NORTON ROSE FULBRIGHT

WHS Law Briefing

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Key issues and trends

Welcome to our WHS Law Briefing. This briefing identifies key issues and emerging trends in WHS Law, and details significant legislative and case law developments from August 2025 to date in January 2026. Please contact our national WHS team if you would like to discuss any of the matters in this briefing or would like any source materials which have not been included. We welcome your feedback.

Psychosocial risk management duties implemented in all states and territories	All states and territories of Australia have now introduced specific psychosocial risk management duties in their respective WHS Law, with Victoria's *Occupational Health and Safety (Psychological Health) Regulations 2025* commencing on 1 December 2025. WHS Regulators are continuing to be active in their investigation and prosecution of WHS offences involving psychosocial risks, including in the Commonwealth jurisdiction where a Government Department has been convicted and fined for failing to manage psychosocial risks to a worker during a performance management process (read our detailed article here), and in New South Wales where it is reported that another major University has been issued with an improvement notice requiring it to consult with workers potentially affected by a proposed restructure.
Changes to incident notification requirements under model WHS Act	Safe Work Australia has published major changes to incident notification requirements under the model Work Health and Safety Act (WHS Act), including new requirements to notify the WHS Regulator of violent incidents (including sexual assault), notifiable extended absences of more than 15 days, notifiable suicides or attempted suicides and additional categories of dangerous incidents involving mobile plants and falls. The amendments will apply in states and territories once adopted under the relevant state or territory WHS Law.
Updated Heavy Vehicle National Law	An updated Heavy Vehicle National Law (HVNL) has been developed, following a review of the HVNL by the National Transport Commission (NTC). The Heavy Vehicle National Law Amendment Act 2025 passed through the Queensland Parliament (as host of the HVNL) on 18 November 2025, and is expected to commence in mid-2026 in each state and territory covered by the HVNL.
Developments in WHS law to address health and safety impacts of technological advances	The NSW Parliament is considering the Work Health and Safety Amendment (Digital Work Systems) Bill 2025 which proposes to introduce new duties for persons conducting a business or undertaking (PCBUs) involving digital work systems. Safe Work Australia's Research and Evaluation Strategy has identified technological advances as a primary focus area, and the Senate's Select Committee on Adopting Artificial Intelligence has recommended that the Australian Government extend the existing WHS legislative framework to health and safety risks posed by the adoption of artificial intelligence.

Legislative updates

Commonwealth / National

Changes to incident notification requirements under the model WHS Act

Safe Work Australia has published major changes to incident notification requirements under the model WHS Act, including a new requirement to notify the WHS Regulator of violent incidents, notifiable extended absences of more than 15 days, notifiable suicides or attempted suicides, and additional categories of dangerous incidents involving mobile plants and falls. The amendments will apply in a state or territory once adopted under the state or territory WHS Law.

According to the new incident notification requirements, PCBUs must ensure that the WHS Regulator is notified of a "relevant occurrence", which is defined to mean:

1. A **notifiable incident,** which means a **death, serious injury or illness,** a **dangerous incident** or a **violent incident** arising from the conduct of the business or undertaking.

A *serious injury* or *illness* now expressly includes a serious brain injury (from significant or repeated blows, knocks or shocks to the persons head), serious crush injuries and serious bone fractures.

A *dangerous incident* now includes the following incidents that immediately or imminently expose a person to a serious risk to health and safety:

- a "mobile plant incident", including an incident in which mobile plant overturns, partially overturns, collides, malfunctions or moves while not under the control of an operator, and an incident where a person is pinned to the ground or ejected from mobile plant; and
- a "serious fall", including to a lower level, into a hole, trench, pit or void, into a body of water or onto a dangerous surface or object.

A *violent incident* means any of the following that exposes a person to a serious risk of psychological harm:

- a sexual assault or suspected sexual assault;
- a physical assault, including with bodily fluids;
- deliberate deprivation of a person's liberty (without lawful authority);
- a threat of violence mentioned above, where there is a reasonable belief that, at the time the threat is made, the person making the threat intends, and has the means, to carry out the threat.

2. A **notifiable extended absence,** which is where a worker has been absent from work for 15 or more consecutive days, or the worker notifies the PCBU that they anticipate being absent from work for 15 consecutive days or more (on the basis of a medical practitioner's opinion), and the absence is reasonably attributable to a physical or psychological injury or illness arising from the conduct of a business or undertaking.
3. A **notifiable suicide,** which means a suicide or attempted suicide (or a suspected suicide or attempted suicide):

a. of a worker:

   i. that occurs at a time when the worker is not on leave and would ordinarily be working;

   ii. that occurs at, or in the immediate vicinity of, the worker's workplace or another workplace managed or controlled by the same PCBU;

   iii. that occurs in accommodation owned by, or under the management or control of, the PCBU for which the worker works or accommodation otherwise supplied or paid for by the PCBU;

   iv. that makes use of one or more things available to the worker because of the worker's work or at the workplace;

   v. that occurs when the worker is wearing the worker's usual work uniform at a time or in a place the worker would not ordinarily be expected to wear the uniform;

   vi. who had or has a psychological injury or illness arising from the conduct of the business or undertaking;

vii. who is, or has been, exposed to frequent, prolonged or severe psychosocial hazards because of the worker's work or at the workplace;

viii. that occurs in circumstances where the PCBU has notice of a link with the worker's work or workplace, or is otherwise aware of a link with the worker's work or workplace; or

b. of a person other than a worker, that takes place at a workplace where suicide is a reasonably foreseeable risk due to the nature of the workplace **and** the presence of one or more physical hazards that could be used in a suicide.

