter
Attachment 4.11	Department of Commerce – Annual Report 2015-16
Attachment 5.1	Criteria for Investigation
Attachment 5.2	FOI Processes and Charges
Attachment 5.3	Quality Investigations Policy
Attachment 5.4	PIR Policy
Attachment 5.5	Compliance Policy
Attachment 5.6	Prosecution Policy
Attachment 5.7	About WorkSafe, Inspectors and Notices
Attachment 5.8	Case Management Instruction Manual
Attachment 5.9	Quality assurance checklist for investigation files
Attachment 5.10	Evidence policy guidelines – Check-in procedures Legal Services
Attachment 5.11	Procedure – Notification of third parties WS officers of fatalities investigated by WS
Attachment 5.12	Correspondence templates for next of kin or victims
Attachment 5.13	Prosecution procedures checklist
Attachment 5.14	Prosecution summary example
Attachment 6.1	Unrestricted Asbestos Licence Application Guide
Attachment 6.2	New Application for Licence to Carry Out Restricted Asbestos Work
Attachment 6.3	Guidelines for applicants for a demolition licence issued under the Occupational Safety and Health Regulations 1996, 30 June 2016
Attachment 6.4	Assessment Instrument for Licence to operate a forklift truck – Candidate version (confidential – not for distribution)
Attachment 6.5	Assessment Instrument for Licence to operate a forklift truck – Assessor version (confidential -not for distribution)
Attachment 6.6	Licensing Persons Performing High Risk Work, Mandated National Assessment Instruments, Guide for Assessors (confidential - not for distribution)
Attachment 6.7	Application guide - A guide to becoming a WorkSafe registered assessor for licensing persons performing high risk work
Attachment 7.1	Ministerial letter in response recommendation from Coroner
Attachment 7.2	Coroner Policy Guidelines and Procedures WSLS

Attachment 8.1	Comcare jurisdiction procedure
Attachment 8.2	Letter to AMSA regarding jurisdictional matters
Attachment 8.3	MOU WorkSafe – Resources Safety – Administration OSH legislation
Attachment 9.1	Organisation charts new structure