Time frames for notification

The time frames for notification under the amendments to the WHS Act are:

- Immediately after becoming aware that it has happened – for a notifiable incident or notifiable suicide; and
- Within 14 days of becoming aware of the extended absence – for a notifiable extended absence.

The notice must be given by the fastest possible means and contain details approved by the WHS Regulator.

New related duties

The model WHS Act imposes a new duty on a person with management or control of a workplace to ensure, so far as is reasonably practicable, that evidence of the occurrence, including electronic and digital records and witness details, is preserved. The model WHS Act also imposes new duties on PCBUs and persons with management and control of a workplace to notify each other of a relevant occurrence, immediately after becoming aware that a relevant occurrence has occurred.

Further information and resources

Safe Work Australia has published a fact sheet and handbook providing guidance on the new requirements.

Changes to the model WHS Regulations

Safe Work Australia has published amendments to the model Work Health and Safety Regulations **(WHS Regulations),** including:

- updates to high risk work licence requirements to remove encompassment provisions from mobile crane licences and introduce a prerequisite dogging qualification for most crane licence classes;
- clarifying personal protective equipment (PPE) requirements;
- reducing the automatic refusal timeframe for high risk licence applications from 120 to 60 days; and
- streamlining compliance and enforcement for asbestos sample analysis.

Information regarding these changes can be accessed on Safe Work Australia's website here.

Best Practice Review of the model WHS Act and WHS Regulations

Safe Work Australia is conducting a Best Practice Review of the model WHS Act and WHS Regulations. The Best Practice Review will examine and recommend whether the model WHS Act and model WHS Regulations continue to incorporate a best practice approach that achieves the object of the model WHS Act within the context of strengthening and maintaining harmonisation. In an update provided in December 2025, Safe Work Australia reported that a consultation summary will be published in March 2026, and the final Review report is due to be presented to WHS ministers in mid-2026.

New WHS Codes of Practice on fatigue and silica dust

Safe Work Australia has released two new model WHS Codes of Practice on:

- Managing the risk of fatigue at work; and
- Managing risks of respirable crystalline silica in the workplace.

Safe Work Australia has also published a number of resources (including templates, a checklist and case studies) to assist duty holders working with silica containing materials.

Updated Heavy Vehicle National Law

A review of the Heavy Vehicle National Law (HVNL), led by the National Transport Commission (NTC) has resulted in the development of an updated HVNL for Australia. The Heavy Vehicle National Law Amendment Act 2025 passed

through the Queensland Parliament on 18 November 2025, and is expected to commence in mid-2026 in each state and territory covered by the HVNL. Significant changes include:

- a tiered safety assurance system with a baseline tier of simplified requirements and an alternative compliance tier for accredited operators;
- changes to prescribed general access mass and length limits; and
- a new duty to not drive a vehicle whilst 'unfit to drive.'

The NTC has published information regarding the changes, including updates regarding statutory instruments to support the implementation of the HVNL. The National Heavy Vehicle Regulator has also published HVNL implementation FAQs.

Key WHS statistics and survey results for 2025

Safe Work Australia has published the Key Work Health and Safety Statistics Australia 2025 Report, which highlights key trends in work-related fatalities, injuries and disease for the previous 12 months. The data in the report shows that:

- Vehicle incidents were the leading cause of fatal injuries (42%), followed by falls from a height (13%);
- Machinery operators and drivers had the highest proportion of worker fatalities (32%);
- Mental health conditions accounted for 12% of all serious claims, representing a 14.7% increase on 2022–23 and a 161% increase compared to 10 years ago; and
- the median time lost from work for mental health claims was almost 5 times longer than for other serious claims.

Safe Work Australia has also published:

- the 2025 National Return to Work Survey results;
- the mid-term review of the National Return to Work Strategy 2020–2030;
- jurisdictional comparison data for 2023-2024, including data regarding the number of workplace interventions, inspectorate activity, safety notices, enforceable undertakings, legal proceedings and fines across jurisdictions and nationally;
- the Safe Work Australia 2024-25 Annual Report;
- a new annual publication, Evidence Matters; and
- a new hub and dashboard for the Beta Occupational Hazards Dataset (BOHD), which contains selected data about workplace hazards and risks, including information on how often workers in occupations are exposed to, or involve doing, things which may result in injury or illness.

Changes to workplace exposure limits

In November 2025, Safe Work Australia published an updated list of Workplace Exposure Limits (WEL) for airborne contaminants. The term WEL has replaced workplace exposure standards (WES) to align with international practice and better reflect that these are exposure levels which must not be exceeded, rather than best practice standards.

Safe Work Australia has announced that the exposure limit for aluminium (welding fumes) has been reduced.

Commonwealth Workplace Protection Orders

The Commonwealth Workplace Protection Orders Act 2025 has passed through Federal Parliament, establishing a scheme for courts to make Commonwealth workplace protection orders **(WPOs)** to prevent personal violence against Commonwealth workers or in Commonwealth workplaces.

Updated guide regarding rooftop solar installation work

Safe Work Australia has updated the Guide to managing the risks of rooftop solar installation work, to provide practical guidance for managing WHS risks of battery installation, given the rise in popularity of batteries to support rooftop solar systems.

Construction Industry Blueprint and Culture Standard

The National Construction Industry Forum has finalised the Blueprint for the Future, which makes a range of recommendations to Government, including that Commonwealth and State and Territory WHS Ministers "consider what more could be done to address risks of sex discrimination, harassment and assault" in the building

and construction industry.

The Construction Industry Culture Taskforce has implemented the Culture Standard for the Construction Industry, which provides a framework for clients and contractors to work together to address significant challenges facing the construction industry. The Culture Standard includes 3 interrelated pillars (wellbeing, time for life, and inclusion and diversity). Each pillar contains requirements that aim to enhance culture in the construction sector.

Review of Safety, Rehabilitation and Compensation Act 1988

The Federal Government has released the Final Report of the Review of the Safety, Rehabilitation and Compensation Act 1988 **(SRC Act)**. The Report recommends extensive changes which will require redrafting of the SRC Act. Recommendation 116 concerns the coverage of non-Commonwealth licensees under the Work Health and Safety Act 2011 (Cth)).

New South Wales

Significant changes to NSW WHS Act

On 13 October 2025, most provisions of the Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 **(Amendment Act)** commenced. The remaining provisions are due to commence on 1 March and 1 July 2026.

The Amendment Act amends both the Industrial Relations Act 1996 (NSW) and the Work Health and Safety Act 2011 (NSW) **(NSW WHS Act)**. Key amendments to the NSW WHS Act which commenced in October 2025 include to:

- allow entry permit holders to take photos, videos and measurements, or conduct tests, directly relevant to suspected WHS contraventions at work sites, and also inquire into another suspected contravention identified while at the worksite;
- mandate that PCBUs notify SafeWork NSW after being issued with a provisional improvement notice by a HSR;
- allow PCBUs, workers, health and safety representatives and unions to refer WHS disputes directly to the Industrial Commission, which has jurisdiction to hear and determine the dispute; and
- allow a proceeding for an offence to be brought after the end of the limitation period, with the leave of the court, where it is in the interests of justice to do so.

From 1 March 2026, unions will be able to initiate prosecutions after consultation with SafeWork NSW, and bring proceedings for contravention of civil penalty provisions under the NSW WHS Act on behalf of affected persons.

From 1 July 2026, it will be mandatory for PCBUs to comply with approved codes of practice, or manage hazards and risks in a way that provides a standard of health and safety that is equivalent to or higher than the standard required under the code of practice.

Further information regarding the changes and relevant commencement dates is published by SafeWork NSW here.

Commencement of Work Health and Safety Regulation 2025

The Work Health and Safety Regulation 2025 (NSW) **(NSW WHS Regulation)** commenced in August 2025, replacing the Work Health and Safety Regulation 2017 which was due for automatic repeal on 1 September 2025.

Key changes to the NSW WHS Regulation include:

- reg 55C now requires psychosocial risks to be managed in accordance with the hierarchy of control measures set out in reg 36. This is a departure from the model WHS Regulation which excludes the application of the hierarchy of control measures from the psychosocial risk management duty. The NSW WHS Regulation is now aligned with changes to reg 55C already adopted in Queensland, the Australian Capital Territory, the Northern Territory, South Australia and the Commonwealth jurisdiction; and
- a new duty for PCBUs involved in high risk processing of crystalline silica substances (CSS) to give information to SafeWork NSW (as soon as reasonably practicable and no more than 28 days from the date the processing of a CSS that is high risk commences) including:
  - the name, date of birth, phone number and email address of each worker carrying out the processing of a CSS that is high risk;
  - the location of the processing of a CSS that is high risk, the date the processing commenced, whether the processing involves or is associated with the construction of a tunnel, and if so, the name of the project; and
  - whether, in the previous 12 months, the PCBU engaged a person to undertake health monitoring of workers carrying out processing of a CSS that is high risk, and if so, the details of the person so engaged.
- The new information sharing duty is likely to apply to a range of PCBUs involved in the crushing, cutting, grinding or drilling of CSS (not limited to PCBUs involved in tunnelling projects), given the broad meaning given to high risk processing of a CSS under the WHS Regulation (see Part 8A.1).

In October 2025, the Work Health and Safety Amendment Regulation 2025 made further changes to the NSW WHS Regulation, including to:

- provide for the duty of a PCBU who commissions licensed demolition work to ensure the licensed demolition work is carried out by, or for, a person who has a demolition licence;
- make it an offence for a food delivery booking provider to direct or allow a food delivery rider to carry out food delivery work for the provider without completing food delivery induction training; and
- update references to AS 2700S-2011 Colour Standards; and
- correct minor errors.

The NSW Government also made the Industrial Relations Commission (Amendment No 2) Rules 2025 in October 2025, which set out rules for applying to the Industrial Relations Commission for orders against bullying or harassment, or starting a WHS dispute.

The final stages of audiometric testing requirements under clause 58 of the NSW WHS Regulation commenced on 1 January 2026.

Other changes brought about by the Work Health and Safety Regulation 2025 are summarised in a table published by SafeWork NSW here.

Proposed new digital work systems duty

The NSW Parliament is considering the *Work Health and Safety Amendment (Digital Work Systems) Bill 2025* **(Digital Work Systems Bill)** which proposes to introduce new duties in the NSW WHS Act involving digital work systems. The Digital Work Systems Bill defines a digital work system as an algorithm, artificial intelligence, automation or online platform. This is potentially a broad definition and could apply to many businesses, not just those businesses that use apps to allocate jobs to gig workers.

The Digital Work Systems Bill proposes to:

- expand PCBU's primary duty of care to extend to ensuring the health and safety of workers is not put at risk from the use of digital work systems by the business or undertaking;
- insert a new duty (section 21A) requiring a PCBU to ensure, so far as is reasonably practicable, that the health and safety of a worker is not put at risk from the allocation of work by a digital work system used by the business or undertaking. This requires the PCBU to consider whether the allocation of work by or using a digital work system creates or results in any of the following risks
  - excessive or unreasonable workloads for workers at work in the business or undertaking;
  - the use of excessive or unreasonable metrics to assess and track the performance of workers at work in the business or undertaking
  - excessive or unreasonable monitoring or surveillance of workers at work in the business or undertaking;
  - discriminatory practices or decision-making in the conduct of the business or undertaking.
- expand the rights that may be exercised by WHS entry permit holders while at a workplace in respect of digital work systems, including a right to require a PCBU to provide the WHS entry permit holder with reasonable assistance to access and inspect a digital work system relevant to a suspected contravention of the NSW WHS Act.

Changes to WHS Codes of Practice

In December 2025, the NSW Government made three new WHS Codes of Practice and revoked old codes of the same names:

- Moving plant on construction sites;
- Overhead protective structures; and
- Safety in forest harvesting operations.

The NSW Government also made the Tower Cranes Code of Practice in July 2025.

A number of draft WHS Codes of Practice have also been released:

- Health and safety risk management of tunnels and shafts in construction code of practice;
- Work on Roofs – Commercial and Industrial Buildings;
- Tree work Industry;
- Safe use and storage of agricultural and veterinary chemicals; and
- Safe use and design of bulk storage silos and bins

The WHS Code of Practice: Safe use of synthetic mineral fibres has been revoked.

New WHS provisions have significant consequences for hospitality industry

In November 2025, the NSW Parliament passed the 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2025 **(Reform Act)**, which (amongst other things) introduces new WHS provisions into the Liquor Act 2007 (NSW).

The Reform Act introduces a new section 139(3)(hc) to the Liquor Act 2007 (NSW) which provides that a failure by a licensee or manager to prevent or address a significant risk to the safety of employees or other persons on licensed premises is grounds on which a complaint may be made to the Independent Liquor and Gaming Authority, which may lead to disciplinary action. This has significant potential consequences for the hospitality industry, in that venue operators that fail to address or prevent risks to their employees or patrons (for example, operators that do not proactively address the risk of sexual harassment), could have their liquor licences suspended or revoked.

Queensland

Updated Heavy Vehicle National Law

The Heavy Vehicle National Law Amendment Act 2025 passed through the Queensland Parliament (as the host of the HVNL) on 18 November 2025, and is expected to commence in mid-2026 in each state and territory covered by the HVNL. See article on page 5 regarding 'Updated Heavy Vehicle National Law'.

Queensland Building and Construction Commission (QBCC) reform and modernisation

The Queensland Building and Construction Commission and Other Legislation Amendment Act 2025 passed the Queensland Parliament on 24 November 2025, amending the Building Act 1975, the Plumbing and Drainage Act 2018 and the Queensland Building and Construction Commission Act 1991 **(QBCC Act)** with the reported objective of modernising the regulatory framework for the Queensland Building and Construction Commission **(QBCC)**.

The changes include streamlining how Queensland's building and construction industry is required to report serious safety matters that are also required to be notified under the Work Health and Safety Act 2011 (Qld) **(QLD WHS Act)** and the Electrical Safety Act 2002. See here for more information published by the QBCC.

Review of Resources Safety and Health regulatory model

The Review of the Queensland Resources Safety and Health Regulatory Model **(Review)** has found that Queensland's current regulatory model for resources safety and health is "intrinsically flawed" and that there is need for "significant improvement" in Resources Safety and Health Queensland's **(RSHQ's)** approach to investigations and enforcement, information sharing and engagement with stakeholders, being a risk-based regulator and understanding and responding to internal cultural issues.

The Review report also made recommendations in respect of the Commissioner for Resources Safety and Health **(CRSH)** role.

In response to the Review report, the Minister for Natural Resources and Mines stated on 19 November that the role of the CRSH will be discontinued, and a new independent Governing Board will be established as a priority.

Updated guide to the QLD WHS Act and proposed changes to High Risk Plant definition

In January 2026, WorkSafe QLD published an updated Guide to the QLD WHS Act to incorporate changes from the Work Health and Safety and Other Legislation Amendment Act 2024 **(WHSOLA Act)**.

From 29 March 2026, the WHSOLA Act will amend the Work Health and Safety Act 2011 (QLD) **(QLD WHS Act)** to allow 'high risk plant' to be prescribed by the Work Health and Safety Regulation 2011 (QLD) **(QLD WHS Regulation)** instead of being prescribed in Schedule 1 of the QLD WHS Act. In advance of this change, Workplace Health and Safety Queensland has sought feedback on what types of plant should be categorised as 'high risk plant'.

Electrical safety changes and discontinuance of new power for health and safety representatives

The Electrical Safety and Other Legislation Amendment Bill 2025 (ESOLA Bill) was introduced into the Queensland Parliament on 28 October 2025. If passed, the ESOLA Bill will:

- amend the Electrical Safety Act 2002 **(ES Act)** and the Electrical Safety Regulation 2013 **(ES Regulation)**, including to clarify that electricity entities can issue electrical equipment defect notices, and to elevate the regulator's prohibition power for unsafe electrical equipment from the ES Regulation to the ES Act; and

- remove from the QLD WHS Act an additional avenue for health and safety representatives and WHS entry permits holders to request information from the regulator, prior to that provision commencing on 29 March 2026.

New Mining and Resources Coroner and mandatory coronial inquests

The Coroners (Mining and Resources Coroner) Amendment Act 2025 passed Parliament on 16 October 2025, and commenced on 20 October 2025, establishing a Mining and Resources Coroner and mandating coronial inquests for all mining related reportable deaths, which includes accidental deaths that occur on coal mines, mines, quarries and certain petroleum and gas sites.

Proposed changes to Concrete Pumping code of practice

Workplace Health and Safety Queensland **(WHSQ)** has called for feedback on proposed changes to Queensland's unique WHS Code of Practice, Concrete pumping.

New requirements for audiometric testing

WHSQ has published FAQs and a stakeholder communication kit regarding the new requirements under the QLD WHS Regulation for employers to provide audiometric testing for workers who use PPE due to the risk of hearing loss associated with noise that exceeds the exposure standards for noise.

South Australia

Change to definition of high-risk construction work

On 1 July 2026, a new definition of "high risk construction work" under the Work Health and Safety Regulations 2012 (SA) **(SA WHS Regulations)** will come into force, so that it includes a risk of a person falling more than 2 metres, instead of more than 3 metres. This change is brought about by the Work Health and Safety (High Risk Construction Work) Amendment Regulations 2025 and aligns the definition of high risk construction work in South Australia with other harmonised jurisdictions.

New Workplace Protection Orders scheme to commence

The Workplace Protection (Personal Violence) Act 2025 passed through the South Australian Parliament on 4 December 2025. The Act will enable an employer, owner or occupier of a premises, a health and safety representative or union to apply to court for a workplace protection order **(WPO)**, and the court may make a WPO if satisfied that the defendant has engaged in personal violence in relation to a workplace and may engage in personal violence in relation to a workplace during the time the WPO is proposed to operate if the WPO is not made. A WPO may last for up to 12 months, and either prevent the defendant from entering or coming near the premises, or impose strict conditions on their presence in the workplace – including conditions on who they are able to have contact with.

The Standing Council of Attorneys-General agreed in November that South Australia will lead a working group that shares information and best practice on existing and forthcoming legislative reforms aimed at reducing violence in retail settings.

Victoria

New Psychological Health Regulations and Compliance Code

Victoria's Occupational Health and Safety (Psychological Health) Regulations 2025 **(Psychological Health Regulations)** commenced on 1 December 2025. WorkSafe Victoria has made a Compliance Code: Psychological Health which provides practical guidance for duty holders.

The Psychological Health Regulations require employers to, so far as is reasonably practicable, identify psychosocial hazards and eliminate any risk associated with a psychosocial hazard. If it is not reasonably practicable to eliminate a risk associated with a psychosocial hazard, the employer must reduce the risk so far as is reasonably practicable by:

- Altering – (i) the management of work; or (ii) the plant; or (iii) the systems of work; or (iv) the work design; or (v) the workplace environment;
- Using information, instruction or training (which can only be exclusively used if alteration control measures are not reasonably practicable);
- A combination of the above measures (where information, instruction or training cannot be the predominant measure).

Employers are also required to review and, if necessary, revise any implemented risk controls and ensure that any risk control measure required by the Psychological Health Regulations is properly installed, used and maintained.

For more information see our article here.

Victorian Government responds to inquiry into workplace drug testing

The Victorian Government has responded to the Legislative Council Legal and Social Issues Committee inquiry into workplace drug testing in Victoria. The Victorian Government's response includes a commitment to update guidance material concerning workplace alcohol and drug testing, including in relation to medicinal cannabis use.

Amendment Act to tackle occupational violence against customer facing workers

The Victorian Government has introduced the Crimes Amendment (Retail, Fast Food, Hospitality and Transport Worker Harm) Act 2025 **(Crimes Amendment Act)**, which amends the Crimes Act 1958 and the Summary Offences Act 1966 to create new offences relating to threatening, intimidating or assaulting certain customer-facing workers in retail, hospitality, fast food and transport industries.

WorkSafe Victoria Statement of Regulatory Intent

WorkSafe Victoria has published its Statement of Regulatory Intent 2025-2026. The Statement outlines that WorkSafe is focussing on five priority industries: health care and social assistance, construction, government, agriculture and manufacturing. Within each of these industries, WorkSafe is concentrating on key hazards causing the most harm, including falls from height, occupational violence and aggression, hazardous manual handling, bullying and harassment, occupational illness and disease, loading and unloading, and operating mobile plant. WorkSafe is also focusing on improvements in workplace consultation and psychological health across all Victorian workplaces.

New law restricting non disclosure agreements in work related sexual harassment cases

The Restricting Non-disclosure Agreements (Sexual Harassment at Work) Act 2025 passed the Victorian Parliament in November 2025, placing restrictions on the use of non-disclosure agreements in workplace sexual harassment matters. The Victorian Government has published Frequently Asked Questions regarding the new law, which states that it is intended to commence on 1 July 2026.

Western Australia

Proposed changes to dangerous goods safety laws

The WorkSafe group of the Department of Local Government, Industry Regulation and Safety is inviting public submissions on proposed reforms under the Dangerous Goods Safety Act 2004 **(DGS Act)** and associated regulations as outlined in the Consultation Regulatory Impact Statement (CRIS). The closing date for submissions is 27 February 2026.

The general aims of the proposed reforms are to align equivalent elements of the DGS Act and WHS Law, improve, update and modernise the DGS Act and facilitate more effective enforcement under the DGS Act.

Sexual and gender-based harassment code of practice

WorkSafe WA has published the draft WHS Code of Practice, Sexual and gender-based harassment and sought public feedback (closed 5 December 2025). The draft Code contains material adapted from Safe Work Australia's Model code of practice of the same name.

Statutory review of WA WHS Act

The WA State Government is undertaking a statutory review of the Work Health and Safety Act 2020 **(WA) (WA WHS Act)**, which must be reviewed every 5 years. The review recommendations will be provided to Parliament in late 2026.

Retail Barring Orders bill introduced to Parliament

The Retail Barring Orders Bill 2025 has been introduced into the Western Australian Parliament. The purpose of the bill is to prevent people from committing retail violence or otherwise stalking or harassing retail workers by enabling people to apply for a "retail barring order" **(RBO)**.

Australian Capital Territory

WHS reforms pass Parliament

The Workplace Legislation Amendment Act 2025 (No 3) passed Parliament in November 2025, amending various pieces of legislation including the Work Health and Safety Act 2011 **(ACT WHS Act)**. The amendments to the ACT WHS Act include:

- expanding the list of notifiable incidents to cover "spinal injury", "serious crush injury" and "serious head injury or illness" resulting from "a significant blow, knock or other shock to the person's head", or "repeated blows, knocks or shocks to the person's head";
- introducing a new obligation for PCBUs and persons with management or control of a workplace to notify each other of notifiable incidents. and
- changes to section 232 to allow a proceeding for an offence to be brought after the end of the applicable limitation period with the leave of a court, if the court is satisfied this is in the interests of justice.

New and revised WHS Codes of Practice

Two new WHS Codes of Practice have been approved under section 274 of the Work Health and Safety Act 2011 (ACT) **(ACT WHS Act)**:

- WHS Code of Practice: Managing the risks associated with extreme temperatures; and
- WHS Code of Practice: Safe design and structures.

Six other WHS Codes of Practice have also been remade under the ACT WHS Act, to incorporate changes to the ACT WHS Act and associated regulations over recent years and include references to psychosocial hazards:

- Confined spaces;
- Construction work;
- How to manage work health and safety risks;
- Managing noise and preventing hearing loss;
- Managing the risks of plant in the workplace; and
- Managing the work environment and facilities.

Tasmania

New crystalline silica WHS Code of Practice

Tasmania has approved two national model WHS Codes of Practice under the Work Health and Safety Act 2012 (Tas) **(Tas WHS Act)**:

- the national model WHS Code of Practice: Managing risks of respirable crystalline silica in the workplace; and
- the national model WHS Code of Practice: Healthcare and Social Assistance Industry.

Significant cases

National

A major Government Department has been convicted and fined for failing to manage psychosocial risks during performance management processes. . The worker had been subjected to four separate Work Plans (which were being used as a performance management tool) over a six-month period and had been displaying increasing signs of distress and ill-health. The worker took his own life while at work.

The Department pleaded guilty to a single charge under section 33 of the Work Health and Safety Act (Cth) **(Cth WHS Act)**, admitting it did not take reasonably practicable measures to eliminate or minimise health and safety risks to the worker during the Work Plan/performance management process.

In the Comcare publication regarding the decision, Comcare stated that risk controls available to the Department included training supervisors to:

- understand how a Work Plan may be a psychosocial hazard;
- identify psychosocial risks associated with workers subject to performance management through Work Plans; and
- eliminate or minimise psychosocial risks arising from Work Plans, including when to refer a worker for medical assessment and suspend the performance management process.

Magistrate Brett Thomas of the NSW Local Court fined the department $188,000, and made an adverse publicity order, with details to be determined.

Read our detailed article here.

WHS convictions upheld following fatal 2014 truck crash

The South Australian Court of Appeal has dismissed Cleanaway Operations Pty Ltd **(Cleanaway)**'s appeal against two remaining convictions under the section 32 of the Cth WHS Act, relating to an alleged breach of Cleanaway's duties to its workers and to other persons. The convictions related to a fatal truck crash on the South Eastern Freeway in 2014. Cleanaway was initially convicted of eight section 32 offences, however six convictions were set aside by the South Australian Supreme Court in 2022.

The grounds of appeal against the remaining two convictions included that the Comcare inspector who launched the case had not received written authorisation from Comcare's chief executive to bring proceedings, and the judge failed to apply the test of risk causation required by section 32(c) of the Cth WHS Act. Both of these grounds of appeal were dismissed.

The Court of Appeal found the Comcare inspector was authorised in writing to commence the proceedings against Cleanaway, and held the appeal judge did not misunderstand the "exposure" element in section 32(c) when finding that it had been proved that the exposure to death or serious injury resulted from the breach of duty. Cleanaway's appeal was dismissed.

New South Wales

Court considers relevance of timing for commencing WHS prosecution

Profect Construction Pty Ltd **(Profect)** has been fined $45,000 for breaching the NSW WHS Act, following an incident where a crane struck powerlines and brought a live powerline onto the truck.

In sentencing Profect, **Justice Bellew of the NSW Industrial Court** invited counsel for each party to provide written submissions in relation to whether the "delay" in commencement of the prosecution "may be relevant on sentence". The incident occurred on 9 February 2023 and the proceedings were commenced on 7 February 2025, i.e. within the 2 year limitation period under the NSW WHS Act.

Counsel for the Prosecutor submitted that the limitation period under the WHS Act "addressed the issue", and further submitted that, as a general proposition, delay of this kind had limited application in cases where the defendant was a corporation rather than a natural person. Counsel for the defendant generally accepted that position. Justice Bellow concluded "In these circumstances I will take the issue no further, other than to say that in my view, it would not be correct to conclude that there will never be a case in which delay may not be relevant to sentence."

Mistake of fact defence rejected

The NSW District Court has rejected a labour hire company's mistake of fact defence following an incident where two workers collided on pallet riders at a host employer's warehouse. The labour hire company contended that it did not contravene the NSW WHS Act because it had honestly and reasonably believed that its workers would not be operating pallet riders at the host's site.

Judge Scotting rejected the labour hire company's claim, finding there was a "manifest failure on the part of [the company] to make proper inquiries" as to the types of duties its workers would be involved in. His Honour noted the mistake of fact defence "does not arise if the accused did not turn his or her mind to the question". The labour hire company will be sentenced at a later date.

The host company plead guilty to a category 2 offence against the NSW WHS Act in relation to the incident and was fined $390,000.

Industrial court finds injured truck driver not the PCBUs worker

The Industrial Court of NSW has held that an injured person was not a "worker" to whom Tattam Express Pty Ltd **(Tattam)** owed a duty under section 19(1) of the NSW WHS Act, because the injured person was not carrying out work "for" Tattum when he was injured in Tattum's distribution centre.

The injured person was a truck driver employed by Freight Specialists Pty Ltd **(FSPL)**. Tattam argued that the prosecution brought against it under section 19(1) of the NSW WHS Act could not succeed, because the truck driver was not a worker to whom it owed a section 19(1) duty. Tattam argued there was no evidence it had engaged the driver or caused him to be engaged, nor was there evidence it had directed him to take part in the unloading task. Furthermore, the work the truck driver did at the distribution centre was in furtherance of FSPL's (not Tattam's) business.

Paingakulam J noted that he had received a request from the prosecutor that he refrain from entering final orders in the event that the judgment was adverse to the prosecutor. After finding that the injured person was not a "worker" for the purpose of section 19(1) of the NSW WHS Act, His Honour stood the matter over to give the prosecutor time to consider the judgment and the merit of any appeal.

Improvement notice issued in relation to university restructure

It has been reported that a SafeWork NSW improvement notice has been issued to another major University in Sydney, requiring the University to consult with workers who are affected or potentially affected by a proposed restructure.

This follows a trend we reported on in the previous edition of our WHS Law Briefing, of WHS Regulators investigating the management of psychosocial hazards during restructures, which are identified as a source of psychosocial hazard in WHS Codes of Practice.

PCBU convicted for breach of duty as a supplier

Allcott Hire Pty Ltd **(AHPL)** has been convicted and fined $90,000 after pleading guilty to a breach of the supplier duty under section 25 of the NSW WHS Act.

AHPL hired out scaffolding equipment to a licenced builder, but did not include any toe boards and had an inadequate number of horizontal braces, trapdoor platforms and stabilisers. The Court heard that a relatively new branch manager selected the equipment to be delivered, but had not been trained on the use of AHPL's "scaffold component list".

Queensland

Powerline electrocutes and kills worker; appeal upheld for natural person PCBU

A natural person PCBU, Nathan Luke Stevens, successfully appealed against a District Court ruling that he committed a category 2 breach of the ES Act, following an incident where a tractor came into contact with a high-voltage overhead powerline at a pineapple farm. Six workers suffered electric shocks and one worker died.

An investigation into the incident found that two days prior to the incident, Stevens' father was watching a harvester travel under the powerline when he commented to a leading hand that the machinery nearly touched the line. The leading hand relayed this message to Stevens, who disregarded the suggestion.

Stevens, his father and Ergon Energy Corporation Ltd were all charged with breaching their duties of care under the ES Act and exposing individuals to a risk of death or serious injury. Ergon pleaded guilty and was fined $300,000.

Stevens and his father successfully defended their charges in the Magistrates Court, and the District Court confirmed this decision for Stevens' father, but found the complaint against Stevens was proved beyond reasonable doubt. District Court Judge Jeffrey Clarke found it was possible the father's observation before the fatality could have been "impacted by an optical illusion", but Stevens was obligated under the ES Act to respond to his father's observation, by either halting harvesting work in the area until he ascertained the height of the powerline, or arranging for Ergon to de-energise the line. Stevens appealed this decision to the Court of Appeal.

The Court of Appeal found Stevens did breach his primary duty of care under section 30 of the ES Act by not immediately adopting at least one of the particularised control measures, however it was not proved that Stevens' contravention exposed himself and others to the risk of serious injury and death across the two days before the fatality, as alleged by Queensland's independent Work Health and Safety Prosecutor. While Stevens' father's comment two days before the fatality was admissible in the prosecutor's case against his son, it constituted "ina(dmissible second-hand hearsay" if relied on as proof that the powerline was sitting lower than its usual height on that day. It was possible the powerline didn't start sagging until immediately before the fatal incident. The Court of Appeal held that the evidence adduced was insufficient to provide a causal relationship between the failure to maintain a exclusion zone, and the risk of death or serious injury by electrocution. Accordingly, the Court of Appeal set aside the decision of the District Court and confirmed the Magistrates Court's not guilty finding.

South Australia

Volunteer member of football club avoided WHS prosecution; football club not a PCBU

A volunteer member of a community football club has avoided WHS prosecution, after the South Australian Employment Tribunal considered whether the football club was a PCBU within the meaning of section 5 of the Work Health and Safety Act 2012 (SA) **(SA WHS Act)**). Section 5 relevantly excludes a "volunteer association" from the definition of a PCBU, which is defined as "a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association." If the football club was a volunteer association, and not a PCBU, the prosecution of the volunteer as a "worker" could not be a successful, because a person only falls within the definition of a worker under the WHS Act if they carry out work "for a PCBU".

The South Australian Employment Tribunal held:

- the contract between the football club and its players and coaches was not a contract of employment and there was no written contract of employment between any person and the football club, so all the circumstances of the relationship had to be weighed to decide whether the football club engaged any person under a contract of employment;
- the key indicia showed that the football club did not engage any person under a contract of employment;
- alternatively, any contract, engagement or payment made by the football club during the 2022 football season ceased on 20 August 2022 and the incident the subject of the prosecution occurred in September 2022, and the playing and coaching contracts were expressed to come to an end at the end of the season so, if there was a contract of employment between the football club and its players or coaches, the contract had expired prior to the date on which the alleged offence occurred.

The Tribunal concluded it was not proven beyond reasonable doubt that the football club was a PCBU, and accordingly the volunteer member of the football club could not be a worker, because he didn't carry out the relevant task "for a PCBU". The prosecution of the volunteer member of the football club was dismissed.

Victoria

High Court refuses special leave to appeal $2.1 million recklessness fine

The High Court has rejected Dennis Jones Engineering Pty Ltd's application for an extension of time within which to seek special leave to appeal its record $2.1 million fine for a recklessness offence under the *Occupational Health and Safety Act 2004* (Vic). The High Court held that the application did not concern a matter of public importance, so it would be futile to grant the extension of time sought.

Western Australia

Record high WHS fine for Western Australia

An industrial spray painting and sandblasting company, RPC Surface Treatment Pty Ltd **(RPC)**, pleaded guilty to two charges of failing to ensure the health and safety of a 16 year old worker, who was killed in an incident involving a 425kg suspended load which fell on the worker's chest.

RPC was fined $975,000. WorkSafe WA has reported this is the biggest ever fine under WA's workplace safety and health laws. Prior to the incident, WorkSafe inspectors had issued a Prohibition Notice to RPC prohibiting the activity of working underneath suspended loads.

Australian Capital Territory

Engineering company convicted and fined for unsafe design

The Structural Design and Construction Company Pty Ltd **(SDCC)** has been convicted of a Category 2 offence against the ACT WHS Act and fined $750,000 in relation to the collapse of a shoring wall around a construction site.

SDCC was responsible for the design and associated drawings for the shoring wall. It was found that SDCC failed to provide an adequate design for the shoring wall system, including because:

- the design capacity for the shoring wall was not equal to or greater than the design action effect, as required by clause 7.2 of the Australian Standard AS1170.0; and
- the design of the shoring wall was incapable of supporting the ground forces when a minimum pressure of 0.2Ka was applied.

It has been reported that this was the first time an engineering company has been prosecuted under the ACT WHS Act for an unsafe design.

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